The Public Health and Local government Act, 1875 (38 & 39 Vic. cap. 55), and the statutes incorporated therewith, with short explanatory notes / by J. V. Vesey Fitzgerald.

FOURTH EDITION

RE-WRITTEN & ENLARGED

THE PUBLIC HEALTH AND LOCAL GOVERNMENT ACT 1875

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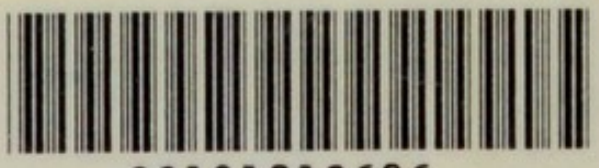

THE

PUBLIC HEALTH

AND

LOCAL GOVERNMENT ACT, 1875

(38 & 39 Vic. cap. 55),

AND

THE STATUTES INCORPORATED THEREWITH,

WITH

SHORT EXPLANATORY NOTES.

BY

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BARRISTER-AT-LAW.

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PREFACE TO THIRD EDITION.

Since the partial codification of the law relating to Public Health and Local Government, which was attained by the passing of the Act of 1875, these subjects have frequently occupied the attention of our Courts, and numerous decisions, explaining or modifying the apparent meaning of the Act, are to be found in the law reports. Parliament also has twice amended the code of 1875, by passing the Public Health (Water) Act, 1878, and the Public Health (Interments) Act, 1879; it has, moreover, increased and altered the powers and duties of local authorities by several other Acts, which are not incorporated with the Public Health Act.

In consequence of these changes, books on the Public Health Act, which were published soon after it became law, are no longer practical guides to it. This Edition will be found, I believe, to contain references to all the statutory changes of the law and to the reported cases bearing on the Act down to the present time. Several earlier decisions, which were omitted from the previous Editions, have also been noted. The work has been rewritten throughout, and now contains 212 pages more than it did previously. I hope that it may now be found to meet the wants of those members of the legal profession who have occasion to refer to the Public Health Act, and be not less adapted than the previous Editions for the use of local authorities who have to administer the Act.

J. V. Vesey Fitzgerald.

6, Crown Office Row, Temple,
April, 1881.

PREFACE.

The consolidation of the various Statutes relating to the Public Health into one Act, at last renders the subject one which those who have not been specially trained in the study of the Law can comprehend. This work is published in the hope that it may prove of some use to those who will have to put the Act into execution. It has been my aim to give notes only where explanation of the Act seemed wanted; and where the same point has been several times decided, only to quote some of the more recent cases bearing upon it. With a view of rendering this book more practically useful, I have included in the text those sections of the Incorporated Acts which are of every-day importance. But I have not thought it necessary to swell the size of my work by including the Land Clauses Acts, and other provisions, which are not likely to occupy the attention of any but members of the Legal Profession. Those points will be found fully explained in larger works already written on this and kindred subjects, with which I could neither hope nor wish that this volume should be thought in any way to compete.

J. V. Vesey Fitzgerald.

6, Crown Office Row,

August, 1875.

PREFACE TO FOURTH EDITION.

Since the appearance of the last Edition of this work there have been no important alterations in the Statute Law affecting the Public Health and Local Government, except the Alkali Act, 1881, 44 & 45 Vic. c. 37; but there have been several important judicial decisions upon the meaning of the Act, notably the case of *re* Dudley as to the rights required by local authorities to the support of sewers; Newhaven Board *v.* Newhaven Water Company, a decision of V. C. Hall as to the right of a Water Company, with Parliamentary powers to preserve a monopoly of its district; and Attorney-General *v.* Bidder, a decision of the M. R. as to the position of owners of property who have constructed works in the street adjoining as required by the Local Authority. These cases, and all others reported up to the beginning of this month, will be found in the notes ot the several sections to which they refer.

J. V. Vesey Fitzgerald.

6, Crown Office Row,

July, 1882.

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PUBLIC HEALTH ACT, 1875.

An Act for consolidating and amending the Acts relating to Public Health in England.

11th August, 1875.

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:

PART I.

PRELIMINARY.

1. This Act may be cited as the Public Health Act, 1875. Secs. 1–

2. This Act shall not extend to Scotland or Ireland, nor (save as by this Act is expressly provided) to the metropolis.

3. This Act is divided into parts, as follows:

Part I.—Preliminary.
Part II.—Authorities for Execution of the Act.
Part III.—Sanitary Provisions.
Part IV.—Local Government Provisions.
Part V.—General Provisions.

Secs. 3, 4.

Part VI.—Rating and Borrowing Powers, &c.
Part VII.—Legal Proceedings.
Part VIII.—Alteration of Areas and Union of Districts.
Part IX.—Local Government Board.
Part X.—Miscellaneous and Temporary Provisions.
Part XI.—Saving Clauses and Repeal of Acts.

4. In this Act, if not inconsistent with the context, the following words and expressions have the meanings hereinafter respectively assigned to them; that is to say—

In interpretation clauses of Acts of Parliament the word "means" is restrictive, and the words defined cannot be construed throughout the Act in any other sense than that put on them by the interpretation clause: the word "include" is used by way of extension, and admits the ordinary definition of the word defined, as well as the special definition. (*See* judgment of Erle, J., in Reg. *v.* Kershaw, 6 E. & B. at p. 1007, 26 L. J. M. C. 19; and judgment of Lord Coleridge, C. J., in Plumstead Board of Works *v.* British Land Company, 10 L. R. Q. B. at pp. 206 and 207.)

"Borough" means any place for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," and any Act amending the same:

"The metropolis" means the City of London and all parishes and places mentioned in schedules A, B, and C to the Metropolis Management Act, 1855:

The Act is 18 & 19 Vic. c. 120.

"Local Government District" means any area subject to the jurisdiction of a local board constituted in pursuance of the Local Government Acts before the passing of this Act, or in pursuance of this Act, and "local board" means any board so constituted:

"Improvement Act District" means any area for the time being subject to the jurisdiction of any Improvement Commissioners as hereinafter defined:

"Improvement Commissioners" means any Commissioners,

trustees, or other persons invested by any local Act with powers of town government and rating : Sec. 4.

"Parish" means a place for which a separate poor-rate is or can be made, or for which a separate overseer is or can be appointed :

"Union" means a union of parishes incorporated or united for the relief or maintenance of the poor under any public or local Act of Parliament, and includes any parish subject to the jurisdiction of a separate board of guardians :

"Guardians" means any persons or body of persons by whom the relief of the poor is administered in any union :

"Person" includes any body of persons, whether corporate or unincorporate :

"Local Authority" means urban sanitary authority and rural sanitary authority :

"Surveyor" includes any person appointed by a rural authority to perform any of the duties of surveyor under this Act :

"Lands" and "premises" include messuages, buildings, lands, easements and hereditaments of any tenure :

A fishery is probably included in this definition of lands, or in "rights over lands." (Oldacre *v.* Hunt, 6 De G. M. & G. 376.) So also is a ferry. (Reg. *v.* Cambrian Railway Company, 6 L. R. Q. B. 422 ; 40 L. J. Q. B. 169.) But the Standing Orders Committee of the House of Lords have held that it does not include water rights, at any rate as regards their compulsory purchase. (*See* note to s. 176, *post*.)

The definition given by the Lands Clauses Act (8 and 9 Vic. c. 18) does not include easements. A right of shooting would not, therefore, be included that definition, but probably would be in this. (Bird *v.* G. E. R. 34 L. J. C. P. 366.)

"Owner" means the person for the time being receiving the rackrent of the lands or premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person,

Sec. 4.

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

Under this definition of owner a person for the time being receiving the rent of land, though not legally entitled to it, is the "owner" for the purposes of the Act. (Peek *v.* Waterloo Board of Health, 2 H. & C. 709; 33 L. J. M. C. 11.)

The definition given by the Metropolis Management Act (18 & 19 Vic. c. 120, s. 250) is the same as this. Under it A., the owner in fee of land, entered into an agreement with a builder, by which he covenanted to build certain houses, and A. covenanted to grant leases of the houses when finished. Some houses were finished and leases granted, and A. sold the reversion of them; the other houses were not completed. It was held that A., though not receiving the rackrent of any of the houses, was still owner within the meaning of the Act. (Lady Holland *v.* Kensington Vestry, 2 L. R. C. P. 565; 36 L. J. M. C. 105.) In a later case, however, a builder who, under an agreement with a landowner, was in possession of the land and of houses which he had built on it, and was bound to pay a heavy ground rent, though *not a rackrent*, to the landowner, was held to be the owner. (Poplar Board *v.* Love, 29 L. T. N. S. 915.)

The definition of "owner" given by the Metropolitan Buildings Act (18 and 19 Vic. c. 122) is similar, though not the same. Sec. 3 defines owner to apply to "any person in possession or receipt either of the whole or of any part of the rents or profits of any 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." Under that definition, an owner in fee simple who let his land at a peppercorn rent, so as not to derive any benefit from it, was held not to be the owner within the meaning of the statute. (Evelyn *v.* Wychord, E. B. & E. 126; 27 L. J. M. C. 211.) *See* also Caudwell *v.* Hanson (7 L. R. Q. B. 55; 41 L. J. M. C. 8), which is to the same effect. A lessee, however, for 99 years, who has sublet portions of his premises for terms exceeding a year, has been held to be the owner. (Hunt *v.* Harris, 19 C. B. N. S. 13; 34 L. J. C. P. 249.) Though these decisions are on the words of a different statute, their reasoning seems to apply here. In case of liability for the continuance of a nuisance, at any rate, the owner must be the person who receives the rent from the occupier who causes the nuisance, a head landlord who receives rent from his tenant, who has underlet a portion of the premises, may not be owner of that portion, though he ultimately receives the rent. (Cook *v.* Montagu, 7 L. R. Q. B. 418; 41 L. J. M. C. 149.)

A trustee of a school, who derives no benefit from it, is an owner within this definition, as the person who would receive the rackrent if the premises were let. (Bowditch *v.* Wakefield Local Board, 6 L. R. Q. B. 567; 40 L. J. M. C. 214.) Commissioners for building churches cannot, however, be owners as respects those churches, as they are excepted from the definition of "lands" given in this Act. (Angell *v.* Paddington, 3 L. R. Q. B. 714, approved in Plumstead Board of Works *v.* British Land Co., 10 L. R. Q. B.

at p. 209.) *See* also Reg. *v.* Lee (4 Q. B. D. 75), where the Queen's Bench Division held that the incumbent of a church who is not in receipt of rent from it is not the owner within the meaning of the Metropolis Buildings Act. *See* also s. 151, *post*, as to this. For the definition of owner for purposes of voting, see Sch. II. clause 10. Sec. 4.

"Rackrent" means 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.

"Street" includes any highway (not being a turnpike road), and any public bridge (not being a county bridge), and any road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not:

The word "street" does not mean the roadway merely, but a thoroughfare with houses on each side. (Per Lord Chelmsford, in Galloway *v.* Corporation of London, 35 L. J. Ch. 493; L. R. 1 H. L. 34.) An unfinished road, with houses at intervals along it, and not dedicated to the public as a highway, is not a street. (Reg. *v.* Vestry of Islington, E. B. & E. 743). So also a piece of private ground adjoining a roadway, but not in any way dedicated to the public, is not part of a street. (Le Neve *v.* Vestry of Mile End, 8 E. & B. 1,054; 27 L. J. Q. B. 208. *See* also Curtis *v.* Embery, 7 L. R. Ex. 369.) A bridge over a railway, where previously there was only a right of way for foot-passengers, may come within the definition of the word street. (North London Railway *v.* St. Mary, Islington, 21 W. R. 226.) An ancient highway kept in repair by the parish may become a street on houses being built along it. (Pound *v.* Plumstead Board of Works, 7 L. R. Q. B. 183; 41 L. J. M. C. 51). The fact of the road being a turnpike road does not prevent its being a street (Nutter *v.* Accrington Board, 4 Q. B. D. 375; 47 L. J. Q. B. 521.) As regards water supply, *see* the definition in sec. 57, *post*.

"House" includes schools, also factories and other buildings in which more than twenty persons are employed at one time:

Sec. 4.

"House" signifies *primâ facie* a dwelling-house. (Surman *v.* Darley, 14 M. & W. 181; 14 L. J. M. C. 105.) Or a building calculated to be used as a dwelling-house. (Nunn *v.* Denton, 8 S. N. R. 794; 14 L. J. C. P. 13; Daniel *v.* Coulsting, 8 S. N. R. 949; 14 L. J. C. P. 70.)

"Drain" means 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:

"Sewer" includes sewers and drains of every description, except drains to which the word "drain" interpreted as aforesaid applies, and except drains vested in or under the control of any authority having the management of roads and not being a local authority under this Act:

The word "sewer" has a much more extended meaning than drain embracing works of the largest scale. "In the common sense of the term, it means a large and generally underground passage for fluid and feculent matter from a house or houses to some other locality, but it does not comprise a cesspool for the purpose of retaining the sewage, whether as a simple deposit or to be converted into manure, or for other useful purposes." (Per Kyndersley, V. C., in Sutton *v.* Mayor of Norwich, 31 L. T. 389.) So a wall, when forming part of a general system of drainage, may come within the meaning of the term sewer. (Poplar Board of Works *v.* Knight, E. B. & E. 408; 28 L. J. M. C. 37.) But a stream supplied by the drainage, natural and artificial, of cultivated land, and receiving the sewage of two or three inhabited houses, has been held not to be a sewer within the meaning of the Public Health Act, 1848. (Reg. *v.* Godmanchester Local Board of Health, 1 L. R. Q. B. 328; 35 L. J. Q. B. 125.)

"Slaughter-house" includes the buildings and places commonly called slaughter-houses and knackers' yards, and any building or place used for slaughtering cattle, horses or animals of any description for sale:

A place where an animal is killed not for sale is not a slaughter-house within the meaning of this Act. (Elias *v.* Nightingale, 8. E. & B. 698; 27 L. J. M. C. 151.)

"Water Company" means any person or body of persons,

corporate or unincorporate, supplying, or who may hereafter supply water for his or their own profit: Sec 4.

"Waterworks" includes 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 Water Company:

"Bakehouse Regulation Act" means 26 & 27 Vic. c. 40 (Bakehouse Regulation Act, 1863).

This Act has been repealed by 41 Vic. c. 16. (The Factory and Workshop Act, 1878.) References to such portions of it as affect this Act will be found in the notes.

"Artizans' and Labourers' Dwellings Act" means 31 & 32 Vic. c. 130 (Artizans' and Labourers' Dwellings Act, 1868):

This Act has been amended by 42 & 43 Vic. c. 64. The Acts here mentioned must not be confused with the Artizans' and Labourers' Dwellings Improvement Acts, 38 & 39 Vic. c 36, and 42 & 43 Vic. c. 63.

"Baths and Wash-houses Acts" means 9 & 10 Vic. c. 74 (An Act to encourage the establishment of Public Baths and Wash-houses); 10 & 11 Vic. c. 61 (An Act to amend the Act for the establishment of Public Baths and Wash-houses):

These acts have been amended and their scope enlarged by 41 Vic. c. 14, the Baths and Washhouses Act, 1878. *See* note to s. 10, *post*, as to their effect.

"Labouring Classes Lodging Houses Acts" means 14 & 15 Vic. c. 34 (Labouring Classes Lodging Houses Act, 1851); 29 & 30 Vic. c. 28 (Labouring Classes Dwelling Houses Act, 1866); 30 & 31 Vic. c. 28 (Labouring Classes Dwelling Houses Act, 1867).

See note to s. 10, *post*.

"Sanitary Acts" means all the above-mentioned Acts and the Acts mentioned in Part I. of Schedule V. to this Act:

Secs. 4, 5.

"Sanitary purposes" means any object or purposes of the Sanitary Acts.

"Court of quarter sessions" means the Court of general or quarter sessions of the peace having jurisdiction over the whole or any part of the district or place in which the matter requiring the cognisance of general or quarter sessions arises:

"Court of Summary jurisdiction" means any justice or justices of the peace, stipendiary or other magistrate or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts or any Acts therein referred to:

"Summary Jurisdiction Acts" means the Act of the Session of the eleventh and twelfth years of the reign of Her present Majesty, 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," and any Act amending the same.

This Act has been amended in many important particulars by 42 & 43 Vic. c. 49.

Other definitions are to be found in the Act, and the incorporated Acts. "Earth-closet" is defined by s. 37. The words "streams" and "undertakers," as regards water supply, by s. 57. "Supply of water for domestic purposes," by s. 12 of the Waterworks Clauses Act, 1863. "Reasonable expense of water supply," by s. 3 of the Public Health Water Act, 1878. "Cellar dwelling," by s. 74. "Common lodging house," by s. 76.

PART II.

AUTHORITIES FOR EXECUTION OF ACT.

CONSTITUTION OF DISTRICTS AND AUTHORITIES.

5. For the purposes of this Act, England, except the Metropolis, shall consist of districts to be called respectively—

(1.) Urban sanitary districts, and

(2.) Rural sanitary districts,

(in this Act referred to as urban and rural districts); and such urban and rural districts shall respectively be subject to the jurisdiction of local authorities, called urban sanitary authorities and rural sanitary authorities (in this Act referred to as urban and rural authorities), invested with the powers in this Act mentioned. Secs. 5, 6.

See ss. 10 & 11, *post*.

6. Urban districts shall consist of the places in that behalf mentioned in the first column of the Table in this section contained, and urban authorities shall be the several bodies of persons specified in the second column of the said table in relation to the said places respectively.

Urban district.	Urban authority.
Borough constituted such either before or after the passing of this Act.	The Mayor, Aldermen, and Burgesses acting by the Council.
Improvement Act district constituted such before the passing of this Act, and having no part of its area situated within a Borough or Local Government district.	The Improvement Commissioners.
Local Government district constituted such either before or after the passing of this Act, having no part of its area situated within a borough, and not coincident in area with a Borough or Improvement Act district.	The Local Board.

Provided that—

(1.) Any borough, the whole of which is included in and forms part of a Local Government district or Improvement Act district, and any Improvement Act district which is included in and forms part of a Local Government district, and any Local Government district which is included in and forms part of an Improvement Act district, shall for the purposes of this Act be deemed to be absorbed in the larger

Secs. 6, 7.

district in which it is included, or of which it forms part; and the improvement Commissioners or local board, as the case may be, of such larger district, shall be the urban authority therein; and

(2.) Where an Improvement Act district is coincident in area with a Local Government district, the improvement commissioners, and not a local board, shall be the urban authority therein; and

If a Corporation or Commissioners purport to act as a Local Board instead of in their proper name, they are bound by their acts, and cannot take advantage of their mistake to escape any liability they may have incurred. (Andrews *v.* Mayor of Ryde, 9 L. R. Ex. 302; 43 L. J. Ex. 174.)

(3.) Where any part of an Improvement Act district is situated within a Borough or Local Government district, or where any part of a Local Government district is situated within a borough, the remaining part of such Improvement Act district or of such Local Government district so partly situated within a borough shall, for the purposes of this Act, continue subject to the like jurisdiction as it would have been subject to if this Act had not been passed, unless and until the Local Government Board by provisional order otherwise directs.

As to provisional orders, *see* s. 270 and following sections.

For the purposes of this Act, the boroughs of Oxford, Cambridge, Blandford, Calne, Wenlock, Folkestone, and Newport, Isle of Wight, shall not be deemed to be boroughs, and the borough of Cambridge shall be deemed to be an Improvement Act district, and the borough of Oxford to be included in the Local Government district of Oxford. So much of the borough of Folkestone as is not included within the Local Government district of Sandgate shall be an urban district, and shall be under the jurisdiction, for the purposes of this Act, of the authority for executing "The Folkestone Improvement Act, 1855."

As to Oxford, *see* s. 342.

7. Every local board, and any improvement commissioners,

being an urban authority and not otherwise incorporated, shall continue to be or be a body corporate, designated (in the case of local boards and improvement commissioners being urban sanitary authorities at the time of the passing of this Act) by such name as they then bear, and (in the case of local boards constituted after the passing of this Act) by such name as they may, with the sanction of the Local Government Board, adopt; with a perpetual succession and a common seal, and with power to sue and be sued in such name, and to hold lands without any licence in mortmain for the purpose of this Act.

These bodies are corporations for those purposes only for which they are established by Parliament, and whatever is done by them beyond the scope of such purposes is *ultra vires* and void. (Rochdale Canal Co. *v.* Radcliffe, 18 Q. B. 287; 21 L. J. Q. B. 297. National Guaranteed Manure Co. *v.* Donald, 4 H. & N. 8; 28 L. J. Ex. 185.)

8. The members of local boards shall be elective; and the number and qualification of members of the local boards, the qualification of electors, the mode and expenses of election, and the proceedings incident thereto, the retirement and disqualification of members, the proceedings in case of lapse of a local board, and all other matters relating to the election of members of local boards, shall be governed by the rules contained in Schedule II. to this Act.

9. The area of any union which is not coincident in area with an urban district, nor wholly included in an urban district (in this section called a rural union), with the exception of those portions (if any) of the area which are included in any urban district, shall be a rural district, and the guardians of the union shall form the rural authority of such district.

The qualification and manner of election of guardians of a union are provided by 4 & 5 Wm. IV. c. 76, s. 38; and by 7 & 8 Vic. c. 101, ss. 14–20, and 30 & 31 Vic. c. 106, ss. 4–12. *See* also the definition given by s. 4 of this Act, *ante*, p. 3.

Provided that—

(1.) An *ex officio* guardian resident in any parish or part of a parish belonging to such union, which parish or

Sec. 9.

part of a parish forms or is situated in an urban district, shall not act or vote in any case in which guardians of such union act or vote as members of the rural authority, unless he is the owner or occupier of property situated in the rural district of a value sufficient to qualify him as an elective guardian for the union.

By 4 & 5 Wm. IV. c. 76, s. 38, every justice of the peace residing in a parish, and acting for the county, &c., within which it is situated, is an *ex officio* guardian for that parish. (*See* also 7 & 8 Vic. c. 101, s. 24.)

(2.) An elective guardian of any parish belonging to such union, and forming or being wholly included within an urban district, shall not act or vote in any case in which guardians of such union act or vote as members of the rural authority.

(3.) Where part of a parish belonging to a rural union forms or is situated in an urban district, the Local Government Board may by order divide such parish into separate wards, and determine the number of guardians to be elected by such wards respectively, in such manner as to provide for the due representation of the part of the parish situated within the rural district; but until such order has been made, the guardian or guardians of such parish may act and vote as members of the rural authority in the same manner as if no part of such parish formed part of or was situated in an urban district.

Where the number of elective guardians who are not by this section disqualified from acting and voting as members of the rural authority is less than five, the Local Government Board may, from time to time, by order nominate such number of persons as may be necessary to make up that number from owners or occupiers of property situated in the rural district of a value sufficient to qualify them as elective guardians for the union, and the persons so nominated shall be entitled to act and vote as members of the rural authority, but not further or otherwise.

Subject to the provisions of this Act, all statutes orders and legal provisions applicable to any board of guardians shall apply to them in their capacity of rural authority under this Act for purposes of this Act; and it is hereby declared that the rural authority are the same body as the guardians of the union or parish for or within which such authority act. Secs. 9. 10.

10. In addition to the powers rights duties capacities liabilities and obligations exerciseable by or attaching to an urban authority under this Act, every urban authority shall within their district (to the exclusion of any other authority which may have previously exercised or been subject to the same), have, exercise and be subject to all the powers rights duties capacities liabilities and obligations within such district exerciseable or attaching by and to the local authority under the Bakehouse Regulation Act, and the Artizans' and Labourers' Dwellings Act, or any Acts amending the same.

The Bakehouse Regulation Act is now repealed. Similar powers are now given by the Factory and Workshop Act, 1878, 41 Vic. c. 16. The provisions as to bakehouses are the following:—

XXXIV. Where a bakehouse is situate in a city town or place containing, according to the last published census for the time being, a population of more than five thousand persons, all the inside walls of the rooms of such bakehouse, and all the ceilings or tops of such rooms (whether such walls ceilings or tops be plastered or not), and all the passages and staircases of such bakehouse, shall either be painted with oil or varnished or be limewashed, or be partly painted or varnished and partly limewashed; where painted with oil or varnished, there shall be three coats of paint or varnish, and the paint or varnish 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.

A bakehouse in which there is any contravention of this section shall be deemed not to be kept in conformity with this Act.

XXXV. Where a bakehouse is situate in any city town or place containing, according to the last published census for the time being, a population of more than five thousand persons, a place on the same level with the bakehouse, and forming part of the same building, shall not 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; and

unless there be an external glazed window of at least nine superficial

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feet in area, of which at the least four and a-half superficial feet are made to open for ventilation.

Any person who lets or occupies or continues to let or knowingly suffers to be occupied any place contrary to this section shall be liable to a fine not exceeding, for the first offence, twenty shillings, and for every subsequent offence five pounds.

By s. 61 it is provided that the provisions of the Act are not generally to apply to the case of manufactures carried on in dwelling-houses; but the section contains this provision also:—

Nothing in this section shall exempt a bakehouse from the provisions of this Act with respect to cleanliness (including limewashing, painting, varnishing and washing), or to freedom from effluvia.

See also note to s. 102, *post*, as to inspection of these places.

The Artisans' and Labourers' Dwellings Act, 1868 & 1879, empowers the medical officer of health of the urban authority, to inspect when he thinks fit and obliges him to do so, if he receives a written representation from four or more householders living in or near to any street, and after inspection to report to the urban authority if he finds any premises in the district in a condition or state dangerous to health so as to be unfit for human habitation, and thereupon their surveyor must report whether the premises ought to be pulled down or otherwise altered so as to cure the defects. The urban authority, after hearing any objections which the owner of the premises or other persons responsible for the nuisance may have to urge, may make an order on him or them to do such works as they may deem necessary; these orders are subject to be reversed or modified on appeal to quarter sessions. If the order is not successfully appealed against, it must be complied with, and the urban authority may close the premises, or themselves execute the necessary works and obtain an order from quarter sessions making the cost of so doing a first charge on the premises. The owner who has executed works on his premises in compliance with an order of the urban authority, may also obtain a charging order, charging the expenses on the premises. The owner who has been ordered to do any works may require the urban authority to purchase his premises at a price to be settled by an arbitrator appointed by the Local Government Board. The urban authority are authorised to charge a special local rate, not exceeding twopence in the Pound, to meet the expenses incurred by them under this Act, and apparently may charge such expenses on the general district rate. *See* s. 207, *post*.

The powers of the Artisans' Dwellings Improvement Acts, 38 & 39 Vic. c. 36, and 42 & 43 Vic. c. 63, are not given by this section, but by s. 2 of 38 & 39 Vic. c. 36, those Acts apply to all urban sanitary districts containing over 25,000 inhabitants, and the urban authority of the district is the authority responsible for exercising the powers of those Acts. Those powers are, however, distinct from the powers given under this Act.

Where the Baths and Wash-houses Acts and the Labouring

Classes Lodging Houses Acts, or any of them, are in force within the district of any urban authority, such authority shall have all powers rights duties capacities liabilities and obligations in relation to such Acts exerciseable by or attaching to the council, incorporated commissioners, local board, improvement commissioners, and other commissioners or persons acting in the execution of the said Acts or any of them. Sec. 10.

Where the Baths and Wash-houses Acts are not in force within the district of any urban authority, such authority may adopt such Acts; and where the Labouring Classes Lodging Houses Acts are not in force within the district of any urban authority such authority may adopt such Acts.

The Acts here mentioned are those specified in s. 4, *ante*, p. 7. The Baths and Wash-houses Acts enable the corporation of a borough, for the inhabitants of any parish which is not a borough, by resolution duly passed in a vestry meeting convened for that purpose, to adopt the Acts. The town council or commissioners elected in the parish are the authority to execute the Acts, and may purchase or erect baths and wash-houses and swimming baths and provide public bathing places, charging for their use prices not exceeding those prescribed by the schedules to 10 & 11 Vic. c. 61 and 41 Vic. c. 14. They may also make bye-laws for the regulation and management of their baths, &c., by virtue of s. 34 of 9 & 10 Vic. c. 74, and may refuse admission to any person who shall have been convicted of wilfully disobeying those bye-laws or of any offence against public decency. Swimming baths may be turned into gymnasia during the winter months. The expense of providing baths, &c., is chargeable in boroughs on the borough fund and elsewhere on the poor rate (9 & 10 Vic. c. 74 ss. 4 and 17), and money received for their use goes in aid of the same funds. It would seem that, in the case of an urban authority which is not the council of the borough, these expenses and receipts now go to the district fund by virtue of s. 207 of this Act, *post*.

The Labouring Classes Lodging Houses Acts empower town councils, boards of health, improvement boards, and parishes having a population of over 10,000, to adopt the Acts, and make the local authority or commissioners elected in parishes the authority for carrying them into effect. This authority may purchase or erect buildings suitable for the dwellings of the labouring classes, and may provide those buildings with requisite fittings, &c., and may make bye-laws as to the management of those buildings and as to the charges to be made for their occupation. There is no statutory limit on the amount of the charges, but the bye-laws require the sanction of a Secretary of State. Gas and Water Companies may supply such houses with gas and water gratis or on specially favourable terms, as they may do in the case of baths and wash-houses. Where the local

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authority are the Company who supply their district with gas or water, it will probably be best for them to supply gratis and recoup themselves by the charges they make for occupation. Expenses under these Acts are chargeable on the district fund, except in parishes under commissioners, where they are chargeable on the poor rate.

Where any local Act other than an Act for the conservancy of any river is in force within the district of an urban authority, conferring on any commissioners, trustees, or other persons powers for purposes the same as or similar to those of this Act (but not for their own pecuniary benefit), all the powers rights duties capacities liabilities and obligations of such commissioners, trustees or other persons in relation to such purposes shall be transferred and attach to the said urban authority.

This clause provides for a transfer of powers to urban authorities, such as was given in the first instance by 20 & 21 Vic. c. 50, s. 2, to municipal corporations, which transfer was found to be ineffective (Swinford *v.* Keble, 1 L. R. Q. B. 549; 35 L. J. Q. B. 155.) The larger words used here will probably obviate the difficulty raised in that case.

The exception in favour of water rights is to be found throughout the Act. The expression, Act for the conservancy of a river, is also used in s. 303, *post*. There is no definition given of it, but it would seem to contemplate the same class of exemption as is provided for in s. 327, sub-s. 3.

11. In addition to the powers rights duties capacities liabilities and obligations exerciseable by or attaching to a rural authority under this Act, every rural authority shall, within their district (to the exclusion of any other authority which may have previously exercised or been subject to the same) have exercise and be subject to all the powers rights duties capacities liabilities and obligations within such district exerciseable by or attaching to the local authority under the Bakehouse Regulation Act, or any Acts amending the same.

See note to s. 10 as to these powers.

The Local Government Board may extend any urban powers to rural districts in certain cases. (Cf. s. 276, *post*.)

12. From and after the passing of this Act, all such property real and personal, including all interests rights and easements in to and out of property real and personal (including things in action), as belongs to or is vested in, or would but for this Act have belonged to or been vested in the council of any

borough, or any improvement commissioners or local board as the urban sanitary authority of any district under the Sanitary Acts, or any board of guardians as the rural sanitary authority of any district under those Acts, shall continue vested or vest in such council, improvement commissioners, or local board, or board of guardians, as the local authority of their district under this Act, subject to all debts liabilities and obligations affecting the same property. Secs. 12, 13.

All debts liabilities and obligations incurred by any authority whose powers rights duties liabilities capacities and obligations are under this Act exerciseable by or attached to a local authority may be enforced against the local authority to the same extent and in the same manner as they might have been enforced against the authority which incurred the same.

PART III.

SANITARY PROVISIONS.

SEWERAGE AND DRAINAGE.

Regulations as to Sewers and Drains.

13. All existing and future sewers within the district of a local authority, together with all buildings works materials and things belonging thereto,

Except

(1.) Sewers made by any person for his own profit, or by any Company for the profit of the shareholders; and

(2.) 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

(3.) Sewers under the authority of any commissioners of sewers appointed by the Crown,

shall vest in and be under the control of such local authority.

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Provided that sewers within the district of a local authority which have been or which may hereafter be constructed by or transferred to some other local authority, or by or to a sewage board or other authority empowered under any Act of Parliament to construct sewers, shall (subject to any agreement to the contrary) vest and be under the control of the authority who constructed the same, or to whom the same have been transferred.

Sewers which vest in a local authority by virtue of this section become the property of that local authority, and thereby the owners of the soil through which they run are deprived of their property in that portion of the soil. (Taylor *v.* Oldham Local Board, 4 C. D. 395, 46 L. J. Ch. 105; Coverdale *v.* Charlton, 4 Q. B. D. 104, 48 L. J. Q. B. 128.) The property, however, vests in the local authority only so long as the space occupied is used as a sewer. If that user ceases by reason of the sewer being no longer needed, the property revests in the owner of the soil. (Rolls *v.* St. George's, Southwark, 14 C. D. 785).

For what is included in the term "sewer," see s. 4, *ante*, p. 6.

See further, s. 327, *post*, as to powers of local authorities with respect to sewers.

14. Any local authority may purchase or otherwise acquire from any person any sewer, or any right of making or of user or other right in or respecting a sewer (with or without any buildings works materials or things belonging thereto), within their district, and any person may sell or grant to such authority any such sewer right or property belonging to him; and any purchase-money paid by such authority in pursuance of this section shall be subject to the same trusts (if any) as the sewer right or property sold was subject to.

But any person who, previously to the purchase of a sewer by such authority, has acquired a right to use such sewer shall be entitled to use the same, or any sewer substituted in lieu thereof, to the same extent as he would or might have done if the purchase had not been made.

But not to a greater extent. (Metropolitan Board of Works *v.* London and North Western Railway Company, 14 C. D. 521.)

15. Every local authority shall keep in repair all sewers belonging to them, and shall cause to be made such sewers as

may be necessary for effectually draining their district for the purposes of this Act. Sec. 15.

If the sewers vested in and belonging to a local authority are allowed by their negligence to get out of repair, the local authority are liable to an action for damages consequent on their being out of repair. (White *v.* Hindley Local Board, 10 L. R. Q. B. 219, 44 L. J. Q. B. 114; Blackmore *v.* Mile End Vestry, W. N. 82, p. 97. *See* also note to s. 19, *post.*)

It has been recently held that a local authority may be liable in their joint capacity of sewer authority and highway authority for damages caused by subsidence of the highway due to its settling down after a sewer had been made under it. (Smith *v.* West Derby Local Board, 38 L. T. N. S. 716.)

Keeping in repair does not, however, include construction of entirely new works. Where therefore an old sewer not constructed by the local authority, but vested in them, was inadequate by reason of faulty design, and the only remedy was the construction of a new set of works, the Court of Queen's Bench refused to grant a mandamus ordering the local authority to make such works. (Reg. *v.* Epsom Guardians, 8 L. T. N. S. 383.) And recently the Court of Appeal refused a mandatory injunction to restrain a local authority from permitting sewage to flow through their drains so as to cause a nuisance, the local authority having only recently acquired the drains in question and there being no evidence that any fresh nuisance was caused. The Court of Appeal at the same time intimated their opinion that if there was a persistent neglect or refusal by a local authority to construct necessary sewers, the Queen's Bench might by its prerogative mandamus compel the local authority to do its duty. (Glossop *v.* Heston and Isleworth Board, 12 C. D. 102, 48 L. J. Ch. 736; A. G. *v.* Dorking Union, 46 L. T. N. S. 573.) Power is given by s. 299 of this Act, *post*, to the Local Government Board to cause all necessary sewers to be made in cases where local authorities neglect to perform their duty; and the Queen's Bench Division would possibly refuse a mandamus and relegate the petitioners to the Local Government Board. (*See* Reg. *v.* Cockerell, 6 L. R. Q. B. 252, 40 L. J. M. C. 153.)

The duty to provide sewers is extended and explained by s. 7 of the Rivers Pollution Act, 1876, 39 & 40 Vic. c. 75. The section is as follows:—

"Every sanitary or other local authority having sewers under their control shall give facilities for enabling manufacturers within their district to carry the liquids proceeding from their factories or manufacturing processes into such sewers:

Provided that this section shall not extend to compel any sanitary or other local authority to admit into their sewers any liquid which would prejudicially affect such sewers, or the disposal by sale application to land or otherwise of the sewage matter conveyed along such sewers, or which would from its temperature or otherwise be injurious in a sanitary point of view:

Provided also, that no sanitary authority shall be required to give such facilities as aforesaid where the sewers of such authority are only sufficient for the requirements of their district, nor where such facilities

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would interfere with any order of any Court of competent jurisdiction respecting the sewage of such authority."

See further as to this, the case of St. Helen's Chemical Co. *v.* Mayor of St. Helen's (1 Ex. D. 196, 45 L. J. M. C. 150), and note to s. 94, *post*.

This duty is further enlarged by s. 5 of the Alkali Act, 1881, 44 & 45 Vic. c. 37, which is as follows :—

"Every work in which acid is produced or used shall be carried on in such manner that the acid shall not come in contact with alkali waste, or with drainage therefrom, so as to cause a nuisance.

"The owner of any work which is carried on in contravention of this section shall be liable to a fine not exceeding, in the case of the first offence, fifty pounds, and in the case of every subsequent offence, one hundred pounds, with a further sum not exceeding five pounds for every day during which any such subsequent offence has continued.

"On the request of the owner of any such work as is mentioned in this section the sanitary authority of the district in which such work is situate shall, at the expense of such owner, provide and maintain a drain or channel for carrying off the acid produced in such work into the sea or into any river or watercourse into which such acid can be carried without contravention of the Rivers Pollution Prevention Act, 1876, and the sanitary authority shall for the purpose of providing any such drain or channel have the like powers as they have for providing sewers, whether within or without their district, under the Public Health Act.

"Compensation shall be made to any person for any damage sustained by him by reason of the exercise by a sanitary authority of the powers conferred by this section, and such compensation shall be deemed part of the expenses to be paid by the owner making the request to the sanitary authority under this section."

The sewers provided by the local authority must be sufficient to carry off the ordinary sewage and rainfall of the district. (Brown *v.* Sargent, 1 F. & F. 112.) But they need not be sufficient to carry off an extraordinary flow of water caused by a storm : damage caused by that would come under the definition of damage caused by the act of God, for which there is no individual responsibility. (Blyth *v.* Birmingham Waterworks Co., 11 Ex. 533, 25 L. J. C. P. 212 ; Ruck *v.* Williams, 3 H. & N. 27, 27 L. J. Ex. 357 ; Nichols *v.* Marsland, 2 Ex. D. 1, 46 L. J. Ex. 174 ; Box *v.* Jubb, 41 L. T. N. S. 97.) So also it has been recently held by Lord Coleridge, that the Metropolitan Board of Works, who are bound under their Acts to provide the necessary sewers for draining their district, are not liable for damage caused at the outfall of one of their sewers by an extraordinary rush of water in consequence of a thunderstorm. (Dixon *v.* Metropolitan Board, 45 L. T. N. S. 312.)

16. Any local authority may carry any sewer 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 carriage-way of any street, and after giving reasonable notice in writing to the owner or occupier (if on the report of the surveyor it appears necessary), into, through or under any lands whatsoever within their district. Sec. 16.

The notice should be given in the manner prescribed by the Act, ss. 266, 267.

Sewers once made vest in and are the property of the local authority, s. 13, *ante*, p. 17. It would seem right, therefore, that a local authority, when thus partially taking a man's land from him, should be obliged to purchase the land, under the powers given by the Act, ss. 175 to 177, *post*, as is the case with a railway Company which takes a tunnel under a man's land. (Ramsden *v.* Manchester, &c., Railway Company, 1 Ex. 723; Sparrow *v.* Oxford, &c., Railway Company, 2 De G. M. & G. 94; 21 L. J. Ch. 731.) It has, however, been decided that local authorities are not obliged to purchase land before making their sewers through it (North London Railway Company *v.* Metropolitan Board, Johns, 405; 28 L. J. Ch. 909). And this exemption extends to land used for works necessarily appertaining to the sewers, such as manholes (Swanston *v.* Twickenham Board, 11 C. D. 838, 48 L. J. Ch. 623). Full compensation must, however, be made, under s. 308, *post*. A right to vertical support is acquired by the sewer directly it is constructed, and should be considered in assessing the compensation (*re* Dudley, 8 Q. B. D. 86, 51 L. J. Q. B. 121).

A sewer may be taken above ground under the powers of this section, if the local authority think that desirable (Roderick *v.* Aston Local Board, L. R. 5 C. D. 328, 46 L. J. Ch. 802).

Though "lands," by the interpretation clause, includes buildings, it has been held, under the Gasworks Clauses Act, 1847, 10 Vic. c. 15, where a similar, though not the same definition of lands is given, that a power given by that Act to take gaspipes under streets did not authorise the pipes being taken through a cellar which formed an arch under a street (Thompson *v.* Sunderland Gas Co., L. R. 2 Ex. D. 429, 46 L. J. Ex. 710).

They may also (subject to the provisions of this Act relating to sewage works without the district of the local authority) exercise all or any of the powers given by this section without their district, for the purpose of outfall or distribution of sewage.

The provisions of the Act as to sewage works without the district will be found in ss. 32 to 34, p. 30.

It is not necessary to pay or tender compensation *before* proceeding to exercise the powers of the Act for the purpose of outfall, &c. (Lister *v.* Lobley, 7 A. & E. 124; Peters *v.* Clarson, 8 S. N. R. 384, 13 L. J. M. C. 153), even though the works to be constructed are such as to involve the actual taking of land. (North London Railway *v.* Metropolitan Board of Works, *supra*, p. 20.) The liability to make compensation arises on the doing of the act which causes the damage, and not before. (Pettiward *v.* Metropolitan Board of Works, 19 C. B. N. S. 503, 34 L. J. C. P. 301.)

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17. Nothing in this Act shall authorise any local authority to make or use any sewer drain or outfall for the purpose of conveying sewage or filthy water into any natural stream or water-course, or into any canal pond or lake, until such sewage or filthy water is 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 water-course or in such canal pond or lake.

"Making or using a sewer means that you must not make a sewer which brings down sewage into the river; you must not use existing sewers for bringing into a stream sewage which you by other means bring into the old sewer. Per Cotton, L. J., Glossop *v.* Heston Board, 12 C. D., p. 125. Section 327, *post*, provides against interference with watercourses, &c., in any other way that may be detrimental to individuals, except in the cases there specified. Local authorities have no power given them to commit nuisances, &c., and therefore will be restrained by the Courts if they attempt to do so. (Bidder *v.* Croydon Local Board, 6 L. T. N. S. 778; Grand Junction Canal Co. *v.* Shugar, 6 L. R. Ch. 293; Attorney-General *v.* Cockermouth Local Board, 18 L. R. Eq. 172, 44 L. J Ch. 118.) Or the party injured may maintain an action for damages sustained by him in consequence of their so doing. (Cator *v.* Lewisham Board, 5 B. & S. 115, 34 L. J. Q. B. 74.)

If sewage gets into water, it is no defence to show that it does no harm there. (Attorney-General *v.* Cockermouth, *supra*.)

The following sections of the Pollution of Rivers Act, 1876, 39 & 40 Vic. c. 74, should be read along with this section:—

III. Every person who causes to fall or flow, or knowingly permits to fall or flow or to be carried into any stream, any solid or liquid sewage matter, shall (subject as in this Act mentioned) be deemed to have committed an offence against this Act.

Where any sewage matter falls or flows, or is carried into any stream along a channel used constructed or in process of construction at the date of the passing of this Act for the purpose of conveying such sewage matter, the person causing or knowingly permitting the sewage matter so to fall or flow or to be carried, shall not be deemed to have committed an offence against this Act if he shows to the satisfaction of the Court having cognisance of the case that he is using the best practicable and available means to render harmless the sewage matter so falling or flowing or carried into the stream.

Where the Local Government Board are satisfied, after local inquiry, that further time ought to be granted to any sanitary authority, which at the date of the passing of this Act is discharging sewage matter into any stream, or permitting it to be so discharged by any such channel as aforesaid for the purpose of enabling such authority to adopt the best practicable and available means for rendering harmless such sewage

matter, the Local Government Board may by order declare that this section shall not, so far as regards the discharge of sewage matter by such channel, be in operation until the expiration of a period to be limited in the order.

Any order made under this section may be from time to time renewed by the Local Government Board, subject to such conditions, if any, as they may see fit.

A person other than a sanitary authority shall not be guilty of an offence under this section in respect of the passing of sewage matter into a stream along a drain communicating with any sewer belonging to or under the control of any sanitary authority, provided he has the sanction of the sanitary authority for so doing.

IV. Every person who causes to fall or flow, or knowingly permits to fall or flow or to be carried into any stream any poisonous noxious or polluting liquid proceeding from any factory or manufacturing process, shall (subject as in this Act mentioned) be deemed to have committed an offence against this Act.

Where any such poisonous noxious or polluting liquid as aforesaid falls or flows or is carried into any stream along a channel used constructed or in process of construction at the date of the passing of this Act, or any new channel constructed in substitution thereof and having its outfall at the same spot for the purpose of conveying such liquid, the person causing or knowingly permitting the poisonous, noxious or polluting liquid so to fall or flow or to be carried, shall not be deemed to have committed an offence against this Act, if he shows to the satisfaction of the Court having cognisance of the case that he is using the best practicable and reasonably available means to render harmless the poisonous noxious or polluting liquid so falling or flowing or carried into the stream."

In case of pollution of a stream, where the plaintiffs asked for an injunction to prevent the continuance of the pollution, and the defendants suggested that damages were the proper remedy, Fry, J., gave the injunction, on the ground that damages would not give a proper compensation to the plaintiffs, and the pollution which prevented the due enjoyment of their property must be stopped. (Pennington *v.* Brinsop Hall Coal Company, L. R. 5 C. D. 769, 46 L. J. Ch. 773.)

18. Any local authority may from time to time enlarge lessen alter the course of cover in or otherwise improve any sewer belonging to them, and may discontinue close up or destroy any such sewer that has in their opinion become unnecessary, on condition of providing a sewer as effectual for the use of any person who may be deprived in pursuance of this section of the lawful use of any sewer: Provided that the

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discontinuance closing up or destruction of any sewer shall be so done as not to create a nuisance.

The equivalent sewer must be provided by the local authority at the general expense. The owner of the house to which it is made cannot be specially charged for so doing as private improvement expenses. (St. Marylebone *v.* Viret, 19 C. B. N. S. 424, 34 L. J. C. P. 214; Fulham Board *v.* Goodwin, 1 Ex. D. 400.)

19. Every local authority shall cause the sewers belonging to them to be constructed covered ventilated and kept so as not to be a nuisance or injurious to health, and to be properly cleansed and emptied.

Under a similar provision of the Metropolitan Local Management Act, 18 & 19 Vic. c. 120, s. 72, it has been held that a local authority "are not to be held liable for not keeping their sewers cleansed, at all events and under all circumstances; but only where, by the exercise of reasonable care and diligence, they can and ought to know that they require cleansing, and where, by the exercise of reasonable care and skill, they can be kept cleansed." If there is this absence of reasonable care, they are liable for damages consequent on the sewers being improperly kept, but not otherwise. (Hammond *v.* St. Pancras Vestry, 9 L. R. C. P. 157, 43 L. J. C. P. 157; Fleming *v.* Mayor of Manchester, 44 L. T. N. S. 517, where the authorities are carefully reviewed by Stephen, J. The Court of Appeal have directed a new trial in this case, being dissatisfied with the findings of the jury, but have not overruled the judgment of Stephen, J. on those findings—*Times*, June 27th, 1882. *See* also White *v.* Hindley Board, 10 L. R. Q. B. 219, 44 L. J. Q. B. 114.)

The local authority are liable, in case they make default in observing the requirements of this section, to have an information filed against them in the name of the Attorney-General, and to be restrained by injunction from allowing the continuance of the nuisance. (A. G. *v.* Mayor of Basingstoke, 45 L. J. Ch. 726.)

They may also obtain an injunction to prevent their sewers being blocked up and rendered a nuisance by the act of a party who contracts to dispose of the sewage. It would seem that the Attorney-General need not necessarily be made a party to such proceedings. (Nuneaton Local Board *v.* General Sewage Co., 44 L. J. Ch. 561.)

20. An urban authority may, if they think fit, provide a map exhibiting a system of sewerage for the effectual draining their district, and any such map shall be kept at their office, and shall at all reasonable times be open to the inspection of the ratepayers of their district.

21. The owner or occupier of any premises within the district of a local 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 that authority to superintend the making of such communications. Secs. 21, 22.

If the drains leak, and sewage consequently escapes on to his neighbour's land, the owner of the drains will be responsible for the damage caused thereby. (Humphries *v.* Cousins, 2 C. P. D. 233, 46 L. J. C. P. 438.)

The owner is not apparently liable, if the damage is caused by a defect in a sewer, as the sewer, by s. 13, is vested in the local authority. *Ibid.*

Any person causing a drain to empty into a sewer of a local authority without complying with the provisions of this section, shall be liable to a penalty not exceeding twenty pounds, and the local authority may close any communication between a drain and a sewer made in contravention of this section, and may recover in a summary manner from the person so offending any expenses incurred by them under this section.

The rules as to summary procedure will be found in s. 257, *post.*

An owner of property may not bring the sewage of fresh houses through an existing drain into a sewer, except as permitted by the local authority. (Metropolitan Board *v.* London and North Western Railway Co., 14 C. D. 521; Affd. 17 C. D. 246, 50 L. J. Ch. 409.) If by reason of the work not being done as required, any person sustains injury, it seems that he can maintain an action for it against the owner or occupier of the premises who has had the work done. (Gray *v.* Pullen, 5 B. & S. 970, 34 L. J. Q. B. 265.)

22. The owner or occupier of any premises without the district of a local authority may cause any sewer or drain from such premises to communicate with any sewer of the local authority on such terms and conditions as may be agreed on between such owner or occupier and such local authority, or, as in case of dispute, may be settled, at the option of the owner or occupier, by a Court of summary jurisdiction, or by arbitration in manner provided by this Act.

As to Arbitration, *see* ss. 179-181.

This section has been held to give the owner of premises without the district an absolute right to cause his drains to communicate with the system of sewers of a local authority, notwithstanding that the sewers were

Sec. 23.

only large enough to carry off the sewage of their own district. (Newington Board *v.* Cottingham Board, 12 C. D. 725, 48 L. J. Ch. 226.)

23. Where any house within the district of a local authority is without a drain sufficient for effectual drainage, the local authority shall by written notice require the owner or occupier of such house, within a reasonable time therein specified, to make a covered drain or drains emptying into any sewer which the local authority are entitled to use, and which is not more than one hundred feet from the site of such house; 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 local authority direct; and the local authority may require any such drain or drains to be of such materials and size, and to be laid at such level and with such fall as on the report of their surveyor may appear to them to be necessary.

The local authority are the sole judges of what constitutes a sufficient drain, including therein what materials are to be used in its construction (s. 25, *post*). If they choose to object to materials used, or proposed to be used, in the construction of a drain, the Courts, in the absence of wrong motives for such refusal being shown, will refuse to review their decision in the matter. (Austin *v.* Lambeth Vestry, 27 L. J. Ch. 388 and 677.)

If such notice is not complied with, the local authority may, after the expiration of the time specified in the notice, do the work required, and may recover in a summary manner the expenses incurred by them in so doing from the owner, or may by order declare the same to be private improvement expenses.

See ss. 251-257, as to these expenses.

Provided that where in the opinion of the local authority greater expense would be incurred in causing the drains of two or more houses to empty into an existing sewer pursuant to this section, than in constructing a new sewer and causing such drains to empty therein, the local authority may construct such new sewers, and require the owners or occupiers of such houses to cause their drains to empty therein, and may apportion, as they deem just, the expenses of the construction of such sewer among the owners of the several houses, and recover in a summary

manner the sums apportioned from such owners, or may, by order, declare the same to be private improvement expenses.

If the local authority choose, for the benefit of the district generally, to make a new system of drainage, it seems that they cannot apportion the expenses of so doing among owners of the property actually using the new drains, but must themselves defray the cost of such work. (Fulham Board *v.* Goodwin, 1 Ex. D. 400.)

There seems to be no limit of time within which apportionment may be made. (Bradley *v.* Greenwich Board of Works, 38 L. T. N. S. 849, 47 L. J. M. C. 111.)

The conditions prescribed by this section, as a preliminary to the local authority taking the work out of the hands of the owner, have regard solely to his rights, and do not limit the power of the local authority to do the work. The Act requires the work to be done by the one party or the other; and the owner may waive the option given to him by the Act, if he pleases, and agree with the local authority that the drain shall be made by them in the first instance. If they do the work, they are liable for damages caused by the negligence of their servants during its course. (Hall *v.* Mayor of Batley, 47 L. J. Q. B. 148.)

24. Where any house within the district of a local authority has a drain communicating with any sewer, which drain, though sufficient for the effectual drainage of the house is not adapted to the general sewerage system of the district, or is, in the opinion of the local authority, otherwise objectionable, the local authority may, on condition of providing a drain or drains as effectual for the drainage of the house and communicating with such other sewer as they think fit, close such first-mentioned drain, and may do any works necessary for that purpose, and the expenses of those works and of the construction of any drain or drains provided by them under this section shall be deemed to be expenses properly incurred by them in the execution of the Act.

Payable under ss. 207 and 229.

25. It shall not be lawful in any urban district newly to erect any house or to rebuild any house which has been pulled down to or below 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 on the report of the surveyor may appear to the urban authority to be necessary for the effectual

Secs. 25—27.

drainage of such house; and the drain or drains so to be constructed shall empty into any sewer which the urban authority are entitled to use and which is within one hundred feet of some part of the site of the house to be built or rebuilt; but if no such means of drainage are within that distance, then shall empty into such covered cesspool or other place, not being under any house, as the urban authority direct.

Any person who causes any house to be erected or rebuilt, or any drain to be constructed in contravention of this section, shall be liable to a penalty not exceeding fifty pounds.

26. Any person who in any urban district, without the written consent of the urban authority—

(1.) Causes any building to be newly erected over any sewer of the urban authority; or,

(2.) Causes any vault arch or cellar to be newly built or constructed under the carriageway of any street,

shall forfeit to the urban authority the sum of five pounds and a further sum of forty shillings for every day during which the offence is continued after written notice in this behalf from the urban authority; and the urban authority may cause any building vault arch or cellar erected or constructed in contravention of this section to be altered pulled down or otherwise dealt with as they may think fit, and may recover in a summary manner any expenses incurred by them in so doing from the offender.

A building merely placed on the ground without any foundations is a building which may be removed as interfering with a sewer in the way contemplated in this section. (Poplar Board of Works *v.* Knight, E. B. & E. 408.)

Disposal of Sewage.

27. For the purpose of receiving storing disinfecting distributing or otherwise disposing of sewage, any local authority may—

(1.) Construct any works within their district or (subject to the provisions of this Act as to sewage works without the district of the local authority) without their district; and

(2.) Contract for the use of, purchase, or take on lease any land buildings engines materials or apparatus either within or without their district; and

(3.) Contract to supply for any period not exceeding twenty-five years any person with sewage, and as to the execution and costs of works either within or without their district for the purposes of such supply:

Provided that no nuisance be created in the exercise of any of the powers given by this section.

It has been held that similar provisions of the former Public Health Acts did not empower a local authority to take land against the consent of the owner for the purpose of making a reservoir for sewage, only to use land they had for that purpose. (Sutton *v.* Mayor of Norwich, 27 L. J. Ch. 739.) It has also been held that there was no power given which would enable a local authority to construct a sewer beyond their district against the wish of the adjoining district. (Haywood *v.* Lowndes, 4 Drew. 454, 28 L. J. Ch. 400.) This power is now given, subject to the provisions of ss. 32–34 of this Act, *post*, p. 30, by which the Local Government Board can in its discretion allow or prohibit such works.

If the works are so conducted as to create a nuisance and injury to private property, the local authority may be restrained by injunction from proceeding with their works and increasing or continuing the nuisance. (Attorney-General *v.* Birmingham, 4 K. & J. 528, 19 W. R. 561, 24 L. T. N. S. 224.)

28. The local authority of any district may, by agreement with the local authority of any adjoining district, and with the sanction of the Local Government Board, cause their sewers to communicate with the sewers of such last-mentioned authority, in such manner and on such terms and subject to such conditions as may be agreed on between the local authorities, or, in case of dispute, may be settled by the Local Government Board: Provided that so far as practicable storm-waters shall be prevented from flowing from the sewers of the first-mentioned authority into the sewers of the last-mentioned authority, and that the sewage of other districts or places shall not be permitted by the first-mentioned authority to pass into their sewers so as to be discharged into the sewers of the last-mentioned authority without the consent of such last-mentioned authority.

Secs. 29—32.

29. Any local authority may deal with any lands 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 twenty-one 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 dealing with land for any of the above purposes, provision shall be made for effectually disposing of all the sewage brought to such land without creating a nuisance.

30. Where any local authority agree with any person as to the supply of sewage and as to works to be made for the purpose of such supply, they may contribute to the expense of carrying into execution by such person 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 local authority, or to or in which the benefits and obligations of such agreement may have been or may be transferred or vested.

31. 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 Improvement of Land Act, 1864," and the provisions of that Act shall apply accordingly.

The Act mentioned is 27 & 28 Vic. c. 114.

As to Sewage Works without District.

32. A local authority shall, three months at least before commencing the construction or extension of any sewer or other work for sewage purposes without their district, give notice of the intended work by advertisement in one or more of the local newspapers circulated within the district where the work is to be made.

Such notice shall describe the nature of the intended work, and shall state the intended termini thereof, and the names of the parishes, and the turnpike roads and streets, and other

lands (if any) through across under or on which the work is to be made, and shall name a place where a plan of the intended work is open for inspection at all reasonable hours; and a copy of such notice shall be served on the owners or reputed owners lessees or reputed lessees and occupiers of the said lands, and on the overseers of such parishes, and on the trustees surveyors of highways or other persons having the care of such roads or streets. Secs. 32–35.

See further, order of Local Government Board as to this, *post*, Appendix.

33. If any such owner lessee or occupier, or any such overseer trustee surveyor or other person as aforesaid, or any other owner lessee or occupier who would be affected by the intended work, objects to such work, and serves notice in writing of such objection on the local authority at any time within the said three months, the intended work shall not be commenced without the sanction of the Local Government Board after such inquiry as hereinafter mentioned, unless such objection is withdrawn.

34. The Local Government Board may, on application of the local authority, appoint an inspector to make inquiry on the spot into the propriety of the intended work and into the objections thereto, and to report to the Local Government Board on the matters with respect to which such inquiry was directed, and on receiving the report of such inspector the Local Government Board may make an order disallowing or allowing, with such modifications (if any) as they may deem necessary, the intended work.

As to this inquiry, see ss. 293–296, *post*.

Privies, Waterclosets, &c.

35. It shall not be lawful newly to erect any house, or to rebuild any house pulled down to or below the ground floor, without a sufficient watercloset, earthcloset or privy and an ashpit furnished with proper doors and coverings.

Any person who causes any house to be erected or rebuilt

Secs. 35–37.

in contravention of this enactment, shall be liable to a penalty not exceeding twenty pounds.

In case of several houses together, it is not necessary to have separate accommodation for each house, if there is sufficient for them collectively. (Clutton Guardians *v.* Pointing, 4 Q. B. D. 340, 48 L. J. M. C. 137.)

A similar requisition as to water supply in rural districts is made by the Public Health Water Act, 1878, s. vi., *post*, p. 80.

36. If a house within the district of a local authority appears to such authority by the report of their surveyor or inspector of nuisances to be without a sufficient watercloset earthcloset or privy and an ashpit furnished with proper doors and coverings, the local authority shall, by written notice, require the owner or occupier of the house, within a reasonable time therein specified, to provide a sufficient watercloset earthcloset or privy and an ashpit furnished as aforesaid, or either of them, as the case may require.

A local authority have power under this section to require a watercloset to be substituted for a privy if the latter in their opinion is insufficient (St. Luke, Middlesex, *v.* Lewis, 1 B. & S. 865, 31 L. J. M. C. 33), but have no power to issue a general order requiring waterclosets to be provided in all cases throughout their district. (Tinkler *v.* Wandsworth Board, 2 De G. & J. 261, 26 L. J. Ch. 342; *see* also note to s. 23, *ante*).

If such notice is not complied with, the local authority may, at the expiration of the time specified in the notice, do the work thereby required to be done, and may recover in a summary manner from the owner the expenses incurred by them in so doing, or may by order declare the same to be private improvement expenses: Provided that where a watercloset earthcloset or privy has been and is used in common by the inmates of two or more houses, or if in the opinion of the local authority a watercloset earthcloset or privy may be so used, they need not require the same to be provided for each house.

In case the local authority proceed to recover expenses incurred by them in carrying out the provisions of this section, the Court of Summary jurisdiction has no power to consider whether the works were necessary or the expenses reasonable; their functions are purely ministerial in such a matter. (Hargreaves *v.* Taylor, 3 B. & S. 613, 32 L. J. M. C. 111.)

See also s. 257, *post*.

37. Any enactment in force within the district of any local

authority requiring the construction of a watercloset shall be deemed to be satisfied by the construction, with the approval of the local authority, of an earthcloset.

Any local authority may, as respects any house in which any earthcloset is in use with their approval dispense with the supply of water required by any contract or enactment to be furnished to any watercloset in such house, on such terms as may be agreed on between such authority and the person providing or required to provide such supply of water.

Any local authority may themselves undertake or contract with any person to undertake a supply of dry earth or other deodorising substance to any house within their district for the purpose of any earthcloset.

In this Act the term "earthcloset" includes any place for the reception and deodorisation of fœcal matter, constructed to the satisfaction of the local authority.

38. Where it appears to any local authority by the report of their surveyor that any house is used or intended to be used as a factory or building in which persons of both sexes are employed or intended to be employed at one time in any manufacture trade or business, the local authority may, if they think fit, by written notice require the owner or occupier of such house, within the time therein specified, to construct a sufficient number of waterclosets earthclosets or privies and ashpits for the separate use of each sex.

Any person who neglects or refuses to comply with any such notice shall be liable for each default to a penalty not exceeding twenty pounds, and to a further penalty not exceeding forty shillings for every day during which the default is continued.

The notice should be given as provided by ss. 266–7. The penalty is enforceable summarily. *See* ss. 251–4.

39. Any urban authority may, if they think fit, provide and maintain, in proper and convenient situations, urinals waterclosets earthclosets privies and ashpits and other similar conveniences for public accommodation.

Secs. 39—41.

The urban authority have an absolute discretion as to the sites they select for erecting places of public convenience. In the absence of improper motives they cannot be restrained, at the instance of parties who fancy themselves injured, from erecting them where they think proper. (Mason *v.* Wollasey Local Board, L. J. Notes of Cases, 1876, p. 212.) They cannot, however, erect these conveniences so as thereby to cause a nuisance, even though the convenience is wanted and the locality chosen suitable. (Vernon *v.* St. James's Vestry, 42 L. T. N. S. 82.)

40. Every local authority shall provide that all drains waterclosets earthclosets privies ashpits and cesspools within their district be constructed and kept so as not to be a nuisance or injurious to health.

As to nuisance, *see* further, s. 91.

The cleansing and repairing of all drains and sewers is *prima facie* the duty of the occupier of premises, and not of the owner merely as such. (Russel *v.* Shenton, 3 Q. B. 449; *see* also notes to ss. 15 & 19, *ante*, pp. 19 & 24.)

41. On the written application of any person to a local authority, stating that any drain watercloset earthcloset privy ashpit or cesspool, on or belonging to any premises within their district, is a nuisance or injurious to health (but not otherwise), the local authority may, by writing, empower their surveyor or inspector of nuisances, after twenty-four hours' written notice to the occupier of such premises, or in case of emergency without notice, to enter such premises, with or without assistants, and cause the ground to be opened, and examine such drain watercloset earthcloset privy ashpit or cesspool. If the drain watercloset earthcloset privy ashpit or cesspool on examination is found to be in proper 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 local authority. If the drain watercloset earthcloset privy ashpit or cesspool on examination appear to be in bad condition, or to require alteration or amendment, the local authority shall forthwith cause notice in writing to be given to the owner or occupier of the premises requiring him forthwith or within a reasonable time therein specified to do the necessary works; and if such notice is not complied with, the person to whom it is given shall be liable to a penalty not exceeding 10s. for every day during which

he continues to make default, and the local authority may, if they think fit, execute such works, and may recover in a summary manner from the owner the expenses incurred by them in so doing, or may by order declare the same to be private improvement expenses.

In Hargreaves *v.* Taylor (3 B. & S. 54, 32 L. J. M. C. 111), it was held that it rested with the local authority to determine what works were necessary to be done, and that on a proceeding before justices for the recovery of a penalty from the owner for not doing the works which the board had ordered him to do, the justices had no jurisdiction to determine whether the works ordered by the board were necessary or not.

As to the notice, *see* ss. 266 & 267.

As to private improvement expenses, *see* s. 213.

No power is given under this section to enable the local authority to enforce their order, if the occupier of the premises refuses to admit the surveyor or inspector. Powers are given to Courts of summary jurisdiction, by ss. 102 & 305, to make orders for admission, and possibly the words of s. 305 would authorise an order for admission to enforce an order under this section.

SCAVENGING AND CLEANSING.

Regulations as to Streets and Houses.

42. Every local authority may, and when required by order of the Local Government Board shall, themselves undertake or contract for—

The removal of house refuse from premises.

The meaning of this provision is that the ordinary refuse of districts shall be removed by the local authority or their contractor, without expense to the persons whose refuse it is: but that persons, who, in carrying on a trade manufacture or business for their own profit, create refuse, independent and in excess of the ordinary domestic refuse, shall not impose upon the scavenger the burden of removing such refuse, but shall pay a reasonable sum for its removal. (Gay *v.* Cadby, 2 C. P. D. 391, 46 L. J. M. C. 260.) The local authority is only bound to remove such refuse as is injurious to health. (Collins *v.* Paddington Vestry, 40 L. T. N. S. 843.)

As to the power of the Local Government Board to order such removal, *see* s. 299.

The cleansing of earth closets privies ashpits and cesspools, either for the whole or any part of their district:

Moreover every urban authority and an rural authority invested by the Local Government Board with the requisite powers may, and when required by order of the said Board shall, themselves undertake or contract for the proper cleansing

Secs. 42–43.

of streets, and may also themselves undertake or contract for the proper watering of streets for the whole or any part of their district.

Section 276 enables the Local Government Board to invest a rural authority with any of the powers of an urban authority.

All matters collected by the local authority or contractor in pursuance of this section may be sold or otherwise disposed of, and any profits thus made by an urban authority shall be carried to the account of the fund or rate applicable by them for the general purposes of this Act; and any profits thus made by a rural authority in respect of any contributory place shall be carried to the account of the fund or rate out of which expenses incurred under this section by that authority in such contributory place are defrayed.

The following matters have been held not to be such as could be appropriated by a local authority as refuse:—

Ashes from a brass foundry, in which some metal remained. (Law *v.* Dodd, 1 Ex. 845, 15 L. J. M. C. 65.)

Half-burnt coals from a brewery, mixed with dust and ashes, and required for the purpose of cleaning casks. (Filby *v.* Combe, 2 M. & W. 677.)

Dust and ashes produced by a manufactory. (Lyndon *v.* Standbridge, 2 H. & N. 45, 26 L. J. Ex. 386.)

If any person removes, or obstructs the local anthority or contractor in removing any matters by this section authorised to be removed by the local authority, he shall for each offence be liable to a penalty not exceeding £5: Provided that the occupier of a house within the district shall not be liable to such penalty in respect of any such matters which are produced on his own premises and are intended to be removed for sale or for his own use, and are in the meantime kept so as not to be a nuisance.

43. If a local authority, who have themselves undertaken or contracted for the removal of house refuse from premises, or the cleansing of earthclosets privies ashpits and cesspools, fail, without reasonable excuse, after notice in writing from the occupier of any house within their district requiring them to remove any house refuse or to cleanse any earthcloset privy ashpit or cesspool belonging to such house or used by the occupiers thereof, to cause the same to be removed or cleansed

as the case may be, within seven days, the local authority shall be liable to pay to the occupier of such house a penalty not exceeding five shillings for every day during which such default continues after the expiration of the said period.

The words 'on summary conviction,' which were in the corresponding section of the previous Act, are here omitted, but the penalty must, no doubt, be imposed by a Court of summary jurisdiction under s. 251, *post*. By an analogous provision of the Metropolitan Management Act, 1855 (18 & 19 Vic. c. 120, s. 125), vestries are required to remove refuse. Under that section it was recently held that an action might be maintained against a vestry to recover damages consequent on their neglect to perform this duty. (Guardians of Holborn Union *v.* Vestry of St. Leonard's, Shoreditch, 2 Q. B. D. 145, 46 L. J. Q. B. 36.) It would seem, therefore, if this decision is held to be good law, that, where a local authority have the duty cast upon them, and neglect to perform it, an occupier who suffered from their neglect might maintain an action for damages, instead of claiming the penalty given by this section. *See*, however, the decision of the Court of Appeal in Atkinson *v.* Newcastle and Gateshead Waterworks Company (2 Ex. D. 441, 46 L. J. Ex. 775).

44. Where the local authority do not themselves undertake or contract for—

The cleansing of footways and pavements adjoining any premises,

The removal of house refuse from any premises,

The cleansing of earthclosets privies ashpits and cesspools belonging to any premises,

they may make bye-laws imposing the duty of such cleansing or removal, at such intervals as they think fit, on the occupier of any such premises.

These bye-laws must conform to the general rules given by ss. 182–188. They will be invalid so far as they apply to objects not authorised by the Act. (Reg. *v.* Wood, 8 E. & B. 49, 24 L. J. M. C. 130.)

An urban authority may also make bye-laws for the prevention of nuisances arising from snow filth dust ashes and rubbish, and for the prevention of the keeping of animals on any premises so as to be injurious to health.

A bye-law forbidding the keeping of animals absolutely, without reference to the question whether they are so kept as to be injurious to health, would be bad. (Everett *v.* Grapes, 3 L. T. N. S. 669.)

45. Any urban authority may, if they see fit, provide in proper and convenient situations receptacles for the temporary

Secs. 45—47. deposit and collection of dust ashes and rubbish; they may also provide fit buildings and places for the deposit of any matters collected by them in pursuance of this part of this Act.

See note to s. 39, *ante*, p. 34, as to the powers of the urban authority to provide these receptacles.

46. Where, on the certificate of the medical officer of health or of any two medical practitioners, it appears to any local authority 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 disease, the local authority 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.

If the person to whom notice is so given fails to comply therewith within the time therein specified, he shall be liable to a penalty not exceeding ten shillings for every day during which he continues to make default; and the local authority may, if they think fit, cause such house or part thereof to be whitewashed, cleansed or purified, and may recover in a summary manner the expenses incurred by them in so doing, from the person in default.

The local authority are it seems obliged to give the notice requiring the owner or occupier to do the necessary work, but are not obliged to make him comply with it, or to do the necessary works themselves. It seems that there is no power given by the Act to make them move in such a matter, as s. 299 only empowers the Local Government Board to take the initiative in cases where the local authority do not comply with provisions of the Act, which it is their duty to enforce.

47. Any person who in any urban district—

(1.) Keeps any swine or pigstye in any dwelling-house, or so as to be a nuisance to any person; or

(2.) 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 urban authority to remove the same; or

(3.) Allows the contents of any watercloset 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 not exceeding five shillings for every day during which the offence is continued, and the urban authority shall abate or cause to be abated every such nuisance, and may recover in a summary manner the expenses incurred by them in so doing from the occupier of the premises on which the nuisance exists.

In order to subject a person to the penalty provided by this section, it is unnecessary to prove that the nuisance is injurious to health. (Banbury Authority *v.* Page, 8 Q. B. D. 97, 51 L. J. M. C. 21.) Nuisances injurious to health are dealt with by s. 91. As to keeping animals so as to be injurious to health, *see* also s. 44, *ante*. The duty of abating such nuisance is compulsory and may be enforced on the local authority under s. 299; expenses may be recovered under s. 251.

Offensive Ditches and Collections of Matter.

48. Where any watercourse or open ditch lying near to or forming the boundary between the district of any local authority and any adjoining district is foul and offensive, so as injuriously to affect the district of such local authority, any justice having jurisdiction in such adjoining district may, on the application of such local authority, summon the local authority of such adjoining district to appear before a Court of Summary Jurisdiction to show cause why an order should not be made by such Court for cleansing such watercourse or open ditch, and for executing such permanent or other structural works as may appear to such Court to be necessary; and such Court, after hearing the parties, or *ex parte*, in case of the default of any one 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 Court may seem reasonable.

49. Where in any urban district it appears to the inspector of nuisances that any accumulation of manure dung soil or filth

Secs. 49—51. or other offensive or noxious matter 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 such notice is not complied with within twenty-four hours from the service thereof, the manure dung soil or filth or matter referred to shall be vested in and be sold or disposed of by the urban authority, and the proceeds thereof shall be applied in payment of the expenses incurred by them in the execution of this section; and the surplus (if any) shall be paid on demand to the owner of the matter removed.

The expenses of removal by the urban authority of any such accumulation, if and so far as they are not covered by the sale thereof, may be recovered by the urban authority in a summary manner from the person to whom the accumulation belongs, or from the occupier of the premises, or (where there is no occupier) from the owner.

See ss. 254 and 257.

50. Notice may be given by any urban authority (by public announcement in the district or otherwise) for the periodical removal of manure or other refuse matter from mews stables or other premises; and where any such notice has been given, any person to whom the manure or other refuse matter belongs who fails so to remove the same, or permits a further accumulation, and does not continue such periodical removal at such intervals as the urban authority direct, shall be liable without further notice to a penalty not exceeding twenty shillings for each day during which such manure or other refuse matter is permitted to accumulate.

WATER SUPPLY.

Powers of Local Authority in relation to Supply of Water.

51. Any urban authority may provide their district or any part thereof, and any rural authority may provide their district or any contributory place therein or any part of any such contributory place, with a supply of water proper and sufficient for

public and private purposes, and for those purposes or any of them may— Secs. 51, 52.

(1.) Construct and maintain waterworks, dig wells, and do any other necessary acts; and

The local authority may dig wells, and thereby secure a supply of water by underground percolation without incurring any liability to pay damages to neighbouring landowners whose water-supply is abstracted or diminished in consequence of such well. (Chasemore *v.* Richards, 7 H. L. C. 349, 29 L. J. Ex. 81.) Nor is this an injury for which compensation can be claimed under the Waterworks Clauses Act, 1847. *E converso*, no compensation is due when a well is emptied by underground percolation. (New River Company *v.* Johnson, 2 E. & E. 435, 29 L. J. M. C. 93; *see* also Stainton *v.* Metropolitan Board of Works, 3 B. & S. 710.) But an injunction has been granted to prevent the pollution of a well by the percolation of sewage into it, although the above cases were quoted in the argument. (Womersley *v.* Church, 19 L. T. N. S. 190.)

(2.) Take on lease or hire any waterworks, and (with the sanction of the Local Government Board) purchase any waterworks or any water or right to take or convey water, either within or without their district, and any rights powers and privileges of any water Company; and

An urban authority cannot take water from any stream in quantites sufficient to interfere with the rights of riparian proprietors below the spot where the water is abstracted without incurring the liability to compensate such proprietors. (Embrey *v.* Owen, 6 Ex. 369; Attorney-General *v.* Lonsdale, 7 L. R. Eq. 377; Lord Norbury *v.* Kitchin, 7 L. T. N. S. 685, 20 L. J. Ex. 685.)

They are not obliged to purchase the water rights, but must compensate the riparian proprietors below, for any injury they cause by taking the water. (Bush *v.* Trowbridge Waterworks Company, 10 L. R. Ch. 463, 44 L. J. Ch. 645.)

(3.) Contract with any person for a supply of water.

Special facilities are given for the acquisition of water rights by local authorities by the limited owners' Reservoirs and Water Supply further facilities Act, 1877, 40 & 41 Vic. c. 31, which enables landowners under disability to construct waterworks and charge the cost on their estates and also to contract to supply water to local authorities.

52. Before commencing to construct waterworks within the limits of supply of any water Company empowered, by Act of Parliament or any order confirmed by Parliament, to supply water, the local authority shall give written notice to every

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water Company within whose limits of supply the local authority are desirous of supplying water, stating the purposes for which, and (as far as may be practicable) the extent to which water is required by the local authority.

It shall not be lawful for the local authority to construct any waterworks within such limits, if and so long as any such Company are able and willing to supply water proper and sufficient for all reasonable purposes for which it is required by the local authority; and any difference as to whether the water which any such Company are able and willing to lay on is proper and sufficient for the purposes for which it is required, or whether the purposes for which it is required are reasonable, or (if and so far as the charges of the Company are not regulated by Parliament) as to the terms of supply, shall be settled by arbitration in manner provided by this Act.

A water Company is not able and willing to supply water, within the meaning of this section, unless it has both the necessary powers and the requisite supply of water within the district. If there is an existing Company able and willing to give a good supply of water, such as is required by the Legislature, then in that concurrence of circumstances they are entitled to the monopoly; but if there is a Company having merely a legal existence and not able and willing to give that supply, no such monopoly is given. (Richmond Waterworks Co. *v.* Richmond Vestry, 3 C. D. 82, 45 L. J. Ch. 441.) But Hall, V.-C., has decided, January 19th, 1882, that a Company which had the necessary powers and supply of water and was engaged in constructing the works necessary for bringing that supply into the district, was entitled to an injunction restraining a local authority from constructing other works within the same area. (Newhaven Water Company *v.* Newhaven Board, L. T. 1882, p. 227, not reported elsewhere.)

As to arbitration, *see* ss. 179–181.

53. At least two months before commencing to construct under the provisions of this Act any reservoir (other than a service reservoir or tank which will hold not more than one hundred thousand gallons), the local authority shall give notice of the intended work by advertisement in one or more of the local newspapers circulated within the district where the reservoir is to be constructed.

If any person who would be affected by the intended work

objects to such work, and serves notice in writing of such objection on the local authority at any time within the said two months, the intended work shall not be commenced without the sanction of the Local Government Board, after such inquiry as hereinafter mentioned, unless such objection is withdrawn.

The Local Government Board may on application of the local authority, appoint an inspector to make inquiry on the spot into the propriety of the intended work and into the objections thereto, and to report to the Local Government Board on the matters with respect to which such inquiry was directed; and on receiving the report of such inspector, the Local Government Board may make an order disallowing or allowing with such modifications (if any) as they may deem necessary, the intended work.

See ss. 293–296.

54. Where a local authority supply water within their district they shall have the same powers, and be subject to the same restrictions, for carrying water mains within or without their district as they have and are subject to for carrying sewers within or without their district respectively by the law for the time being in force.

As to the conditions under which these powers may be exercised, *see* ss. 16–18, 32–34, *ante*.

55. A local authority shall provide and keep in any waterworks constructed or purchased by them a supply of pure and wholesome water; and where a local authority lay any pipes for the supply of any of the inhabitants of their district, the water may be constantly laid on at such pressure as will carry the same to the top story of the highest dwelling-house within the district or part of the district supplied.

If the local authority make default in respect of water supply, the Local Government Board can see that a proper supply is provided, s. 299. (*See* also s. iii. of the Public Health Water Act, 1878, 41 & 42 Vic. c. 25, *post*, p. 75).

56. Where a local authority supply water to any premises they may charge in respect of such supply a water rate to be assessed on the net annual value of the premises ascertained in

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the manner by this Act prescribed with respect to general district rates; moreover they may enter into agreements for supplying water on such terms as may be agreed on between them and the persons receiving the supply, and shall have the same powers for recovering water rents or other payments accruing under such agreements as they have for recovering water rates.

That is, under 10 & 11 Vic. c. 17, s. lxviii.–lxxiv., and 26 & 27 Vic. c. 93, s. xxi., *post*, pp. 57–58 & 66.

The water rate must not be calculated on such a scale as to give the local authority a profit on the supply of water. "They should make an estimate of the sum they actually require for the maintenance of their waterworks, and cannot legally levy a larger sum by water rate than the sum they so require." (Mayor of Worcester *v.* Droitwich Assessment Committee, 2 Ex. D. 49, 46 L. J. M. C. 241.)

By s. x. of the Public Health Water Act, 1878, it is made incumbent on a sanitary authority supplying water in an urban district or contributory place, to charge water rates or water rents in respect of the water so supplied, if required to do so by ten persons rated to the relief of the poor. *See* further note to that section, *post*, p. 82.

As to Assessment of General District Rates, *see* ss. 209–212, *post*.

57. For the purpose of enabling any local authority to supply water there shall be incorporated with this Act the Waterworks Clauses Act, 1863, and the following provisions of the Waterworks Clauses Act, 1847 (namely):

"With respect (where the local authority have not the control of the streets) to the breaking up of streets for the purpose of laying pipes;" and

"With respect to the communication pipes to be laid by the undertakers;" and

"With respect to the communication pipes to be laid by the inhabitants;" and

"With respect to waste or misuse of the water supplied by the undertakers;" and

"With respect to the provision for guarding against fouling the water of the undertakers;" and

"With respect to the payment and recovery of the water rates."

Provided—

That the provisions with respect to the communication

pipes to be laid by the undertakers and the inhabi- Sec. 57.
tants respectively shall apply only in districts or parts of districts where the local authority lay any pipes for the supply of any of the inhabitants thereof; and

That any dispute authorised or directed by any of the said incorporated provisions to be settled by an inspector or two justices shall be settled by a Court of summary jurisdiction; and

That section 44 of the Waterworks Clauses Act, 1847, shall for the purposes of this Act have effect as if the words "with the consent in writing of the owner or reputed owner of any such house, or of the agent of such owner," were omitted therefrom; and any rent for pipes and works paid by an occupier under that section may be deducted by him from any rent from time to time due from him to such owner.

The Acts incorporated are 10 & 11 Vic. c. 17, ss. 28–34 and 44–74, and the whole of 26 & 27 Vic. c. 93. The sections of these Acts, which are not practically included in this Act, will be found in the following pages.

The following definitions are given by the Waterworks Clauses Act, 1847:—

The word "streams" shall include springs, brooks, rivers and other running waters.

The word "street" shall include any square, court or alley, highway, lane, road, thoroughfare or public passage or place within the limits of the special Act.

The expression "the undertakers" shall mean the persons by the special Act authorised to construct the waterworks.

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10 & 11 Vic. c. 17.

With respect to breaking up streets for the purpose of laying pipes:—

XXVIII. The undertakers, under such superintendence as is hereinafter specified, may open and break up the soil and pavement of the several streets and bridges within the limits of

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the special Acts, and may open and break up any sewers drains or tunnels within or under such streets or bridges, and lay down and place, within the same limits, pipes conduits service pipes and other works and engines, and from time to time repair alter or remove the same, and for the purposes aforesaid remove and use all earth and materials in and under such streets and bridges, and do all other acts which the undertakers shall from time to time deem necessary for supplying water to the inhabitants of the district included within the said limits; doing as little damage as can be in the execution of the powers hereby or by the special Act granted, and making compensation for any damage which may be done in the execution of such powers.

It was held recently by the Court of Appeal that very similar words in the Gas Clauses Act, 1847, 10 Vic. c. 15 ss. 6-7, did not authorise the laying of pipes in the crown of a brick-arched cellar under the street. (Thompson *v.* Sunderland Gas Company, 2 Ex. D. 429, 46 L. J. Ex. 710.)

The words "doing as little damage as can be" do not apply to what is done in the execution of the powers given by Parliment—*e.g.*, if two modes of doing work are authorised, one of which might cause more damage than the other, the undertakers may adopt whichever mode they prefer. The words only apply to the manner of doing work. (Reg. *v.* East and West India Dock Company, 2 E. & B. 466, 22 L. J. Q. B. 380.)

XXIX. Provided always, That nothing herein contained shall authorise or empower the undertakers to lay down or place any pipe conduit service pipe or other work in any land not dedicated to public use without the consent of the owners and occupiers thereof, except that the undretakers at any time may enter upon and lay or place any new pipe in the place of an existing pipe in any land wherein any pipe hath been already lawfully laid down or placed in pursuance of this or the special Act or any other Act of Parliament, and may repair or alter any pipe so laid down.

A pipe so laid without the consent of the owner may be ordered to be removed (Goodson *v.* Richardson, 9 L. R. Ch. 221, 43 L. J. Ch. 790.) A local authority have, however, greater powers given them by s. 54 of the principal Act, *ante* p. 43, and may place their pipes in private land, being only liable to compensate the owner for the damage caused by so placing them.

XXX. Before the undertakers open or break up any street bridge sewer drain or tunnel, they shall give to the persons under whose control or management the same may be, or to their clerk surveyor or any other officer, notice in writing of their intention to open or break up the same not less than three clear days before beginning such work, except in cases of emergency arising from defects in any of the pipes or other works, and then so soon as is possible after the beginning of the work or the necessity for the same shall have arisen. Sec. 57.

This and the following four sections are not of much practical importance here, as the local authority who break up the street will almost always be themselves the persons who have the control of it.

XXXI. No such street bridge sewer drain or tunnel shall, except in the cases of emergency aforesaid, be opened or broken up except under the superintendence of the persons having the control or management thereof or of their officer, and according to such plan as shall be approved of by such persons or their officer, or in case of any difference respecting such plan, as shall be determined by two justices; and such justices may, on the application of the persons having the control or management of any such sewer or drain or their officer, require the undertakers to make such temporary or other works as they may think necessary for guarding against any interruption of the drainage during the execution of any works which interfere with any such sewer or drain. Provided always that if the persons having such control or management as aforesaid and their officer fail to attend at the time fixed for the opening of any such street bridge sewer drain or tunnel, after having such notice of the intention of the undertakers as aforesaid, or shall not propose any plan for breaking up or opening the same, or shall refuse or neglect to superintend the operation, the undertakers may perform the work specified in such notice without the superintendence of such persons or their officer.

The plan must show the position on the road and depth of the proposed excavation, so as to show accurately what is proposed to be done. (Edgware Highway Board *v.* Colne Valley Water Company, 47 L. J. Ch. 889.)

XXXII. When the undertakers open or break up the road

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or pavement of any street or bridge, or any sewer drain or tunnel, they shall with all convenient speed complete the work for which the same shall be broken up, and fill in the ground and reinstate and make good the road or pavement or the sewer drain or tunnel so opened or broken up, and carry away the rubbish occasioned thereby; and shall at all times whilst any road or pavement shall be so opened or broken up cause the same to be fenced and guarded, and shall cause a light sufficient for the warning of passengers to be set up, and kept thereagainst every night during which such road or pavement shall be continued open or broken up, and shall, after replacing and making good the road or pavement which shall have been so broken up, keep the same in good repair for three months thereafter, and such further time, if any, not being more than twelve months in the whole as the soil so broken up shall continue to subside.

XXXIII. If the undertakers open or break up any street or bridge or any drain sewer or tunnel without giving notice aforesaid, or in a manner different from that which shall have been approved of or determined as aforesaid, or without making such temoporary or other work as aforesaid when so required, except in the cases in which undertakers are authorised to perform such works without superintendence or notice, or if the undertakers make any unnecessary delay in completing any such work, or in filling the ground or reinstating and making good the road or pavement or the sewer drain or tunnel so opened or broken, or in carrying away the rubbish occasioned thereby, or if they neglect to cause the place where such road or pavement has been broken up to be fenced guarded and lighted, or neglect to keep the road or pavement in repair for the space of six months next after the same is made good or such further time as aforesaid, they shall forfeit to the persons having the control or management of the street bridge sewer drain or tunnel in respect of which such default is made, a sum not exceeding five pounds for every such offence, and an additional sum of five pounds for each day during

which any such delay as aforesaid shall continue after they shall have received notice thereof.

XXXIV. If any such delay or omission as aforesaid shall take place the persons having the control or management of the street bridge sewer drain or tunnel in respect of which delay or omission shall take place, may cause the work so delayed or omitted to be executed, and the expense of executing the same shall be repaid to such persons by the undertakers, and such expenses may be recovered in the same way as damages are recoverable under this and the special Acts.

With respect to the communication pipes to be laid down by the undertakers :—

The following ten sections apply only in cases where the local authority lay supply pipes. (*See* s. 57 of the principal Act, *ante*, p. 45.)

XLIV. The undertakers shall upon the request of the owner of any dwelling-house in any street in which pipes have been laid down by them, the annual value of which house shall not exceed ten pounds, or upon request of the occupier (*with the consent in writing of the owner or reputed owner of any such house, or of the agent of such owner*), and upon payment or tender of the proportion of water rate in respect of such house, by this or the special Act made payable in advance, lay down communication pipes and other necessary works for the supply of such house with water for domestic or other purposes, and shall keep the same in repair; and thereupon the occupier of such house shall be entitled to have a sufficient supply of water for his domestic purposes from the undertakers, and the undertakers may charge for such pipes and works, in addition to the water rate, such reasonable annual rent as shall be agreed upon, or in case of dispute, as shall be settled by such inspector as aforesaid, when appointed, and in the meantime as shall be settled by two justices; and such rent shall be chargeable on, and recoverable from, the occupier, or, in his default, from the owner of such house, at the same times and in the same manner as water rates; and such pipes and other works shall not be subject to distress

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nor to be taken in execution under any process of a Court of law or equity, or under any fiat or sequestration in bankruptcy, against such occupier or against such owner, unless he shall have become the proprietor of the said pipes and works under the provisions hereinafter contained.

A workhouse has been held to be a dwelling-house within the meaning of this section. (Liskeard Union *v.* Liskeard Waterworks Company, 7 Q. B. D. 505.)

As to the words in italics, *see* s. 57, *ante*, p. 45.

As to what are domestic purposes, *see* 26 & 27 Vic. c. 93, s. xii., *post*, p. 63.

XLV. If, upon such request and consent, and upon tender or payment of such proportion of rate as aforesaid, the undertakers for seven days neglect or refuse to lay down such communication pipes or other works, they shall be liable to forfeit to the person so making such request the sum of five pounds, and a further sum of forty shillings for every day during which such refusal or neglect shall continue after seven days from the making of such request and tender as aforesaid.

XLVI. If the occupier for the time being of the house in which any such communication pipes or other works and engines shall have been laid down by the undertakers refuse to pay for a supply of water, or if such house be unoccupied for twelve months, the undertakers may demand from the owner thereof payment of the amount of the principal money invested by them in providing and laying down such communication pipes and other works and engines; and if such owner, after ten days' notice given to him by the undertakers, neglect or refuse to pay such principal money, the undertakers may enter the house and remove such pipes and other works, and the balance of such principal money, after deducting the value of such pipes and other works, with all arrear of rent for such pipes and works, shall, in default of payment, be recovered with the costs incurred, from the owner, or from the occupier for the time being, in the same manner as water rates are directed by this or the special Act to be recovered: Provided always that no greater sum shall be recovered from any such occupier than the

amount of rent for the time being owing by him, unless he refuse to discover the amount of rent owing by him, and that every such occupier shall be entitled to deduct from the amount of rent payable by him the sum so recovered from him, or which he shall have paid on demand. Sec. 57.

See ss. lxviii.–lxxiv., and 26 & 27 Vic. c. 93, s. xxi., *post*, p. 67, as to the recovery of water rates.

XLVII. The owner or reputed owner of any house where any such communication pipes or other works shall have been laid down by the undertakers may at any time pay off the amount then due to the undertakers in respect of the costs of providing and laying down such pipes and works, and all rent at that time due in respect thereof, and thereupon such pipes and works shall become the property of such owner, and all further rent in respect thereof shall cease to accrue to the undertakers.

And with respect to the communication pipes to be laid by the inhabitants:—

XLVIII. Any owner or occupier of any dwelling-house or part of a dwelling-house within the limits of the special Act who shall wish to have water from the waterworks of the undertakers brought into his premises by this or the special Act directed to be paid in advance, may open the ground between the pipes of the undertakers and his premises, having first obtained the consent of the owners and occupiers of such ground, and lay any leaden or other pipes from such premises to communicate with the pipes of the undertakers, such pipes to be of a strength and material to be approved of by the undertakers, or, in case of dispute, to be settled by two justices, or by the inspectors to be appointed as aforesaid; Provided always that every such owner or occupier shall before he begins to lay any such pipe, give to the undertakers fourteen days' notice of his intention to do so.

XLIX. Before any pipe is made to communicate with the pipes of the undertakers, the person intending to lay such pipe shall give two days' notice to the undertakers of the day and hour when such pipe is intended to be made to communicate

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with the pipes of the undertakers; and every such pipe shall be so made to communicate under the superintendence and according to the directions of the surveyor or other officer appointed for that purpose by the undertakers, unless such surveyor or officer fail to attend at the time mentioned in the said notice; and in case of any dispute as to the manner in which such pipe shall be so made to communicate it shall in England or Ireland be settled by two justices, and in Scotland by the Sheriff, or in either case by the inspector to be appointed as aforesaid.

The dispute must be settled by a Court of Summary Jurisdiction, *see* s. 57, *ante*, p. 45.

L. The bore of any such pipe as last aforesaid shall not exceed the prescribed limits, and where no limit shall be prescribed it shall not exceed half-an-inch, except with the consent of the undertakers.

LI. Any person who shall have laid down any pipe or other works, or who shall have become the proprietor thereof, may remove the same, after having first given six days' notice in writing to the undertakers of his intention so to do, and of the time of such proposed removal, and every such person shall make compensation to the undertakers for any injury or damage to their pipes or works which may be caused by such removal; and every person who shall remove any such pipe or other works without giving such notice as aforesaid shall forfeit to the undertakers a sum not exceeding five pounds, over and above the damage which he may be found liable to pay in any action-at-law, at the suit of the undertakers, for the damage done to their pipes or works.

LII. Any such owner or occupier may open or break up so much of the pavement of any street as shall be between the pipe of the undertakers and his house building or premises and any sewer or drain therein, for any such purpose as aforesaid, doing as little damage as may be, and making compensation for any damage done in the execution of any such work: Provided

always that every such owner or occupier desiring to break up the pavement of any street or any sewer or drain therein shall be subject to the same necessity of giving previous notice, and shall be subject to the same control restrictions and obligations in and during the time of breaking up the same, and also reinstating the same, and to the same penalties for any delay in regard thereto as the undertakers are subject to by virtue of this or the special Act. Sec. 57.

As to the meaning of the words, "doing as little damage as may be," *see* note to s. xxviii., *ante*, p. 46.

See ss. xxviii.–xxxiv., *ante*, pp. 45–49, as to the restrictions to which the undertakers are subject.

Where an owner acting under this power opened the street to lay a service-pipe, and carelessly filled up the hole, and the connexion with the main was at the same time effected by the waterworks Company, it was held that the owner and not the Company was responsible for reinstating the street. (Glover *v.* East London Waterworks Company, 16 W. R. 310.) Held also that pavement did not mean foot-pavement only. (*Ib.* 19 L. T. N. S. 475.)

See s. 149 of the principal Act, *post*, as to liability in case of unauthorised breaking up of the pavement.

LIII. Every owner and occupier of any dwelling-house or part of a dwelling-house within the limits of the special Act shall, when he has laid such communication pipes as aforesaid, and paid or tendered the water rate payable in respect thereof according to the provisions of this and the special Act, be entitled to demand and receive from the undertakers a sufficient supply of water for his domestic purposes.

As to what are domestic purposes, *see post*, p. 63.

And with respect to waste and misuse of the water supplied by the undertakers :—

LIV. If by the special Act it be provided that the water to be supplied by the undertakers need not be constantly laid on under pressure, every person supplied with water shall, when required by the undertakers, provide a proper cistern to hold the water with which he shall be so supplied, with a ball and stop-cock in the pipe bringing the water from the works of the undertakers to such cistern, and shall keep such cistern ball and

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stop-cock in good repair, so as effectually to prevent the water from running to waste; and in case any such person shall, when required by the undertakers, neglect to provide such cistern ball or stop-cock, or to keep the same in good repair, the undertakers may cut off the pipe or turn off the water from the premises of such person until such cistern and ball and stop-cock shall be provided or repaired as the case may require.

The principal Act by s. 55, *ante*, p. 43, leaves it discretionary for a local authority to provide a constant supply or not as they think fit. If they provide such supply the duty to provide cisterns would still remain if they choose to enforce it.

LV. Every person supplied with water by the undertakers who shall suffer any such cistern pipe ball or stop-cock to be out of repair, so that the water supplied to him by the undertakers shall be wasted, shall forfeit to the undertakers for every such offence a sum not exceeding five pounds.

To be recovered under the provisions of ss. 251, *et seq.*, of the principal Act.

LVI. The undertakers may repair any such cistern pipe ball or stop-cock so as to prevent any such waste of water, and the expenses of any such repair shall be repaid to them by the person so allowing the same to be out of repair, and may be recovered as damages.

As to recovery of damages, *see* note to s. lxvii., *post*.

LVII. The surveyor or any other persons acting under the authority of the undertakers may, between the hours of nine of the clock in the forenoon and four of the clock in the afternoon, enter into any house or premises supplied with water by virtue of this or the special Act in order to examine if there be any waste or misuse of such water; and if such surveyor or other person at any such time be refused admittance into such dwelling-house or premises for the purpose aforesaid, or be prevented from making such examination as aforesaid, the undertakers may turn off the water supplied by them from such house or other premises.

It does not seem that the local authority, when they undertake the

supply of water, have any right to enforce the admittance of their surveyor to inspect the water fittings, except by cutting off the water. The words of s. 305, empowering justices to make an order for entry, are apparently not applicable here. A penalty for refusing admission can be imposed under s. xv. of the Waterworks Clauses Act, 1863, *post*, p. 65, but no order for admission can be given. Sec. 57.

LVIII. Every owner or occupier of any tenement supplied with water under this or the special Act who shall supply to any other person or wilfully permit him to take any such water from any cistern or pipe in such tenement, unless for the purpose of extinguishing any fire, or unless he be a person supplied with water by the undertakers and the pipes belonging to him be, without his default, out of repair, shall forfeit to the undertakers, for every such offence a sum not exceeding five pounds.

LIX. Every person who, not having agreed to be supplied with water by the undertakers, shall take any water from any reservoir watercourse or conduit belonging to the undertakers, or any pipe leading to any such reservoir watercourse or conduit, or from any cistern or other like place containing water 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 ten pounds.

Taking water from a cistern or tap in an unoccupied dwelling-house is not an offence within the words of this section. (Piercy *v.* Pope, 45 L. T. N. S. 477).

Water was supplied gratuitously to a fountain by a local board of health as owners of waterworks; a horsekeeper in the town took water from the fountain for the use of his horses, he not having agreed to be supplied with water by the board. It was held that the board could limit the purpose for which they supplied the water gratuitously, and that he was liable to the penalty imposed by this section (Hildreth *v.* Adamson, 8 C. B. N. S. 587, 30 L. J. M. C. 204).

LX. Every person who shall wilfully or carelessly break injure or open any lock cock valve pipe work or engine belonging to the undertakers, or shall flush or draw off the water from the reservoirs or other works of the undertakers, or shall do any other wilful act whereby such water shall be wasted shall

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forfeit to the undertakers for every such offence a sum not exceeding five pounds.

And with respect to the provision for guarding against fouling the water of the undertakers:—

LXI. Every person who shall commit any of the offences next hereinafter enumerated shall for every such offence forfeit to the undertakers a sum not exceeding five pounds (that is to say):—

Every person who shall bathe in any stream reservoir or aqueduct or other waterworks belonging to the undertakers, or wash throw or cause to enter therein any dog or other animal.

Every person who shall throw any rubbish dirt filth or other noisome thing into any such stream reservoir aqueduct or other waterworks as aforesaid, or wash or cleanse therein any cloth wool leather or skin of any animal, or any clothes or other thing.

Every person who shall cause the water of any sink sewer or drain steam-engine boiler or other filthy water belonging to him or under his control to run or be brought into any stream reservoir aqueduct or other waterworks belonging to the undertakers, or shall do any other act whereby the water of the undertakers shall be fouled.

And every such person shall forfeit a further sum of twenty shillings for each day (if more than one) that such last-mentioned offence shall be continued.

Allowing sewage to percolate into a well through the soil has been held to be such an offence as may be restrained by injunction. (Womersley *v.* Church, 17 L. T. N. S. 190; *see* also Hipkins *v.* Birmingham Gas Company, 6 H. & N. 250; 30 L. J. Ex. 60; noted to s. 68 of the principal Act, *post*, p. 72.)

See also s. xvi. of the Waterworks Clauses Act, 1863, and s. 332 of the principal Act, *post*.

It is not necessary to print ss. lxii.–lxiv. of the Waterworks Clauses Act, 1847, here, as the provisions contained in those sections are contained in s. 68 of the principal Act, *post*, p. 71.

LXV. For the purpose of ascertaining whether the water of the undertakers be fouled by the gas of any person making or supplying gas within the limits of the special Act, the undertakers may dig up the ground and examine the pipes conduits and works of the persons making or supplying gas, provided that before proceeding so to dig and examine the undertakers shall give twenty-four hours' notice in writing to the person so making or supplying gas of the time at which such digging and examination is intended to take place, and they shall give the like notice to the persons having the control or management of the pavements or place where such digging shall take place, and they shall be subject to the like obligation of reinstating the road and pavement, and to the same penalties for delay or any nonfeasance or misfeasance therein, as hereinbefore provided with respect to roads and pavements broken up by them for laying their pipes. Sec. 57.

See ss. xxviii.–xxxiv., *ante*, pp. 45-49, as to conditions of breaking up the road. Penalties are imposed by s. 68 of the principal Act, *post*, on any person who causes or suffers water to be polluted by gas.

LXVI. If upon such examination it appear that such water has been fouled by any gas belonging to such person, the expenses of the digging examination and repair of the street or place disturbed in any such examination shall be paid by the person making or supplying gas, but if upon such examination it appear that the water has not been fouled by the gas of such person, then the undertakers shall pay all the expenses of the examination and repairs, and also make good to the said person any injury which may be occasioned to his works by such examination.

LXVII. The amount of the expenses of every such examination and repair, and any injury done to the undertakers, shall, in case of any dispute about the same, together with the costs of ascertaining and recovering the same, be ascertained and recovered in the same manner as damages for the ascertaining and recovery whereof no special provision is made are directed to be ascertained and recovered.

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These damages are to be ascertained by two justices, who, on complaint by one party, summon the other, and, after hearing the evidence, decide what is to be paid, and how. (8 & 9 Vic. c. 20, ss. 140 & 142.) Now it would seem that the procedure should be, under ss. 251, *et seq.*, of the principal Act.

And with respect to the payment and recovery of the water rates :—

LXVIII. The water rates, except as hereinafter, *and in the special Act mentioned*, shall be paid by and be recoverable from the person requiring receiving or using the supply of water, and shall be payable according to the annual value of the tenement supplied with water, and if any dispute arise as to such value, the same shall be determined by two justices.

If there is a dispute as to value of the premises, that must be decided by two justices before the local authority can enforce payment of rates for water supplied. (New River Co. *v.* Mather, 10 L. R. C. P. 442; 44 L. J. M. C. 104). The two justices must be sitting as a Court of summary jurisdiction, as provided by ss. 251 *et seq.* (*See* s. 57, *ante*, p. 44.)

LXIX. When several houses or parts of houses in the separate occupation of several persons are supplied by one common pipe, the several owners or occupiers of such houses or parts of houses shall be liable to the payment of the same rates for the supply of water as they would have been liable to if each of such several houses or parts of houses had been supplied with water from the works of the undertakers by a separate pipe.

LXX. The rates shall be paid in advance by equal quarterly payments, at Christmas Day, Lady Day, Midsummer Day and Michaelmas Day, and the first payment shall be made at the time when the pipe by which the water is supplied is made to communicate with the pipes of the undertakers, or at the time when the agreement to take water from the undertakers is made.

LXXI. The occupier of any dwelling house or part of a dwelling house liable to the payment of any water rate who shall give notice of his intention to discontinue the use of

the water supplied by the undertakers, or who shall remove from his dwelling between any two quarterly days of payment, shall pay the water rate in respect of such dwelling house or part of a dwelling house for the quarter ending on the quarterly day of payment next after his quitting the same or giving such notice. Sec. 57.

LXXII. The owners of all dwelling houses or parts of dwelling houses occupied as separate tenements, the annual value of which houses or tenements shall not exceed the sum of ten pounds, shall be liable to the payment of the rates instead of the occupiers thereof, and the powers and provisions herein *or in the special Act* contained for the recovery of rates from occupiers shall be construed to apply to the owners of such houses and tenements; and the person receiving the rents of any such houses or [tenements as aforesaid from the occupier thereof, on his own account, or as agent or receiver for any person interested therein, shall be deemed the owner of such house or tenement.

See the definition of the word owner in s. 4, *ante*, p 3.

LXXIII. Provided always, that when any owner shall pay any such rate in respect of any such dwelling house or part of a dwelling house which shall be in the occupation of any tenant under any lease or agreement made prior to the passing of the special Act, such tenant shall repay to the owner all sums which shall be so by him paid during the continuance of such lease, unless it have been agreed that the owner shall pay the water rates in respect of such dwelling house or part of a dwelling house; and every such sum of money payable by the tenant to the owner under the provision hereinbefore contained may be recovered if the same be not paid upon demand, as arrears of rent could be recovered from the occupier by the said owner.

See note to s. 104 of the principal Act, *post*, p. 102, as to the right of the landlord to be repaid these sums.

LXXIV. If any person supplied with water by the undertakers, or liable as herein *or in the special Act* provided to pay

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the water rate, neglect to pay such water rate at any of the said times of payment thereof, the undertakers may stop the water from flowing into the premises in respect of which such rate is payable, by cutting off the pipe to such premises or by such means as the undertakers shall think fit, and may recover the rate due from such person, if less than twenty pounds, with the expenses of cutting off the water and costs of recovering the rate, in the same manner as any damages for the recovery of which no special provision is made are recoverable by this or the special Act; or if the rate so due amount to twenty pounds or upwards the undertakers may recover the same, with the expenses of cutting off the water, by action in any Court of competent jurisdiction.

The undertakers have no lien for arrears of rates. If the current rate is tendered, they have no right to cut off the supply or refuse to supply water till anterior rates due have been paid. If, however, the pipe has been properly cut off, they are not bound to restore it, but the owner or occupier requiring a supply must provide his own pipes, under the powers given by ss. xlviii.–liii., *ante*, pp. 51–53. (Sheffield Water Company *v.* Wilkinson, 4 C. P. D. 410.)

See note to s. lxvii., *ante*, p. 58, as to recovery of damages.

See further, 26 & 27 Vic. c. 93, s. xxi., *post*, p. 67, as to recovery of rates and as to cutting off the supplies.

The Waterworks Clauses Act, 1863,

26 & 27 Vic. c. 93.

The powers given by this Act are incorporated in and enlarged by the Reservoirs Act, 1877, 40 & 41 Vic. c. 31, s. 4, but it is not incorporated with the Public Health Act.

Sections 1 and 2 are immaterial.

With respect to the security of reservoirs constructed by the undertakers:—

III. Whenever any person interested complains to two justices that any reservoir constructed by the undertakers is in a dangerous state, such justices shall forthwith make inquiry into the truth of the complaint; or two justices on their own

view, and without complaint by any person, may proceed under the present provisions as if a complaint had been so made to them. Sec. 57.

IV. If on any such inquiry the justices are satisfied that the complaint is well-founded, and that the reservoir is in a dangerous state, and that the danger is so imminent as not to admit of delay in removing the cause of complaint, they shall order such persons as they think fit to enter on the property of the undertakers and to lower the water in the reservoir, and to execute and do all such works and things as the justices think requisite and proper for removing the cause of complaint.

V. If on any such inquiry the justices are satisfied that there is good cause of complaint but are not satisfied that the reservoir is in such an imminently dangerous state as not to admit of delay in removing the cause of complaint, they shall issue their summons to the undertakers to answer the complaint; and upon hearing the parties the justices may, or upon default of appearance of the undertakers, then in their absence the justices shall order the undertakers within such period as the justices think reasonable and specify in the order, to lower the water in the reservoir, and to execute and do all such works and things as the justices think requisite and proper for removing the cause of complaint.

On hearing the parties, the justices may be persuaded that they were wrong when they originally were satisfied that there was good cause of complaint, consequently it is left in their discretion whether they will make an order. But if no adequate cause is shown to change their original opinion, then it is obligatory on them to make the order.

The form will be found in the Appendix, T.

If the undertakers fail to execute or do within that period any such work or thing, the justices who made the order or any other two justices, on being satisfied of such failure, may either order such persons as the justices think fit to enter on the property of the undertakers and to lower the water in the reservoir, and to execute and do all such works and things as the justices think requisite and proper for removing the cause

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of complaint; or may, if they think fit, by order impose on the undertakers a penalty, not exceeding ten pounds, for every day during which such failure continues after the making of the order imposing the penalty.

See form of order, T., Appendix.

VI. Any order of justices made in any of the cases aforesaid shall be in writing under their hands, and may be in the form set forth in the schedule to this Act, with such variations as circumstances require.

For form, T., *see* Appendix.

VII. Any person acting under and in pursuance of any such order shall not be deemed a trespasser; and if any person wilfully obstructs any person lawfully acting in obedience to any such order, or wilfully does or instigates or suffers to be done anything in contravention thereof, he shall for every such offence be liable to a penalty not exceeding fifty pounds.

The power given by s. 305 of the principal Act, *post*, p. 342, to a Court of summary jurisdiction to make an order for admission, is only applicable when the local authority request it; not against them, as proceedings under this section would probably be.

VIII. The justices may order all or such part as they think fit of the costs of and incident to the applying for and obtaining of any such order to be paid by the undertakers, and also all or such part as the justices think fit of the expenses of the works and things executed and done in pursuance of any such order by any person other than the undertakers, to be paid by the undertakers to such person as the justices appoint.

If the justices before whom the complaint is made think that there is no sufficient ground for the complaint they may, if they think fit, order the complainant to pay to the undertakers the whole or any part of the costs of or incident to the complant.

IX. If the undertakers consider themselves aggrieved by any order or determination of justices under the present provisions, they may, in like manner and subject to the like conditions as by the Railways Clauses Consolidation Act, 1845, are provided

in the case of appeals in respect of penalties, appeal to the Court of General or Quarter Sessions for the county or place where the cause of appeal arises, and that Court may, on the hearing of the appeal, either affirm or quash the order or determination, or make such other order in the premises as may seem fit, and may make such order as to the costs, both of the original proceedings and of the appeal, as may seem fit; but the order or determination appealed against shall, pending the appeal, continue in force. Sec. 57.

The appeal here given is regulated by 8 & 9 Vic. c. 20, ss. 107, 108, the provisions of which are not quite the same as those of the Public Health Act, 1875, s. 269, *post*. The Railway Clauses Act fixes a minimum below which no appeal is to be allowed, and fixes four months as the period within which notice of appeal may be given. It may be some day interesting to see whether the provisions of the Public Health Act are held to override those of the Railway Clauses Act or not. If not, then it will follow that local authorities in their capacity as undertakers of waterworks will have a longer time within which to appeal against any order, &c., made against them than they have in any other capacity, or than anyone else has under the Public Health Act.

X. Notwithstanding anything in the special Act contained the undertakers shall not be liable to pay any damages penalties costs charges or expenses for or in respect of, or be answerable or accountable for any diminution or cessation of the supply of water, or any other breach or non-performance of their or any of their duties liabilities or obligations *under the special Act* that may be occasioned by or result from the execution of any such order.

Section 11 refers to Scotland only, and therefore is not incorporated here.

And with respect to the supply of water to be furnished by the undertakers.

XII. 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.

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It has been held that water used for watering a horse and washing a private carriage came within the meaning of water used for domestic purposes. (Bushby *v.* Chesterfield Waterworks Co., E. B. & E. 176; 27 L. J. M. C. 174.)

The maintenance of the poor is a public purpose, but a water supply for the inmates of a workhouse is a supply for domestic purposes. (Liskeard Union *v.* Liskeard Waterworks Co., 7 Q. B. D. 505.)

XIII. Where the undertakers are authorised by the special Act to supply water for other than domestic purposes, they shall not be liable, in the absence of express stipulation, under any agreement for the supply of water for other than domestic purposes, to any penalty or damages for not supplying such water, if the want of such supply arises from frost unusual drought or other unavoidable cause or accident.

Urban authorities are authorised to supply water generally by s. 51, *ante*, p. 41; Rural Authorities may be permitted by the Local Government Board to do so under s. xi. of the Public Health Water Act, 1878, *post*, p. 83.

XIV. Where the undertakers are authorised by the special Act to supply water by measure, they may let for hire to any consumer of water so supplied any meter or instrument for measuring the quantity of water supplied and consumed, and any pipes and apparatus for the conveyance reception or storage of the water, for such remuneration in money as may be agreed on between them and the consumer, which shall be recoverable in the same manner as rates due to the undertakers for water; and the meters instruments pipes and apparatus shall not be subject to distress for rent of the premises where the same are used, or be attached or taken in execution under any process of any Court of law or equity, or under or in pursuance of any adjudication or order in bankruptcy or other legal proceedings against or affecting the consumer of the water or the occupier of the premises, or other the person in whose possession the meters instruments pipes and apparatus may be.

This power is given by s. 58 of the principal Act, where see further as to supply of water by meter, *post*, p. 67. The provisions as to the recovery of water rates are in ss. lxviii.–lxxiv. of the Act of 1847, *ante*, pp. 55–59, and in s. xxi. of this Act, *post*, p. 67.

XV. The officer of the undertakers may enter any house building or lands to, through or into which water is supplied by them by measure, in order to inspect the meters instruments pipes and apparatus for the measuring conveyance reception or storage of water, or for the purpose of ascertaining the quantity of water supplied or consumed, and may from time to time enter any house building or lands, for the purpose of removing any meter instrument pipe or apparatus the property of the undertakers; and if any person hinders any such officer from entering or making such inspection or effecting such removal, he shall for every such offence be liable to a penalty not exceeding five pounds; but except with the consent of a justice this power of entry shall be exercised only between the hours of ten in the forenoon and four in the afternoon. Sec. 57.

The meter is evidence as to the quantity consumed, s. 95 of the principal Act. As to enforcing admission, *see* note to s. lvii. of the Act of 1847, *ante*, p. 55.

And with respect to waste or misuse of the water supplied by or belonging to the undertakers:—

XVI. If any person supplied with the water by the undertakers wrongfully does or causes or permits to be done anything in contravention of any of the provisions of the special Act, or wrongfully fails to do anything which under any of those provisions ought to be done for the prevention of the waste misuse undue consumption or contamination of the water of the undertakers, they may (without prejudice to any remedy against him in respect thereof), cut off any of the pipes by or through which water is supplied by them to him or for his use, and may cease to supply him with water so long as the cause of injury remains or is not remedied.

The sections of the principal Act which appear to be affected by this section are 60 and 68. See also ss. liv.–lx. of the Waterworks Clauses Act 1847, *ante*, p. 54.

It appears doubtful how far a local authority would be justified in cutting off the water supply from a house within their district, as a house without water would be very apt to become a nuisance, and the local authority ought not to be indirectly instrumental in causing a nuisance.

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XVII. If any person supplied with water by the undertakers wilfully or negligently causes or suffers any pipe valve cock cistern bath soilpan water-closet or other apparatus or receptacle to be out of repair, or to be so used or contrived as that the water supplied to him by the undertakers is or is likely to be wasted misused unduly consumed or contaminated, or so as to occasion or allow the return of foul air or other noisome or impure matter into any pipe belonging to or connected with the pipes of the undertakers, he shall for every such offence be liable to a penalty not exceeding five pounds.

XVIII. If any person, first, not having from the undertakers a supply of water for other than domestic purposes uses for other than domestic purposes any water supplied to him by the undertakers; or, secondly, having from the undertakers a supply of water for any other than domestic purposes, uses, for any purposes other than those for which he is entitled to use the same, any water supplied to him by the undertakers, he shall for every such offence be liable to a penalty not exceeding forty shillings, without prejudice to the right of the undertakers to recover from him the value of the water misused.

Section xii., *ante*, p. 64, as to what are domestic purposes.

XIX. It shall not be lawful to the owner or occupier of any premises supplied with water by the undertakers, or any consumer of the water of the undertakers or any other person to affix or cause or permit to be fixed any pipe or apparatus to a pipe belonging to the undertakers, or to a communication or service pipe belonging to or used by such owner occupier consumer or other person, or to make any alteration in any such communication or service pipe or in any apparatus connected therewith, without the consent in every such case of the undertakers; and if any person acts in any respect in contravention of the provisions of the present section he shall for every such offence be liable to a penalty not exceeding five Pounds, without prejudice to the right of the undertakers to recover damages from him in respect of any injury done to their property, and

without prejudice to their right to recover from him the value of any water wasted, misused or unduly consumed. Sec. 58.

XX. If any person, not being supplied with water by the undertakers, wrongfully takes or uses any water from any reservoir watercourse conduit or pipe belonging to the undertakers, or from any pipe leading to or from any such reservoir watercourse conduit or pipe, or from any cistern or other like place containing water belonging to the undertakers or supplied by them for the use of any consumer of the water of the undertakers, he shall for every such offence be liable to a penalty not exceeding five pounds.

A person who wrongfully took gas from a gas main by means of a pipe which took the gas without allowing it to go through the meter has been convicted of larceny. (Reg. *v.* White, 22 L. J. M. C. 123.) On the analogy of that case, offences under this and the previous section might amount to larceny.

And with respect to the recovery of water rates and other money:—

XXI. If any person refuses or neglects to pay to the undertakers any rate or sum due to them under the special Act they may recover the same with costs, in any Court of competent jurisdiction, and their remedy under the present section shall be in addition to their other remedies for the recovery thereof.

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58. A local authority may agree with any person to supply water by measure, and as to the payment to be made in the form of rent or otherwise for every meter provided by them; they shall at all times at their own expense keep all meters and other instruments for measuring water let by them for hire to any person in proper order for correctly registering the supply of water; and in default of their so doing such person shall not be liable to pay rent for the same during such time as such default continues. The local authority shall for the purposes aforesaid have access to and be at liberty at all reasonable times to remove test inspect and replace any such meter or other instrument.

See 26 & 27 Vic. c. 93, ss. xiv. and xv., *ante*, p. 64.

Secs. 58—61.

There is no power here or in the incorporated sections of the Waterworks Clauses Acts to enable the local authority to insist on the consumer taking water by meter and paying hire for the meter. (Sheffield Waterworks Company *v.* Carter, 8 Q. B. D. 632.)

There is no provision as to what is to happen if the occupier obstructs their access. Section 305 seems not to apply.

59. Where water is supplied by measure by any local authority the register of the meter or other instrument for measuring water shall be *primâ facie* evidence of the quantity of water consumed; and if the local authority and the consumer differ with respect to the quantity consumed, the difference shall be determined, on the application of either party, by a Court of summary jurisdiction, and such Court may order by which of the parties the costs of the proceedings before them shall be paid, and its decision shall be final and binding.

60. If any person wilfully or by culpable negligence injures or suffers to be injured any meter or fittings belonging to a local authority, or fraudulently alters the index to any meter, or prevents any meter from duly registering the quantity of water supplied, or fraudulently abstracts or uses water of the local authority, he shall (without prejudice to any other right or remedy of the local authority) be liable to a penalty not exceeding forty shillings, and the local authority may in addition thereto recover the amount of any damage sustained. The existence of artificial means, under the control of the consumer, for causing any such alteration prevention abstraction or use shall be evidence that the consumer has fraudulently effected the same.

See Reg. *v.* White, noted to s. xx. of the Act of 1863, *ante*, p. 67; *see* also s. lviii. of the Act of 1847, p. 55.

61. Any local authority for the time being supplying water within their own district may, with the sanction of the Local Government Board, supply water to the local authority of an adjoining district on such terms as may be agreed upon between such authorities, or as, in case of dispute, may be settled by arbitration in manner provided by this Act.

It would seem that, in the absence of express agreement, the local authority of the adjoining district need not consume within their own

district the water so supplied, but might sell it again. (Halifax Corporation v. Soothill Board, 31 L. T. N. S. 6.) Secs. 62, 63.

62. Where on the report of the surveyor of a local authority it appears to such authority that any house within their district is without a proper supply of water, and that such a supply of water can be furnished thereto at a cost not exceeding the water rate authorised by any local Act in force within the district, or where there is not any local Act so in force at a cost not exceeding twopence a week, or at such other cost as the Local Government Board may, on the application of the local authority, determine under all the circumstances of the case to be reasonable, the local authority shall give notice in writing to the owner, requiring him, within a time therein specified, to obtain such supply, and to do all such works as may be necessary for the purpose.

This is similar to the power of requiring the keeper of a common lodging-house to obtain a supply; as to which *see* s. 81, *post*.

For a definition of what is a reasonable cost, *see* s. viii. of the Public Health Water Act, 1878, *post*, p. 81.

If such notice is not complied with within the time specified, the local authority may, if they think fit, do such works and obtain such supply, and for that purpose may enter into any contract with any water Company supplying water within their district; and water rates may be made and levied on the premises by the authority or Company which furnishes the supply, and may be recovered as if the owner or occupier of the premises had demanded a supply of water and were willing to pay water rates for the same; and any expenses incurred by the local authority in doing any such works may be recovered in a summary manner from the owner of the premises, or may by order of the local authority be declared to the private improvement expenses.

As to recovery of expenses, *see* ss. 251–254.

See also ss. 213–257.

63. Any water Company may contract to supply water or may lease their waterworks to any local authority; and the directors of any water Company in pursuance, in the case of a Company registered under the Companies' Act, 1862, of a special

Secs. 63, 64.

resolution of the members passed in manner provided by that Act, and in the case of any other Company of a resolution passed by three-fourths in number and value of the members present, either personally or by proxy, at a meeting specially convened, with notice of the business to be transacted, may sell and transfer to any local authority, on such terms as may be agreed on between the Company and the local authority, all the rights powers and privileges, and all or any of the waterworks premises and other property of the company, but subject to all liabilities to which the same are subject at the time of such purchase.

By s. 51 of the Companies' Act, 1862, a special resolution must be passed by three-fourths of the members present, personally or by proxy, at a general meeting of which notice specifying the resolution to be proposed has been duly given, as prescribed by the regulations of the Company; and the resolution must be confirmed by a majority of the members present at a subsequent meeting held not less than 14 nor more than 28 days after the first one.

64. All existing public cisterns pumps wells reservoirs conduits aqueducts and works used for the gratuitous supply of water to the inhabitants of the district of any local authority shall vest in and be under the control of such authority, and such authority may cause the same to be maintained and plentifully supplied with pure and wholesome water, or may substitute maintain and plentifully supply with pure and wholesome water other such works equally convenient; they may also (subject to the provisions of this Act) construct any other such works for the supplying water for the gratuitous use of any inhabitants who choose to carry the same away, not for sale, but for their own private use.

Though the well may be on private ground, yet if it has been used by the public so as to give them a prescriptive right to its user, it vests in the local authority and becomes, *qua* well, their property (Coverdale *v.* Charlton 4 Q. B. D. 104; 48 L. J. Q. B. 128). As to the effect of the word vest, *see* further notes to ss. 13 & 149. A local authority may do any acts necessary to protect and maintain, for public use wells &c., vested in them, though situated on private land (Smith *v.* Archibald, 5 App. Cas. 489), but may not commit trespasses on that land, as distinct from the well, &c., for the purpose of thereby improving the water supply (Edwards *v.* Jolliffe, W. N. 1877, p. 120.)

It would seem that the local authority may limit the uses for which water is supplied gratuitously (Hildreth *v.* Adamson, 8 C. B. N. S. 587; 30 L. J. M. C. 204.) But they cannot limit the grant to a section of the inhabitants of their district (Poole *v.* Huskisson, 11 M. & W. 827.)

65. Any local authority may, if they think fit, supply water from any waterworks purchased or constructed by them to any public baths or wash-houses, or for trading or manufacturing purposes, on such terms and conditions as may be agreed on between the local authority and the persons desirous of being so supplied; moreover, any local authority may, if they think fit, construct any works 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.

As to their powers of providing these baths, &c., *see* notes to s. 10, *ante*, p. 15; *see* also ss. ix. & x. of "The Public Health Water Act, 1878," *post* p. 82.

66. Every urban authority shall cause fire-plugs and all necessary works machinery and assistance for securing an efficient supply of water in case of fire to be provided and maintained, and for this purpose they may enter into any agreement with any water Company or person; and they shall paint or mark on the buildings or walls within the streets, words or marks near to such fire-plugs to denote the situation thereof, and do such other things for the purposes aforesaid as they may deem expedient.

67. In the Oxford or Cambridge district the local authority may supply water to any hall, college or premises of the university within such district, on such terms with respect to the mode of paying for such supply as may from time to time be agreed on between such university, or any hall or college thereof, and the local authority.

Provisions for Protection of Water.

68. Any person engaged in the manufacture of gas who—

(1.) Causes or suffers to be brought or to flow into any stream reservoir aqueduct pond or place for water, or into any drain or pipe communicating therewith,

Secs. 68, 69.

any washing or other substance produced in making or supplying gas; or,

(2.) Wilfully does any act connected with the making or supplying of gas whereby the water in any such stream reservoir aqueduct pond or place for water is fouled,

shall forfeit for every such offence the sum of two hundred pounds, and after the expiration of twenty-four hours' notice from the local authority or the person to whom the water belongs in that 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.

Every such penalty may be recovered, with full costs of suit, in any of the superior Courts, in the case of water belonging to or under the control of the local authority by the local authority, and in any other case by the person into whose water such washing or other substance is conveyed or flows or whose water is fouled by any such act as aforesaid, 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 has ceased.

A private gas Act imposed penalties in case the Company should "cause or suffer to be conveyed or to flow into any stream, &c., gas washings, &c." Their tank, from no fault of their own, leaked, and the plaintiff's well became in consequence contaminated by percolation from it. It was held that they were liable for any damage or inconvenience caused by water being fouled by their gas, inasmuch as they had a duty imposed upon them of preventing their gas becoming a nuisance. (Hipkins *v.* Birmingham Gas Company, 6 H. & N. 250, 30 L. J. Ex. 60; Millington *v.* Griffiths, 30 L. T. N. S. 65.)

69. Any local authority, with the sanction of the Attorney-General, may, either in their 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 they may deem advisable for the purpose of protecting any

watercourse within their jurisdiction from pollutions arising from sewage either within or without their 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 such authority in the execution of this Act. Secs. 69, 70.

It is no defence to an action for polluting a stream by discharging injurious matters into it to show that they were produced in the course of a lawful trade, carried on in a proper manner. (Stockport Waterworks Co. *v.* Potter, 7 H. & N. 160, 31 L. J. Ex. 9).

By the Rivers Pollution Prevention Act, 1876, 39 & 40 Vic. c. 75, ss. 10–15, further provision is made as to legal proceedings for protecting watercourses from pollution. Power is given to the County Courts within their respective districts to stop the continuance of pollutions by summary orders, under a penalty of £50 per day so long as the party subject to the order continues in default. There is an appeal by way of special case to the High Court of Justice from the decision of the County Court in point of law, or on the merits, given to any party in such proceedings who may feel aggrieved. It is also provided that no proceedings shall be taken for any offence under that Act, till the expiration of two months after written notice of the intention to take such proceedings has been given to the offender.

70. On the representation of any person to any local authority that within their district the water in any well tank or cistern, public or private, or supplied from any public pump, and used or likely to be used by man for drinking or domestic purposes, or for manufacturing drinks for the use of man, is so polluted as to be injurious to health, such authority may apply to a Court of summary jurisdiction for an order to remedy the same; and thereupon such Court shall summon the owner or occupier of the premises to which the well tank or cistern belongs, if it be private, and in the case of a public well tank cistern or pump any person alleged in the application to be interested in the same, and may either dismiss the application or may make an order directing the well tank cistern or pump to be permanently or temporarily closed, or the water to be used for certain purposes only, or such other order as may appear to them to be requisite to prevent injury to the health of persons drinking the water.

It seems to be discretionary for the local authority to interfere or not in

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such a case. If they refuse to move in the matter, s. 299 does not authorise Local Government Board to compel them.

The Court may, if they see fit, cause the water complained of to be analysed at the cost of the local authority applying to them under this section.

No provision is made as to the person by whom the analysis is to be made. The public analysts appointed under the Food and Drugs Acts, 1875 & 1879, 38 & 39 Vic. c. 63, and 42 & 43 Vic. c. 30, are not required to analyse water. They might, no doubt, make an analysis of it, but would be apparently entitled to charge extra for so doing; moreover, their certificate would not be evidence in a Court of justice, but it would be necessary for them to attend themselves, and state what they found the water to contain.

If the person on whom an order under this section is made fails to comply with the same, the Court may, on the application of the local authority, authorise them to do whatever may be necessary in the execution of the order, and any expenses incurred by them may be recovered in a summary manner from the person on whom the order is made.

Expenses incurred by any rural authority in the execution of this section, and not recovered by them as aforesaid, shall be special expenses.

As to special expenses, *see* ss. 229, 230, *post*.

The powers of local authorities and the liabilities of owners of house property have been greatly enlarged by "The Public Health Water Act, 1878," 41 & 42 Vic. c. 25. Its provisions are as follows:—

I. This Act may be cited as the Public Health (Water) Act, 1878, and shall be construed as one with the Public Health Act, 1875.

II. This Act shall come into operation on the Twenty-fifth day of March one thousand eight hundred and seventy-nine, which is in this Act referred to as the commencement of this Act.

III. It shall be the duty of every rural sanitary authority, regard being had to the provisions in this Act contained, to see

that every occupied dwelling-house within their district has within a reasonable distance an available supply of wholesome water sufficient for the consumption and use for domestic purposes of the inmates of the house. Sec. 70.

This duty is entirely new and unlike anything hitherto imposed on either urban or rural authorities, the nearest approach to it is the duty imposed by s. 62 of the principal Act on local authorities, of requiring the owner in certain specified cases to obtain a supply. Section xi., *post*, enables the Local Government Board, if they think fit, to impose the same or some of these duties on urban authorities. The Local Government Board has power under s. 299 of the principal Act to compel local authorities to provide their 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, and a proper supply can be got at a reasonable cost."

Where it appears to a rural sanitary authority, on the report of their inspector of nuisances, or their medical officer of health, that any occupied dwelling-house within their district has not such supply within a reasonable distance, and the authority are of opinion that such supply can be provided at a reasonable cost not exceeding a capital sum the interest on which at the rate of five per centum per annum would amount to twopence per week, or at such other cost, not exceeding a capital sum the interest on which at the rate of five per centum per annum would amount to threepence per week, as the Local Government Board may on the application of the local authority determine under all the circumstances of the case to be reasonable, and that the expense of providing the supply ought to be paid by the owner or defrayed as private improvement expenses, proceedings may be taken as follows:—

(1.) The authority may serve on the owner of the house a notice requiring him, within a time specified in the notice and not exceeding six months from the date of the service thereof, to provide such supply, and to do all such works as may be necessary for that purpose.

(2.) If at the expiration of the time so specified the notice is not complied with, the authority may serve on the owner a second notice, informing him that if

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the requirements of the first notice are not complied with within one month from the date of the service of the second notice, the authority will themselves provide such supply, and that the expense of providing the supply will in that case be payable by the owner or as a private improvement expense.

That is under ss. 213–215 and 232 of the principal Act. This Act very materially increases the liability of owners of house property in respect of these expenses.

(3.) If at the expiration of one month from the date of the service of the second notice the requirements of the first notice are not complied with, the authority may, subject as in this Act is mentioned, themselves provide the supply, and for that purpose they may enter upon the premises and execute all such works as appear to them necessary for obtaining a supply of water for the house, and for the purposes of such entry ss. 102 & 103 of the Public Health Act, 1875, shall apply until the works are completed, in the same manner as if an order of a Court of summary jurisdiction had been made for the abatement of a nuisance on the premises, and that order had not been complied with.

(4.) Any expenses incurred by the authority in providing such supply and doing such works may, when the supply has been provided, be recovered in a summary manner from the owner of the house, or may, at the option of the authority, be declared, by their order, to be private improvement expenses.

(5.) Where the owners of two or more houses have failed to comply with the requirements of the notices served on them under this section, and the authority might, under this Act, execute the necessary works for providing a water supply for each house, the authority may, if it appears to them desirable, and no

greater expense would be occasioned thereby, execute works for the joint supply of water to those houses and apportion the expenses as they deem just. Sec. 70.

As to apportionment, *see* notes to ss. 23 and 150 of the principal Act.

The authority may, on cause being shown to their satisfaction why the requirements of a notice served by them under this section should not be complied with, withdraw the notice or modify the requirements thereof.

Provided that nothing in this section contained shall be deemed to relieve the authority from the duty imposed upon them by the Public Health Act, 1875, of providing their district or any contributory place or part of a contributory place therein 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, and a general scheme of supply is required, and such supply can be got at a reasonable cost.

This duty is imposed by ss. 62 and 81, and may be enforced under s. 299 of the Act. Section viii. of this Act further provides for the determination of what is a reasonable cost.

IV. Where an owner of a house has been required by the notice of a rural sanitary authority to provide a supply of water for his house, and objects to such requirement on any of the following grounds ; that is to say,—

(1.) That the supply is not required ; or,

(2.) That the time limited by the notice for providing the supply is insufficient; or,

(3.) That it is impracticable to provide the supply at a reasonable cost; or,

(4.) That the authority ought themselves to provide a supply of water for the district or contributory place in which the house is situate, or to render the existing supply of water wholesome ; or,

(5.) That the whole or part of the expense of providing the supply, or of rendering the existing supply

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wholesome, ought to be a charge on the district or contributory place :

he may, within twenty-one days after service on him of the second notice, address a memorial to the authority, stating his objections, and in that case it shall not be lawful for the authority to proceed with the execution of the works which they might otherwise execute under this Act until they have been authorised to execute the same by a Court of summary jurisdiction or by the Local Government Board in manner hereinafter provided.

The memorial should be addressed and sent in the manner prescribed by ss. 266 & 267 of the principal Act, *post*.

If the objections stated in the memorial do not include either the fourth or fifth of the above-mentioned grounds, the authority may apply to a Court of summary jurisdiction for an order authorising them to proceed with the works, and thereupon the Court shall summon the owner, and if satisfied, on hearing the case, that the objections are not well founded, shall make an order authorising the authority to proceed with the works in the event of their not being executed by the owner within a time limited by the order.

See s. 251, *et seq.*, of the principal Act, *post*, as to proceedings before a Court of summary jurisdiction.

If the objections stated in the memorial are or include the fourth and fifth of the above-mentioned grounds, or either of them, the authority shall forward a copy of the memorial to the Local Government Board, who may either cancel the requirement of the authority, or confirm the same, with or without modifications.

It would seem that the Local Government Board must hold a local inquiry in manner required by s. 297 of the principal Act. This Act is silent on the point.

If the Local Government Board confirm the requirement, they shall issue an order authorising the authority, subject to such modifications, if any, as they prescribe, to execute the works in the event of such works not being executed by the owner within a time limited by the order.

Any such order may, if the Local Government Board think it equitable so to do, apportion the expense of providing the supply between the owner of the house and the authority of the district comprising the contributory place in which the house is situate, or between the owner and any other person or persons. Sec. 70.

If the Local Government Board cancel the requirement on the grounds that the authority ought themselves to provide a supply of water for the district or contributory place in which the house is situate, or to render the existing supply wholesome, the memorial shall be deemed to have been a complaint of default made to the Local Government Board against the authority under the 299th section of the Public Health Act, 1875.

In practice the inspectors of the Local Government Board require complaints of general default to be proved, before putting in force their compulsory powers. They do not, for instance, require local authorities to provide a water supply for one or two houses, but leave that to be provided at the expense of the owners.

V. Where the expenses of providing a joint supply of water for two or more houses are apportioned under this Act by a rural sanitary authority among the owners of the several houses, notice of such apportionment shall be forthwith given to each of such owners, and if any owner objects to the apportionment as unjust, he may, within twenty-one days after service on him of notice thereof, apply to a justice, and thereupon the justice may summon the authority, and also the other owners, to show cause before a Court of summary jurisdiction why the apportionment should not be varied, and the Court may either dismiss the application or make such order varying the apportionment as to the Court may appear reasonable.

Power to apportion these expenses is given by s. iii. sub-sec. 5, *ante* p. 77, which is similar to s. 23 of the principal Act, which confers like powers with respect to apportioning the expenses of making drains. This section gives the Court of summary jurisdiction power to vary the apportionment, and therefore, it would seem, to review the principle on which the apportionment is made. Thus these Courts have greater power in respect to the expenses of water supply apportioned under this section than they had previously in respect to other matters. (Cf. Nesbitt *v.* Greenwich

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Board, L. R. 10 Q. B. 465; 44 L. J. M. C. 119.) It seems to be left in the discretion of the justice whether he will summon any one except the local authority, but unless the other owners are before the Court, no order prejudicially affecting them can be made (Tonbridge Wells Board *v.* Akroyd, 5 Ex. D. 199.)

VI. It shall not be lawful in any rural district for the owner of any dwelling house which may be erected after the date of the commencement of this Act, or of any dwelling house which after that date may be pulled down to or below the ground floor and rebuilt, to occupy the same or cause or permit the same to be occupied, unless and until he has obtained from the sanitary authority of the district a certificate that there is provided, within a reasonable distance of the house, such an available supply of wholesome water as may appear to such authority, on the report of their inspector of nuisances or of their medical officer of health, to be sufficient for the consumption and use for domestic purposes of the inmates of the house.

This is similar to the provisions of s. 35 of the principal Act with regard to privy accommodation. Urban authorities generally have bye-laws now under the powers given by s. 157, which include provisions similar to these. Where they have no such bye-laws, the Local Government Board may apply this section to them under the powers given by s. xi., *post*.

If the sanitary authority refuse to grant such certificate, the owner may apply to a Court of summary jurisdiction for an order authorising the occupation of the house notwithstanding the refusal of the certificate, and thereupon the Court shall summon the authority; and if the Court, after hearing the case, is of opinion that the certificate ought to have been granted, the Court may make an order authorising the occupation of the house.

Any owner who occupies a house or causes or permits it to be occupied in contravention of this section shall be liable on conviction by a Court of summary jurisdiction to a penalty not exceeding ten pounds.

The order of the Court of summary jurisdiction is subject to appeal to quarter sessions, under s. 269 of the principal Act.

VII. It shall be the duty of every rural sanitary authority

from time to time to take such steps as may be necessary to ascertain the condition of the water supply within their district, and the authority may pay all reasonable costs and expenses incurred by them for the purpose of taking such steps. The authority, or any of their officers, or any person duly authorised in writing for that purpose by the authority, if they or he has reasonable ground for believing that any occupied dwelling-house within the district is without a proper supply of wholesome water, sufficient for the consumption and use for domestic purposes of the inmates of such house, shall be admitted into the premises for which such supply is required or from which the water supply may be derived, for the purpose of ascertaining whether or not such house has such a supply within a reasonable distance; and for the purposes of any such admission, sections 102 and 103 of the Public Health Act, 1875, shall apply in the same manner as if such admission were necessary for the purpose of examining as to the existence of any nuisance on the premises, and the person so authorised as aforesaid were an officer of the rural sanitary authority. Sec. 70

This is in addition to the powers of entry, for the purpose of inspecting water supplied by them, which local authorities already have, under s. lvii. of the Waterworks Clauses Act, 1847, and s. xv. of the Act of 1863.

VIII. Where application is made to the Local Government Board by a local authority under section 62 of the Public Health Act, 1875, to determine what is a reasonable cost within the meaning of that section, the Board may, for that purpose, fix, by order, a general scale of charges for the whole or any part of the district of the local authority, and the cost of the supply of water to any house within the area specified in the order shall be deemed to be determined to be a reasonable cost within the meaning of that section, if it does not exceed the cost authorised by such general scale of charges.

This section will practically never be used, except to authorise a scale of charges exceeding that prescribed by a local Act or exceeding twopence per week; or it may be used to authorise a higher charge on some classes of property than on others.

Sec. 70.

IX. Where a rural sanitary authority have provided a stand-pipe or stand-pipes for the supply of water to any portion of their district, they may recover water rates or water rents from the owner or occupier of every dwelling-house within two hundred feet of any such stand-pipe, in the same manner in all respects as if the supply had been given on the premises.

By s. 64 of the Principal Act power is given to local authorities to erect works for supplying water gratuitously. Stand-pipes might apparently be included among such works, and it would seem that this section gives power to charge for water so supplied. Section lix. of the Waterworks Clauses Act, 1847, and s. xx. of the Waterworks Clauses Act, 1863, both incorporated in the Principal Act, give power to the local authority to recover penalties from persons who take water without payment of rates or rents. Can a local authority recover a penalty under this section from persons who take water from their stand-pipes?

Provided that if any such dwelling-house has, within a reasonable distance, and from other sources, a supply of wholesome water sufficient for the consumption and use of the inmates of the house, no water rate or water rent shall be recoverable from the owner or occupier of the house unless and until the water supplied by the authority by means of such stand-pipes is used by inmates of the house.

X. Where a sanitary authority under the provisions of the Public Health Act, 1875, as amended by this Act, supply water in any urban district or in any contributory place, and an application is made to them by any ten persons rated to the relief of the poor in such urban district, or by any five persons so rated in such contributory place, to charge water rates or water rents in respect of the water so supplied, it shall be incumbent upon the authority to exercise the powers given to them by the Public Health Act, 1875, and by this Act, of charging water rates or water rents in respect of all water supplied by them in such urban district or in such contributory place.

By ss. 55 and 65 of the principal Act, a local authority is empowered to make special agreements as to the cost of water supplied in certain cases; also to supply water gratuitously. It would seem that this section gives ten ratepayers, or it may be five, the power of prohibiting a local authority

from carrying out such agreements. By s. 229, expenses of providing a water supply for a contributory place are made special expenses, which by s. 230 are to be paid by the overseers of the contributory place to the local authority; such expenses may, under this section, be recovered by means of direct water rates, if the ratepayers so desire. Sec. 70.

According to the Report of the Select Committee who revised this Act previously to its becoming law, and who approved this section, the intention of Parliament was merely to enable persons rated to the relief of the poor to insist on payment for water supplied being made by those who use it; as otherwise portions of a district might be without a supply, but yet contribute to general rates out of which the expenses of water supplied to other portions of the district were defrayed.

The water rates must not be such as to leave a profit in the hands of the local authority and so enable them to diminish general rates at the expense of consumers of water (Cf. Mayor of Worcester *v.* Droitwich Assessment Committee, noted s. 56 of the principal Act, *ante*).

XI. The Local Government Board may, if they think fit, by order, invest any urban sanitary authority with all or any of the powers and duties which are by this Act given to a rural sanitary authority, and such investments may be made either unconditionally or subject to any conditions to be specified by the Board as to the time, portion of the district, or manner during at or in which the powers and duties are to be exercised.

Urban authorities, unless invested with the powers and duties of this Act, have now smaller powers and duties than rural authorities. They are required, by s. 62, to see that an owner of a house has a proper water supply, and to procure it for him at his expense, where their surveyor reports it to be necessary and feasible. But it is a matter in their own discretion, and they cannot be compelled to do so unless they choose. By this section, they may be put in the position, at the option of the Local Government Board, of being called on to provide such water supply, and being superseded, under the powers given by s. 299 of the principal Act, if they fail to satisfy the requirements of the Board.

XII. The forms contained in the schedule to this Act, or forms to like effect varied as circumstances may require, may be used, and shall be deemed sufficient for all purposes.

XIII. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred by Act of Parliament, law or custom.

The forms given by this Act will be found at the end of this volume.

REGULATION OF CELLAR DWELLINGS AND LODGING-HOUSES.

Occupation of Cellar Dwellings.

Secs. 71, 72.

71. It shall not be lawful to let or occupy or suffer to be occupied separately as a dwelling any cellar (including for the purposes of this Act in that expression any vault or underground room) built or rebuilt after the passing of this Act, or which is not lawfully so let or occupied at the time of the passing of this Act.

See s. 74 for what constitutes occupying as a dwelling.

72. It shall not be lawful to let or occupy or suffer to be occupied separately as a dwelling any cellar whatsoever, unless the following requisitions are complied with (that is to say):—

Unless the cellar is in every part thereof at least seven feet in height, measured from the floor to the ceiling thereof, and is at least three feet of its height above the surface of the street or ground adjoining or nearest to the same; and

Unless there is outside of and adjoining the cellar 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; and

Unless the cellar is effectually drained by means of a drain, the uppermost part of which is one foot at least below the level of the floor thereof; and

Unless there is appurtenant to the cellar the use of a watercloset earthcloset or privy and an ashpit, furnished with proper doors and coverings, according to the provisions of this Act; and

Unless the cellar has a fireplace, with a proper chimney or flue, and an external window of at least nine superficial feet in area clear of the sash frame, and made to open in a manner approved by the surveyor (except in

the case of an inner or back cellar let or occupied along with a front cellar 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).

Provided that in any area adjoining a cellar there may be steps necessary for access to such cellar, 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 cellar 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 cellar to which such area adjoins, if the same be so placed as not to be over, across or opposite to any such external window.

See ss. 35–36, *ante*, p. 31.

73. Any person who lets occupies or knowingly suffers to be occupied for hire or rent any cellar contrary to the provisions of 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 authority in this behalf.

74. Any cellar in which any person passes the night shall be deemed to be occupied as a dwelling within the meaning of this Act.

75. Where two convictions against the provisions of any Act relating to the occupation of a cellar as a separate dwelling-place have taken place within three months (whether the persons so convicted were or were not the same), a Court of summary jurisdiction may direct the closing of the premises so occupied for such time as it may deem necessary, or may empower the local authority permanently to close the same, and to defray any expenses incurred by them in the execution of this section.

See the similar provision of s. 109, *post*, as to overcrowding.

Common Lodging-houses.

Secs. 76—78.

76. Every 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 district of such authority; and the situation of every such house, and the number of lodgers authorised under this Act by such authority to be received therein.

A copy of any entry in such register, certified by the clerk of the local authority to be a true copy, shall be received in all Courts and on all occasions as evidence, and shall be sufficient proof of the matter registered, without production of the register or of any document or thing on which the entry is founded; and a certified copy of any such entry shall be supplied gratis by the clerk to any person applying at a reasonable time for the same.

There is no statutory definition in this Act of what is a common lodging-house, and there cannot well be any conclusive decisions on the point, as the question must always be, more or less, one of fact. (Langdon *v.* Broadbent, reported L. J. Notes of Cases, 1877, p. 203, is an instance of what circumstances were held sufficient to support a conviction.)

There is a similar provision in the Towns Police Clauses Act, 1847, 10 & 11 Vic. c. 34, s. 116, which defines "every house in which persons are lodged for hire for less than a week at a time, or any part of which is let for any term less than a week" as a common lodging-house within the meaning of that Act. *See* also s. 89 of this Act, which shows that part of a house may be a common lodging-house.

77. A person shall not keep a common lodging-house or receive a lodger therein unless the house is registered in accordance with the provisions of this Act, nor unless his name as the keeper thereof is entered in the register kept under this Act: 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.

78. A house shall not be registered as a common lodging house until it has been inspected and approved for the purpose by some officer of the local authority; and 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 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.

It would seem that where a proper certificate of character is forthcoming, local authorities cannot refuse to register keepers of common lodging-houses unless they have been three times convicted, as provided by s. 88, *post*, p. 89.

79. The keeper of every common lodging-house shall, if required in writing by the local authority so to do, affix and keep undefaced and legible a notice with the words "Registered Common Lodging-house" in some conspicuous place on the outside of such house.

The keeper of any such house who, after requisition in writing from the local authority, refuses or neglects to affix or renew such notice, shall be liable to a penalty not exceeding five pounds, and to a further penalty of ten shillings for every day that such refusal or neglect continues after conviction.

See s. 183, *post*, as to the penalty for a continued offence.

80. Every local authority shall from time to time make bye-laws—

(1.) For fixing and from time to time varying the number of lodgers who may be received into a common lodging-house, and for the separation of the sexes therein; and,

(2.) For promoting cleanliness and ventilation in such houses; and

(3.) For the giving of notices and the taking precautions in the case of any infectious disease; and,

(4.) Generally for the well ordering of such houses.

These bye-laws must, of course, comply with the general rules laid down in s. 184, *post*.

81. Where it appears to any local authority that a common

Secs. 81—85.

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 such 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 such house from the register until it is complied with.

As to what is a reasonable rate, *see* s. 62, *ante*, p. 69, and iv. & viii. of the Public Health Water Act, 1878, *ante*, p. 77–81.

82. The keeper of a common lodging-house shall, to the satisfaction of the local authority, limewash the walls and ceilings thereof in the first week of each of the months of April and October in every year, and shall if he fails to do so be liable to a penalty not exceeding forty shillings.

83. The keeper of a common lodging-house in which beggars or vagrants are received to lodge shall from time to time, if required in writing by the local authority so to do, report to the local authority, or to such person as the local authority 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 person so ordered to report, which schedules he shall fill up with the information required and transmit to the local authority.

Section 86 imposes a penalty for non-compliance with the requirements of this section.

84. The keeper of a common lodging-house shall, when a person in such house is ill of fever or any infectious disease, give immediate notice thereof to the medical officer of health of the local authority, and also to the Poor Law relieving officer of the union or parish in which the common lodging-house is situated.

As to infectious diseases, *see* further, ss. 120-140, *post*. *See* s. 86 as to penalty for not giving this notice.

85. 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, and any such keeper or person who refuses such access shall be liable to a penalty not exceeding five pounds.

86. Any keeper of a common lodging-house who—

(1.) Receives any lodger in such house without the same being registered under this Act; or

(2.) Fails to make a report, after he has been furnished by the local authority with schedules for the purpose in pursuance of this Act, of the persons resorting to such house; or

(3.) Fails to give the notices required by this Act where any person has been confined to his bed in such house by fever or other infectious disease,

shall be liable to a penalty not exceeding five pounds, and in the case of a continuing offence to a further penalty not exceeding forty shillings for every day during which the offence continues.

87. In any proceedings under the provisions of this Act relating to common lodging-houses, 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.

88. Where the keeper of a common lodging-house is convicted of a third offence against any of the provisions of this Act relating to common lodging-houses, the Court before whom the conviction for such third offence takes place may, if it thinks 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 Court thinks fit, keep a common lodging-house without the previous license in writing of the local authority, which licence the local authority may withhold or grant on such terms and conditions as they think fit.

Secs. 88—90.

This provision makes an alteration in the general obligation to license lodging-houses given by s. 78, *ante*, p. 87.

89. For the purposes of this Act the expression "common lodging-house" includes, in any case in which only part of a house is used as a common lodging-house, the part so used of such house.

It has been held that the landlord of a house, all the rooms of which were let out in tenements by the week at rents less than three shillings per week, though he did not reside on the premises himself, was the keeper of a common lodging-house. (Halligan *v.* Gauly, 19 L. T. N. S. 268; *see* also note to s. 76, *ante*, p. 86, as to what is a common lodging-house. This section gives no authoritative definition of the phrase.)

Bye-Laws as to Houses Let in Lodgings.

90. The Local Government Board may, if they think fit, by notice published in the London Gazette, declare the following enactment to be in force within the district or any part of the district of any local authority, and from and after the publication of such notice such authority shall be empowered to make bye-laws for the following matters (that is to say)—

(1.) For fixing and from time to time varying 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, and for the separation of the sexes in a house so let or occupied:

(2.) For the registration of houses so let or occupied:

(3.) For the inspection of such houses:

(4.) For enforcing drainage and the provision of privy accommodation for such houses, and for promoting cleanliness and ventilation in such houses:

(5.) For the cleansing and lime-washing at stated times of the premises, and for the paving of the courts and courtyards thereof:

(6.) For the giving of notices and the taking of precautions in case of any infectious disease.

This section shall not apply to common lodging-houses

within the provisions of this Act relating to common lodging-houses. Secs. 90, 91.

These bye-laws should comply with the general rules laid down by s. 184, *post*. The provisions as to common lodging-houses are contained in ss. 76–89, *ante*.

Similar powers as to canal boats used as dwellings are given by the Canal Boats Act, 1877, 40 & 41 Vic. c. 60. The Act will be found in the Appendix.

NUISANCES.

91. For the purposes of this Act—

(1.) Any premises in such a state as to be a nuisance or injurious to health:

Under the corresponding sections of the former Act it was held that justices were wrong in ordering the abatement of a nuisance caused by the dropping of water from a railway bridge on to a highway, that (though perhaps a nuisance indictable at common law) not being injurious to health within the meaning of the Act. (G. W. R. *v.* Bishop, 7 L. R. Q. B. 550. But *see* Gaskell *v.* Bayly, 30 L. T. N. S. 516. Noted *post*, sub-s. 7.)

(2.) Any pool ditch gutter watercourse privy urinal cesspool drain or ashpit, so foul or in such a state as to be a nuisance or injurious to health:

(3.) Any animal so kept as to be a nuisance or injurious to health:

As to keeping animals, it has been held that keeping swine in a town is a nuisance and indictable at common law (2 Roll. Abr. 140; Reg. *v.* Wigg, Salk, 460). Further, if pigs are proved to be so kept as to be a nuisance to any person, though not near any dwelling-house, they would come under the meaning of this section (Digby *v.* West Ham, 22 J. P. 304; 6 W. R. 468). Sheep penned in a market in front of a dwelling-house caused a nuisance by their droppings. It was held that the owner of the market, who received the tolls for the sheep standing there, was a person "by whose act default or sufferance" the nuisance arose, and liable to an order for its removal (Draper *v.* Sperring, 10 C. B. N. S. 113; 30 L. J. M. C. 225.)

See also ss. 44–47, *ante*, p. 37.

(4.) Any accumulation or deposit which is a nuisance or injurious to health:

(5.) Any house or part of a house so overcrowded as to be dangerous or injurious to the health of the inmates, whether or not members of the same family:

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The provision in sub-s. 5, as to "whether or not members of the same family," is new and very important. But even under the former Acts a house so over-crowded as to be dangerous to the health of the inmates was a nuisance liable to be suppressed (Rye, Guardians of, *v.* Paine, W. N. 1875, p. 119).

(6.) 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 to health, or so overcrowded while work is carried on as to be dangerous or injurious to the health of those employed therein:

By the Factory and Workshop Act, 1878, 41 Vic. c. 16, sch. vi., the words "not already under the operation of any general Act for the regulation of factories or bakehouses," occurring in sub-s. 6 of this section are repealed, inasmuch as the former Acts relating to factories and bakehouses are now repealed, and their provisions amended and consolidated by the above Act. It is the duty of inspectors under that Act to call the attention of the local authority to any case of a nuisance existing in a factory or workshop within their district, and the local authority is thereupon bound to inquire into the matter and take such proceedings as may seem proper for enforcing the law.

The following sections of that Act should be read with this provision:—

"III. A factory and a workshop shall be kept in a cleanly state and free from effluvia arising from any drain privy or other nuisance.

"A factory or workshop shall not be so overcrowded while work is carried on therein as to be injurious to the health of the persons employed therein, and shall be ventilated in such a manner as to render harmless, so far as is practicable, all the gases vapours dust or other impurities generated in the course of the manufacturing process or handicraft carried on therein that may be injurious to health.

"A factory or workshop in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

"IV. Where it appears to an inspector under this Act that any act neglect or default in relation to any drain water-closet earth-closet privy ashpit water-supply nuisance or other matter in a factory or workshop is punishable or remediable under the law relating to public health, but not under this Act, that inspector shall give notice in writing of such act neglect or default to the sanitary authority in whose district the factory or workshop is situate, and it shall be the duty of the sanitary authority

to make such inquiry into the subject of the notice, and take such action thereon, as to that authority may seem proper for the purpose of enforcing the law. Sec. 91.

"An inspector under this Act may, for the purposes of this section, take with him into a factory or a workshop a medical officer of health, inspector of nuisances, or other officer of the sanitary authority."

See also notes to ss. 94 & 102.

(7.) Any fireplace or furnace which does not as far as practicable consume the smoke arising from the combustible used therein, and which is used for working engines by steam, or in any mill factory dyehouse brewery bakehouse or gaswork, or in any manufacturing or trade process whatsoever; and

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

"As far as practicable," in sub.-sec. 7, means as far as practicable consistently with carrying on the trade in which the furnace is employed, not that the consumption of smoke shall be theoretically perfect. (Cooper *v.* Woolley, 2 L. R. Ex. 88.)

A person causing smoke so as to be a nuisance is liable to a separate conviction for each occasion on which such smoke as the Court of summary jurisdiction holds to be a nuisance issues from his premises, as each such issuing constitutes a separate offence. (Reg. *v.* Waterhouse, 7 L. R. Q. B. 545; 41 L. J. M. C. 114.)

In the event of a nuisance under this section existing, the occupier of the premises on which it exists is liable to be charged and to have an order made on him for its abatement, though it may have arisen or been continued, not by his own act, but by that of a servant employed by him (Barnes *v.* Akroyd, 7 L. R. Q. B. 474; 41 L. J. M. C. 110).

Black smoke issuing from a chimney may be a nuisance liable to be dealt with summarily under this section, though not shown to be injurious to health. (Gaskell *v.* Bayley, 30 L. T. N. S. 516.)

V.-C. Bacon has held that railway Companies are not authorised to use their engines in such a manner as to cause a nuisance by their smoke, and granted an injunction to prevent the continuance of such a nuisance. (Smith *v.* Midland Railway Company, 37 L. T. N. S. 224.) Whether such a nuisance could be dealt with under the summary powers of this section seems doubtful.

It was held under the former Acts that the justices had no power to order the abatement of smoke arising out of a manufactory of ores or minerals, that being expressly excepted by 18 & 19 Vic. c. 121, s. 44; and consequently that such a nuisance, though injurious to health, was not the subject of the summary jurisdiction here given. (Norris *v.* Barnes, 7 L. R. Q. B.

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537; 41 L. J. M. C. 154.) The statute 18 & 19 Vic. c. 121 is repealed by this Act, but s. 334 (which has been considerably modified during the passage of the Bill through Parliament) now greatly resembles the 44th section of 18 & 19 Vic. c. 121. The above decision of the majority of the Court of Queen's Bench is probably, therefore, applicable to the nuisances enumerated in this section; and Courts of summary jurisdiction cannot order a nuisance to be stopped, if their order would obstruct or interfere with the working of mines or metals.

shall be deemed to be nuisances liable to be dealt with summarily, in manner provided by this Act: Provided—

(1.) That a penalty shall not be imposed on any person in respect of any accumulation or deposit necessary for the effectual carrying on any business or manufacture, if it be proved to the satisfaction of the Court that the accumulation or deposit has not been kept longer than is necessary for the purposes of the business or manufacture, and that the best available means have been taken for preventing injury thereby to the public health:

(2.) That where a person is summoned before any Court 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 Court shall hold that no nuisance is created within the meaning of this Act and dismiss the complaint, if it is 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.

Unless the person, by whose default the nuisance is caused, is owner of the land on which it is caused, he cannot be required to do any works on that land for the purpose of abating the nuisance, as he cannot be required to commit a trespass; but he may be required to desist from doing anything which tends to the continuance of the nuisance. (Mayor of Scarborough *v.* Scarborough Rural Authority, 1 Ex. D. 344: *see* also Reg. *v.* Trimble, 36 L. T. N. S. 509, which is a decision of the Queen's Bench Division to the same effect.)

It has been held that the owners of drains which discharge into a common sewer substances, separately innocuous, but productive of bad smells when they meet in the sewer, were properly treated as persons by whose act default or sufferance the nuisance arose. (St. Helen's Chemical Company *v.* Mayor of St. Helen's, 1 Ex. D. 196, 45 L. J. M. C. 150.)

See further, s. 94, *post*.

92. It shall be the duty of every local authority to cause to be made from time to time inspection of their district, with a view to ascertain what nuisances exist calling for abatement under the powers of this Act, and to enforce the provisions of this Act in order to abate the same; also to enforce the provisions of any Act in force within their district requiring fireplaces and furnaces to consume their own smoke.

Power to enter premises for this purpose is given by s. 102, *post*.

The Local Government Board, under s. 299, can enforce the performance of this duty, if the local authority make default.

93. Information of any nuisance under this Act in the district of any local authority may be given to such local authority by any person aggrieved thereby, or by any two inhabitant householders of such district, or by any officer of such authority, or by the relieving officer, or by any constable or officer of the police force of such district.

94. On the receipt of any information respecting the existence of a nuisance the local authority shall, if satisfied of the existence of a nuisance, serve a notice on the person by whose act default or sufferance the nuisance arises or continues, or, if such person cannot be found, on the owner or occupier of the premises on which the nuisance arises, requiring him to abate the same within a time to be specified in the notice, and to execute such works and do such things as may be necessary for that purpose. Provided—

(1.) 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:

(2.) That where the person causing the nuisance cannot

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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, the local authority may themselves abate the same without further order.

See s. 299, *post*.

Under the Nuisances Removal Act, 1855, it was held that a local authority had no power to prefer, nor the justices to determine, a complaint in respect of a nuisance which, though affecting the district of the local authority, arose outside such district. (Reg. *v.* Cotton, 1 E. & E. 203; 19 L. J. Q. B. 333). But by s. 108, *post*, power is now expressly given to a local authority to take proceedings in such cases, and Reg. *v.* Cotton may be considered as overruled.

If a nuisance is caused by a servant, his master comes within the definition of a person by whose default or sufferance the nuisance is caused. (Barnes *v.* Akroyd, 7 L. R. Q. B. 474.) It has recently been held that a man who stopped up a drain, which had been made in his land without his consent, and by stopping it caused a nuisance, was a person by whose act the nuisance arose, and was rightly convicted under this section. (Riddell *v.* Spear, 40 L. T. N. S. 130; *see* also Draper *v.* Sperring, 10 C. B. N. S. 113; 30 L. J. M. C. 225; Brown *v.* Bussell, 3 L. R. Q. B. 251; 37 L. J. M. C. 65; Hendon Guardians *v.* Bowles, 20 L. T. N. S. 609.) It has, however, been held that mud which accumulated in a stream during the occupation of premises, on which it was situated, by a tenant on whom an order was made to abate the nuisance, was not a nuisance caused by the act or default of the owner so as to be a charge upon him, he not being bound to cleanse the stream. (Bird *v.* Elwes, 3 L. R. Ex. 225; *see* also notes to s. 91, *ante*.)

An order cannot be made requiring the person by whose act or default the nuisance is caused to commit a trespass by going on another man's land for the purpose of remedying the nuisance. (Scarborough Mayor *v.* Scarborough Rural Authority, 1 Ex. D. 344; Reg. *v.* Trimble, 36 L. T. N. S. 509.)

95. If the person on whom a notice to abate a nuisance has been served makes default in complying with any of the requisitions thereof within the time specified, or if the nuisance, although abated since the service of the notice, is, in the opinion of the local authority, likely to recur on the same premises, the local authority shall cause a complaint relating to such nuisance to be made before a justice, and such justice shall thereupon issue a summons requiring the person on whom the notice was served to appear before a Court of summary jurisdiction.

Secs. 95, 96.

It would seem that the giving notice to abate a nuisance is a condition precedent to a local authority taking proceedings before justices against "the persons by whose act default or sufferance the nuisance arises or continues;" a private individual may, however, take proceedings against such person under s. 105, *post*, without first giving any notice. (Cocker *v.* Cardwell, 5 L. R. Q. B. 15; 39 L. J. M. C. 28.)

96. If the Court is satisfied that the alleged nuisance exists, or that although abated it is likely to recur on the same premises, the Court shall make an order on such person requiring him to comply with all or any of the requisitions of the notice, or otherwise to abate the nuisance within a time specified in the order, and to do any works necessary for that purpose; or an order prohibiting the recurrence of the nuisance and directing the execution of any works necessary to prevent the recurrence; or an order both requiring abatement and prohibiting the recurrence of the nuisance.

The Court may by their order impose a penalty not exceeding five pounds on the person on whom the order is made, and shall also give directions as to the payment of all costs incurred up to the time of hearing or making the order for abatement or prohibition of the nuisance.

This section re-enacts parts of two sections of the Nuisances Removal Act, 1855. It has been held, in a proceeding to recover expenses for works ordered under the 54th section of the Public Health Act, 1848—the words of which are similar to those of s. 96 of this Act—that the justices had no jurisdiction to review the determination of the local authority as to what works were necessary. (Hargreaves *v.* Taylor, 3 B. & S. 613; 32 L. J. M. C. 111.) In that case, in giving the judgment of the Court, Mellor, J., said: "It seems more reasonable to hold that the discretion as to the nature and extent of the works required to be done is vested in the local board rather than in the justices at petty sessions, and we are therefore of opinion that the justices were wrong in assuming a jurisdiction to review the determination of the Board of Health as to this matter." The discretion given to the justices by this section is as to whether the nuisance exists or is likely to recur; they are not the proper authority to determine the question of what works may be necessary in order to remedy the nuisance.

On the same principle the Court of summary jurisdiction is the proper tribunal for ascertaining whether a nuisance in fact exists, and if it so find, the superior Courts will not interfere to review that decision. (Higgin *v.* Northwich, 22 L. T. N. S. 752.)

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The local authority cannot, under s. 94, require, nor can the justices under this section order the owner to execute any specific works. They can only order the abatement of the nuisance and the execution of such works as may be necessary for that purpose. (*Ex parte* Whitchurch, 6 Q. B. D. 545, 50 L. J. M. C. 41.)

See note to s. 94, *ante*.

97. Where the nuisance proved to exist is such as to render a house or building, in the judgment of the Court, unfit for human habitation, the Court may prohibit the using thereof for that purpose until, in its judgment, the house or building is rendered fit for that purpose; and on the Court being satisfied that it has been rendered fit for that purpose the Court may determine its previous order by another, declaring the house or building habitable, and from the date thereof such house or building may be let or inhabited.

98. Any person not obeying an order to comply with the requisitions of the local authority or otherwise to abate the nuisance shall, if he fails to satisfy the Court that he has used all due diligence to carry out such order, be liable to a penalty not exceeding ten shillings per day during his default; and any person knowingly and wilfully acting contrary to an order of prohibition shall be liable to a penalty not exceeding twenty shillings per day during such contrary action.

The penalty for disobeying an order to abate a nuisance cannot be enforced without a previous summons of the parties on whom it is imposed. (Reg. *v.* Jenkins, 3 B. & S. 116; 32 L. J. M. C. 1.)

An order under the corresponding sections of the former Act was directed to the 'owner or the nuisance removal committee,' the committee being authorised and directed to remove the nuisance in default of the owner doing so within a given time. Neither removed it, and it was held that the owner was rightly fined for non-compliance with the order. (Tomlins *v.* Great Stanmore, 12 L. T. N. S. 118.)

Moreover, the local authority may enter the premises to which any order relates and abate the nuisance, and do whatever may be necessary in execution of such order, and recover in a summary manner the expenses incurred by them from the person on whom the order is made.

The power given by this section to local authorities to enter premises

and abate or remove a nuisance is discretionary, and the superior Courts cannot grant a *mandamus* to compel them, if they do not think fit to do so. (*Ex parte* Bassett, 7 E. & B. 280; 26 L. J. M. C. 64.) Section 102 gives further powers of entry, if the local authority wish to enter.

99. Where any person appeals against an order to the Court of quarter sessions in manner provided by this Act, no liability to penalty shall arise nor shall any proceedings be taken or work be done under such order, until after the determination of such appeal, unless such appeal ceases to be prosecuted.

The right and conditions of appeal are given by s. 269, *post*. Any person who deems himself aggrieved by any order, conviction, judgment, or determination, of any matter or thing by a Court of summary jurisdiction, may appeal.

100. Whenever it appears to the satisfaction of the Court of summary jurisdiction 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 the order of the Court may be addressed to and executed by the local authority.

It would seem, however, that the owner or occupier still remains liable for the existence of the nuisance, even though the order to abate is directed to and executed by the local authority. (Tomlins *v.* Great Stanmore, 12 L. T. N. S. 118.)

101. Any matter or thing removed by the local authority in abating any nuisance under this Act may be sold by public auction; and the money arising from the sale may be retained by the local authority and applied in payment of the expenses incurred by them with reference to such nuisance, and the surplus (if any) shall be paid, on demand, to the owner of such matter or thing.

See s. 49, *ante*.

102. The local authority, or any of their officers, shall be admitted into any premises for the purpose of examining as to the existence of any nuisance thereon, or of enforcing the provisions of any Act in force within the district requiring fireplaces and furnaces to consume their own smoke, at any time between the hours of nine in the forenoon and six in the after-

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noon, or in the case of a nuisance arising in respect of any business, then at any hour when such business is in progress or is usually carried on.

Where under this Act a nuisance has been ascertained to exist, or an order of abatement or prohibition has been made, the local authority or any of their officers shall be admitted from time to time into the premises between the hours aforesaid, until the nuisance is abated, or the works ordered to be done are completed, as the case may be.

Where an order of abatement or prohibition has not been complied with, or has been infringed, the local authority, or any of their officers, shall be admitted from time to time at all reasonable hours, or at all hours during which business is in progress or is usually carried on, into the premises where the nuisance exists, in order to abate the same.

If admission to premises for any of the purposes of this section is refused, any justice on complaint thereof on oath by any officer of the local authority (made after reasonable notice in writing of the intention to make the same has been given to the person having custody of the premises), may, by order under his hand, require the person having custody of the premises to admit the local authority, or their officer, into the premises during the hours aforesaid; and if no person having custody of the premises can be found, the justice shall, on oath made before him of that fact, by order under his hand, authorise the local authority or any of their officers to enter such premises during the hours aforesaid.

Any order made by a justice for admission of the local authority or any of their officers on premises shall continue in force until the nuisance has been abated, or the work for which the entry was necessary has been done.

See also s. 305, as to orders for admission.

By the form of notice given by the former Act, 18 & 19 Vic. c. 121, *post*, Appendix, it would seem that twenty-four hours from the receipt of the notice is a reasonable notice.

By the Public Health Water Act, 1878, 41 & 42 Vic. c. 25, ss. iii. & vii., *ante*, pp. 75–81, the powers of entry here given with respect to nuisances are

extended, so as to enable the local authority to provide a sufficient supply of water for a dwelling-house, in case the owner makes default in providing such supply, and also to enable the local authority, from time to time, to ascertain whether a dwelling-house is provided with a proper supply of water.

Powers of entry are also given by the Factory and Workshop Act, 1878, 41 Vic. c. 16, s. lxviii., to inspectors appointed under that Act, to enter inspect and examine a factory and workshop, and every part thereof, at all reasonable times by day and night, to make such examination and inquiry as may be necessary, to ascertain whether the enactments for the time being in force, relating to public health, so far as respects the factory or workshop and the persons employed therein, are complied with.

The inspector may take with him a constable, in case he has reasonable cause to apprehend any serious obstruction in the execution of his duty, also an officer of the sanitary authority. (*Vide* note to s. 91, *ante*.) By s. lxix. he may not, without the consent of the occupier, enter any room actually used as a dwelling, as well as for a factory or workshop, unless he is armed with the written authority of the Secretary of State, or a warrant from a justice of the peace, authorising him to enter. Such authority or warrant is to be obtained on his making an affidavit or statutory declaration of facts and reasons which show that it is desirable he should enter.

So also, by the Alkali Act, 1881, 44 & 45 Vic. c. 37, s. xvi., power is given to an inspector appointed under that Act, "at all reasonable times, by day and night, without giving previous notice, to enter and inspect any work to which that Act applies, and examine any process causing the evolution of any noxious or offensive gas, &c." This inspector, by s. xviii. of the same Act, may be a person in the service of the local authority.

103. Any person who refuses to obey an order of a justice for admission of the local authority or any of their officers on any premises shall be liable to a penalty not exceeding five pounds.

104. All reasonable costs and expenses incurred in making a complaint or giving notice, or in obtaining any order of the Court or any justice in relation to a nuisance under this Act, or in carrying the same into effect, 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 is made on the local authority or if no order is made, but the nuisance is 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 such costs and expenses may be recovered from any

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person who is for the time being owner of such premises: Provided that such costs and expenses shall not exceed in the whole one year's rackrent of the premises.

See note to s. 94, *ante*, as to what are nuisances caused by the act or default of the owner.

Such costs and expenses, and any penalties incurred in relation to any such nuisance, may be recovered in a summary manner or in any county or superior Court; and the Court shall have power to divide costs expenses and penalties between persons by whose acts or defaults a nuisance is caused, as to it may seem just.

It was held under the former Acts that the County Court was the proper tribunal in which to recover the costs and expenses contemplated by this section, even though title to land should be in question. (Hertford Union *v.* Kimpton, 11 Ex. 295, 25 L. J. M. C. 41; Reg. *v.* Harden, 2 E. & B. 189, 22 L. J. Q. B. 299.)

Any costs and expenses recoverable under this section by a local authority from an owner of premises may be recovered from the occupier for the time being of such premises; and the owner shall allow such occupier to deduct any moneys which he pays under this enactment 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.

As to the meaning of the word owner, cf. s. 4, *ante*, p. 3.

Under the Metropolis Management Amendment Act, s. 96, the words of which are almost identical with those of the last three clauses of this section, it was decided that to entitle the occupier to deduct costs and expenses from his rent the money must have been actually paid, and consequently that a landlord can legally distrain for rent which becomes due after service of a notice from the local authority not to pay such rent to the landlord, if he does so before payment of the rent under that notice by the tenant to the local authority. (Ryan *v.* Thompson, 3 L. R. C. P. 144.)

Provided, 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 demand of such costs or expenses from such occupier, and after notice not to pay his landlord any rent without first deducting the amount of such costs or expenses, becomes payable by such occupier, unless he refuses, on application to him by the local 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 on such occupier: Sec. 104.

Provided also that nothing herein contained shall affect any contract between any owner or occupier of any house building or other property, whereby it is or may be agreed that the occupier shall pay or discharge all rates dues and sums of money payable in respect of such house building or other property, or to affect any contract whatsoever between landlord and tenant.

There have been numerous decisions on the question whether the landlord or the tenant is the person liable. The liability is put by the Act on the owner, unless the occupier has contracted to defray such expenses. Whether he has done so or not depends in each case on the precise words of the covenant in the lease. In Payne *v.* Burridge, 12 M. & W. 727, 13 L. J. Ex. 191, the tenant covenanted to pay "all taxes rates duties levies assessments and payments whatsoever," and it was held that he was bound under his covenant to pay expenses of paving which were imposed by the local act on the landlord. Following that case, it was held, in Sweet *v.* Seager, 2 C. B. N. S. 119, that a covenant by the tenant "to discharge all parliamentary parochial and county district and occasional levies rates assessments charges impositions contributions burthens duties and services whatsoever," obliged him to defray the expense of drainage works required by the local authority. In Thompson *v.* Lapworth, 3 L. R. C. P. 149, 37 L. J. C. P. 74, the covenant was "to pay and discharge all taxes rates duties and assessments whatsoever," and it was held that the tenant was liable to pay the expense of paving required by the local authority. In Crosse *v* Raw, 9 L. R. Ex. 209, 43 L. J. Ex. 144, the tenant covenanted "to bear pay and discharge all taxes rates assessments and outgoings whatsoever, which should be imposed upon the demised premises, or on the landlord or tenant in respect thereof," and was held liable to pay the expense of making a drain which was ordered by the local authority to connect the demised premises with their sewer. In Hartley *v.* Hudson, 4 C. P. D. 367, 48 L. J. C. P. 751, the covenant was to pay "all rates taxes charges and assessments whatsoever, which may be charged or assessed upon the premises or upon any person in respect thereof," and the tenant was held liable for the expense of sewering and paving the street in which the premises were situated. So also in Midgley *v.* Coppoch, 4 Ex. D. 309, 48 L. J. Ex. 674, the Court of Appeal held that a clause by which the vendor of premises agreed to discharge "all rates taxes and outgoings payable in respect of the premises," bound him to pay expenses of paving and sewering

Secs. 104, 105. the street. And in Budd *v.* Marshall, 42 L. T. N. S. 793, the Court of Appeal (*dissentiente*, Brett, L. J.) held that a tenant who had covenanted to "bear pay and discharge all taxes rates duties and assesments imposed on the demised premises or on the landlord or tenant in respect thereof," entitled the landlord to recover the expense of a drain which had been made in pursuance of s. 96 of this Act.

On the other hand there are cases where the tenant has successfully disputed his liability. In Tidswell *v.* Whitworth, 2 L. R. C. P. 326, 36 L. J. C. P. 103, the covenant was to "pay and discharge all taxes rates assessments and impositions whatsoever which should become payable in respect of the demised premises." The Manchester Corporation, under a Local Act, had power to charge expenses of paving streets, &c., on the owners of property; and it was held that an owner who had paid such expenses could not recover them from this tenant under the words of the above covenant. This case has been carefully *distinguished* in nearly all the subsequent cases cited above, on the ground that it proceeded on the words of the local act which imposed the liability on the owner personally, and contained no saving clause as to contracts between landlord and tenant. It has, however, been followed in Rawlins *v.* Briggs, 3 C. P. D. 369, 47 L. J. C. P. 407. In that case the tenant covenanted to pay "all taxes rates charges assessments and impositions whatsoever charged assessed or imposed on the demised premises or in respect thereof." The landlord, being required in pursuance of s. 94 by the local authority to make a drain and abate a nuisance, expended money and sought to recover it from his tenant; but Lindley, J., held that the expense so incurred did not come within the words of the covenant and decided in favour of the tenant. (*See* also Allum *v.* Dickinson, W. N. 1882, p. 101.) The majority of the cases, however, as will be seen by this note, are in favour of the liability of the tenant where he has, as is usually the case, covenanted to pay charges arising in respect of the premises.

105. Complaint may be made to a justice of the existence of a nuisance under this Act on any premises within the district of any local authority, by any person aggrieved thereby or by any inhabitant of such district or by any owner of premises within such district, and thereupon the like proceedings shall be had with the like incidents and consequences as to making of orders penalties for disobedience of orders appeal and otherwise as in the case of a complaint relating to a nuisance made to a justice by the local authority:

As to the meaning of the words "person aggrieved," *see* note to s. 253, *post*. Any inhabitant of the district, or owner of premises in it, may move in this case, consequently it can only be important to see if the complainant is a person aggrieved in case he lives outside the district.

See ss. 95-101—as to the proceedings to be taken.

Provided that the Court may, if it thinks fit, adjourn the hearing or further hearing of the summons for an examination of the premises where the nuisance is alleged to exist, and may authorise the entry into such premises of any constable or other person for the purpose of such examination.

Provided also, that the Court may authorise any constable or other person to do all necessary acts for executing an order made under this section, and to recover the expenses from the person on whom the order is made in a summary manner.

Any constable or other person authorised under this section shall have the like powers and be subject to the like restrictions as if he were an officer of the local authority authorised under the provisions of this Act relating to nuisances to enter any premises and do any acts thereon.

No notice need be given before proceeding when the complaint is made by a private person. (Cocker *v.* Cardwell, 5 L. R. Q. B. 15; 39 L. J. M. C. 28.)

The powers of the officer of the local authority are given by s. 102; *see* also notes to that section, *ante*.

106. Where it is proved to the satisfaction of the Local Government Board that a local authority have made default in doing their duty in relation to nuisances under this Act, the Local Government Board may authorise any officer of police acting within the district of the defaulting authority to institute any proceeding which the defaulting authority might institute with respect to such nuisances, and such officer may recover in a summary manner or in any county or superior Court any expenses incurred by him, and not paid by the person proceeded against, from the defaulting authority:

See s. 299, *post*.

But such officer of police shall not 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, for the purpose of carrying into effect this enactment.

It will be noticed that the police officer has less extensive powers than the local authority whose default authorises him to act.

Secs. 107, 108.

107. Any local authority may, if in their opinion summary proceedings would afford an inadequate remedy, cause any proceedings to be taken against any person in any superior Court of law or equity to enforce the abatement or prohibition of any nuisance under this Act, or for the recovery of any penalties from or for the punishment of any persons offending against the provisions of this Act relating to nuisances, and may order the expenses of and incident to all such proceedings to be paid out of the fund or rate applicable by them to the general purposes of this Act.

As to this fund, *see* ss. 207 & 229.

108. Where a nuisance under this Act within the district of a local authority appears to be wholly or partially caused by some act or default committed or taking place without their district, the local authority may take or cause to be taken against any person in respect of such act or default any proceedings in relation to nuisances by this Act authorised, with the same incidents and consequences as if such act or default were committed or took place wholly within their district; so, however, that summary proceedings shall in no case be taken otherwise than before a Court having jurisdiction in the district where the act or default is alleged to be committed or take place.

This section shall extend to the metropolis so far as to authorise proceedings to be taken under it by any nuisance authority in the metropolis in respect of any nuisance within the area of their jurisdiction caused by an act or default committed or taking place within the district of a local authority under this Act; or by any such local authority in respect of any nuisance within their district caused by an act or default committed or taking place within the jurisdiction of any such nuisance authority.

In this section 'nuisance authority' means the local authority in the metropolis for the execution of the Nuisances Removal Act for England, 1855, and the Acts amending the same.

This section is designed to obviate a difficulty which was found in the

working of the former Acts, by which the local authorities had no power to institute proceedings or take any measures except by the cumbrous process of filing a bill in Chancery, with a view of abating a nuisance which prejudicially affected their district, but had its origin outside that district. (Reg. *v.* Cotton, 1 E. & E. 203, 28 L. J. M. C. 22.)

Compare the similar provisions of s. 115 as to offensive trades.

109. Where two convictions against the provisions of any Act relating to the overcrowding of a house have taken place within a period of three months (whether the persons convicted were or were not the same), a Court of summary jurisdiction may on the application of the local authority of the district in which the house is situated direct the closing of the house for such period as the Court may deem necessary.

This section is similar to s. 75, *ante*, as to cellar dwellings. Sections 80, 90 & 91 of this Act enable overcrowding to be treated as an offence punishable summarily.

110. For the purpose of the provisions of this Act relating to nuisances, any ship or vessel lying in any river harbour or other water within the district of a local authority shall be subject to the jurisdiction of that authority in the same manner as if it were a house within such district; and any ship or vessel lying in any river harbour or other water not within the district of a local authority shall be deemed to be within the district of such local authority as may be prescribed by the Local Government Board, and where no local authority has been prescribed, then of the local authority whose district nearest adjoins the place where such ship or vessel is lying.

The master or other officer in charge of any such ship or vessel shall be deemed for the purpose of the said provisions to be the occupier of such ship or vessel.

This section shall not apply to any ship or vessel under the command or charge of any officer bearing Her Majesty's commission or to any ship or vessel belonging to any foreign government.

111. The provisions of this Act relating to nuisances shall be deemed to be in addition to and not to abridge or affect any

Secs. 111, 112. right remedy or proceeding under any other provisions of this Act, or under any other Act, at law or in equity.

Provided that no person shall be punished for the same offence both under the provisions of this Act relating to nuisances and under any other law or enactment.

See ss. 35, 39, *ante*.

OFFENSIVE TRADES.

112. Any person who, after the passing of this Act, establishes within the district of an urban authority, without their consent in writing, any offensive trade, that is to say, the trade of—

Blood boiler, or
Bone boiler, or
Fellmonger, or
Soap boiler, or
Tallow melter, or
Tripe boiler, or
Any other noxious or offensive trade, business or manufacture,

shall be liable to a penalty not exceeding fifty pounds in respect of the establishment thereof; and any person carrying on a business so established shall be liable to a penalty not exceeding forty shillings for every day on which the offence is continued, whether there has or has not been any conviction in respect of the establishment thereof.

Noxious or offensive trade business or manufacture within the scope of this section must be one *ejusdem generis* with those enumerated. "The substances dealt with in the trades specified are substances which, without anything being done to them, must be, or in the progress of time must necessarily become a nuisance and annoyance to the neighbourhood." (Per Willes, J., in Wanstead Local Board *v.* Hill, 13 C. B. N. S. 479; 32 L. J. M. C. 135.)

In a case of Passey *v.* Oxford Local Board (not reported), the Queen's Bench Division lately held that a man who established the business of a bone dealer, which was so carried on as to be noxious and offensive, was liable to the penalties imposed by this section.

The trades here indicated may be and are lawful, if carried on in a proper manner and in a proper place (cf. Pinckney *v.* Ewens, 4 L. T. N. S.

741), and may continue to be carried on in places where they were carried on before, if they had been carried on long enough to acquire a prescriptive right to be carried on there, and if the nuisance caused is not increased. (Baxendale *v.* McMurray, 2 L. R. Ch. 790.) This section makes the establishment of any fresh trade of the sort in an urban (and therefore presumably populous) district unlawful, unless the urban authority see fit to allow it.

But the fact that offensive trades have for many years been carried on in a locality will not authorise the establishment of further works of a similar kind in the district. (St. Helen's Smelting Co. *v.* Tipping, 11 H. L. C. 642; 35 L. J. Q. B. 66; 13 W. R. 1,083.) So a prescriptive right to carry on an offensive trade does not justify increasing the nuisance caused by that trade, only carrying it on so as not to be a greater nuisance than before. (Reg. *v.* Watts, M. & M. 281.) A nuisance cannot be justified by the existence of other nuisances of a similar character, if it can be shown that the inconvenience is increased by the nuisance complained of. (Crossley *v.* Lightowler, 2 L. R. Ch. 478.)

As to what constitutes establishing an offensive trade, *see* Liverpool New Cattle Market Co. *v.* Hodson, 2 L. R. Q. B. 131; 36 L. J. M. C. 30.

This section only provides a penalty for causing fresh nuisances, without in any way removing the common law liability of the person who creates the nuisance to be indicted for so doing. And the owner of works, carried on for his benefit by his agents, is liable to be indicted for a public nuisance caused by the acts of his workmen in carrying on his works, though done by them without his knowledge and contrary to his general orders. (Reg. *v.* Stephens, 1 L. R. Q. B. 702.) A private individual may, moreover, maintain an action for damages caused by a public nuisance, if he can show that he has thereby sustained direct and substantial injury beyond that caused to the public generally. (Benjamin *v.* Storr, 9 L. R. C. P. 400; 43 L. J. C. P. 162.)

In addition to the prohibition against establishing offensive trades in urban districts, contained in this Act, the Alkali Act, 1881, 44 & 45 Vic. c. 37, s. 11, obliges all works for the manufacture of alkali, sulphate of soda, or sulphate of potash, in which muriatic acid gas is evolved, and certain other works scheduled in that Act, to be certified and registered as properly fitted out and conducted; any work carried on in contravention of that provision is liable to a fine of £5 for every day on which it is so carried on.

113. Any urban authority may from time to time make bye-laws with respect to any offensive trades established with their consent either before or after the passing of this Act, in order to prevent or diminish the noxious or injurious effects thereof.

For general rules as to bye-laws, *see* s. 182, *post*.

114. Where any candle-house melting-house melting-place or soap-house, or any slaughter-house, or any building or place

Sec. 114. 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, is certified to any urban authority by their medical officer of health, or by any two legally qualified medical practitioners, or by any ten inhabitants of the district of such urban authority, to be a nuisance or injurious to the health of any of the inhabitants of the district, such urban authority shall direct complaint to be made before a justice, who may summon the person by or on whose behalf the trade so complained of is carried on to appear before a Court of summary jurisdiction.

Legally qualified medical practitioners means registered under 21 & 22 Vic. c. 90, s. 34.

Under the Nuisances Removal Act, 18 & 19 Vic. c. 121, it was held that the justices had only jurisdiction over such nuisances as were injurious to health. (G. W. R. *v.* Bishop, 7 L. R. Q. B. 550; 41 L. J. M. C. 120.) It has, however, been decided that this section (the words of which are very similar to those of the former act) empowers justices to convict in case the trade causes effluvia which are a nuisance though not injurious to persons in sound health. (Malton Board *v.* Malton Manure Company, 4 Ex. D. 305).

The Court shall inquire into the complaint, and if it appears to the Court that the business carried on by the person complained of is a nuisance, or causes any effluvia which is a nuisance or injurious to the health of any of the inhabitants of the district, and unless it be shown that such person has 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 be liable to a penalty not exceeding five pounds nor less than forty shillings, and on a second and any subsequent conviction to a penalty 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 that the Court may suspend its final determination on condition that the person complained of undertakes to adopt, within a reasonable time, such means as the Court may deem to

be practicable and order to be carried into effect, for abating such nuisance or mitigating or preventing the injurious effects of such effluvia, or if such person gives notice of appeal to the Court of quarter sessions in manner provided by this Act.

Any urban authority may, if they think fit, on such certificate as is in this section mentioned, cause to be taken any proceedings in any superior Court of law or equity against any person in respect of the matters alleged in such certificate.

Formerly the defendant had the option under the Nuisances Removal Act, 1855, s. 28, of compelling the urban authority to take proceedings in a superior Court, and thus practically prevented their attacking him by fear of costs. Now they still can sue him there, but are not compelled to do so, the clause in question not having been re-enacted.

In case of a nuisance caused by any alkali works, special powers of complaint are given by the Alkali Act, 1881, 44 & 45 Vic. c. 37, s. xxvii., which is as follows :—

"Where it appears to any sanitary authority, on the written representation of any of their officers, or of any ten inhabitants of their district, that any work (either within or without the district) to which this Act applies is carried on in contravention of this Act, or that any alkali waste is deposited (either within or without the district) in contravention of this Act, and that a nuisance is occasioned by such contravention to any of the inhabitants of their district, such authority may complain to the central authority, who shall make such inquiry into the matters complained of, and after the inquiry may direct such proceedings to be taken by an inspector as they think just.

"The sanitary authority complaining shall, if so required by the central authority, pay the expense of any such inquiry, and may pay the same out of the fund or rate applicable to the general expenses of such authority.

"The expression 'sanitary authority' in this section includes, as regards the Metropolis, except the City of London, any vestry or district board elected under the Metropolis Management Act, 1855, also any local board of health, not being an urban sanitary authority within the meaning of the Public Health Act, 1875, and as regards the City of London, shall mean the Commissioners of Sewers of the said city."

The central authority there mentioned is the Local Government Board.

115. Where any house building manufactory or place, which is certified in pursuance of the last preceding section to be a nuisance or injurious to the health of any of the inhabitants of the district of an urban authority, is situated without such district, such urban authority may take or cause to be taken any proceedings by that section authorised in respect of the matters alleged in the certificate, with the same incidents and conse-

Secs. 115, 116.

quences as if the house building manufactory or place were situated within such district; so, however, that summary proceedings shall not in any case be had otherwise than before a Court having jurisdiction in the district where the house, building manufactory or place is situated.

This section shall extend to the metropolis so far as to authorise proceedings to be taken under it by any nuisance authority in the metropolis in respect of any house building manufactory or place which is certified as aforesaid to be a nuisance or injurious to the health of any of the inhabitants within the area of their jurisdiction, and is situated within the district of a local authority under this Act; or by any urban authority in respect of any house building manufactory or place which is certified as aforesaid to be a nuisance or injurious to the health of any of the inhabitants of their district, and is situated within the jurisdiction of any such nuisance authority.

In this section "nuisance authority" means the local authority in the metropolis for the execution of the Nuisances Removal for England Act, 1855, and the Acts amending the same.

See the similar provisions of s. 108, *ante*.

UNSOUND MEAT, ETC.

116. Any 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 flour or milk 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 any such purpose, or was not intended for the food of man, resting with the party charged; and if any such animal carcase meat poultry game flesh fish fruit vegetables corn bread flour or milk, appears to such medical officer or inspector to be diseased or unsound, or unwholesome, or unfit for the food of man, he may seize and carry away the same himself or by an assistant, in order to have the same dealt with by a justice.

"It has been held by the stipendiary magistrate at Manchester, that

this section gives no power to deal with rancid butter, as butter is not one of the articles mentioned, and there are no general words in the section to embrace other articles than those specified. If the above decision should be followed, the Act is certainly defective here. Food sold in markets will not be affected by this decision. *See post*, p. 193.

The following case shows what may be an exposure for food within the meaning of this section :—

"Diseased meat placed on a cart when passing along the streets of Dublin from a slaughter-house to a place for the manufacture of preserved meats in the city was seized by the inspector of nuisances. Held that the meat was, when placed upon the cart, exposed for sale, and intended for the food of man within the meaning of the Act." (Daly *v.* Webb, 4 Ir. R. C. L. 309, 18 W. R. 631.)

A yard at the back of a butcher's shop is a place within the meaning of this section, and it was held that a conviction for having the carcases of two cows unfit for food in such yard was right. (Young *v.* Gattridge, 4 L. R. Q. B. 166.) "Place" is intended to include every species of premises where animals or carcases, &c., might be kept for sale, or preparation for sale as food for man. *Ib.*

117. If it appears to the justice that any animal carcase meat poultry game flesh fish fruit vegetables corn bread flour or milk, so seized, is diseased or unsound or unwholesome or unfit for the food of man, he shall condemn the same, and order it to be destroyed, or so disposed of as to prevent it from being exposed for sale or used for the food of man; and the person to whom the same belongs or did belong at the time of exposure for sale, or in whose possession or on whose premises the same was found, shall 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, or for the milk so condemned, or, at the discretion of the justice, without the infliction of a fine, to imprisonment for a term of not more than three months.

Under the former acts it was held that the justices must give the person on whose premises the unsound food was seized an opportunity of being heard, and of showing that it was not exposed for sale before condemning it. (Gill *v.* Bright, 42 L. J. M. C. 22.) It has, however, since that case been decided that the opportunity of being heard only applies to the person summoned for the offence of having unsound food on his premises, before he is convicted of the offence provided for by this section. The justice is to condemn the food seized on his own view or smell of it simply. (Redfern *v.* White, 5 Q. B. D. 15.)

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To expose for sale, or to have possession of with intent to sell, things unfit for food is a nuisance at common law, punishable independently of this section, or of any bye-laws made for similar purposes. (Shillito *v.* Thompson, 1 Q. B. D. 12; 45 L. J. M. C. 18.) Hence it seems that the owner of the premises on which any of the articles enumerated were found might be rightly subjected to penalties under this section, even though not aware that the articles found were in fact unsound or unfit for the food of man. (cf. Reg. *v.* Prince, L. R. 2 C. C. R. 154.)

Knowingly to expose for sale meat which is unfit for human food is an indictable offence. (Reg. *v.* Stevenson, 3 F. & F. 106.) A person convicted on indictment might receive a heavier punishment than this section empowers justices to impose.

The penalty is incurred for every animal or piece of meat, &c. Where four separate penalties were imposed on each of three individuals for exposing four pieces of meat unfit for the food of man, the Court of Queen's Bench held that the convictions were good, and refused to interfere. (*Re* Hartley, 31 L. J. M. C. 232.)

The justice who, under this section, is empowered to convict the offender may be either the justice who may have ordered the article to be disposed of or destroyed or any other justice having jurisdiction in the place.

118. Any person who in any manner prevents any medical officer of health or inspector of nuisances from entering any premises and inspecting any animal carcase meat poultry game flesh fish fruit vegetables corn bread flour or milk exposed or deposited for the purpose of sale, or of preparation for sale, and intended for the food of man, or who obstructs or impedes any such medical officer or inspector or his assistant, when carrying into execution the provisions of this Act, shall be liable to a penalty not exceeding five pounds.

In a case under this section it was held by the Court of Queen's Bench that a refusal to open a door was not such a prevention or impeding of an inspector as to make the party so refusing liable to a penalty. Some overt act of obstruction, and not a mere nonfeasance, seems to be required. (Small *v.* Bickley, 32 L. T. N. S. 727.)

The next section prevents this being practically useless, as a man might often prefer to run the risk of five pounds fine, and so escape the risk of two months' imprisonment. Compare ss. 102 & 305, which also give power to justices to authorise the entry of the officers of local authorities in certain cases on private premises.

119. On complaint made on oath by a medical officer of

health or by an inspector of nuisances or other officer of a local authority, any justice may grant a warrant to any such officer to enter any building or part of a building in which such officer has reason for believing that there is kept or concealed any animal carcase meat poultry game flesh fish fruit vegetables corn bread flour or milk, which is intended for sale for the food of man, and is diseased unsound or unwholesome, or unfit for the food of man; and to search for seize and carry away any such animal or other article in order to have the same dealt with by a justice under the provisions of this Act.

Any person who obstructs any such officer in the performance of his duty under such warrant shall, in addition to any other punishment to which he may be subject, be liable to a penalty not exceeding twenty pounds.

Infectious Diseases and Hospitals.

Provisions against Infection.

120. Where any local authority are of opinion, on the certificate of their medical officer of health or of any other 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 disease, it shall be the duty of such authority to give notice in writing to the owner or occupier of such house or part thereof, requiring him to cleanse and disinfect such house or part thereof and articles, within a time specified in such notice.

If the person to whom notice is so given fails to comply therewith 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 local authority shall cause such house or part thereof and articles to be cleansed and disinfected, and may recover the expenses incurred from the owner or occupier in default in a summary manner.

The Court of summary jurisdiction may, by virtue of s. 4 of 42 & 43 Vic. c. 49, mitigate this minimum penalty of one shilling per day.

Where the owner or occupier of any such house or part

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thereof is from poverty or otherwise unable, in the opinion of the local 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 cleanse and disinfect such house or part thereof and articles, and defray the expenses thereof.

121. Any local authority may direct the destruction of any bedding clothing or other articles, which have been exposed to infection from any dangerous infectious disorder, and may give compensation for the same.

It would seem, from the wording of s. 308, *post*, that the local authority are bound to give compensation for any damage they cause to an individual by the exercise of the powers given by this and the preceding section, unless they can show that the default of the person whose property is injured or destroyed has led to the injury or destruction.

122. Any local authority may provide a proper place, with all necessary apparatus and attendance, for the disinfection of bedding clothing or other articles which have become infected, and may cause any articles brought for disinfection to be disinfected free of charge.

123. Any local authority may provide and maintain a carriage or carriages suitable for the conveyance of persons suffering under any infectious disorder, and may pay the expense of conveying therein any person so suffering to a hospital or other place of destination.

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

person so suffering, who is lodged in any common lodging-house, may, with the like consent and on a like certificate, be so removed by order of the local authority.

Legally qualified medical practitioner means one duly registered under the Medical Act, 21 & 22 Vic. c. 90. Section 131 gives power to provide hospitals.

An order under this section may be addressed to such constable or officer of the local authority as the justice or local authority making the same may think expedient; and any person who wilfully disobeys or obstructs the execution of such order shall be liable to a penalty not exceeding ten pounds.

125. Any local authority may make regulations (to be approved of by the Local Government Board) for removing to any hospital to which such authority are entitled to remove patients, and for keeping in such hospital so long as may be necessary, any persons brought within their district by any ship or boat who are infected with a dangerous infectious disorder, and such regulations may impose on offenders against the same reasonable penalties not exceeding forty shillings for each offence.

See s. 188, *post*.

126. Any person who—

(1.) While suffering from any dangerous infectious disorder wilfully exposes himself without proper precautions against spreading the said disorder in any street public place shop inn or public conveyance, or enters any public conveyance without previously notifying to the owner conductor or driver thereof that he is so suffering; or

(2.) Being in charge of any person so suffering, so exposes such sufferer; or

The case of Tunbridge Wells Local Board *v.* Bishopp (L. R. 2 C. P. D. 187, 46 L. J. C. P. 314), is an instance of what does not constitute wilful exposure so as to make the person charged liable to the penalties imposed by this section.

(3.) Gives lends sells transmits or exposes, without pre-

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vious disinfection, any bedding clothing rags or other things which have been exposed to infection from any such disorder,

shall be liable to a penalty not exceeding five pounds; and a person who, while suffering from any such disorder, enters any public conveyance without previously notifying to the owner or driver that he is so suffering shall in addition be ordered by the Court to pay such owner and driver the amount of any loss and expense they may incur in carrying into effect the provisions of this Act with respect to disinfection of the conveyance.

Provided that no proceedings under this section shall be taken against persons transmitting, with proper precautions, any bedding clothing rags or other things, for the purpose of having the same disinfected.

This section, like those of the previous Act, which it replaces, merely gives a definite punishment and summary mode of procedure for what was an indictable offence at common law, namely, "to expose persons infected with contagious disorders, and therefore liable to communicate them to the public in a place of public resort." (Reg. *v.* Vantandillo, 4 M. & S. 73; Reg. *v.* Burnett, 4 M. & S. 272.)

The powers with regard to infectious diseases are extended to canal boats by the Canal Boats Act, 1877, 40 & 41 Vict. c. 60, ss. 4 & 5 of which are as follows:—

IV. Where any sanitary authority, within whose district a canal or any part of a canal is situate, is informed by the master of a canal boat or otherwise that a person on a canal boat is suffering from an infectious disorder, the authority shall cause such steps to be taken as may by the certificate of their medical officer of health, or of any other legally qualified practitioner, appear requisite for preventing the said disorder from spreading, and for that purpose may exercise the power of removing a person suffering as aforesaid, and all other powers in relation to provisions against infection conferred by the Public Health Act, 1875, and may also, if need be, detain the boat; but such boat shall not be detained a longer time than is necessary for cleansing and disinfecting the same.

V. Where any person duly authorised by a registration or sanitary authority, or by a justice of the peace, has reasonable cause to suppose, either that there is any contravention of this Act on board a canal boat, or that there is on board a canal boat any person suffering from an infectious disorder, he may, on producing (if demanded) either a copy of his authorisation, pur-

porting to be certified by the clerk or a member of the sanitary authority, or some other sufficient evidence of his being authorised as aforesaid, enter by day such canal boat and examine the same and every part thereof, in order to ascertain whether on board such boat there is any contravention of this Act or a person suffering from an infectious disorder, and may, if need be, detain the boat for the purpose, but for no longer time than is necessary.

The master of the boat shall, if required by such person, produce to him the certificate of registry (if any) of the boat, and permit him to examine and copy the same, and shall furnish him with such assistance and means as such person may require for the purpose of his entry and examination of and departure from the boat in pursuance of this section.

A refusal to comply with the requisition of such person under this section shall be deemed to be an obstruction of such person.

If such person is obstructed in the performance of his duty under this Act in the case of any boat, the person so obstructing shall be liable to a fine not exceeding forty shillings.

127. Every owner or driver of a public conveyance shall immediately provide for the disinfection of such conveyance after it has to his knowledge conveyed any person suffering from a dangerous infectious disorder; and if he fails to do so he shall be liable to a penalty not exceeding five pounds; but no such owner or driver shall be required to convey any person so suffering until he has been paid a sum sufficient to cover any loss or expense incurred by him in carrying into effect the provisions of this section.

128. Any person who knowingly lets for hire any house room or part of a house in which any person has been suffering from any dangerous infectious disorder, without having such house room or part of a house and all articles therein liable to retain infection disinfected to the satisfaction of a legally qualified medical practitioner, as testified by a certificate signed by him, 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 for hire part of a house to any person admitted as a guest into such inn.

129. Any person letting for hire or showing for the purpose of letting for hire any house or part of a house, who, on being

Secs. 129-131. questioned by any person negotiating for the hire of such house or part of a house as to the fact of there being or within six weeks previously having been therein any person suffering from any dangerous infectious disorder, knowingly makes a false answer to such question, shall be liable, at the discretion of the Court, to a penalty not exceeding twenty pounds, or to imprisonment, with or without hard labour, for a period not exceeding one month.

130. The Local Government Board may from time to time make alter and revoke such regulations as to the said Board may seem fit, with a view to the treatment of persons affected with cholera or any other epidemic endemic or infectious disease, and preventing the spread of cholera or 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 may declare by what authority or authorities such regulations shall be enforced and executed. Regulations so made shall be published in the London Gazette, and such publication shall be for all purposes conclusive evidence of such regulations.

Any person wilfully neglecting or refusing to obey or carry out or obstructing the execution of any regulation made under this section shall be liable to a penalty not exceeding fifty pounds.

Regulations as to cholera were issued by the Local Government Board on July 9th and August 3rd and 5th, 1871, and again on July 17th, 1873. The latter repealed the previous orders, and never having been repealed, is presumably still in force, though now practically obsolete. It provides for the detention by the Custom House officers of any ship suspected of infection, and for the inspection of the ship and of all persons therein by the medical officer of health, or by a qualified medical practitioner appointed by the local authority. Persons suspected of infection may be detained in quarantine, and those suffering from cholera, or any kindred disease, are to be removed to a hospital and there treated, or else to be treated on board. All infected articles or portions of the ship are to be disinfected or destroyed. Persons dying in port of cholera to be buried at sea.

Hospitals.

131. Any local authority may provide for the use of the

inhabitants of their district hospitals or temporary places for the reception of the sick, and for that purpose may—

Themselves build such hospitals or places of reception; or

Contract for the use of any such hospital or part of a hospital or place of reception; or

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

Two or more local authorities may combine in providing a common hospital.

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

This is analogous to the power of guardians to recover expenses of maintenance from a pauper in case of his being found to be in possession of funds, under 12 & 13 Vic. c. 103, s. 16; 16 & 17 Vic. c. 97, ss. 94 & 104. It is a new provision.

Sir R. Harrington, County Court Judge, has decided in a case in the Warwick County Court (Warwick Sanatorium Committee *v.* Spicer, reported *Law Times*, Jan. 1, 1881), that this section does not impose any liability on the person bound by law to maintain the patient, and consequently that a parent could not be made liable for the maintenance of his child in a hospital, there being no express contract by the parent to pay for such maintenance. There is no reported decision in any superior Court which bears on this section.

133. Any local authority may, with the sanction of the Local Government Board, themselves provide or contract with any person to provide a temporary supply of medicine and medical assistance for the poorer inhabitants of their district.

Prevention of Epidemic Diseases.

134. Whenever any part of England appears to be threatened

Secs. 134—137. with or is affected by any formidable epidemic endemic or infectious disease, the Local Government Board may make and from time to time alter and revoke regulations for all or any of the following purposes (namely)—

(1.) For the speedy interment of the dead; and

(2.) For house to house visitation; and

(3.) For the provision of medical aid and accommodation, for the promotion of cleansing ventilation and disinfection, and for guarding against the spread of disease;

and may by order declare all or any of the regulations so made to be in force within the whole or any part or parts of the district of any local authority, and to apply to any vessels, whether on inland waters or on arms or parts of the sea within the jurisdiction of the Lord High Admiral of the United Kingdom or the Commissioners for executing the office of the Lord High Admiral for the time being, for the period in such order mentioned; and may by any subsequent order abridge or extend such period.

135. All regulations and orders so made by the Local Government Board shall be published in the London Gazette, and such publication shall be conclusive evidence thereof for all purposes.

136. The local authority of any district within which or part of which regulations so issued by the Local Government Board are declared to be in force, shall superintend and see to the execution thereof, 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 any such disease, or for superintending or aiding in the execution of such regulations, or for executing the same, as the case may require. Moreover, the local authority may from time to time direct any prosecution or legal proceedings for or in respect of the wilful violation or neglect of any such regulation.

137. The local authority and their officers shall have power

of entry on any premises or vessel for the purpose of executing or superintending the execution of any regulations so issued by the Local Government Board as aforesaid.

There is no provision for enforcing their power of entry in case those in charge of the ship refuse to admit the local authority and their officers.

138. Whenever, in compliance with any regulation so issued by the Local Government Board as aforesaid, any Poor Law medical officer performs any medical service on board any vessel, he shall be entitled to charge extra for such service, at the general rate of his allowance for services for the union or place for which he is appointed; and such charges shall be payable by the captain of such vessel on behalf of the owners thereof, together with any reasonable expenses for the treatment of the sick.

Where such services are rendered by any medical practitioner who is not a Poor Law medical officer, he shall be entitled to charges for any service rendered on board, with extra remuneration on account of distance, at the same rate as those which he is in the habit of receiving from private patients of the class of those attended and treated on shipboard, to be paid as aforesaid. In case of dispute in respect of such charges such dispute may, where the charges do not exceed twenty pounds, be determined by a Court of summary jurisdiction; and such Court shall determine summarily the amount which is reasonable, according to the accustomed rate of charge within the place where the dispute arises for attendance on patients of the like class as those in respect of whom the charge is made.

139. The Local Government Board may, if they think fit, by order authorise or require any two or more local authorities to act together for the purposes of the provisions of this Act relating to prevention of epidemic diseases, and may prescribe the mode of such joint action and of defraying the costs thereof.

140. Any person who—

(1.) Wilfully violates any regulation so issued by the Local Government Board as aforesaid; or,

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(2.) Wilfully obstructs any person acting under the authority or in the execution of any such regulation, shall be liable to a penalty not exceeding five pounds.

MORTUARIES, ETC.

141. Any local authority may, and if required by the Local Government Board shall, provide and fit up a proper place for the reception of dead bodies before interment (in this Act called a mortuary), and may make bye-laws with respect to the management and charges for use of the same; they may also provide for the decent and economical interment, at charges to be fixed by such bye-laws, of any dead body which may be received into a mortuary.

As to bye-laws, *see* ss. 182–186, *post*.

This compulsory provision is new. *See* s, 299, *post*, as to enforcing it.

142. Where the body of one who has died of any infectious disease is retained in a room in which persons live or sleep, or any dead body which is in such a state as to endanger the health of the inmates of the same house or room is retained in such house or room, any justice may, on a certificate signed by a legally qualified medical practitioner, order the body to be removed, at the cost of the local authority, to any mortuary provided by such authority, and direct the same to be buried within a time to be limited in such order; and unless the friends or relations of the deceased undertake to bury the body within the time so limited, and do bury the same, it shall be the duty of the relieving officer to bury such body at the expense of the poor rate, but any expense so incurred may be recovered by the relieving officer in a summary manner from any person legally liable to pay the expense of such burial. Any person obstructing the execution of an order made by a justice under this section shall be liable to a penalty not exceeding five pounds.

"Legally qualified medical practitioner" is in accordance with 20 & 21 Vic. c. 90.

143. Any local authority may provide and maintain a proper place (otherwise than at a workhouse or at a mortuary) for the

reception of dead bodies during the time required to conduct any post-mortem examination ordered by a coroner or other constituted authority, and may make regulations with respect to the management of such place; and where any such place has been provided, a coroner or other constituted authority may order the removal of the body to and from such place for carrying out such post-mortem examination, such costs of removal to be paid in the same manner and out of the same fund as the costs and fees for post-mortem examinations when ordered by the coroner. Sec. 143.

See further, 11 & 12 Vic. c. 63, s. 83; 24 & 25 Vic. c. 61, s. 21; 29 & 30 Vic. c. 90, s. 44, *post*, in Appendix.

CEMETERIES.

Burial boards existed in many districts prior to the passing of the Public Health Act. By 21 & 22 Vic. c. 98, s. 49 (Appendix, *post*), local boards might become burial boards; and by 29 & 30 Vic. c. 90, s. 44 (Appendix), urban authorities were empowered to accept the transfer from burial boards of all their estate property rights powers duties and liabilities. This power of an urban authority to become a burial authority is now extended to all local authorities by "The Public Health (Interments) Act, 1879" (42 & 43 Vic. c. 31), which is incorporated with the Public Health Act, and is as follows:—

I. This Act may be cited as "The Public Health (Interments) Act, 1879," and shall be construed as one with "The Public Health Act, 1875," in this Act called the principal Act.

II. The provisions of the principal Act, as to a place for the reception of the dead before interment, in the principal Act called a mortuary, shall extend to a place for the interment of the dead, in this Act called a cemetery; and the purposes of the principal Act shall include the acquisition construction and maintenance of a cemetery.

See s. 141 of the principal Act, *ante*. The local authority may it seems be required by the Local Government Board to provide a cemetery, and may have one provided at their expense under the powers given by s. 299. If it is necessary to obtain land for the purpose of making a cemetery, ss. 175–6 enable the local authority to purchase land compulsorily with the consent of the Local Government Board. This consent would not probably be given, if existing cemeteries or churchyards were sufficient for the sanitary needs of the district.

Where a cemetery is made, the local authority may charge for interments, and are it would seem not limited by Act of Parliament as to the

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amount they may charge, though of course the charges must be reasonable. In the case of burial boards, it has been enacted by 15 & 16 Vic. c. 85, s. 34, that—

"Every burial board under this Act shall and may (without prejudice to the fees and payments herein specially provided for) fix and settle and receive such fees and payments in respect of interments in any burial ground provided by such board as they shall think fit, and also the sums to be paid for the exclusive right of burial, either in perpetuity or for a limited period, in any burial ground provided by such board, and also the right of constructing any vault or place of burial with the exclusive right of burial therein in perpetuity or for a limited period, and also the right of erecting and placing any monument gravestone tablet or monumental inscription in such burial ground. And every burial board, with the consent of the vestry, may from time to time revise and alter such fees payments and sums as aforesaid; and a table showing such fees payments and sums, and all other fees and payments in respect of interments in such ground, shall be printed and published, and shall be affixed and at all times continued on some conspicuous part of such burial ground."

These fees are by 18 & 19 Vic. c. 128, s. 7, to be fixed and settled subject to the approval of one of Her Majesty's Principal Secretaries of State, and not to be altered without such approval. The scale of fees charged under this Act by a local authority is, it would seem, subject to the approval of the Local Government Board. (*See* 35 & 36 Vic. c. 76, s. 34, Appendix.)

The local authority may also make bye-laws for cemeteries provided by them; these bye-laws must conform to the conditions prescribed by ss. 182–186 of the principal Act, and must be approved by the Local Government Board.

(2.) A local authority may acquire construct and maintain a cemetery either wholly or partly within or without their district subject, as to works without their district for the purpose of a cemetery, to the provisions of the principal Act as to sewage works by a local authority without their district.

See ss. 32–34 of the principal Act, *ante*, as to works without the district. The expenses would be provided for, so far as they were not covered by fees, under ss. 207 & 229.

(3.) A local authority may accept a donation of land for the purpose of a cemetery, and a donation of money or other property for enabling them to acquire construct or maintain a cemetery.

A local authority may purchase land for the purpose of a cemetery under the provisions of the principal Act, ss. 175–178, and may, with the

approval of the Local Government Board, acquire such land otherwise than by agreement, *i.e.*, compulsorily. Burial Boards may purchase lands under 15 & 16 Vic. c. 85, ss. 26–27, but cannot take them compulsorily. They may by 20 & 21 Vic. c. 81, s. 7, take over from the clergyman of a parish a burial ground provided under the Church Building Acts, 55 Geo. III. c. 68, 56 Geo. III. c. 141, 59 Geo. III. c. 134, and 3 Geo. IV. c. 72. There seems, however, to be no power for a local authority providing a cemetery under this Act to do so. By the Places of Worship Sites Act, 1873, 36 & 37 Vic. c. 50, power is given to persons with a limited estate in land to grant plots of not exceeding one acre to be used as burial grounds; that Act apparently contemplates the grant being for a burial ground connected with a church, but it would seem that this section extends it to burial grounds provided by a local authority. Power is given also by 51 Geo. III. c. 115, s. 2, to grant land forming part of the waste of a manor for church-yards (cf. Forbes *v.* Ecclesiastical Commissioners, L. R. 15 Eq. 51; 42 L. J. Ch. 97; *see* further, s. vi. of the Cemeteries Clauses Act, *post*, p. 130). Sec. 143.

By 16 & 17 Vic. c. 134, s. 1, the Queen in Council may for the protection of public health by order prohibit the opening of any new burial-ground within certain limits, or the continuance of burials in burial grounds within those limits. Section 5 of the same Act provides that it shall not authorise the discontinuance of burials in any cemetery established under authority of any Act of Parliament. This exception has, however, been held to apply only to commercial cemeteries established under the authority of private Acts of Parliament, and not to a burial-ground established under the Church Building Acts. (Reg. *v.* Manchester, J. J. 5 E. & B. 702; 25 L. J. M. C. 45.) It would therefore seem that cemeteries established by burial boards or by sanitary authorities may be closed when public health demands it, just as much as churchyards may be. (*See* also 11 & 12 Vic. c. 63, s. 83, *post*, Appendix.)

III. The Cemeteries Clauses Act, 1847, shall be incorporated with this Act.

The incorporated Act, 10 & 11 Vic. 65, is as follows:—

I. Whereas it is expedient to comprise in one Act sundry provisions usually contained in Acts of Parliament authorising the making of cemeteries, 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 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 shall extend only to such cemeteries as shall

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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 in any such Act, shall apply to the cemetery, authorised thereby, so far as they are applicable to such cemetery, and shall, with the clauses of every other Act incorporated therewith, form part of such Act, and be construed therewith as forming one 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 making of a cemetery, 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 company" shall mean the persons by the special Act authorised to construct the cemetery.

See s. 316 of the principal Act, *post*.

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 only 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: Sec. 143.

The word "lands" shall include messuages lands and hereditaments of any tenure:

The expression "cemetery" shall mean the cemetery or burial ground, and the works connected therewith by the special Act authorised to be constructed:

The word "month" shall mean calendar month:

The expression "superior Courts" shall mean her Majesty's superior Courts 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:

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 expression "Established Church" shall mean the united Church of England as by law established:

The word "county" shall include any riding or other division of a county having a separate commission of the peace, and shall also include the 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 cognisance of any such justice arises, and if such matter arise in respect of lands situated not wholly in 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 met and acting together:

The expression "quarter sessions" shall mean the quarter

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sessions as defined by the special Act, or if such expression be not therein defined it shall mean the general or quarter sessions of the peace which shall be held at the place nearest the cemetery for the county or place in which the cemetery or some part thereof is situated, or for some division of such county having a separate commission of the peace.

This Act being incorporated in the Public Health Act, it would seem that the definitions given by that Act will supersede those given here, where the two definitions differ.

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 sufficient to use the expression "The Cemeteries Clauses Act, 1847."

V. Section 5 is immaterial, and therefore omitted.

And with respect to the making of the cemetery, be it enacted as follows :—

VI. Where by the Special Act the Company shall be empowered, for the purpose of making the cemetery, to take or use any lands otherwise than with the consent of the owners and occupiers thereof, they shall, in exercising the power so given to them, be subject to the provisions and restrictions contained in this Act and the Lands Clauses Consolidation Act, 1845, and shall make to the owners and occupiers of and all other parties interested in any lands taken or used for the purposes of the Special Act, or injuriously affected by the construction of the works thereby authorised, full compensation for the value of the lands so taken or used, and for all damage sustained by such owners occupiers or other parties, by reason of the exercise, as regards such lands, of the powers vested in the Company by this or the Special Act or any Act incorporated therewith, and, except where otherwise provided by this or the Special Act, the amount of such compensation shall be determined in the manner provided by the Lands Clauses Consolidation Act, 1845, for determining

questions of compensation with regard to lands purchased or taken under the provisions thereof, and all the provisions of the last-mentioned Act shall be applicable to determine the amount of such compensation, and to enforce payment or other satisfaction thereof. Sec. 143.

Besides these restrictions, the local authority must also comply with the provisions of the principal Act, s. 176, as to notices where they propose to acquire land otherwise than by agreement. Compensation must not be assessed under ss. 179-181 of that Act, but under the Lands Clauses Acts. (*Ex parte* Rayner, 3 Q. B. D. 446; 47 L. J. Q. B. 660.) These clauses will be found in the Appendix.

VII. If any omission mis-statement or wrong description shall have been made of any lands, or of the owners lessees or occupiers of any lands described in the special Act or the schedule thereto, the Company, after giving ten days' notice to the owners of the lands affected by such proposed correction, may apply to two justices for the correction thereof, and if it appear to such justices that such omission mis-statement or wrong description arose from mistake, they shall certify the same accordingly, and shall in such certificate state the particulars of any such omission mis-statement or wrong description; and such certificate shall be deposited with the Clerk of the Peace of the county in which the lands affected thereby shall be situated, and thereupon the special Act or schedule shall be deemed to be corrected according to such certificate, and the Company may take the lands according to such certificate, as if such omission mis-statement or wrong description had not been made.

VIII. Copies of any alteration or correction of the special Act, or the schedule thereto, or of any extract therefrom, certified by any such Clerk of the Peace in whose custody such alteration or correction may be, which certificate such clerk of the peace shall give to all parties interested, when required, shall be received in all Courts of justice or elsewhere as evidence of the contents thereof.

IX. The Company shall not sell or dispose of any land which

Sec. 143. shall have been consecrated or used for the burial of the dead, or make use of such land for any purpose, except such as shall be authorised by this or the special Act, or any Act incorporated therewith.

This prohibition only affects land consecrated or actually used for burial.

Apart from this statutory prohibition, it has long been settled that "nothing short of an Act of Parliament can authorise the conversion of consecrated ground to secular purposes." (Campbell *v.* Paddington, 2 Robertson 559; Reg *v.* Twiss, L. R. 4 Q. B. 407, 38 L. J. Q. B. 228.) Ground once consecrated becomes dedicated for ever for use as a burial ground, even though subsequently closed by Order in Council (Campbell *v.* Mayor of Liverpool, L. R. 9 Eq. 579). And an injunction has been granted, at the instance of certain purchasers of vaults situated in unconsecrated ground, to restrain the owner of the ground from using it so as in any way to interfere with their enjoyment of the vaults. (Moreland *v.* Richardson, 24 Beav. 33, 26 L. J. Ch. 690.)

By ss. 175 & 177 of the Public Health Act, 1875, local authorities have a general power (subject to the acts of the Local Government Board) of selling or letting any lands acquired by them under the powers of the Act and not required for the purpose for which they were acquired. By 15 & 16 Vic. c. 85, s. 28, burial boards are empowered, "with the approval of the vestry, to sell or dispose of any lands purchased by them under that Act or any part thereof in which no interment shall have taken place and which it may appear to the board may be properly sold or disposed of." And by 20 & 21 Vic. c. 81, s. 24, it is further provided that "in all cases in which any unconsecrated land or buildings is or are vested in a trustee or trustees, either under any local act or otherwise for the purposes of a cemetery or burial ground, and burials in such cemetery or burial ground shall by Order in Council have been ordered to be wholly or partially discontinued, it shall be lawful for the trustee or trustees for the time being of such cemetery or burial ground from time to time, with the sanction of one of Her Majesty's principal Secretaries of State, to let demise or lease any part or parts in which no interment shall have taken place." This provision does not, however, apply to land in which burials may have taken place, but which has long ceased to be used for such a purpose and has been treated by its owner and occupier as private property. (Foster *v.* Dodd, 3 L. R. Q. B. 67, 37 L. J. Q. B. 28.) Burial Boards have also power given to them by 18 & 19 Vic. c. 128, s. 17, to let lands which have not been consecrated and in which no body has been at any time interred. Footpaths may be provided in a consecrated but disused burial ground, and the ground may be planted, so as in effect, though not nominally, to make it a public garden. (*Re* St. George's-in-the-East, 1 P. D. 311.)

X. No part of the cemetery shall be constructed nearer to any dwelling-house than the prescribed distance, or if no distance

be prescribed, two hundred yards, except with the consent in writing of the owner lessee and occupier of such house. Sec. 143.

Two hundred yards was the distance originally fixed for all new burial grounds, 15 & 16 Vic. c. 85, s. 25. This was altered by 17 & 18 Vic. c. 87, s. 12, and 18 & 19 Vic. c. 128, s. 9, to one hundred yards; so that burial grounds established by burial boards, or by guardians for the burial of paupers, under 20 & 21 Vic. c. 81, s. 6, may now, it seems, be nearer to inhabited dwelling-houses than cemeteries established by local authorities may be. The prohibition, however, as to one hundred yards is of general application, and would extend to any new burial ground by whomsoever established, so that no part of such ground, whether private or public, may in any case be used for burials nearer to a dwelling-house than one hundred yards without the required consents. (Greenwood *v.* Wadsworth, L. R. 16 Eq. 288, 43 L. J. Ch. 78.) The prohibition does not extend under the Burial Acts to the making and laying out of a cemetery within the prescribed distance, only to using the part within that distance for the purposes of burial. This section appears to be much more restrictive. (Ld. Cowley *v.* Byas. 5 C. D. 944.)

XI. The Company upon any land which by the special Act they are authorised to use for the purposes of the cemetery may build such chapels for the performance of the burial service as they think fit, and may lay out and embellish the grounds of the cemetery as they think fit.

This is similar to the powers of burial boards which are given by 15 & 16 Vic. c. 85, s. 30. The section is as follows:—

"It shall be lawful for any burial board to lay out and embellish any burial ground provided by such board in such manner as may be fitting and proper, and to build on any land to be purchased or appropriated for a burial ground under this Act, and according to a plan to be approved of by the bishop of the diocese, a chapel for the performance of the burial service according to the rites of the United Church of England *and Ireland*, and such burial ground may be consecrated by the bishop of the diocese: when the same shall appear to him to be in a fit and proper condition, for the purposes of interment according to the rites of the United church: Provided always, that in providing any burial ground such board shall set apart a portion thereof which shall not be so consecrated as aforesaid, and may build thereon a suitable chapel or chapels for the performance of funeral service."

The Burials Act, 1880, 43 & 44 Vic. c. 41, does not expressly alter this provision, though possibly local authorities may now think it unnecessary to have a separate chapel consecrated according to the rites of the Church of England.

See further, note to s. xxiii., *post*, p. 136. Section xxv. requires a chapel for the Church of England to be erected in the consecrated ground.

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Under this section and s. 164 of the principal Act, local authorities might probably lay out cemeteries ornamentally as places for the enjoyment of the living. (*See* also *re* St. George's-in-the-East, 1 P. D. 311, noted *ante*, s. ix.)

XII. The Company upon any land purchased by them under this or the special Act, or any Act incorporated therewith, may make any new roads to the cemetery, or widen or improve any existing roads thereto which they think fit.

XIII. Provided always, that the Company shall not widen or improve any existing road without the consent of the owner thereof if the road be private, or, if the road be public, without the consent of the persons in whom the management of the road is vested by law.

The latter part of this section is immaterial as regards urban authorities, as the roads are vested in them by s. 144 of the principal Act.

XIV. The Company and the owners or persons having the management of any such road, as aforesaid, may enter into such agreements as they think fit, for enabling the Company to widen or improve any such road, and for maintaining the same.

XV. Every part of the cemetery shall be enclosed by walls or other sufficient fences of the prescribed materials and dimensions, and if no materials or dimensions be prescribed, by substantial walls or iron railings of the height of eight feet at least.

XVI. The Company shall keep the cemetery and the buildings and fences thereof in complete repair, and in good order and condition, out of the moneys to be received by them by virtue of this and the special Act.

That is, out-burial fees and the general rates. (*See* ss. 207 & 229 of the principal Act.)

XVII. Provided always, that in the exercise of the powers by this and the special Act granted to the Company they shall do as little damage as can be, and shall make full compensation to all parties interested for all damage sustained by them through the exercise of such powers.

See ss. 179, 181 & 308 of the principal Act.

And with respect to preventing Nuisance from the Cemetery, be it enacted as follows:— Sec. 143.

XVIII. The Company shall make all necessary and proper sewers and drains in and about the cemetery for draining and keeping the same dry, and they may, from time to time, as occasion requires, cause any such sewer or drain to open into any existing sewer, with the consent in writing of the persons having the management of such sewer, and with the consent in writing of the persons having the management of the street or road and of the owners and occupiers of the lands through which such opening is made, doing as little damage as possible to the road or ground wherein such sewer or drain may be made, and restoring it to the same or as good condition as it was in before being disturbed.

By s. 16 of the principal Act, a local authority may take their sewers through any lands whatever. It would seem, therefore, that it is not necessary for them to obtain the consent in writing here specified. It will be well, however, to get it if possible so as to avoid trouble.

See note to s. xxviii. of the Waterworks Clauses Act, 1847, *ante*, p. 46, as to the meaning of the words "doing as little damage as possible."

XIX. When any street or road or sewer shall be opened, with such consent as aforesaid, the clauses of the Waterworks Clauses Act, 1847, with respect to breaking up streets for the purpose of laying pipes, so far as the same are consistent with this Act and applicable thereto, shall be incorporated with this Act, and shall apply to the Company, and to any ground broken by them for making any such sewer or drain as aforesaid to open into any existing sewer.

These clauses are xxviii. & xxxiv. of 10 & 11 Vic. c. 17, *ante*, pp. 46–49.

XX. If the Company at any time cause or suffer to be brought or to flow into any stream canal reservoir aqueduct pond or watering-place, any offensive matter from the cemetery, whereby the water therein shall be fouled, they shall forfeit for every such offence the sum of fifty pounds.

See also ss. 68–70 of the principal Act, *ante*.

XXI. The said penalty, with full costs of suit, may be re-

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covered by any person having right to use the water fouled by such offensive matter in any of the superior courts, by action of debt or on the case: Provided always that the said penalty shall not be recoverable unless the same be sued for during the continuance of the offence, or within six months after it has ceased.

XXII. In addition to the said penalty of fifty pounds (and whether such penalty is recovered or not), any person having right to use the water fouled by such offensive matter may sue the Company in an action on the case in any Court of competent jurisdiction for any damage specially sustained by him by the reason of the water being so fouled; or if no special damage be alleged, for the sum of ten pounds for each day during which such offensive matter is brought or flows as aforesaid after the expiration of twenty-four hours from the time when notice of the offence is served on the Company by such person.

And with respect to burials in the Cemetery, be it enacted as follows:—

XXIII. The bishop of the diocese in which the cemetery is situated may, on application of the Company, consecrate any portion of the cemetery set apart for the burial of the dead according to the rites of the Established Church, if he be satisfied with the title of the Company to such portion, and thinks fit to consecrate such portion; and the part which is so consecrated shall be used only for burials according to the rites of the Established Church.

The bishop may consecrate a burial ground provided by a burial board under 15 & 16 Vic. c. 85, s. 30. If he refuses to consecrate, the board may appeal to the archbishop; if he decide that the burial ground is not in a fit and proper condition for interments, the board must put it right; but if he decide that it is in a fit and proper condition and ought to be consecrated, he shall tell the bishop so, and if the bishop still omits to consecrate, the archbishop may license the ground for interments. There seems to be no provision in this Act for what is to happen if the bishop refuses to consecrate.

It seems to be assumed that part of the cemetery is to be consecrated for burials according to the usages of the Established Church, but the Act

nowhere says that it shall be. Grounds provided by a burial board must be so divided. (16 & 17 Vic. c. 134, s. 7.) Sec. 143.

Since the passing of the Burials Act, 1880, 43 & 44 Vic. c. 41, it would seem that the proviso that the consecrated portion of the cemetery is only to be used for burials according to the rites of the Established Church is impliedly repealed.

XXIV. The Company shall define by suitable marks the consecrated and unconsecrated portions of the cemetery.

By 20 & 21 Vic. c. 81, s. 11, it is provided that "it shall not be necessary to erect or maintain any wall or fence between the consecrated and the unconsecrated portions of any burial ground provided under the herein-before recited Acts and this Act, or any of them: Provided always, that in the case of any burial ground where there shall be no such wall or fence, it shall be the duty of the burial board having the care of such burial ground to place, and from time to time repair and renew, such boundary marks of stone or iron as may be sufficient to show the boundaries of such consecrated and unconsecrated portions respectively."

This Act does not define what are suitable marks. In one case it was held that a wall 12 inches high was suitable. (Reg. *v.* Tiverton, 31 L. J. M. C. 232.)

XXV. The Company shall build, within the consecrated part of the cemetery, and according to a plan approved of by the bishop of the diocese, a chapel for the performance of the burial service according to the rites of the Established Church.

This Act says nothing as to the duty of providing a chapel for the unconsecrated portion of the cemetery. A burial board is required by 16 & 17 Vic. c. 134, s. 7, to build such chapel accommodation as may be approved by one of Her Majesty's Secretaries of State for the performance of burial service by persons not members of the Church of England, in case they build a chapel for the performance of burial service according to the rites of that Church. This obligation may be dispensed with by the Secretary of State in case it shall appear to him, upon the representation of a majority of the vestry of the parish, consisting of not less than three-fourths of the members of the same, to be undesirable and unnecessary. (18 & 19 Vic. c. 128, s. 14.) Power is given by this Act, s. xi., *ante*, to erect suitable chapels simply. One consecrated chapel would perhaps be now considered sufficient.

XXVI. No body buried in the consecrated part of the cemetery shall be removed from its place of burial without the like authority as is by law required for the removal of any body buried in the churchyard belonging to a parish church.

It is an indictable misdemeanour to remove a body from a grave even in unconsecrated ground. (Reg. *v.* Sharpe, 26 L. J. M. C. 47.)

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The prohibition here contained is given further sanction by 20 & 21 Vic. c. 81, s. 25, which is as follows:—

"Except in the cases where a body is removed from one consecrated place of burial to another by faculty granted by the ordinary for that purpose, it shall not be lawful to remove any body, or the remains of any body, which may have been interred in any place of burial, without licence under the hand of one of Her Majesty's principal Secretaries of State, and with such precautions as such Secretary of State may prescribe as the condition of such licence; and any person who shall remove any such body or remains, contrary to this enactment, or who shall neglect to observe the precautions prescribed as the condition of the licence for removal, shall, on summary conviction before any two justices of the peace, forfeit and pay for every such offence a sum not exceeding ten pounds."

XXVII. The Company shall from time to time, with the approval of the bishop of the diocese in which the cemetery is situated, appoint a clerk in holy orders of the Established Church to officiate as chaplain in the consecrated part of the cemetery; and such chaplain shall be licensed by and be subject to the jurisdiction of the said bishop, and the said bishop shall have power to revoke any such licence, and to remove such chaplain, for any cause which appears to him reasonable.

Ordinarily the incumbent of the parish in which a person dies is the person to perform the burial service and to receive the fees. In case of burial boards, the consecrated portion of a burial ground provided by them is considered as being the burial ground for the parish or parishes for which the ground is provided, 15 & 16 Vic. c. 85, s. 32. "And every incumbent or minister of the parish or each of the parishes (as the case may be) for which such burial ground is provided, shall by himself or his curate" perform the same duties as if the burial were in his churchyard.

It was, however, contemplated that a chaplain might be appointed for such a burial ground, for s. 39 of the same Act provides where a burial ground is provided under this Act for the common use of two or more parishes, in case any question arise among the incumbents of such parishes as to the performance of the burial service by a chaplain to be paid by means of contributions from such incumbents, or deductions from fees or sums payable to them, or otherwise touching the performance of service in the consecrated part of such ground, the bishop of the diocese shall from time to time confirm any arrangement which a majority, or in case of equal numbers, one half of the incumbents shall approve, and such arrangement so confirmed shall be binding upon all the parties concerned.

A cemetery, however, established under this Act, is not the burial ground of the parish or parishes contained in the district of the local authority which establishes it, and the incumbent of the parish is not therefore ex-officio

chaplain, and has no right to burial fees. (Hornby *v.* Toxteth Park, 31 L. J. Sec. 143. Ch. 443, 6 L. T. N. S. 146.)

XXVIII. The chaplain shall, when required, unless prevented by sickness or other reasonable cause, perform the burial service over all bodies brought to be buried in the consecrated part of the cemetery which are entitled to be buried in consecrated ground according to the rites and usage of the Established Church.

Every person dying in this country, and not within certain exclusions laid down by the ecclesiastical law, has a right to Christian burial. (Reg. *v.* Stewart, 12 A. & E. 773.) Since the passing of the Burials Act, 1880, 43 & 44 Vic. c. 41, the right to be buried in consecrated ground practically is extended to all persons who have a right of interment in the parish, that is who have died in the parish. (*Ex parte* Blackmore, 1 B & Ad. 122; 8 L. J. K. B. 384.) The duty of the chaplain to perform the service still remains, but if those having charge of the funeral choose, the service may be performed by some other person, or no service need be used.

XXIX. Any clerk in holy orders of the Established Church, not being prohibited by the bishop, nor under ecclesiastical censure, at the request of the executor of the Will of any deceased person or any other person having the charge of the burial of the body of any deceased person, and with the consent of the chaplain for the time being of the cemetery, or if there be no chaplain with the consent of the bishop, may perform the said burial service over such body in the consecrated part of the cemetery.

By ecclesiastical law it is illegal for anyone, unless properly authorised, to read or assist in reading the burial service over a dead body in consecrated ground. (Johnson *v.* Friend, 6 Jur. N. S. 280.) Section vi. of the Burials Act, 1880, appears to alter this.

XXX. The company, out of the moneys to be received by virtue of this and the special Act, shall allow to the chaplain of the cemetery for the time being such a stipend as is approved of by the bishop of the diocese in which the cemetery is situated, which shall be payable, by equal moieties, on the 25th day of March and the 29th day of September in each year; and if any chaplain die resign or be removed or appointed in the interval between the half-yearly days of payment, the company shall pay

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to him, or his executors or administrators, a part only of the half-yearly payment of the stipend proportioned to the time during which he shall have been the chaplain since the last preceding day of payment.

The stipend will be payable out of general rates. Fees received for burials may go in aid of those rates.

XXXI. If the stipend of the said chaplain, or any part thereof, be not paid to the chaplain entitled to receive the same, or to the executors or administrators of a deceased chaplain for the space of 30 days next after any of the days of payment whereon the same ought to be paid, such chaplain or his executors or administrators may recover the same, with full costs of suit, against the company, by action of debt or upon the case in any Court of competent jurisdiction.

The company is for the purposes of this Act the local authority which is a corporation. If it is an urban authority, "all contracts made by it, whereof the value or amount exceeds fifty pounds, must by s. 174 of the principal Act be in writing and sealed with the common seal of such authority." An action cannot be maintained against a local authority to enforce a contract not so made. (Hunt *v.* Wimbledon Board, 4 C. P. D. 48; 48 L. J. C. P. 207.) It would not be safe for a chaplain to accept such an appointment otherwise than under seal, though even without it in some cases he might be successful in recovering his stipend. (Austin *v.* Bethnal Green, L. R. 9 C. P. 91, 43 L. J. C. P. 100; Dyte *v.* St. Pancras 27 L. T. N. S. 42.)

XXXII. All burials in the consecrated part of the cemetery shall be registered in register books to be provided by the company, and kept for that purpose by the chaplain according to the laws in force by which registers are required to be kept by the rectors vicars or curates of parishes or ecclesiastical districts in England; and such register books, or copies or extracts therefrom, shall be received in all Courts in evidence of such burials; and copies or transcripts thereof shall be from time to time sent to the registrar of the Ecclesiastical Court of the bishop of the diocese in which the cemetery is situated, to be kept with the copies of the other register books of the parishes within his diocese.

The law as to registration of burials is prescribed by 52 Geo. III. c. 146,

which requires registers of burials solemnized according to the rites of the Church of England, to be made and kept in books of parchment or of good and durable paper by the rector vicar curate or officiating minister for the time being, who shall as soon as possible after the solemnization record and enter in a fair and legible handwriting the name and abode and age of the deceased, and the date when, and by whom the ceremony was performed, and sign the same. This must be done within seven days after the ceremony, except in case of illness or other unavoidable impediment. Sec. 143.

Two months after the expiration of every year the minister or clerk or person duly appointed by the minister for the purpose, is to make a fair copy of register and sign it and send it by post to the registrar of the diocese on or before the 1st of June.

This act it will be noticed only provides for the registration of burials in the consecrated portion of the cemetery; 16 & 17 Vic. c. 134, s. 8, provided for the registration of all burials in a ground provided under the Burials Act, but left burials in unconsecrated ground elsewhere not subject to registration. This omission was corrected by the Registration of Burials Act, 1864, 27 & 28 Vic. c. 97, which requires all burials in any burial ground in England to be registered in books kept by the persons to whom the ground belongs according to the laws in force by which registers are required to be kept by rectors, &c., of parishes; and imposes a penalty for failure to comply with this requirement. In case of a burial conducted under the Burials Act, 1880, 43 & 44 Vic. c. 41, the person responsible for such burial is bound by s. 10 to send a certificate of such burial to the person required by law to keep the register, who is to enter such burial in the register. (*See* Form of certificate "Y," in the schedule, *post.*)

In order to secure that no person shall be buried secretly, deaths must be registered, and the person who performs the burial service must at the funeral receive a certificate of the registration of death, or give notice within seven days to the registrar of deaths of the absence of such certificate. (6 & 7 Wm. IV. c. 86, s. 27; *see* also 37 & 38 Vic. c. 88, ss. 17–20, as to the production of these certificates at the time of burial.)

XXXIII. The said register books, so far as respects searches to be made therein and copies and extracts to be taken therefrom, shall be subject to the same regulations as are provided by an Act passed in the seventh year of the reign of his late Majesty, intituled an Act for registering Births, Deaths, and Marriages in England, so far as such regulations relate to register books of burials kept by any rector vicar or curate.

These regulations are contained in 6 & 7 Wm. IV. c. 86, ss. 32–38. Every registrar must periodically send certified copies of all entries in his register book to the superintendent registrar, who sends them on to the registrar-general. Every registering officer who has the keeping of any register book of births, deaths, or marriages is required at all reasonable

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times to allow searches to be made in any register book in his keeping, and to give a copy certified under his hand of any entry or entries in the same on the payment of certain fees. Indexes of all the certified copies are to be kept at the general register office, which may be inspected on payment of certain fees, and certified copies of entries in the register books may be obtained stamped with the official seal. Such copies, so stamped, are evidence of the birth, death, or marriage to which they relate if they purport to have been signed by a person whose duty it was to give information of the fact recorded in them.

XXXIV. The Company may, with the consent of the chaplain for the time being, from time to time appoint a clerk to assist in performing the service for burials in the consecrated part of the cemetery, and allow to such clerk such stipend as they think proper out of the moneys to be received by virtue of this and the special Act, and they may remove such clerk at their pleasure.

See note to s. xxvii., *ante*, as to appointments under the Burials Acts. If it is customary and becoming for the services of a clerk to be used, it is necessary. (Gill *v.* Birmingham, 10 L. T. N. S. 497.)

XXXV. The Company may set apart the whole or a portion of that part of the cemetery which is not set apart for burials according to the rites of the Established Church as a place of burial for the bodies of persons not being members of the Established Church, and may allow such bodies to be buried therein, under such regulations as the Company appoint.

It would seem that under the Burials Act, 1880, 43 & 44 Vic. c. 41, s. 1, the friends of deceased persons not members of the Established Church may insist on burying them in the consecrated ground, notwithstanding any regulations made under this section.

XXXVI. The Company may allow, in any chapel built within the unconsecrated part of the cemetery, a burial service to be performed according to the rites of any church or congregation other than the Established Church, by any minister of such other church or congregation duly authorised by law to officiate in such church or congregation, or recognised as such by the religious community or society to which he belongs.

XXXVII. The Company may appoint gravediggers and other servants necessary for the care and use of the cemetery, and

may pay them such wages and allowances as they think fit out of the moneys to be received by virtue of this and the special Act, and may remove them or any of them at their pleasure. Sec. 143.

In case of burial grounds established under the Burial Acts, it seems doubtful whether a local authority, in its capacity of burial board, has power to appoint and pay such servants. The burial ground in such a case is regarded as the parish churchyard, and the sexton of the parish is the proper person to dig the graves, and cannot be prevented by the board from performing his office. (Rochester Burial Board *v.* Thompson, L. R. 6 C. P. 445; 40 L. J. C. P. 213.)

XXXVIII. The Company shall make regulations for ensuring that all burials within the cemetery are conducted in a decent and solemn manner.

By 43 & 44 Vic. c. 41, s. 7, it is provided that "all burials under this Act, whether with or without a religious service, shall be conducted in a decent and orderly manner; and every person guilty of any riotous violent or indecent behaviour at any burial under this Act, or wilfully obstructing such burial or any such service as aforesaid thereat, or who shall, in any such churchyard or graveyard as aforesaid, deliver any address, not being part of or incidental to a religious service permitted by this Act, and not otherwise permitted by any lawful authority, or who shall, under colour of any religious service or otherwise, in any such churchyard or graveyard, wilfully endeavour to bring into contempt or obloquy the Christian religion, or the belief or worship of any church or denomination of Christians, or the members or any minister of any such church or denomination, or any other person, shall be guilty of a misdemeanor."

XXXIX. No body shall be buried in any vault under any chapel of the cemetery, or within 15 feet of the outer wall of any such chapel.

See also 11 & 12 Vic. c. 63, s. 83, Appendix.

And with respect to exclusive Rights of Burial and Monumental Inscriptions in the Cemetery, be it enacted as follows:

XL. The Company may set apart such parts of the cemetery as they think fit for the purpose of granting exclusive rights of burial therein, and they may sell, either in perpetuity or for a limited time, and subject to such conditions as they think fit, the exclusive right of burial in any parts of the cemetery so set apart, or the right of one or more burials therein, and they may sell the right of placing any monument or gravestone

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in the cemetery, or any tablet or monumental inscription on the walls of any chapel or other building within the cemetery.

The Company or local authority cannot, after they have made a grant of the exclusive right of burial, subsequently impose fresh conditions on the purchaser limiting his enjoyment of what he has purchased. (Ashby *v.* Harris, L. R. 3 C. P. 523; 37 L. J. M. C. 164.)

As to the form of grant, *see* s. xlii., *post*.

The property in monuments or tombstones remains in the persons who erect them, consequently they or their representatives can maintain an action against any person who damages or removes them. (Spooner *v.* Brewster, 3 Bing. 136.)

XLI. The Company shall cause a plan of the cemetery to be made upon a scale sufficiently large to show the situation of every burial place in all the parts of the cemetery so set apart, and in which an exclusive right of burial has been granted; and all such burial places shall be numbered, and such numbers shall be entered in a book to be kept for that purpose, and such book shall contain the names and descriptions of the several persons to whom the exclusive right of burial in any such place of burial has been granted by the Company; and no place of burial, with exclusive right of burial therein, shall be made in the cemetery without the same being marked out in such plan, and a corresponding entry made in the said book, and the said plan and book shall be kept by the clerk of the Company.

XLII. The grant of the exclusive right of burial in any part of the cemetery, either in perpetuity or for a limited time, and of the right of one or more burials therein, or of placing therein any monument tablet or gravestone, may be made in the form in the schedule to this Act annexed, or to the like effect, and where the Company are not incorporated it may be executed by the Company or any two or more of them.

The Company for the purposes of this Act means the local authority, who are a corporation; and the grant must therefore be under their common seal. (*See* Form W., in Appendix, *post*.)

A right of burial is an easement, and a grant of it can therefore only

be made by deed. If made by parol, even though for valuable consideration, it is not binding on the grantor. (Bryan *v.* Whistler, 8 B. & C. 288.) Sec. 143.

XLIII. A register of all such grants shall be kept by the clerk to the Company, and within fourteen days after the date of any such grant an entry or memorial of the date thereof and of the parties thereto, and also of the consideration for such grant, and also a proper description of the ground described in such grant, so as the situation thereof may be ascertained, shall be made by the said clerk in such register; and such clerk shall be entitled to demand such sum as the Company think fit, not exceeding the prescribed sum, or if no sum be prescribed two shillings and sixpence, for every such entry or memorial; and the said register may be perused at all reasonable times by the grantee or assignee of any right conveyed in any such grant, upon payment of the prescribed sum, or if no sum be prescribed, the sum of one shilling, to the clerk of the Company.

See also ss. xlvi. & xlvii.

XLIV. The exclusive right of burial in any such place of burial shall, whether granted in perpetuity or for a limited time, be considered as the personal estate of the grantee, and may be assigned in his lifetime or bequeathed by his Will.

XLV. Every such assignment made in the lifetime of the assignor shall be by deed duly stamped, in which the consideration shall be duly set forth, and may be in the form in the schedule to this Act annexed, or to the like effect.

XLVI. Every such assignment shall, within six months after the execution thereof, if executed in Great Britain or Ireland, or within six months after the arrival thereof in Great Britain or Ireland, if executed elsewhere, be produced to the clerk of the company, and an entry or memorial of such assignment shall be made in the register by the clerk of the company, in the same manner as that of the original grant; and until such entry or memorial no right of burial shall be acquired under any such memorial; and for every such entry or memorial the clerk shall be entitled to demand such sum as the company think fit, not

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exceeding the prescribed sum, or if no sum be prescribed, two shillings and sixpence.

XLVII. An entry or memorial of the Probate of every Will by which the exclusive right of burial within the cemetery is bequeathed, and in case there be any specific disposition of such exclusive right of burial in the said Will an entry of such disposition shall, within six months after the Probate of such Will, be made in the said register, in the same manner as that of the original grant, and until such entry no right of exclusive burial shall be acquired under such Will; and for every such entry or memorial the clerk of the company shall be entitled to demand such sum as the company think fit, not exceeding the prescribed sum, or if no sum be prescribed, two shillings and sixpence.

See s. xliii., *ante*, as to entries in the register.

XLVIII. No body shall be buried in any place wherein the exclusive right of burial shall have been granted by the company, except with the consent of the owner for the time being of such exclusive right of burial.

As to this exclusive right of burial, *see* Matthews *v.* Jeffery, 43 L. T. N. S. 796.

XLIX. No such grant as aforesaid shall give the right to bury within the consecrated part of the cemetery the body of any person not entitled to be buried in consecrated ground according to the rites and usage of the Established Church, or to place any monument gravestone tablet or monumental inscription respecting any such body within the consecrated part of the cemetery.

The right to bury in consecrated ground is now extended to everyone by the Burials Act, 1880.

L. The Company may take down and remove any gravestone monument tablet or monumental inscription which shall have been placed within the cemetery without their authority.

In churchyards the freehold of the soil is vested in the incumbent, subject to the right of parishioners to burial; and his consent has consequently to be obtained for the erection of monuments. Once erected, however, they belong to the persons who erect them. (Spooner *v.* Brewster

3 Bing. 136.) Consequently, if erected *with* the consent of the local authority, they cannot afterwards be removed by them. Sec. 143.

LI. The bishop of the diocese in which the cemetery is situated, and all persons acting under his authority, shall have the same right and power to object to the placing, and to procure the removal of any monumental inscription within the consecrated part of the cemetery as he by law has to object to or procure the removal of any monumental inscription in any church or chapel of the Established Church, or the burial ground belonging to such church or chapel, or any other consecrated ground.

"The permission of the ordinary is necessary before any monument can be properly erected. It is to his care that the fabric of the Church is committed, that it shall not be injured or deformed by the caprice of individuals." (Maidman *v.* Malpas, 1 Haggard, p. 205). It has recently been held, however, by the Privy Council that the permission should not be refused except for sufficient reason, though apparently a reasonable objection to the size or shape of the monument, having reference to the place where it is to be fixed, would be upheld. (Keet *v.* Smith, 1 P. D. 73; 45 L. J. P. C. 10.)

And with respect to Payments to Incumbents of Parishes or Ecclesiastical Districts, and to Parish Clerks, be it enacted as follows :—

LII. The Company shall, on the burial of every body within the consecrated part of the cemetery, pay to the incumbent for the time being of the parish or ecclesiastical district from which such body shall have been removed for burial, such sums, if any, as shall be prescribed for that purpose in the Special Act.

The principal Act makes no express provision for payment of any burial fees to the incumbent. These fees are not given by any statute, but depend on custom, which in many parishes gives the incumbent a right to a fee for every person buried in the parish, or who, dying there, is buried elsewhere. In cases where custom gives such a right, this Act does not deprive the incumbent of it, but as no provision is made for the payment of these fees by the local authority, the incumbent must recover his fees as best he can from the parties responsible for burials in the cemetery. His rights to fees are expressly reserved by the Burials Act, 1880, 43 & 44 Vic. c. 41, s. 5.

LIII. For ascertaining the amount of the payments, if any, to be made to the incumbents of the several parishes or districts

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aforesaid, the Company shall cause books to be kept, and entries to be made therein of the names of all persons whose bodies are buried within the consecrated part of the cemetery, and the names of the parishes or districts from which such bodies respectively have been removed, and the manner of their burial within the cemetery (distinguishing whether in a place of exclusive burial or otherwise), with the date of such burial; and such books shall be at all reasonable times open to the inspection of the incumbents for the time being of the said several parishes or districts, or any person employed by them, without fee or reward.

LIV. The Company shall on the twenty-fifth day of March and twenty-ninth day of September in each year, or within one month after each of the said days, deliver to the person who is the incumbent of any parish or ecclesiastical district on that day, or to his executors or administrators, on demand made within the said month, an account of the sums, if any, payable in respect of bodies removed for burial within the consecrated part of the cemetery as aforesaid from such parish or ecclesiastical district during the half year next preceding the said twenty-fifth day of March or twenty-ninth day of September, as the case may be.

LV. The sums payable by virtue of the special Act shall be paid half-yearly on the twenty-fifth day of March and the twenty-ninth day of September, or within one month afterwards, to the persons who are the incumbents of the parishes or ecclesiastical districts in respect of which the same are payable on such twenty-fifth day of March and twenty-ninth day of September respectively, or the executors or administrators of such incumbents; (that is to say,) such sums as accrue between the twenty-ninth day of September and the twenty-fifth day of March following shall be paid to the person who is the incumbent on the twenty-fifth day of March, and such sums as accrue between the twenty-fifth day of March and the twenty-ninth day of September following shall be paid to the person

who is the incumbent on the twenty-ninth day of September; and if any such sums be not paid to the party entitled to receive the same within the period hereinbefore limited for the payment thereof, such party may recover the same, with full costs, by action of debt or on the case, in any Court having competent jurisdiction. Sec. 143.

See note to s. lii., *ante*.

LVI. If any incumbent of any parish or district in respect of which sums are payable by the Company by virtue of the special Act ceases to be incumbent, by cession death or otherwise, between the said two half-yearly days of payment, such incumbent shall be entitled to receive so much of the sum payable at the half-yearly day which happens next after he ceases to be incumbent as has accrued from the last preceding half-yearly day, or from the time when such incumbent became first entitled to receive the fruits of his living, as the case may require, up to the day at which he ceased to be incumbent; and the incumbent of any parish or district who receives from the Company any sum to a part of which any preceding incumbent is entitled under the provisions herein contained shall pay such part to him, his executors or administrators, accordingly; and the Company shall not be answerable to any person, other than the actual incumbent for the time being, for the payment of any sums by virtue of this or the special Act.

LVII. The Company shall, on the burial of every body within the consecrated part of the cemetery, except where the body is buried at the expense of any parish or ecclesiastical district, or union of parishes for the relief of the poor, pay to the parish clerk of the parish or ecclesiastical district from which such body has been removed for burial, if he held the office of parish clerk of such parish or ecclesiastical district at the time of the passing of the special Act, but not otherwise, such sum, if any, as shall be prescribed for that purpose in the special Act.

Fees to parish clerks, like those to incumbents of a living, depend upon custom. (*See* note to s. lii., *ante*.)

If a clerk has a right to these fees, and they are not paid, he can main-

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tain an action for their recovery. (Nichols *v.* Davis, L. R. 4 C. P. 80, 38 L. J. C. P. 127.) He cannot alienate his office. *Ib.*

And with respect to the protection of the cemetery, be it enacted as follows:

These clauses, with respect to the protection of the cemetery, are incorporated in the Burials Acts, 15 & 16 Vic. c. 85, s. 40, so that the law under the Burials Acts, and the Public Health Act, is the same in this respect.

LVIII. Every person who shall wilfully destroy or injure any building wall or fence belonging to the cemetery, or destroy or injure any tree or plant therein, or who shall daub or disfigure any wall thereof, or put up any bill therein or on any wall thereof, or wilfully destroy injure or deface any monument tablet inscription or gravestone within the cemetery, or do any other wilful damage therein, shall forfeit to the Company for every such offence a sum not exceeding five pounds.

LIX. Every person who shall play at any game or sport, or discharge fire-arms, save at a military funeral, in the cemetery, or who shall wilfully and unlawfully disturb any persons assembled in the cemetery for the pupose of burying any body therein, or who shall commit any nuisance within the cemetery, shall forfeit to the Company for every such offence a sum not exceeding five pounds.

Being guilty of indecent behaviour as aforesaid, or wilfully interfering with a funeral, is made a misdemeanour by s. vii. of the Burials Act, 1880. (*See* also s. xxxviii. of this Act, *ante.*, p. 143.)

And with respect to the accounts to be kept by the Company, be it enacted, that—

LX. The Company shall every year cause an account to be prepared, showing the total receipt and expenditure of all moneys levied by virtue of this or the special Act for the year ending on the thirty-first day of December, or some other convenient day in each year, under the several distinct heads of receipt and expenditure, with a statement of the balance of such account, certified by the Chairman of the Company, and duly audited, and shall send a copy of the said account, free of charge, to the Clerk of the Peace for the county in which the cemetery is situated, on

or before the expiration of one month from the day on which such accounts end, which last-mentioned account shall be open to the inspection of the public at all reasonable hours, on payment of the sum of one shilling for every such inspection; and if the Company omit to prepare or send such account as aforesaid, they shall forfeit for every such omission the sum of twenty pounds. Sec. 143.

As to audit, *see* ss. 245–250 of the principal Act and notes thereto, *post*.

And with respect to the tender of amends, be it enacted, that—

LXI. If any person 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 have been made, the defendant by leave of the Court where such action is pending, may at any time before issue joined pay into Court such sum of money as he thinks fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into Court.

And 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, be it enacted as follows:—

LXII. The clauses of the Railways Clauses Consolidation 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, shall be incorporated with this and the special Act; and such clauses shall apply to the cemetery and to the Company respectively.

The incorporated clauses of the Railway Clauses Consolidation Act, 8 & 9 Vic. c. 20, are 140–149, 151–160.

Provision, however, for legal proceedings and recovery of penalties by local authorities is made by the Public Health Act, 1875, ss. 251–265, so that the incorporated clauses of the Railway Clauses Act would only apply in the very improbable case of some proceeding which is not covered by the above clauses of the Public Health Act.

Sec. 143. Section lxiii. refers to Ireland only, and therefore is not incorporated here. It is moreover repealed by 38 & 39 Vic. c. 66.

LXIV. All things herein or in the special Act or any Act incorporated therewith, authorised or required to be done by two justices, may and shall be done by any one magistrate having by law authority to act alone for any purpose with the powers of two or more justices.

LXV. Every person who, upon any examination upon oath under the provisions of this or the special Act or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

And with respect to affording access to the special Act, be it enacted as follows:

LXVI. The Company shall, at all times after the expiration of six months after the passing of the special Act, keep in their principal office of business a copy of the special Act, printed by the printers to Her Majesty or some of them, and shall also, within the space of such six months, deposit in the office of the Clerk of the Peace of the county in which the cemetery is situated a copy of such special Act so printed as aforesaid; and the said Clerk of the Peace shall receive, and he and the Company respectively shall keep the said copies of the special Act, and shall allow all persons interested therein to inspect the same, and make extracts or copies therefrom, in the like manner and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an Act passed in the first year of the Reign of Her Majesty, intituled "An Act to compel Clerks of the Peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either House of Parliament."

The Act is 7 Wm. IV., and 1 Vic. c. 38.

LXVII. If the Company fail to keep or deposit any of the said copies of the special Act as hereinbefore mentioned, they

shall forfeit twenty Pounds for every such offence, and also five Pounds for every day afterwards during which such copy shall be not so kept or deposited. Sec. 144.

LXVIII. And be it enacted, that nothing herein contained shall be deemed to exempt the Company from any general Act relating to burials in towns or populous places which may be passed in the same session of Parliament in which the special Act is passed, or any future session of Parliament.

PART IV.

LOCAL GOVERNMENT PROVISIONS.

HIGHWAYS AND STREETS.

As to Highways.

144. Every urban authority shall within their district exclusively of any other person execute the office of and be surveyor of highways, and have exercise and be subject to all the powers authorities duties and liabilities of surveyors of highways under the law for the time being in force, save so far as such powers authorities or duties are or may be inconsistent with the provisions of this Act; every urban authority shall also have exercise and be subject to all the powers authorities duties and liabilities which by the Highway Act, 1835, or any Act amending the same, are vested in and given to the inhabitants in vestry assembled of any parish within their district.

The urban authority are by this section placed in the position of surveyor of highways, who is the servant of the parish, and also in the position of the parish itself, under the provisions of 5 & 6 Will. IV. c. 50. The surveyor or other person appointed by the urban authority is in the same position as the district surveyor of a highway board, by 25 & 26 Vic. c. 61, s. 16, that is, he is agent of the authority for carrying out their duties as surveyor of highways.

It is an exceedingly doubtful question how far urban authorities are liable to pay damages to an individual who is injured in consequence of their failure properly to perform their duties as surveyors of highways.

It has been held that no action could be maintained against a surveyor of highways to recover damages resulting from an accident caused by his

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neglect to repair a highway (Young *v.* Davis, 7 H. & N. 760, 31 L. J. Ex. 250; affirmed in C. S. 2 H. & C. 177; Pendlebury *v.* Greenhalgh, 9 L. R. Q. B. 487, 43 L. J. Q. B. 186); and under the Metropolis Local Management Act, 18 & 19 Vic. c. 120, which gave the vestries of parishes the powers of surveyors of highways, it was held that they were not liable (Parsons *v.* St. Matthew, Bethnal Green, 3 L. R. C. P. 56; 37 L. J. C. P. 62), following which the Court of Queen's Bench held that no such action could be maintained against a local board of health, who had the same duties and powers in this respect that are now given to the urban authority. (Gibson *v.* Mayor of Preston, 5 L. R. Q. B. 218.)

Nor can an action be maintained for such neglect against the parish; "inasmuch as the highway ought to be repaired by the public, an injury arising from such neglect cannot be the subject of an action, but is only ground for the Crown interfering." (McKinnon *v.* Penson, 8 Ex. 231.)

The inhabitants of the parish remain liable to an indictment for non-repair, notwithstanding that the power of repairing is vested in a local authority (Reg. *v.* St. George's, Hanover Square, 3 Camp. 222), and by s. 20 of 5 & 6 Will. IV. c. 50, the surveyor of highways is rendered liable to a penalty for neglecting to perform his duty. (Cf. Robinson *v.* Stevenett, 38 L. T. N. S. 611.) That being so, it would seem that an action might be maintained against an urban authority in its capacity of surveyor, subject to the liabilities of the inhabitants of the parish. (Hartnall *v.* Ryde Commissioners, 4 B. & S. 361, 33 L. J. Q. B. 39; Forbes *v.* Lee Conservancy Board, 4 Ex. D. 116, 48 L. J. Ex. 402; Bathurst (Borough of) *v.* McPherson, 41 L. T. N. S. 778.) Moreover, by s. 149, *post*, all streets which are highways repairable by the inhabitants at large vest in, and so become, *qua* streets, the property of the urban authority, and as owners the authority may be liable to an action for damages. (*See* Smith *v.* West Derby Local Board, 38 L. T. N. S. 716.)

Whether liable or not for their own nonfeasance, public bodies, such as an urban authority, are liable for the negligence of their servants, just as if they were acting as the servants of a private person (Mersey Docks *v.* Gibbs, 1 L. R. H. L. 93); and consequently this section does not relieve them from responsibility of that kind any more than a surveyor of highways was exempt from personal responsibility for the negligence of himself and his subordinates formerly. (Foreman *v.* Mayor of Canterbury, 6 L. R. Q. B. 214; 40 L. J. Q. B. 138.)

It is often a question whether an injury has been caused by the neglect of a servant or of a contractor. If the latter, the contractor is liable, not his employer. It has recently been held that a surveyor of highways was liable for injuries caused by the negligence of a person who was employed by him under a verbal contract to do certain work on a road. (Pendlebury *v.* Greenhalgh, 1 Q. B. D. 36; 45 L. J. Q. B. 3.)

If an action is brought against an urban authority in its capacity of surveyor of highways, the times and conditions within which the action may be brought are those given by this Act, ss. 252 & 264, and not those

provided by the Highway Act, 5 & 6 Will. IV. c. 50, s. 109. (Taylor v. Meltham Board, 47 L. J. C. P. 12.) Secs. 144–146.

"By common law any individual specially injured is entitled to remove an obstruction" (on a highway) "which causes an injury to him; but he has no right to remove an obstruction which causes him no special injury, but which is simply an obstruction to the road as regards the public in general." It seems, however, that a person who acts on behalf of the public, *e.g.*, the highway authority, has a right to prostrate an obstruction on reasonable notice independently of any statutory power, such as is given in this Act by the incorporated sections of the Towns Police Clauses Act, 1847, 10 & 11 Vic. c. 89, ss. xxi.–xxix., *post*, p. 206. (Bagshaw *v.* Buxton Board of Health, 1 Ch. D. 220; 45 L. J. Ch. 260.)

All ministerial acts required by any Act of Parliament to be done by (or to) the surveyor of highways may be done by (or to) the surveyor of the urban authority, or by (or to) such other person as they may appoint.

Power to appoint a surveyor is given by s. 189, *post*.

145. The inhabitants within any urban district shall not in respect of any property situated 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 without such district: Provided that any person who in any place after the passing of this Act ceases under or by virtue of any provision of this Act, or of any order made thereunder, to be surveyor of highways within such place, may recover any highway rate made in respect of such place, and remaining unpaid at the time of his so ceasing to be such surveyor, as if he had not ceased to be such surveyor; and the money so recovered shall be applied, in the first place, in reimbursing himself any expenses incurred by him as such surveyor, and in discharging any debts legally owing by him on account of the highways within his jurisdiction; and the surplus (if any) shall be paid by him to the treasurer of the urban authority, and carried to the fund or rate applicable to the repair of highways within their districts.

This prohibition is modified by s. 13 of the Highway Act, 1878, 41 & 42 Vic. c. 77, which charges half the cost of maintaining main roads on the county rate.

146. Any urban authority may agree with any person for

Secs. 146—148. the making of roads within their district for the public use through the lands and at the expense of such person, and may agree that such roads shall become and the same shall accordingly become on completion highways maintainable and repairable by the inhabitants at large within their districts; they may also, with the consent of two-thirds of their number, agree with such person to pay, and may accordingly pay, any portion of the expenses of making such roads.

See also s. 152, *post*, as to roads becoming repairable by the inhabitants at large.

147. Any urban authority may agree with the proprietors of any canal railway or tramway to adopt and maintain any existing or projected bridge viaduct or arch within their district, over or under any such canal railway or tramway, and the approaches thereto, and may accordingly adopt and maintain such bridge viaduct or arch and approaches as parts of public streets or roads, maintainable and repairable by the inhabitants at large within their district; or such authority may themselves agree to construct any such bridge viaduct or arch at the expense of such proprietors; they may also, with the consent of two-thirds of their number, agree to pay and may accordingly pay any portion of the expenses of the construction or alteration of any such bridge viaduct or arch, or of the purchase of any adjoining lands required for the foundation and support thereof, or for the approaches thereto.

148. Any urban authority may by agreement with the trustees of any turnpike road, or with any person liable to repair any street or road or any part thereof, or with the surveyor of any county bridge, take on 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 streets or roads within their district, and may remove any turnpike gates toll gates or bars which may be situated within their district, and may erect other turnpike gates toll gates or bars in lieu thereof, on such terms

as the urban authority and such trustees or person or surveyor as aforesaid may agree on: Secs. 148, 149

The urban authority may, when they agree to repair part of a road, divide the road in any reasonable way which they think fit to adopt; thus they may agree to repair the footpath, leaving the roadway to the trustees or other persons who are liable for its repair. (Nutter *v.* Accrington Board, 4 Q. B. D. 375, 48 L. J. Q. B. 487). The expenses must be defrayed out of the district fund, under s. 207, *post*.

Provided—

That where any mortgage debt is charged on 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 where the terms arranged include any annual or other payments from such urban authority to the trustees of any such turnpike road, then the payments may be secured on any fund or rate applicable by such authority to any of the purposes of this Act, in the same manner as other charges on any such fund or rate are authorised by this Act.

Any executors administrators guardians trustees or committee of the estate of any idiot or lunatic, who are as such 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.

See s. 233 and following sections, *post*.

Regulation of Streets and Buildings.

149. All streets, being or which at any time become highways repairable by the inhabitants at large within any urban district, and the pavement stones and other materials thereof, and all buildings implements and other things provided for the

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Streets, which are highways repairable by the inhabitants at large, are by this section vested in urban authorities, so as to make them, and not the owners of the adjacent soil, the owners of the street. (Bagshaw *v.* Buxton Local Board, 1 C. D. 220, 45 L. J. Ch. 260; Taylor *v.* Oldham Local Board, 4 C. D. 395, 46 L. J. Ch. 105; Coverdale *v.* Charlton, 4 Q. B. D. 104, 48 L. J. Q. B. 128.) This is recognised by the Highway Act, 1878, 41 & 42 Vic. c. 77, s. 27 of which is as follows:—

"Notwithstanding anything contained in s. 68 of the Public Health Act, 1848, or in s. 149 of the Public Health Act, 1875, all mines and minerals of any description whatsoever under any disturnpiked road or highway, which has or shall become vested in an urban sanitary authority by virtue of the said sections or either of them, shall belong to the person who would be entitled thereto in case such road or highway had not become so vested, and the person entitled to any such mine or minerals shall have the same powers of working and of getting the same or other minerals as if the road or highway had not become vested in the urban sanitary authority, but so, nevertheless, that in such working and getting no damage shall be done to the road or highway.

"This section shall extend to the Isle of Wight and to South Wales, as defined by the said Act of the 23rd and 24th years of the reign of Her present Majesty, c. 68, intituled 'An Act for the better management and control of the highways in South Wales.'"

The street, &c., however, vests in the urban authority only during such time as the highway is repairable by the inhabitants at large; if it ceases to be so repairable, the property reverts to the owner of the soil. (Rolls *v.* St. George's, Southwark, 14 C. D. 785.)

As to what are streets, cf. s. 4, *ante*, p. 5.

The streets which vest in the urban authority under this section are only those which are highways repairable by the inhabitants at large in contra-distinction to highways repairable by individuals *ratione tenuræ*. (Gibson *v.* Mayor of Preston, 5 L. R. Q. B. 218; 39 L. J. Q. B. 131.)

See note to s. 152, *post*, as to how streets become so repairable.

The urban authority shall from time to time cause all such streets to be levelled paved metalled flagged channelled, altered and repaired as occasion may require; 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 may place and keep in repair fences and posts for the safety of foot passengers.

See further s. 144, as to powers of surveyor, *ante*.

The urban authority have the duty imposed upon them by this section of keeping the streets vested in them in proper repair; they are not obliged

to provide or maintain fences generally, and not liable for damages which result from their neglect to do so (Wilson *v.* Halifax, 3 L. R. Ex. 114; 37 L. J. Ex. 44), though they have the duty cast on them in certain cases. (cf. 10 & 11 Vic. c. 34, s. lxxix., &c., p. 182.) If in altering the level of the street the urban authority causes damage to private individuals, such individuals are entitled to compensation, to be assessed in the manner directed by s. 180, *post* (Reg. *v.* Wallasey, 4 L. R. Q. B. 351; 38 L. J. Q. B. 217). When the level of a street was altered in such a manner as to cause water to remain accumulated in front of a warehouse and injure the plaintiff, an injunction was granted to restrain the local board from allowing the water to remain there (Milward *v.* Redditch, 21 W. R. 429). These cases were decided under the former Acts, and the Common Pleas Division on the 21st December, 1880, gave judgment in a case of Burgess *v.* Northwich Board, 6 Q. B. D. 264, against the right of the individual to recover compensation. The facts of that case were, however, peculiar. The soil of Northwich is gradually sinking, and the main street and the houses alongside of it sank to such an extent as to interfere with the traffic, which was after the sinking liable to be seriously obstructed by floods. The local board raised the street over four feet, so as to restore it to the former level of the surface of the soil, and prevent the traffic being stopped by floods. This raising of the road naturally impeded the access to the houses abutting on it, and their owners claimed compensation for the cost of raising their houses to the new level. The Court, however, held that the act of the Board was merely an act of *repair*, done by them as surveyors of highways, and not an alteration in the level of the soil, and consequently that no compensation was payable.

Power is given to break up the pavement in certain cases by other Acts. (cf. 10 & 11 Vic. c. 17. s. 32, *ante*, p. 47.)

Any person who without the consent of the urban authority wilfully displaces or takes up or who injures the pavement stones materials fences or posts of or the trees in any such street shall be liable to a penalty not exceeding five pounds, and to a further penalty not exceeding five shillings for every square foot of pavement stones or other materials so displaced taken up or injured; he shall also be liable in the case of any injury to trees to pay to the local authority such amount of compensation as the court may award.

The urban authority may accept a money payment as the consideration for giving their consent (Edgware Highway Board *v.* Harrow Gas Company, 10 L. R. Q. B. 92, 44 L. J. Q. B. 1).

150. Where any street within any urban district (not being a highway repairable by the inhabitants at large), or the carriageway footway or any other part of such street is not

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sewered levelled paved metalled flagged channelled and made good or is not lighted to the satisfaction of the urban authority, such authority may, by notice addressed to the respective owners or occupiers of the premises fronting adjoining or abutting on such parts thereof as may require to be sewered levelled paved metalled flagged or channelled, or to be lighted, require them to sewer level pave metal flag channel or make good, or to provide proper means for lighting the same within a time to be specified in such notice.

Jessel, M. R., on motion for injunction in a case of A. G. *v.* Bidder (not reported), decided, in June 1881, that while this section empowers the local authority to require the owners to do *any* of the enumerated works, they must *all* be done before the street becomes repairable by the public, under s. 152, *post*.

This section does not empower an urban authority to make new streets and charge the owners of the adjoining lands with the expense of paving, &c.; it only applies to existing streets not repairable by the parish. (Kingston-upon-Hull *v.* Jones, 1 H. & N. 489; 26 L. J. Ex. 280.) But the owners of property adjoining ground which comes within the definition of the word street (*see* s. 4, *ante*) may, under this section, be required to pave, &c., although the ground is private property and has in no way been dedicated to the public. "Such ground, if not properly made, might become a nuisance," and this section gives power to the urban authority to prevent that. (Reg. *v.* Hackney Board, 8 L. R. Q. B. 528. Islington Vestry *v.* Barrett, 9 L. R. Q. B. 278; 43 L. J. M. C. 75.) Both the above cases were decided on the corresponding sections of the Metropolis Management Acts. and Bacon, V.-C., has recently, in Hall *v.* Mayor of Bootle (44 L. T. N. S. 873) held that where land had been laid out as a street, and houses had been built adjoining part of it, but the dedication had not been completed, the local authority had no power to compel the owners of the property adjoining this so-called street to pay for sewering, &c. This decision, however, seems hard to reconcile with the principle above-stated, and will probably not be followed.

A highway, repairable by the inhabitants at large, cannot be charged to individuals; on the other hand, in the case of a highway not repairable by the inhabitants at large, the local authority have no power to defray the cost of sewering levelling paving, &c., out of the general rates, but must call upon the owners, &c., of the adjoining premises to do such works as are required (Dryden *v.* Overseers of Putney, 1 Ex. D. 223; A. G. *v.* Wandsworth District Board of Works, 6 C. D. 539, 46 L. J. Ch. 777). How far this applies to the power of the local authority to light a new street seems doubtful; the words of s. 161, *post*, which empower them to light their district are very general, and in the absence of the above decisions would certainly seem to authorise the local authority to light any portion of their district at the general expense.

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It was decided that refusal of justices to order an owner to contribute on the ground that the road was repairable by the public, was a judgment *in rem*, and therefore estopped the local authority from afterwards seeking to charge other owners with expenses incurred in respect of that street. This decision, however, has been reversed on appeal, and an order of justices, though unappealed, is consequently not conclusive on the question of the liability of the public to repair. (Reg. *v.* Hutchins, 6 Q. B. D. 300; 50 L. J. M. C. 35.) It would, however, probably be an important element in determining the question.

The notice must be given in proper manner (cf. s. 266, *post*), otherwise the local authority cannot recover the expenses incurred from the owners of the property (Jarrow Local Board *v.* Kennedy, 6 L. R. Q. B. 128). If the notice does not sufficiently specify the works required to be done, it is bad (Parkinson *v.* Blackburn, 33 L. T. 119, 28 L. J. M. C. 7).

A notice, however, ending with the words "particulars of the necessary works may be obtained at the surveyor's office" has been held to be sufficient (Bayley *v.* Wilkinson, 16 C. B. N. S. 161, 33 L. J. M. C. 161.) A notice may require more to be done than the urban authority have power to order, and in that case will be good so far as it requires things within their power to be done (Hall *v.* Potter, 21 L. T. N. S. 454). Deposit of plans is not a condition precedent so as to avoid the notices and prevent the expenses being recoverable (Cook *v.* Ipswich Local Board, 6 L. R. Q. B. 451, 40 L. J. M. C. 169). If from the notices being bad, or from any other cause, a local authority be unable to recover from the owners expenses incurred by them in executing works contemplated by this section, they are nevertheless liable to pay contractors employed by them for work done (Worthington *v.* Wright, 2 B. & S. 508; Collin *v.* Wright, 27 L. J. Q. B 115). And in such a case a rate may be levied to provide the necessary funds (Worthington *v* Hulton, 1 L. R. Q. B. 63; 35 L. J. Q. B. 61.)

The following have been held under similar provisions of other Acts to be premises fronting adjoining or abutting on streets, and therefore liable to contribute :—

Ground forming a *cul-de-sac* at the end of a street and separated from it by a wall. (Manchester (Mayor of) *v.* Chapman, 18 L. T. N. S. 640, 37 L. J. M. C. 173.) Strips of land belonging to a railway company kept for the purpose of obtaining access for repairs to the masonry of a viaduct; also land used as a buttress to support an embankment. (Higgins *v.* Harding, 42 L. J. M. C. 31.) A railway running along the side of a street and separated from it by a wall through which there was no communication with the street. (Reg. *v.* Newport, 3 B. & S. 341, 32 L. J. M. C. 97; London and North Western Railway Company *v.* St. Pancras, 17 L. T. N. S. 654.) So also houses in a yard which stood behind the houses fronting on a street, and communicated with the street by a gateway, have been held to be "within" the street. (Baddeley *v.* Gingell, 1 Ex. 319; 17 L. J. Ex. 63.) Following which, it was recently held that a building which only communicated with the street by means of a private passage which ran by the side of one of the houses fronting on the street, practically formed part of the street. (London

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School Board *v.* Islington Vestry, 1 Q. B. D. 65; 45 L. J. M. C. 1.) So also premises separated from the street by a small stream, which was crossed by two bridges, were held to be adjoining the street, although the principal entrance was in another street. (Wakefield Board *v.* Lee, 1 Ex. D. 336; 45 L. J. M. C. 54.) The soil of private roads leading out of a new street is land abutting on the street. (Pound *v.* Plumstead Board, 7 L. R. Q. B. 183; 41 L. J. M. C. 51.) It has recently been held that a railway crossed by the street by a bridge does not abut on the street or on the bridge which forms part of the street. (L. B. & S. C. R. *v.* St. Giles, Camberwell, 4 Ex. D. 239.) But this case has been questioned, though not expressly overruled by the Court of Appeal, in Hackney Board *v.* Great Eastern Railway, April 21st, 1882 (51 L. J. M. C. 57), in which case the Court held that the roadway over the bridge was a street, and that the parapet of the bridge was land abutting on or at any rate bounding the street, and therefore that the railway company, as owners of that land, were liable to contribute to the expenses of paving the street.

The levelling here mentioned only refers to the level of the street itself; the urban authority has no power to charge the owners with the expenses of altering the level of a street so as to make it uniform with the adjoining streets. (Caley *v.* Kingston-upon-Hull, 34 L. J. M. C. 7; 5 B. & S. 815.) *See* also the case of Burgess *v.* Northwich Local Board, noticed under s. 149, *ante*.

Before giving such notice the urban authority shall cause plans and sections of any structural works intended to be executed under this section, and an estimate of the probable cost thereof, to be made under the direction of their surveyor, such plans and sections to be 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; such plans sections and estimate shall be deposited in the office of the urban authority, and shall be open at all reasonable hours for the inspection of all persons interested therein during the time specified in such notice; and a reference to such plans and sections in such notice shall be sufficient without requiring any copy of such plans and sections to be annexed to such notice.

The estimate must be of the probable cost of executing the work contemplated by the urban authority, with the costs of which the owners are to be charged. It is a condition precedent to the recovery of the expenses that such estimate should have been properly made. (cf. Cunningham *v.* Wolverhampton Local Board of Health, 7 E. & B. 107; 26 L. J. M. C. 33.)

If such notice is not complied with, the urban authority may, if they think fit, execute the works mentioned or referred to therein; and may recover in a summary manner the expenses incurred by them in so doing from the owners in default, according to the frontage of their respective premises, and in such proportion as is settled by the surveyor of the urban authority, or (in case of dispute) by arbitration in manner provided by this Act; or the urban authority may by order declare the expenses so incurred to be private improvement expenses. Sec. 150.

Though, as we have seen, the local authority have no power to do at the general expense work which should be done at the expense of the owners of the adjoining property, yet if they get such work done by a contractor they may be liable to pay him, even though they fail to recover the expenses from the adjoining owners. (Worthington *v.* Sudlow, 2 B. & S. 509; 31 L. J. Q. B. 131.)

If the urban authority elect to recover the expenses summarily, they must sue within nine months of the time of the work being done. (Wilson *v.* Bolton (Mayor of), 7 L. R. Q. B. 105, 41 L. J. M. C. 4; West *v.* Downam, 42 L. T. N. S. 340.) This is not the case, however, if they declare the expenses to be private improvement expenses. (Tottenham Board *v.* Rowell, 15 C. D. 378, 50 L. J. Ch. 99). If the Board, by their notice, state that they intend to treat the expenses as private improvement expenses, they cannot afterwards proceed for them summarily. (Gould *v.* Bacup Board, 50 L. J. M. C. 44.) When they do so proceed, the person liable to pay is the owner of the property at the time the work is done, and not the owner at the time the notices are given. (Hinton *v.* Swindon Board, 40 L. T. N. S. 424.)

If some owners execute the works required by the notice, they are not in default, and of course the local authority need only execute the works left unexecuted; as regards the owners in default, there is no necessity to give a fresh notice stating what works remain to be executed by them. (Simcox *v.* Handsworth Board, 8 Q. B. D. 39; 51 L. J. Q. B. 168.)

The expenses of each owner should be apportioned according to the frontage of his premises, irrespective of the width of the street. (Reg. *v.* Newport Local Board of Health, 3 B. & S. 341, 32 L. J. M. C. 97.) But it was recently held by the Common Pleas Division to be a good apportionment which required the owners of property on one side of the street only to pay, that side being the part of the street which required the work to be done. (Wakefield Urban Authority *v.* Mander, 5 C. P. D. 248.) This case is in direct variance with the cases of Whitchurch *v.* Fulham Board, 1 L. R. Q. B. 233, 35 L. J. M. C. 145; Mile End Vestry v. Whitechapel Union, 1 Q. B. D. 680, 45 L. J. M. C. 75), the latter being a decision of the Court of Appeal, where it was held, on very similar words of the

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corresponding sections of the Metropolis Management Acts, that the owners of certain houses in the street could not be charged for such expenses to the exclusion of the other owners. The case of Wakefield *v.* Mander is, however, the only decision on *this* section, and till reversed, must be considered as binding.

The apportionment is conclusive, if not disputed within three months. (Shanklin Board *v.* Miller, 5 C. P. D. 272; 49 L. J. C. P. 272; *see* s. 257, *post.*)

If the surveyor originally made his apportionment on a wrong basis, he is not *functus officio*, and may subsequently make a second valid apportionment (Cook *v.* Ipswich Local Board, 6 L. R. Q. B. 151, 40 L. J. M. C. 169); and it seems that the apportionment of expenses may be made when the local authority think proper, and will be valid though not made for a considerable time after the completion of the work. (Bradley *v.* Metropolitan Board of Works, 38 L. T. N. S. 849.)

The owners of property chargeable may waive the performance by the urban authority of all or any of the conditions which are required by the Act, before the urban authority can charge the expenses of surveying levelling, &c., upon the property adjoining the street. Such waiver will not, however, extend to give the urban authority power to charge expenses which they have no right to charge. (Lewis *v.* Cardiff Urban Authority, 47 L. J. M. C. 101.)

If the urban authority proceed to recover summarily, it is under s. 251; if by arbitration, under ss. 179–181.

Neither an arbitrator nor a Court of summary jurisdiction can enter into an inquiry as to how the sum claimed has been expended, or whether it has been properly expended; they can only see whether the individual owner is ordered to pay the proper proportion. "It would be in the highest degree inconsistent, where there is a large sum expended in this way, and sought to be enforced in driblets before magistrates, if the local authority were forced each time to prove to the satisfaction of the magistrates before whom the matter went that these expenses were properly incurred in respect to what was done." (Bayley *v.* Wilkinson, 16 C. B. N. S. 161, 33 L. J. M. C. 161; Cook *v.* Ipswich Local Board, 6 L. R. Q. B. 466.) Nor can magistrates review the principle on which the apportionment is made. (Nesbitt *v.* Greenwich Board of Works, 10 L. R. Q. B.; 44 L. J. M. C. 119; *see* also Debenham *v.* Metropolitan Board of Works, 6 Q. B. D. 112.) The remedy, in case expenses are alleged to have been improperly incurred or an apportionment to have been wrongly made, is by appeal to the Local Government Board, under s. 268, *post*. But it is open to an owner when summoned to pay his quota of expenses to dispute his liability to pay, on the ground that the street in question is a highway repairable by the inhabitants at large, and for which therefore the owners of adjoining property are not chargeable. (Hesketh *v.* Atherton Local Board, 9 L. R. Q. B. 4, 43 L. J. M. C. 37, overruling Reg. *v.* Livesey, 20 L. T. N. S. 470.)

By s. 257, *post*, these expenses may be declared to be a charge upon the premises, payable by annual instalments over a period of not more than 30

years. If the local authority declare the expenses to be private improvement expenses, that will not prevent their subsequently proceeding to enforce the charge (Tottenham Board *v.* Rowell, 15 C. D. 378), though it may prevent their enforcing *payment* of more than the instalments due at the time. Manisty and Stephen, J. J., have, in a case of Gould *v.* Bacup Board of Health (decided February 18th, and not yet reported, except in the *Times* of February 21st), held that a notice to treate xpenses of such work as private improvement expenses precluded the local authority to recover these expenses summarily as a debt. This decision does not appear to be inconsistent with the above decision of the Court of Appeal in Tottenham Board *v.* Rowell, as the question of a charge on the premises seems not to have been raised. (*See* further, notes to s. 257, *post.*)

The same proceedings may be taken and the same powers may be exercised, in respect of any street or road of which a part is or may be a public footpath or repairable by the inhabitants at large as fully as if the whole of such street or road was a highway not repairable by the inhabitants at large.

See Nutter *v.* Accrington Board, noted above, s. 148.

151. The 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, shall not be liable to any expenses under the last preceding 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 urban authority may, if they think fit, undertake any works from the expenses of which any such incumbent or minister is hereby exempted.

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. (Cf. Angell *v.* Paddington, 3 L. R. Q. B. 714; 37 L. J. M. C. 171.) And by 32 & 33 Vic. c. 40, power is given to a rating authority to extend this exemption to any building or part of a building used exclusively as a Sunday school or ragged school. But it has been held, under the Metropolis Management Acts, that the trustees of a chapel which had not been consecrated or permanently dedicated for religious worship, and which had caretaker's rooms attached to it in respect of which it was rated to the poor-rate, were liable to pay their contribution towards paving the street. (Caiger *v.* Islington Vestry, 50 L. J. M. C. 59.)

Secs. 151, 152. Also *see* Reg. *v.* Lee, 4 Q. B. D. 75, 48 L. J. M. C. 22, as to the legal liability of the incumbent of a church, &c.

152. When any street within any urban district, not being a highway repairable by the inhabitants at large, has been sewered levelled paved flagged metalled channelled and made good and provided with proper means of lighting to the satisfaction of the urban authority, such authority may, if they 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 repairable by the inhabitants at large; and every such notice shall be entered among the proceedings of the urban authority.

Provided that no such street shall become a highway so repairable, if within one month after such notice has been put up the proprietor or the majority in number of proprietors of such street, by notice in writing to the urban authority, object thereto, and in ascertaining such majority joint proprietors shall be reckoned as one proprietor.

As to what is a street, cf. s. 4, *ante*, p. 5.

By common law the duty of repairing highways is usually thrown on the inhabitants of the parish. A landowner might dedicate his land for public use by giving a right of way over it without thereby binding himself to keep the road so granted in repair. If the public use the road so granted they must repair it. (*See* Reg. *v.* Lordsmere, 19 L. J. M. C. 219; Healey *v.* Mayor of Battley, 19 L. R. Eq. 375; 44 L. J. Ch. 642). And it has been held that a highway may be dedicated to the public and become repairable by the inhabitants at large by user amounting to prescription, as well as by special dedication, even though it has never been repaired by the public. (Illingworth *v.* Montgomery, 2 L. T. N. S. 726; Hirst *v.* Halifax Local Board, 6 L. R. Q. B. 181, 40 L. J. M. C. 43; and *see* s. 146, *ante*, p. 156.) But now a highway dedicated to the public by the owners of the land is not completely dedicated so as to vest in an urban authority within the meaning of this section, until used and adopted by the public. (Machett *v.* Commissioners of Herne Bay, 35 L. T. N. S. 202.)

This adoption can now only be carried out in certain specified ways. By the Highway Act, 1835, 5 & 6 Will. IV. c. 50, ss. 23 & 62, a road which it is proposed to dedicate to the public must be put in a good state of repair to the satisfaction of the surveyor of highways and of two justices, and certain notices must be given and other formalities complied with before the liability to repair can be imposed on or accepted by the public. Section 146 of this Act gives power to local authorities to agree to pay for making and repairing roads, and this section does so also, subject to certain

conditions. On a motion for injunction, in June, 1881, Jessel, M. R., decided in a case of A. G. *v.* Bidder (not reported), that the fact of certain of the works specified by s. 150, *ante*, having, at the requisition of the local authority, been executed by the owners of the property, did not throw on the inhabitants at large the liability to repair in the future. To do that, *all* the works mentioned in this section must first have been executed. Therefore under this section a street cannot be dedicated to the public unless all the works above enumerated (which are more than are required in the metropolis) have been completed. It would seem, however, that even in urban districts the powers given by the above-mentioned sections of the Highway Act are still in force, and that if the order of justices declaring the road to be repairable by the public has been obtained, the liability of the owners of property would be at an end.

Powers of adopting roads are also given by s. 146 of this Act, *ante*, p. 160. If roads are not made to the satisfaction of the urban authority and adopted by them as prescribed here, the owner cannot now dedicate a new road to the public so as to make it repairable by the inhabitants at large. (Reg. *v.* Dukinfield, 4 B. & S. 158; 32 L. J. M. C. 230.) In that case the urban authority can require the owners of property adjoining the street to do the necessary work under the powers given by s. 150, *ante*, p. 160. (Wallington *v.* White, 10 C. B. N. S. 128, 30 L. J. M. C. 209; Willes *v.* Wallington, 13 C. B. N. S. 865, 32 L. J. C. P. 86.)

153. Where for any purpose of this Act any urban authority deem it necesary to raise sink or otherwise alter the situation of any water or gas pipes mains plugs or other waterworks or gas-works laid in or under any street, they may by notice in writing require the owner of the pipes mains plugs or works to raise sink or otherwise alter the situation of the same in such manner and within such reasonable time as is specified in the notice; the expenses of or connected with any such alteration shall be paid by the urban authority; and if such notice is not complied with, the urban authority may themselves make the alteration required:

Provided—

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; and

That where under any local Act of Parliament the expenses of or connected with the raising sinking or

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otherwise altering the situation of any water or gas pipes mains plugs or other waterworks or gasworks, are directed to be borne by the owner of such pipes or works, his liability in that respect shall continue in the same manner and under the same conditions in all respects as if this Act had not been passed.

Notice should be given as provided by ss. 266 & 267, *post*.

Sections 328 & 333, *post*, provide for arbitration in case of any difference of opinion as to whether alterations proposed by the local authority will prove injurious, but this section prescribes no means for deciding whether the alterations proposed are so or not. Probably a memorial to the Local Government Board would insure inquiry into such a matter.

154. Any urban authority may purchase any premises for the purpose of widening opening enlarging or otherwise improving any street, or (with the sanction of the Local Government Board) for the purpose of making any new street.

They can take as much land as is necessary for the formation of the street itself, not merely of the roadway. (Galloway *v.* Mayor of London, 1 L. R. H. L. 34, 35, L. J. Ch. 477; Quinton *v.* Bristol Corporation, 17 L. R. Eq. 524, 43 L. J. Ch. 783.)

The purchase will be under the provisions of ss. 175–8, *post*.

See also s. lxvii. of the Towns Improvement Clauses Act, incorporated with this Act, *post*, p. 176.

155. When any house or building situated in any street in an urban district, or the front thereof, has been taken down in order to be rebuilt or altered, the urban authority may prescribe the line in which any house or building or the front thereof, to be built or rebuilt in the same situation, shall be erected, and such house or building or the front thereof shall be erected in accordance therewith.

The urban authority 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 or forward, the amount of such compensation, in case of dispute, to be settled by arbitration in manner provided by this Act.

A church is a building within the meaning of this section. (Folkestone *v.* Woodward, 15 L. R. Eq. 159; 42 L. J. Ch. 782). A wall, apparently, is not. (Brown *v.* Holyhead, 7 L. T. N. S. 333).

Where plans for rebuilding were submitted to a committee of a local authority and approved by them, and the owner subsequently pulled down his premises and began to rebuild in accordance with the plans so approved, it was held that the local authority could not require him to set back his premises, they having in fact given him permission to build in front of the line. (Slee *v.* Mayor of Bradford, 8 L. T. N. S. 491, 4 Giff. 262, followed in Masters *v.* Pontypool Board, 9 C. D. 677; 47 L. J. Ch. 797).

See also s. lxviii. of the Towns Improvement Clauses Act, *post*, p. 176.

156. It shall not be lawful in any urban district, without the written consent of the urban authority, 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 the house or building on either side of the same.

The word street in this section means the continuous line of houses along the side of the roadway, and does not bear the meaning given by s. 4 of the Act, *ante*, p. 5. *Re* Fulford *infra*, Robinson *v.* Barton Board, 48 L. T. N. S. 193.

If the conditions of the consent are not complied with, and a different house is erected from that which the urban authority approve, it is no consent, and the builder would be liable to the penalty prescribed in the next paragraph. (Bauman *v.* St. Pancras Vestry, 2 L. R. Q. B. 28; 36 L. J. M. C. 127.)

Any person offending against this enactment shall be liable to a penalty not exceeding forty shillings for every day during which the offence is continued after written notice in this behalf from the urban authority.

Whether or not a house does form part of a street is a question of fact, and it seems that a set of detached houses not in a continuous line and facing different ways is not a street. Houses form part of a street within the meaning of this section when they are so substantially contiguous as practically to form a continuous row. (Reg. *v.* Fullford, 33 L. J. M. C. 122; 10 L. T. N. S. 346.) -The justices who hear the case have to decide whether, in fact, the building is brought beyond the front wall of the adjoining buildings. (Simpson *v.* Smith, 6 L. R. C. P. 87; 40 L. J. C. P. 89).

By virtue of s. 252, *post*, proceedings must be commenced, or at any rate the written notice must be given within six months of the erection of the building, otherwise the Court of summary jurisdiction has no authority to impose the penalty. (Paddington Vestry *v.* Snow, 45 L. T. N. S. 475). But if the building is kept standing, after notice has been duly given, the penalties may be recovered, though more than six months have elapsed from the completion of the building. (Rumball *v.* Schmidt, W. N. 1882, p. 70.)

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The urban authority cannot empower an individual to bring his building forward so as to obstruct part of the highway, without first having the highway stopped up by order of Quarter Sessions, in accordance with 5 & 6 Wm. IV. c. 50, s. 91. (Reg. *v.* Platts, 43 L. T. N. S. 159.) The urban authority cannot give an implied assent by tacit acquiescence. They must consent in writing. (Kerr *v.* Preston, 6 C. D. 463; 46 L. J. Ch. 409.)

See further, notes to 10 & 11 Vic. c. 34, s. lxviii. *post*, p. 173.

As to notice, *see* s. 266, *post*.

157. Every urban authority may make bye-laws with respect to the following matters (that is to say)—

These bye-laws must be in accordance with the conditions prescribed by ss. 182–188, *post*. *See* also s. 341.

(1.) With respect to the level, width and construction of new streets, and the provisions for the sewerage thereof:

The powers given by s. 150 of this Act, of requiring owners of property to pave streets, &c., are by the Metropolis Management Acts given against owners of property adjoining *new* streets only. Under those Acts it has been held that the building of houses along previously existing highways turned them into *new streets*, so as to make the owners liable. Dryden *v.* Putney Overseers (1 Ex. D. 223). But Fry, J., has held that under this section a road which, in accordance with the definition given in this Act (*ante* p. 5,) is a street, does not become a *new* street by the fact of houses being built along it, and consequently that bye-laws cannot be made for such a street. (Robinson *v.* Barton Board, 46 L. T. N. S. 193.)

It has been held by the Court of Appeal that the words of this sub-section give power to urban authorities to make bye-laws with reference to the construction of houses in new streets, and to pull down buildings erected in contravention of such bye-laws (Baker *v.* Mayor of Portsmouth, 3 Ex. D. 157, 47 L. J. Ex. 223.)

The Exchequer Division, whose attention appears not to have been called to the above case, have since held that a builder who erected a building in a position contrary to a bye-law made in pursuance of this power could not be convicted under it, though the owners who ordered him to build there might be (Sunderland, Mayor of, *v.* Brown, 43 L. T. N. S. 478.)

(2.) With respect to the structure of walls foundations roofs and chimneys of new buildings, for securing stability and the prevention of fires, and for purposes of health:

An urban authority has no power to make bye-laws with regard to old buildings except in cases where this or some other Act expressly gives them that power; the power given by this section is only prospective (Cf. Tucker *v.* Rees, 7 Jur. N. S. 629; Shiel *v.* Mayor of Sunderland, 6 H. & N. 796; Burgess *v.* Peacock, 16 C. B. N. S. 624).

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It was formerly held that a bye-law cannot treat as a continuing offence the failure to alter a building so as to be in compliance with the requirements of the urban authority: but that the proper remedy is for the urban authority to pull down the objectionable portion of the building (Marshall *v.* Smith, 8 L. R. C. P. 416; 42 L. J. M. C. 108; *see*, however, s. 158 and notes thereto.)

The power to make bye-laws with respect to buildings refers to buildings intended for habitation. The Common Pleas Division held that bye-laws requiring plans to be deposited and approval obtained, previously to erecting a shed, were not in accordance with the powers given by the former Acts (Fielding *v.* Rhyl Improvement Commissioners, 38 L. T. N. S. 223; 3 C. P. D. 272.)

(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:

A bye-law requiring a certain amount of space for ventilation to be left for every house is bad, so far as it relates to old buildings (Tucker *v.* Rees, 7 Jur. N. S. 629). A bye-law that the distance between a house and the nearest building shall be "at least so much" is good; it means that the minimum distance must be maintained at every point between the buildings. (Anderton *v.* Rigby, 13 C. B. N. S. 603; 32 L. J. M. C. 137.) So a bye-law that every house should have 500 square feet space in front or rear, so as to ensure ventilation, has been held to be good (Adams *v.* Bromley Local Board, *Times*, November 14, 1872.)

(4.) With respect to the drainage of buildings, to water-closets earthclosets privies ashpits and cesspools in connexion with buildings, and to the closing of buildings or parts of buildings unfit for human habitation, and to prohibition of their use for such habitation.

A bye-law that "no dwelling-house shall be erected without having provided at the rear or side a sufficient roadway for the purpose of affording efficient means of access to the privy and ashpit belonging to the same" is bad, as being *ultra vires;* but *semble* per Cockburn, C. J., that a bye-law that there should be no privy or ashpit belonging to the house without adequate means of access would be good. (Waite v. Garston, 3 L. R. Q. B. 5; 37 L. J. M. C. 19.)

And they may further provide for the observance of such bye-laws 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 urban authority, and as to the

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power of such authority (subject to the provisions of this Act) to remove alter or pull down any work begun or done in contravention of such bye-laws:

The bye-law must not require an unreasonably long notice. (Hattersley *v.* Burr, 4 H. & C. 523; 14 L. T. N. S. 565.) It may impose a penalty for not giving a reasonable notice before commencing the work. (Hall *v.* Nixon, 10 L. R. Q. B. 152; 44 L. J. M. C. 51.)

The urban authority may not exercise the power of removing or altering work done in contravention of the bye-laws without first giving the party offending notice of their intention to do so and hearing his defence. (Cooper *v.* Wandsworth Board, 8 L. T. N. S. 278; 32 L. J. M. C. 185.)

Provided that no bye-law made under this section shall affect any building erected in any place (which at the time of the passing of this Act is included in an urban sanitary district) before the local government Acts came into force in such place, or any building erected in any place (which at the time of the passing of this Act is not included in an urban sanitary district) before such place becomes constituted or included in an urban district or, by virtue of any order of the Local Government Board, subject to this enactment.

The provisions of this section and of the two last preceding sections shall not apply to buildings belonging to any railway company and used for the purposes of such railway under any Act of Parliament.

Under a similar exemption given by the Metropolitan Buildings Act, 18 & 19 Vic. c. 122, s. 6, it has been held that a railway arch bricked up at the ends and used as a stable, was not a building subject to the Act, but a building used for the purposes of the railway. (*Re* Badger, 8 E. & B. 728; 27 L. J. M. C. 106.) So also a station built under the powers of the Companies' Acts in a place forbidden by the Metropolitan Building Act, was held to be excepted from the operation of that Act. (London and Blackwall Railway *v.* Limehouse Board, 3 K. & J. 123.)

158. Where a notice plan or description of any work is required by any bye-law made by an urban authority to be laid before that authority, the urban authority shall within one month after the same has been delivered or sent to their surveyor or clerk, signify in writing their approval or disapproval of the intended work to the person proposing to execute the same: and if the work is commenced after such notice of dis-

approval, or before the expiration of such month without such approval, and is in any respect not in conformity with any bye-law of the urban authority, the urban authority may cause so much of the work as has been executed to be pulled down or removed. Sec. 158.

It has been held that a bye-law which in effect required a month's notice at least to be given before commencing a building is unreasonable, and that a person who left with an urban authority notice of his intention to build, and plans of his proposed building, might begin work at once, subject to the liability of having his building altered or pulled down if not in conformity with the other requirements of the authority. (Hattersley *v.* Burr, 4 H. & C. 523.) This section apparently is intended to give legal sanction to that decision. (*See* also Hall *v.* Nixon, 10 L. R. Q. B. 157; 44 L. J. M. C. 51.)

A builder cannot obtain approval for one building and then erect another. If he does, it seems his building may be pulled down if it contravenes the bye-laws. (Bauman *v.* St. Pancras Vestry, 2 L. R. Q. B. s. 28; 36 L. J. M. C. 127.)

An urban authority cannot demolish any work without giving proper notice (cf. s. lxxv., *post*, p. 181) of their intention to do so, and giving him an opportunity of being heard in defence of his property. (Cooper *v.* Wandsworth, 14 C. B. N. S. 180. Masters *v.* Pontypool Bd. 9 C. D. 677; 47 L. J. Ch. 797.)

Where an urban authority incur expenses in or about the removal of any work executed contrary to any bye-law, such authority may recover in a summary manner the amount of such expenses, either from the person executing the works removed or from the person causing the works to be executed, at their discretion.

Where an urban authority may under this section pull down or remove any work begun or executed in contravention of any bye-law, or where the beginning or the execution of the work is an offence in respect whereof the offender is liable in respect of any bye-law to a penalty, the existence of the work during its continuance in such a form and state as to be in contravention of the bye-law shall be deemed to be a continuing offence, but a penalty shall not be incurred in respect thereof after the expiration of one year from the day when the offence was commited or the bye-law was broken.

This clause would seem to be introduced to meet the difficulty raised by the Common Pleas in Marshall *v.* Smith, 8 L. R. C. P. 416, where they held

Secs. 158—160. that an owner could not be fined for the continuing offence of leaving an objectionable building standing. The single penalty for erecting any building might be quite inadequate to prevent improper buildings being constructed. (*See* also note to s. 183, *post*.)

159. 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 is 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.

Removing a shed from one part of a man's premises to another and re-erecting it chiefly out of the old materials may be the erection of a new building within the meaning of this section. (Hobbs *v.* Dance, 43 L. J. M. C. 21, 9 L. R. C. P. 43.)

Temporary buildings erected for the convenience of workmen employed in erecting permanent works have been held not to be buildings erected in contravention of bye-laws under this Act. (Fielding *v.* Rhyl Commissioners, 38 L. T. N. S. 223.)

160. 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; and

(2.) With respect to improving the line of the streets and removing obstructions; and

(3.) With respect to ruinous or dangerous buildings; and

(4.) With respect to precautions during the construction and repair of the sewers, streets and houses,

shall, for the purpose of regulating such matters in urban districts, be incorporated with this Act.

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 said Towns Improvement Clauses Act may, at the option of the urban authority, be served on owners instead of occupiers, or on

owners as well as occupiers, and the cost of works done under any of these sections may, when notices have been so served on owners, be recovered from owners instead of occupiers; and when such cost is recovered from occupiers so much thereof may be deducted from the rent of the premises where the work is done as is allowed in the case of private improvement rates under this Act. Sec. 160.

See ss. 266–7, *post*, as to service of notices. *See* also ss. 213–14, as to private improvement rates.

The incorporated provisions of the Towns Improvement Clauses Act, 10 & 11 Vic. c. 34, are as follows:—

With respect to naming the streets and numbering the houses:—

LXIV. The commissioners shall from time to time cause the houses and buildings in all or any of the streets to be marked with numbers as they think fit, and shall cause to be put up or painted on a conspicuous part of some house building or place at or near each end corner or entrance of every such street the name by which such street is to be known; and every person who destroys pulls down or defaces any such number or name, or puts up any number or name different from the number or name put up by the commissioners, shall be liable to a penalty not exceeding forty shillings for every such offence.

LXV. The occupiers of houses and other buildings in the streets shall mark their houses with such numbers as the commissioners approve of, and shall renew such numbers as often as they become obliterated or defaced; and every such occupier who fails, within one week after notice for that purpose from the commissioners, to mark his house with a number approved of by the commissioners, or to renew such number when obliterated, shall be liable to a penalty not exceeding forty shillings; and the commissioners shall cause such numbers to be marked or to be renewed, as the case may require, and the expense thereof shall

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be repaid to them by such occupier, and shall be recoverable as damages.

Damages are directed by s. ccx. of the Towns Police Clauses Act to be recovered as provided by the Railways Clauses Act, 8 & 9 Vic. c. 20, by ss. 140–142 of which damages are made recoverable before two justices, the parties being brought before the Court by Summons, clauses of the Towns Police Clauses Act being incorporated in the principal Act, it seems that proceedings should be as provided by the principal Act, ss. 251 *et seq.*, and might be in the County Court under s. 261.

And with respect to improving the line of the streets, and removing obstructions:—

LXVI. The commissioners may allow, upon such terms as they think fit, any building within the limits of the special Act to be set forward, for improving the line of the street in which such building, or any building adjacent thereto, is situated.

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 re-sell any parts of the land so purchased which shall not be wanted for the enlargement of the street.

See also note to s. 154 of the principal Act, *ante*, p. 168.

LXVIII. When any house or building any part of which projects beyond the regular line of the streets or beyond the front of the house or building on either side thereof, has been taken down in order to be rebuilt or altered, the commissioners may require the same to be set backwards to or towards the line of the street or the line of the adjoining houses or buildings, in such manner as the commissioners direct, for the improvement of such street: Provided always, that the commissioners shall make full compensation to the owner of any such house or building for any damage he thereby sustains.

This section is practically included in ss. 155 & 156 of the principal Act, *ante*, p. 168, 169.

Obstacles which have been in their present position long enough to gain prescriptive rights for their owners, are not obstructions which can be removed by the local authority under this section; the highway in such

cases is presumably dedicated to the public with these obstacles attaching to it. (Fisher *v.* Prowse, 2 B. & S. 770; 31 L. J. Q. B. 212.) Sec. 160.

The line of the street does not mean a strict mathematical line, but only a substantially regular line. (Tear *v.* Freebody, 4 C. B. N. S. 228.)

The position of the house which has been pulled down must be taken into consideration for the purpose of determining what is the line of the street. (Lord Auckland *v.* Westminster Board, 7 L. R. Ch. 597, 41 L. J. Ch. 723; *see* also Kerr *v.* Preston Board, 6 C. D. 463, 46 L. J. Ch. 409.)

A church is a house or building within the meaning of this section, though exempted in other matters. (Folkestone Corporation *v.* Woodward, 15 L. R. Eq. 159, 42 L. J. Ch. 782.) The urban authority must enforce their rights promptly, they cannot lie by until the new building has been begun, and then require it to be put back. *Ib.*

LXIX. The commissioners may give notice to the occupier of any house or building to remove or alter any porch shed projecting window step cellar cellar door or window sign sign-post signiron showboard window-shutter wall gate or fence or any other obstruction or projection, erected or placed after the passing of the special Act against or in front of any house or building within the limits of the special Act, and which is an obstruction to the safe and convenient passage along any street; 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.

As to service of notices, &c., under this and the following sections, of s. 160 of the principal Act, *ante*, p. 174; *see* also s. lxxv. of this Act, *post*, p. 180.

The wall of a garden in front of a house, and shrubs in the garden which encroach on the street, come within the words "any other obstructions" in this section. (Bagshaw *v.* Buxton Board, 1 C. D. 220; 45 L. J. Ch. 261.)

As to recovery of damages, *see* note, to s. lxv. *ante*, p. 176.

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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.

The notice may be given to the owner. (*See* s. 160 of the principal Act, *ante*, p. 174.)

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.

The notice may be given to, and expenses recovered from the owner. *See* s. 160, *ante*, p. 174.

See also note to s. lxv., *ante*, p. 176, as to recovery of damages.

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.

LXXIII. When any opening is made in any pavement or footpath within the limits of the special Act, as an entrance into any vault or cellar, a door or covering shall be made by the occupier of such vault or cellar, of iron or such other materials and in such manner as the commissioners direct, and such door or covering shall from time to time be kept in good repair by the occupier of such vault or cellar: Sec 160.

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.

Besides the penalty, the person negligently leaving the covering in a dangerous condition would be liable to an action for damages at the suit of anyone who had sustained an injury in consequence of the covering being so kept. (White *v.* Hindley Local Board of Health, 10 L. R. Q. B. 223, per Blackburn, J., 44 L. J. Q. B. 144.) But not if the opening existed before the road was dedicated to the public. (Fisher *v.* Prowse, 2 B. & S. 770, 31 L. J. Q. B. 212.)

The owner may, by s. 160 of the principal Act, be directed to supply proper coverings, and be liable to the penalty for neglecting to comply with such direction; whether he could be made liable in damages for such neglect seems doubtful.

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, fit up and keep in good condition a shoot or trough of the whole length of such house or building, and shall connect the same either with a similar shoot on the adjoining house, or with a pipe or trunk to be fixed to the front or side of such building from the roof to the ground, to carry the water from the roof thereof in such manner that the water from such house or any portico or projection therefrom shall not fall upon the persons passing along the street or flow over the footpath; and in default of compliance with any such order within the period aforesaid, such occupier shall be liable to a penalty not exceeding forty shillings for every day that he shall so make default.

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This order may, by s. 160, *ante*, p. 174, be served on the owner. This section does not empower the local authority to do the work if the owner fails to comply with the order, but it seems doubtful whether that power may not be implied and given by s. 160.

And with respect to ruinous or dangerous buildings:—

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 walls, if he be known and resident within the said limits, and shall also cause such notice to be put on the door or other conspicuous part of the said premises, or otherwise to be given to the occupier thereof, if any, requiring such owner or occupier forthwith to take down secure or repair such building wall or other thing, as the case shall require;

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 any 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; 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. Sec. 160.

The opinion of the surveyor is apparently conclusive on the question of the building, &c., being dangerous. If the notices are duly given, the owner must apparently pay for such repairs as are thereby ordered. (Cheetham *v.* Mayor of Manchester, 10 L. R. C. P. 249, 44 L. J. C. P. 139.)

If the house is in danger of falling on the public highway from want of repair, the occupier might be indicted for a nuisance at common law independently of this section. (Reg. *v.* Watts, 1 Salk, 357; Fisher *v.* Prowse, 2 B. & S. 779, 31 L. J. Q. B. 212.)

The notice must be given as directed, ss. 266–7 of the principal Act.

The incumbent of a church is not its owner so as to be liable for the expense of repairing it when dangerous. If there is no owner, the repairs must be done at the expense of the rates. (Reg. *v.* Lee, 606, 4 Q. B. D. 75, 48 L. J. M. C. 22.) This exemption does not extend to a Dissenting chapel (Caiger *v.* Vestry of St. Mary, Islington, 16 Notes of Cases, 36).

LXXVI. If such owner can be found within the limits of the special Act, and if, on demand of the expenses aforesaid, he neglect or refuse to pay the same, then such expenses may be levied by distress, and any justice may issue his warrant accordingly.

The expenses may be recovered summarily, as provided by the principal Act, s. 257, or may be declared to be private improvement expenses.

If summary proceedings are taken, the matter of complaint is non-payment of the expenses, and therefore the six months within which proceedings may be taken dates from the time of demand and refusal to pay these expenses, and not from the time of pulling down the premises (Labalmondiere *v.* Addison, 1 E. & B. 41, 28 L. J. M. C. 25).

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 day's 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,

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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.

The sections of the Lands Clauses Act which provide for this compensation are 8 & 9 Vic. c. 18, ss. 21–68. Those sections and not the arbitration sections of the Public Health Act should be followed. (cf. *Ex parte* Rayner 3 Q. B. D. 446; 47 L. J. Q. B. 660). The sections will be found in the Appendix.

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.

Sections lxxv. & lxxvi. provide a summary method for recovering these expenses. Or the urban authority may, by virtue of s. cxlix. of this Act (not incorporated in the principal Act), recover them as damages, as to which *see* note to s. lxv., *ante*, p. 160, or by action of debt.

And with respect to precautions during the construction and repair of the sewers, streets and houses:—

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: Sec. 160.

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.

See Wilson *v.* Mayor of Halifax, noted s. lxxxiii., *post*, as to the scope of this and the following sections.

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:

By virtue of ss. 144 & 149 of the principal Act, no person can put up hoards in the street without first obtaining the consent of the urban authority.

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, 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

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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:

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:

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.

LXXXIII. If any building or hole or any other place near any street be, for want of sufficient repair protection or inclosure, dangerous to the passengers along such street, the commissioners

shall cause the same to be repaired protected or inclosed so as to prevent danger therefrom; and the expenses of such repair, protection or inclosure shall be repaid to the commissioners by the owner of the premises so repaired, protected or inclosed, and shall be recoverable from him as damages. Sec. 161.

The holes or places to which this and the preceding sections refer are holes or similar places arising or exposed during the construction or repair of the sewers, streets and houses of the town, and no others. (Wilson *v.* Mayor of Halifax, 3 L. R. Ex. 114; 37 L. J. Ex. 44).

Lighting Streets, &c.

161. Any urban authority may contract with any person for the supply of gas or other means of lighting the streets markets and public buildings in their district, and may provide such lamps lamp-posts and other materials and apparatus as they may think necessary for lighting the same.

Lamps cannot be fixed by an urban authority to houses within their district without the consent of the owners of such houses. (Meek *v.* Langdon, 37 L. T. 181.)

Where there is not any company or person (other than the urban authority) authorised by or in pursuance of any Act of Parliament or any order confirmed by Parliament to supply gas for public and private purposes, supplying gas within any part of the district of such authority, such authority may themselves undertake to supply gas for such purposes or any of them throughout the whole or any part of their district; and if there is any such company or person so supplying gas, but the limits of supply of such company or person include part only of the district, then the urban authority may themselves undertake to supply gas throughout any part of the district not included within such limits of supply.

The corresponding clause in s. 52, *ante*, p. 42, authorises a local authority to supply water in case the Water Company authorised by Act of Parliament is not *able and willing to supply water sufficient for all reasonable purposes*. There are no such words here, and it seems as if the existence of a gas Company authorised by Parliament might be sufficient to prevent an urban authority undertaking to supply their district with gas.

Where an urban authority may under this Act themselves

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undertake to supply gas for the whole or any part of their district, a provisional order authorising a gas undertaking may be obtained by such authority under and subject to the provisions of the Gas and Water Works Facilities Act, 1870, and any Act amending the same; and in the construction of the said Act the term "the undertakers" shall be deemed to include any such urban authority: Provided that for the purposes of this Act the Local Government Board shall throughout the said Act be deemed to be substituted for the Board of Trade.

See 33 & 34 Vic. c. 70; 36 & 37 Vic. c. 89.

162. For the purpose of supplying gas within their district or any part thereof, either for public or private purposes, any urban authority may (with the sanction of the Local Government Board) buy, and the directors of any gas company, in pursuance, in the case of a company registered under the Companies' Act, 1862, of a special resolution of the members passed in manner provided by that Act, and in the case of any other company, of a resolution passed by a majority of three-fourths in number and value of the members present either personally or by proxy at a meeting specially convened with notice of the business to be transacted, may sell and transfer to such authority, on such terms as may be agreed on between such authority and the company, all the rights powers and privileges, and all or any of the lands premises works and other property of the company, but subject to all liabilities attached to the same at the time of such purchase.

Section 51 of 23 & 24 Vic. c. 89 is the section which provides as to special resolutions. The resolution must be passed at a general meeting by not less than three-fourths of the members present personally or by proxy, due notice of the meeting and of the intention to propose the resolution having first been given, and must be confirmed by a majority of the members present at a subsequent general meeting held not less than a fortnight nor more than a month after the first.

See s. 69, *ante*, p. 69, which gives water companies similar powers of selling their undertakings to local authorities.

163. Where in any place which after the passing of this Act becomes constituted or included in an urban district, or which by virtue of any order of the Local Government Board becomes

subject to this enactment, the Act passed in the fourth year of the reign of King William the Fourth, intituled "An Act to repeal an Act of the eleventh year of his late Majesty King George the Fourth for the lighting and watching of parishes in England and Wales, and to make other provisions in lieu thereof," has been adopted, the said Act shall be superseded by this Act, and all lamps lamp-posts gaspipes fire-engines hose and other property vested in the inspectors for the time being under the said Act shall vest in the authority having under this Act jurisdiction in such place.

The Act mentioned is 3 & 4 Wm. IV. c. 90.

Public Pleasure-grounds, &c.

164. Any urban authority may purchase or take on lease lay out plant improve and maintain lands for the purpose of being used as public walks or pleasure-grounds, and may support or contribute to the support of public walks or pleasure grounds provided by any person whomsoever.

Any urban authority may make bye-laws for the regulation of any such public walk or pleasure-ground, and may by such bye-laws provide for the removal from such public walk or pleasure-ground of any person infringing any such bye-law by any officer of the urban authority or constable.

This section gives no power to the urban authority to part with land acquired by them for pleasure-grounds; consequently they have no power to do so. (Tupper *v.* Nichols, 18 C. B. N. S. 140.)

When provided, the pleasure-grounds cannot be diverted to any other purpose than that contemplated by the Act (Attorney-General *v.* Southampton, 29 L. J. Ch. 282; 2 Giff. 363): nor even given up temporarily for the benefit of a section of the public, so as to exclude the general public therefrom. Thus, in June, 1881, Hall, V.-C., granted an injunction restraining a local board from lending their recreation ground for a day to an athletic club for the purpose of holding athletic sports there. (A. G. *v.* Loughborough Board. Not reported.)

An urban authority may, on lands set apart as pleasure-grounds, erect buildings auxiliary to their use as pleasure-grounds, but no others. (A. G. *v.* Corporation of Sunderland, 2 C. D. 634; 45 L. J. Ch. 838.)

Land belonging to private individuals, but not set apart for the use of the inhabitants as a recreation-ground, though in fact so used by them, is

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not land which comes within the meaning of this section. (Tulk *v.* Metropolitan Board of Works, 3 L. R. Q. B. 94; affirmed in C. S. p. 682; 37 L. J. Q. B. 272.)

As to bye-laws, *see* s. 182, *post*.

By the Commons Act, 1876, 39 & 40 Vic. c. 56, s. 8, powers are given to acquire and lay out commons for purposes of recreation. The section is as follows:—

"Notice of any application under this Act in relation to a common which is situate either wholly or partly in any town or towns or within six miles of any town or towns (which common so situate is in this Act referred to as a suburban common), shall be served as soon as may be on the urban sanitary authority or authorities having jurisdiction over such town or towns; and it shall be lawful for the urban sanitary authority of any such town to appear before the assistant commissioner on the occasion of his holding a local inquiry as in this Act mentioned, and also to appear before the Inclosure Commissioners, and to make to him or them, at any time during the proceedings in relation to obtaining a provisional order under this Act, such representations as they may think fit with respect to the expediency or inexpediency of such application, regard being had to the health comfort and convenience of the inhabitants of the town over which such authority has jurisdiction, and to propose to him or them such provisions as may appear to such urban sanitary authority to be proper, regard being had as aforesaid.

"Any urban sanitary authority entitled to receive notice of an application in relation to a suburban common may, with the sanction of the Inclosure Commissioners, enter into an undertaking to contribute out of their funds for or towards the maintenance of recreation-grounds, or of paths or roads, or the doing any other matter or thing for the benefit of their town in relation to the common to which such application relates.

"They may also, in relation to any such common, and with such sanction as aforesaid, enter into an undertaking to pay compensation in respect to the rights of commoners, for the purpose of securing greater privileges for the benefit of their town.

"An urban sanitary authority may acquire by gift and hold without licence in mortmain on trust for the benefit of their town any suburban common in respect of which they would be entitled to receive notice of any application made to the inclosure commissioners in pursuance of this Act, and any rights in such a common.

"They may also in the case of any such suburban common purchase and hold as aforesaid, with a view to prevent the extinction of the rights of common, any saleable rights in common or any tenement of a commoner having annexed thereto rights of common.

"They may, with the consent of persons representing at least one-third in value of such interests in a suburban common as aforesaid as are proposed to be affected by the provisional order, make an application to the Inclosure Commissioners for the regulation of such common, with a view to the benefit of their town and the improvement of such common.

"Where an urban sanitary authority makes an application under this Act with such consent as aforesaid in respect of the regulation of a common, or undertakes to make any contribution or to pay any compensation or make any other payment out of its funds in respect of a common, such urban sanitary authority may, if the Inclosure Commissioners deem it advisable, having regard to the benefit of the neighbourhood as well as to private interests, be invested with such powers of management or other powers as may be expedient.

"The expenses incurred by an urban sanitary authority in pursuance of this section may be defrayed out of any rate applicable to the payment of expenses incurred by such authority in the execution of the Public Health Act, 1875, and not otherwise provided for.

"A town, for the purposes of this section, means any municipal borough, or Improvement Act district, or Local Government district, having a population of not less than five thousand inhabitants.

"The population of any town, for the purposes of this Act, shall be reckoned according to the last published census for the time being, and distances shall be measured in a direct line from the town-hall, or if there shall be no town-hall, then from the cathedral or church if there shall be only one church, or if there be more churches than one, then from the principal market-place of such town to the nearest point of the suburban common. When part only of a common is situate within the aforesaid distance from a town, such part shall be deemed for the purposes of this section to be a common separate and distinct from the part situated without and beyond such distance."

165. Any urban authority may from time to time provide such clocks as they consider necessary, and cause them to be fixed on or against any public building, or, with the consent of the owner or occupier, on 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 may from time to time alter and remove any such clocks to such other like situation as they may consider expedient.

MARKETS AND SLAUGHTER-HOUSES.

166. Where an urban authority are a local board or improvement commissioners they shall have power, with the consent of the owners and ratepayers of their district, expressed by resolution passed in manner provided by schedule III. to this Act, and where the urban authority are a town council they shall have power, with the consent of two-thirds of their number, to do the following things or any of them within their district:—

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To provide a market-place and construct a market-house and other conveniences, for the purpose of holding markets :

The owner of a market, especially when he takes tolls for his own benefit, incurs an obligation to maintain the market in a state reasonably fit for its purpose, and is liable for damages consequent on his failure to do so. (Lax *v.* Darlington, Mayor of, 40 L. T. N. S. 64.)

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 :

But no market 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 without his consent.

Removal of a market to another site so as to deprive a householder of stallage which he derived from stalls situate in front of his house and belonging to him is an interference with privileges enjoyed by a person, and entitles him to compensation. (Ellis *v.* Bridgenorth, 32 L. J. C. P. 273, 15 C. B. N. S. 52.) And it would seem that the establishment of a market to be held on a different day of the week from an existing market might be an interference with the rights of the owner of that market. (Elwes *v.* Payne, 12 C. D. 468; 48 L. J. Ch. 831).

167. For the purpose of enabling any urban authority to establish or to regulate markets, 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; that is to say—

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 :

Provided that all tolls leviable by an urban authority in

pursuance of this section shall be approved by the Local Government Board. Sec. 167.

An urban authority may with respect to any market belonging to them make bye-laws for any of the purposes mentioned in section 42 of the Markets and Fairs Clauses Act, 1847, so far as those purposes relate to markets, and printed copies of any bye-laws so made shall be conspicuously exhibited in the market.

The purposes for which bye-laws may be made under 10 Vic. c. 14, s. 42, are, "for regulating the use of the market-place and fair, and the buildings stalls pens and standings therein, and for preventing nuisances and 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 regulating the carriers resorting to the market or fair and fixing the rates for carrying the articles carried therefrom within the limits of the special Act; for regulating the use of weighing machines provided by the undertakers, and for preventing the use of false or defective weights scales or measures."

Regulating the use of the market would include restricting particular trades to one spot away from the rest of the market, but would not empower the urban authority to make regulations which practically forbade the carrying on of such trades altogether. (Wortley *v.* Nottingham Board, 21 L. T. N. S. 582.)

See further, ss. 182-186 of this Act as to the conditions applicable to bye-laws.

The incorporated clauses of the Markets and Fairs Clauses Act, 1847, 10 Vic. c. 14, are the following:—

With respect to the holding of the market or fair, and the protection thereof:—

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.

XIII. 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

Sec. 167. 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.

A person holding a pedlar's licence is included in the words "licensed hawker" (Howard *v.* Lupton, 44 L. J. M. C. 150).

Prescribed limits means limits to which the local Act applies, that is, here, limits of the district of the urban authority who have established the market (Caswell *v.* Cook, 11 C. B. N. S. 637, 31 L. J. M. C. 185).

Any shop is exempted by this section, whether such shop be attached to a dwelling-house or not (Wiltshire *v.* Willett, 11 C. B. N. S. 240, 31 L. J. C. P. 8). In order, however, to be exempt from penalties under this section, a party must be shown to have sold marketable articles in what is really his own private shop, and not in any such way as to constitute a different market from the legal one. In order to determine the question, all the circumstances of the case must be taken into consideration (Pope *v.* Whalley, 6 B. & S. 303, 34 L. J. M. C. 76.) It is in every case a question of fact as to whether the place in which the goods were sold was or was not a shop (Fearon *v.* Mitchell, 7 L. R. Q. B. 690, 41 L. J. M. C. 170).

A vessel moored on a canal within the prescribed limits is not a shop (Wiltshire *v.* Baker, 11 C. B. N. S. 237; 31 L. J. C. P. 10). Nor is a large hall and yard used for the sale of cattle by an auctioneer. (Fearon *v.* Mitchell, 7 L. R. Q. B. 690.) Query whether an auctioneer's place of business can be a shop? *Ib.* So a slight wooden shed, the supports of which were let into the ground, has been held not to be a shop (Pope *v.* Whalley, 6 B. & S. 303, 34 L. J. M. C. 76). And a yard, under and behind a small building occupied as a dwelling-house, was held to be neither a dwelling-house nor part of a shop (McHole *v.* Davies, 1 Q. B. D. 59; 45 L. J. M. C. 30). Nor is a skittle alley, hired for a short period for the sale of goods, a shop (Hooper *v.* Kenshole, 2 Q. B. D. 127; 46 L. J. M. C. 160). But a shed affixed to a house and projecting in front has been held to be part of a shop (Ashworth *v.* Heyworth, 4 L. R. Q. B. 316; 38 L. J. M. C. 91).

Selling without licence or payment of toll articles which are liable to payment of toll exposes the person so doing to the penalty, even though he subsequently pay the toll (Carter *v.* Parkhouse, 22 L. T. N. S. 788).

Sale by sample on a market-day near to but outside the limits of a market is not a disturbance of the market unless done designedly and with the intention of avoiding payment of the toll (Mayor of Brecon *v.* Edwards, 1 H. & C. 51; 31 L. J. Ex. 368). So also sale outside a town of an article liable to toll is not a sale within the meaning of the Act, even though followed by delivery within the town (Bourne *v.* Lowndes, 31 L. T. 114).

A horse is an article within the meaning of this section, if tolls are authorised by the bye-laws to be taken on his sale. (Llandaff and Canton Market Co. *v.* Lyndon, 8 C. B. N. S. 515, 30 L. J. M. C. 105.)

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. Sec. 167.

Markets may not be held on Sundays (13 & 14 Vic. c. 23).

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 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:

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.

See 10 & 11 Vic. c. 34, s. cxxxi., *post*, p. 204; and ss. 116-119 of the principal Act, p. 112.

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.

And with respect to weighing goods and carts:—

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.

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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; and any such person who shall refuse, on demand, to cause such articles to be weighed or measured in manner aforesaid shall be liable to a penalty not exceeding forty shillings.

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.

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.

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; and if such cart be weighed with its load thereupon the driver shall, if required, take such cart after its load has been discharged to the weighing machine nearest to such place of discharge, and permit it to be re-weighed without such load; and if any such driver shall for the purposes aforesaid be required to take such cart a greater distance than half-a-mile, including the going to and returning from such machines respectively, the owner of the cart shall be paid for every horse which shall be used in drawing such cart twopence for the first half-mile, and a like sum for every additional half-mile; and such payment shall be made by the person requiring such cart to be weighed as aforesaid, before the driver thereof shall be obliged to take it aforesaid for the purpose of having it weighed.

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. Sec. 167.

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 the loading thereof.

XXVIII. If the buyer or seller of any goods brought in any

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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.

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 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.

And with respect to stallages rents and tolls to be taken by the undertakers :— Sec. 167.

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.

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.

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.

There cannot be any toll in respect of goods not actually brought into the market. (Wells *v.* Miles, 4 B. & A. 559.) Nor can it be claimed on goods samples only of which are brought into the market while the bulk remains outside. (Hill *v.* Smith, 4 Taunt. 520).

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.

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.

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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.

The principal Act, by s. 166, *ante*, empowers the urban authority to take stallages rents and tolls, but says nothing as to their amount.

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 or Ireland by distress, *and in Scotland by poinding and sale*, 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.

The penalty incurred by selling marketable articles without a licence is not condoned by payment of the toll subsequent to the sale and previous to the summons for the offence being taken out. (Carter *v.* Parkhouse, 22 L. T. N. S. 788).

XXXIX. 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; 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 in England or Ireland by distress, *and in Scotland by poinding and sale*, and the justice *or sheriff* shall issue his warrant accordingly.

Stallage can only be claimed in respect of stalls actually provided.

(Mayor of Northampton *v.* Ward, 2 Stra. 1238; Swindon Market Co. *v.* Panting, 27 L. T. N. S. 578).

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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 or 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 so 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.

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168. Any urban authority may purchase, and the directors of any market company, in pursuance, in the case of a company registered under the Companies' Act, 1862, of a special resolution passed in manner provided by that Act, and in the case of any other company, of a resolution passed by a majority of three-fourths in number and value of the members present, either personally or by proxy, at a meeting specially convened, with notice of the business to be transacted, may sell and transfer to any urban authority, on such terms as may be agreed on between the company and the urban authority, all the rights powers and privileges, and all or any of the markets premises and things which at the time of such purchase are the property

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of the company, but subject to all liabilities attached to the same at the time of such purchase.

See 25 & 26 Vic. c. 89, s. 51. *See* also notes to ss. 63 & 162 of this Act, *ante*.

169. Any urban authority may, if they think fit, provide slaughter-houses, and they shall make bye-laws with respect to the management and charges for the use of any slaughter-houses so provided.

For the purpose of enabling any urban authority to regulate slaughter-houses within their district the provisions of the Towns Improvement Clauses Act, 1847, with respect to slaughter-houses, shall be incorporated with this Act.

Nothing in this section shall prejudice or affect any rights, powers or privileges of any persons incorporated by any local Act passed before the passing of the Public Health Act, 1848, for the purpose of making and maintaining slaughter-houses.

The incorporated clauses are the following:—

10 & 11 Vic. c. 34.

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.

Premises were licensed by a local authority under 31 & 32 Vic. c. 98, for the slaughter of pigs, and subsequently the tenant used them for killing sheep and oxen. Held that a fresh licence was not required. (Brighton Local Board of Health *v.* Stenning, 15 L. T. N. S. 567.)

The grant of a licence is complete if the local authority pass a resolution to make it and communicate the fact to the applicant, though no formal licence in writing be ever given him. (Howarth *v.* Mayor of Manchester, 6 L. T. N. S. 683.)

If a licence to erect slaughter-houses be given, that includes a licence to use them as slaughter-houses when erected. This was decided by the Court of Exchequer Chamber, reversing a judgment of the Court of Exchequer, under the following circumstances:—The Corporation of Brecon, under a local Act, gave their consent by a resolution of the town council to the erection of certain slaughter-houses by a company formed for that and other purposes. After the slaughter-houses were erected they refused in their capacity of local board of health to license them for use; and in an

action by the lessee of the slaughter-houses against the company for breach of an agreement to let the slaughter-houses to him caused by the refusal of the corporation to license them for that purpose, it was held that a "licence having been given by the corporation to erect a slaughter-house, it could be used as such." (Anthony *v.* Brecon Markets Co., 7 L. R. Ex. 399, 41 L. J. Ex. 201.) The question whether the local authority has power, after such licence to build has been given, to revoke it in case of its being abused, under ss. cxxix. & cxxx., was expressly left open in this case. Sec. 169.

In case the slaughter-house is intended to be used for slaughtering cattle for human food only, the licence of the urban authority seems to be all that is required. In other cases the statute 26 Geo. III. c. 71, s. 1 seems to be applicable. The section is as follows: "No person shall keep or use any house or place for the purpose of slaughtering or killing any horse mare gelding colt filly ass mule bull ox cow heifer calf sheep hog goat or other cattle, which shall not be killed for butcher's meat, without first taking out a licence for that purpose at the general quarter sessions held for the county, &c., wherein such slaughter-house or slaughtering place shall be situate; and the justices are hereby authorised and empowered to grant such licence upon a certificate under the hands and seals of the minister and churchwardens or overseers or of the minister and two or more substantial householders of the parish wherein such person applying for the licence shall dwell, certifying that such person is fit and proper to be trusted with the management and carrying on of such business." Penalties are imposed by subsequent sections for breach of the Act. By s. 1 of 7 & 8 Vic. c. 87, it is provided that such licences are to be in force for a period of not more than one year, but the certificates of fitness need not be produced in case of applications for renewal. It will thus be seen that the licence of quarter sessions ought in strictness to be required for all knackers' yards and similar places. Urban authorities have in many instances granted licences to such places, and the grantees have used them for slaughtering without obtaining the required consent from quarter sessions. No reported case is to be found as to whether this licence of the urban authority is sufficient, but it seems probable that if proceedings were taken to recover penalties under the Act of Geo. III., the licence of an urban authority under this Act would not be held a sufficient answer so as to exempt from the penalty the person who so slaughtered cattle.

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.

The licence must be specific for a certain building. It would seem that

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a general licence to erect a slaughter-house anywhere in the limits of the urban authority would be bad. (Hughes *v.* Trew, 36 L. T. N. S. 585.)

And every person who, without having first obtained such licence 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.

Animals need not be killed in a slaughter-house unless intended for sale as human food—10 & 11 Vic. c. 14, s. 19—and therefore no penalty can be enforced for killing an animal elsewhere for any other purposes. (Elias *v.* Nightingale, 8 E. & B. 698; 27 L. J. M. C. 151.)

A conviction for using an unlicensed slaughter-house under this section cannot be sustained against a person who merely pays the owner of the premises for being allowed to kill animals there. (Reg. *v.* Heyworth, 14 L. T. N. S. 600.) But it would seem that it might be sustained against the owner of the premises for allowing them to be so used. (Liverpool Market Co. *v.* Hodson, 2 L. R. Q. B. 131; 36 L. J. M. C. 30; *see* also note to s. cxxv., *supra*.)

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.

As to notices, *see* ss. 266–7 of the principal Act.

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 knacker's 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. Sec. 169.

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.

These bye-laws should conform to the general rules laid down by s. 182, *post*.

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

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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.

CXXXI. The inspector of nuisances, the officer of health or any other officer appointed by the commissioners for that purpose, may at all reasonable times, with or without assistants, enter into and inspect any building or place whatsoever within the said limits kept or used for the sale of butcher's meat or for slaughtering cattle, and examine whether any cattle or the carcase of any such cattle is deposited there; and in case such officer shall find any cattle or the carcase or part of the carcase of any beast, which appears unfit for the food of man, he may seize and carry the same before a justice, and such justice shall forthwith order the same to be further inspected and examined by competent persons; and in case upon such inspection and examination such cattle carcase or part of a carcase be found to be unfit for the food of man, such justice shall order the same to be immediately destroyed or otherwise disposed of in such way as to prevent the same being exposed for sale or used for the food of man;

and such justice may adjudge the person to whom such cattle carcase or part or 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 butcher's 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.

This section is very like ss. 116-118 of the principal Act, p. 112; it differs in applying only to the case of meat and in providing a smaller penalty. Here the justice before whom suspected meat is brought is to have the same examined by competent persons, while in the principal Act no provision is made as to the means by which the justice is to ascertain whether the meat is bad or not. By the principal Act the prosecutor must be the medical officer of health or inspector of nuisances, while this section allows the commissioners, *e.g.*, local authority, to appoint any officer (who probably would be a police constable) to carry out its provisions.

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170. The owner or occupier of any slaughter-house licensed or registered under this Act shall, within one month after the licensing or registration of the premises, affix and shall keep undefaced and legible on some conspicuous place on the premises, a notice, with the words "Licensed slaughter-house," or "Registered slaughter-house," as the case may be.

Any person who makes default in this respect, or who neglects or refuses to affix or renew such notice after requisition in writing from the urban authority, shall be liable to a penalty not exceeding five pounds for every such offence, and of ten shillings for every day during which such offence continues after conviction.

POLICE REGULATIONS.

171. The provisions of the Towns Police Clauses Act, 1847, with respect to the following matters (namely)—

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(1.) With respect to obstructions and nuisances in the streets; and

(2.) With respect to fires; and

(3.) With respect to places of public resort; and

(4.) With respect to hackney carriages; and

(5.) With respect to public bathing,

shall, for the purpose of regulating such matters in urban districts, be incorporated with this Act.

The expression in the provisions so incorporated "the superintendent constable," and the expression "any constable or other officer appointed by virtue of this or the special Act," shall, for the purposes of this Act, respectively include any superintendent of police and any constable or officer of police acting for or in the district of any urban authority; and the expression "within the prescribed distance" shall for the purposes of this Act mean within any urban district.

Notwithstanding anything in the provisions so incorporated, a licence granted to the driver of any hackney carriage in pursuance thereof shall be in force for one year only from the date of the licence, or until the next general licensing meeting where a day for such meeting is appointed.

The incorporated provisions are as follows:—

10 & 11 Vic. c. 89.

With respect to obstructions and nuisances in the streets:—

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. Sec. 171.

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.

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.

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.

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By 12 & 13 Vic. c. 92, s. 5, every person who shall impound or confine any animal is bound to provide such animal with proper supply of food and water, under a penalty of twenty shillings fine. This provision has been held to apply not to the pound keeper, but to the person who seizes and impounds the animal. (Dargan *v.* Davies, 2 Q. B. D. 118; 46 L. J. M. C. 122; *see* also s. xxvii., *infra*, as to the liability of the pound keeper or owner.)

XXV. If the said penalty and expenses be not paid within three days after such impounding, the pound-keeper or other person appointed by the commissioners for that purpose may proceed to sell or cause to be sold any such cattle; but previous to such sale seven days' notice thereof shall be given to or left at the dwelling-house or place of abode of the owner of such cattle, if he be known, or if not, then notice of such intended sale shall be given by advertisement to be inserted seven days before such sale in some newspaper published or circulated within the limits of the special Act; and the money arising from such sale, after deducting the said sums and the expenses aforesaid, and all other expenses attending the impounding advertising keeping and sale of any such cattle so impounded, shall be paid to the commissioners, and shall be by them paid, on demand, to the owner of the cattle so sold.

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.

XXVII. The commissioners may purchase a piece of land within the limits of the special Act, for the purpose of a pound for stray animals, and may erect a pound thereon, and such pound when made shall be kept in repair by the commissioners.

The commissioners (now local authority) are bound to provide access to a proper pound. If they use the manor pound, and it is not in a proper condition, and cattle placed therein are consequently injured, the distrainer is liable for damages occasioned thereby. (Bignold *v.* Clarke, 2 L. T. N S. 189.)

XXVIII. Every person who in any street, to the obstruction annoyance or danger of the residents or passengers, commits any of the following offences shall be liable to a penalty not exceeding forty shillings for each offence, or, in the discretion of the justice before whom he is convicted, may be committed to prison, there to remain for a period not exceeding fourteen days; and any constable or other officer appointed by virtue of this or the special Act shall take into custody, without warrant, and forthwith convey before a justice, any person who within his view commits any such offence, that is to say— Sec. 171.

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):

Cattle grazing by the roadside under the care of their owner's servant, are not turned loose within the meaning of this provision. (Sherborne *v.* Wells, 3 B. & S. 784; 32 L. J. M. C. 179.)

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

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part thereof, except in the case of any cattle overdriven 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 wagon 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:

This clause is wider than the corresponding section of the highway Act, 5 & 6 Wm. IV. c. 50, s. 78, as to which *see* Williams *v.* Evans, 35 L. T. N. S. 864.

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: Sec. 171.

Every unauthorised obstruction of the highway to the annoyance of the Queen's subjects is an indictable offence. (R. *v.* Cross, 3 Camp. 224). This clause does not create a new offence, but provides a summary mode of punishing one known to the law before.

It is not an offence within the meaning of this clause to attract a crowd and so obstruct a thoroughfare, by placing a show van on ground where it has a right to be near the thoroughfare, though the crowd extends into and obstructs the thoroughfare. (Ball *v.* Ward, 33 L. T. N. S. 170). But the fact that it has been customary to obstruct the highway would be no answer if a man was summoned for doing so. (Gerring *v.* Barfield, 16 C. B. N. S. 597).

Every person who causes any tree or timber or iron beam to be drawn in or upon any carriage, without having sufficient means of safely guiding the same:

Every person who leads or rides any horse or other animal, or draws or drives any cart or carriage sledge truck or barrow upon any footway of any street, or fastens any horse or other animal so that it stands across or upon any footway:

Every person who places or leaves any furniture goods wares or merchandise, or any cask tub basket pail or bucket, or places or uses any standing-place stool bench stall or showboard on any footway, or who places any blind shade covering awning or other projection over or along any such footway, unless such blind shade covering awning or other projection is eight feet in height at least in every part thereof from the ground:

Every person who places hangs up or otherwise exposes

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to sale any goods wares merchandise matter or thing whatsoever so that the same project into or over any footway, or beyond the line of any house shop or building at which the same are so exposed, so as to obstruct or incommode the passage of any person over or along such footway:

Under a corresponding provision of the Metropolitan Police Act, 2 & 3 Vic. c. 47, s. 60, it was held that a magistrate may properly convict on proof of the existence of a projection capable of incommoding the passage along the footpath, and need not hear witness called for the defence to prove that there is no serious obstruction. (Read *v.* Perrett, 1 Ex. D. 349).

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 bonfire, or throws or sets fire to any firework:

Every person who wilfully and wantonly disturbs any inhabitant, by pulling or ringing any doorbell or knocking at any door, or who wilfully and unlawfully extinguishes the light of any lamp:

The mere fact of a man being instructed to deliver papers at a house is

no answer to a complaint against him under this section for wilfully and wantonly disturbing the family by knocking and ringing at an unreasonable hour of the night (Clark *v.* Hoggins, 11 C. B. N. S. 545). Sec. 171.

The corresponding clause of the Metropolitan Police Act, 2 & 3 Vic. c. 47, s. 54, adds the words "without lawful excuse;" and it was held that a man could not be given into custody under that section for gently ringing a bell of a house where he wished to enter on a matter of business, though the owner of the house had given him notice not to apply for admittance (Home *v.* Grimble, Car. & M. 17).

Every person who flies any kite, or who makes or uses any slide upon ice or snow:

Every person who cleanses hoops fires or washes or scalds any cask or tub, or hews saws bores or cuts any timber or stone, or slacks sifts or screens any lime:

Every person who throws or lays down any stones coals slate shells lime bricks timber iron or other materials (except building materials so inclosed as to prevent mischief to passengers):

Under the corresponding provision of the Metropolitan Police Act, 2 & 3 Vic. c. 47, s. 60, it was held that a person who gave another into custody for putting down oyster-shells in a thoroughfare was justified by the Act so far as to be entitled to notice of action for so giving him into custody (Danvers *v.* Morgan, 1 Jur. N. S. 105; *see* s. 264 of the principal Act *post*, as to this notice).

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 flowerpot 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

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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:

Compare s. lxxi. & lxxiii. of the Towns Improvement Clauses Act, *ante*, p. 178.

Every person who throws or lays any dirt litter or ashes night-soil 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 pigstye to the front of any street, not being shut out from such street by a sufficient wall or fence, or who keeps any swine in or near any street, so as to be a common nuisance.

See also s. 91 of the principal Act, *ante*.

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. Sec. 171.

A person summoned to answer a charge under this section could not be convicted of simply being drunk under 21 Jac. I. c. 7, s. 3, which is now repealed, nor could he probably under the corresponding provision of the present Act, 35 & 36 Vic. c. 94, s. 12. (Martin *v.* Pridgeon, 1 E. & E. 778, 28 L. J. M. C. 179.)

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 : 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 : 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.

By s. 66 of the principal Act, *ante*, urban authorities are obliged to provide all necessary works for securing an efficient supply of water in

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XXXIII. The commissioners may send such engines with their appurtenances and the said firemen, beyond the limits of the special Act, for extinguishing fire in the neighbourhood of the said limits; and the owner of the lands or buildings where such fire shall have happened shall in such case defray the actual expense which may be thereby incurred, and shall also pay to the commissioners a reasonable charge for the use of such engines with their appurtenances, and for the attendance of such firemen; and in case of any difference between the commissioners and the owner of the said land 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.

The justices should be those empowered to act for the district in which the property is situated, not for the district to which the engines belong. (cf. note to s. 251, *post.*)

The occupier of a farm is owner within the meaning of this section, and liable for the expenses incurred in sending an engine to extinguish a fire at a haystack belonging to him. (Lewis *v.* Arnold, 10 L. R. Q. B. 245, 44 L. J. M. C. 68.)

Damages are by s. lxxiii. of this Act made recoverable in manner provided by the Railways Clauses Act. As to this, *see* note to s. lxv. of the Towns Improvement Clauses Act, *ante*, p. 176.

The power given to charge for extinguishing fires outside the district impliedly negatives the right to charge within it. (Drighlington Board *v.* Bower, W. N. 1873, p. 220.)

And with respect to places of public resort:—

XXXIV. Every victualler or keeper of any public-house, or person licensed to sell wines 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. Sec. 171.

The 16th section of the Licensing Act, 1872, 35 & 36 Vic. c. 94, imposes a heavier penalty for the offence here specified, and also for supplying drink to or attempting to bribe a constable. Harbouring a constable and supplying him with drink are both acts which are calculated to prevent the efficient action of the police, as well as offences on the part of the publican, and so might properly be punishable under both Acts. It seems that unless the master knowingly harbours the constable, he could not properly be convicted of the offence, though the constable remained on the premises with the knowledge and consent of his servants (*e.g.*, his cook). (Mullins *v.* Collins, 29 L. T. N. S. 839.)

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.

A keeper of a licensed alehouse is within this section, which is cumulative upon other enactments with respect to such houses. (Cole *v.* Coulton, 2 E. & E. 695, 29 L. J. M. C. 125.)

The fact of the same individuals having previously been seen in the house is evidence that the landlord knew their character and pursuits. (Parker *v.* Green, 2 B. & S. 299, 31 L. J. M. C. 133.)

The offence is complete if the Court considers that loose women or reputed thieves assemble and remain in the house for any purpose beyond procuring necessary refreshment, and if the Court convict such conviction will probably be upheld. (Belasco *v.* Hammant, 3 B. & S. 13, 31 L. J. M. C. 225; *see* also Marshall *v.* Fox, 6 L. R. Q. B. 370, 40 L. J. M. C. 142.)

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

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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.

This section only prevents the keeping of a place for fighting animals. It would not empower the police to arrest persons present at a cockfight or other similar performance which was not in a place kept for the purpose. So decided under 12 & 13 Vic. c. 92, s. 3. (Clarke *v.* Hague, 2 E. & E. 281, 29 L. J. M. C. 105; Morley *v.* Greenhalgh, 3 B. & S. 374, 32 L. J. Q. B. 93.)

Rabbit coursing does not come within the term "baiting;" the rabbit has a run for its life, and therefore is not baited. (Pitts *v.* Miller, 9 L. R Q. B. 380; 43 L. J. M. C. 96.)

And with respect to hackney carriages:—

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.

The possession of an Inland Revenue licence does not authorise a carriage to ply for hire within the "prescribed distance" without the licence of the local authority. (Buckle *v.* Wrightson, 5 B. & S. 854; 34 L. J. M. C. 43.)

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: Sec. 171.

To be a hackney carriage within the meaning of this Act the vehicle must ply for hire in a street, as defined by the principal Act, *ante*, p. 5. (*See* Bateson *v.* Oddy, 43 L. J. M. C. 131.)

It has been held that the yard of a railway station, the property of a railway company, is not a street within the meaning of this section, and a vehicle plying for hire there does not consequently come within the term hackney carriage. (Case *v.* Storey, 4 L. R. Ex. 319, 38 L. J. M. C. 115; Curtis *v.* Embery, 7 L. R. Ex. 369, 42 L. J. M. C. 39.)

By the Metropolitan Carriage Act, 1869, 32 & 33 Vic. c. 115, the words "public place or street" are omitted, and "this appears to have been done intentionally and advisedly," and consequently carriages have been held liable to penalties for plying for hire without a licence at railway stations. (Clarke *v.* Stanford, 6 L. R. Q. B. 357, 40 L. J. M. C. 131; Allen *v.* Tonbridge, 6 L. R. C. P. 481, 40 L. J. M. C. 197; but those cases apparently are not applicable to this section; *see* further s. xlv., *post*, p. 221).

XXXIX. For every such licence there shall be paid to the clerk to the commissioners or other person appointed by them to receive the same such sum as the commissioners direct, not exceeding five shillings.

XL. Before any such licence is granted, a requisition for the same, in such form as the commissioners from time to time provide for that purpose, shall be made and signed by the proprietor or one of the proprietors of the hackney carriage in respect of which such licence is applied for, and in every such requisition shall be truly stated the name and surname and place of abode of the person applying for such licence, and of every proprietor or part proprietor of such carriage or person concerned, either solely or in partnership with any other person, in the keeping employing or letting to hire of such carriage; and any person who, on applying for such licence, states in such requisition the name of any person who is not a proprietor or part proprietor of such carriage, or who is not concerned as aforesaid in the keeping employing or letting to hire of such

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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.

XLI. In every such licence shall be specified the name and surname and place of abode of every person who is a proprietor or part proprietor of the hackney carriage in respect of which such licence is granted, or who is concerned, either solely or in partnership with any other person, in the keeping employing or letting to hire of any such carriage, and also the number of any 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.

XLII. Every licence shall be made out by the clerk of the commissioners and duly entered in a book to be provided by him for that purpose, and in such book shall be contained columns or places for entries to be made of every offence committed by any proprietor or driver or person attending such carriage, and any person may at any reasonable time inspect such book without fee or reward.

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.

XLIV. So often as any person named in any such licence as the proprietor or one of the proprietors, or as being concerned either solely or in partnership with any person in the keeping employing or letting to hire of any such carriage, changes his place of abode, he shall, within seven days next after such

change, give notice thereof in writing signed by him to the commissioners, specifying in such notice his new place of abode; and he shall at the same time produce such licence at the office of the commissioners, who shall, by their clerk or some other officer, endorse thereon and sign a memorandum specifying the particulars of such change; and any person named in any such licence as aforesaid as the proprietor or one of the proprietors of any hackney carriage, or as being concerned as aforesaid, who changes his place of abode, and neglects or wilfully omits to give notice of such change, or to produce such licence in order that such memorandum as aforesaid may be endorsed thereon, within the time and in the manner limited and directed by this or the special Act, shall be liable to a penalty not exceeding forty shillings. Sec. 171.

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.

A licence granted by the Commissioners of Inland Revenue does not dispense with the necessity of a licence from the towns commissioners (now urban authority) under this section (Buckle *v.* Wrightson, 34 L. J. M. C. 43, 5 B. & S. 854).

Waiting to be hired on private ground is not an offence within the meaning of this section, as plying for hire must be in a street. (Skinner *v.* Usher, 7 L. R. Q. B. 423; Curtis *v.* Embery, 7 L. R. Ex. 369, 42 L. J. M. C. 39.)

See also s. xxxviii., *ante*, p. 219.

XLVI. No person shall act as driver of any hackney carriage

Sec. 171. 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 :

Within the prescribed distance means in any urban district. (*See* s. 171, *ante*, p. 206.)

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.

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.

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 :

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 :

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. Sec. 171.

The proprietor has no right to endorse on a licence deposited with him anything injurious to the character of the driver, and an action on the case may be brought against him if he does. (Hurrell *v.* Ellis, 2 C. B. 265, 15 L. J. C. P. 18; *see* also Rogers *v.* Macnamara, 14 C. B. 27, 23 L. J. C. P. 1.) No notice of action is required in such a case. (Heath *v.* Brewer, 15 C. B. N. S. 803.)

XLIX. When any driver leaves the service of the proprietor by whom he is employed, without having been guilty of any misconduct, such proprietor shall forthwith return to such driver the licence belonging to him; but if such driver have been guilty of any misconduct, the proprietor shall not return his licence, but shall give him notice of the complaint which he intends to prefer against him, and shall forthwith summon such driver to appear before any justice to answer the said complaint; and such justice having the necessary parties before him shall inquire into and determine the matter of complaint; and if upon inquiry it appears 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.

See note to preceding section.

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.

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

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legible letters, so as to be clearly distinguishable from the colour of the ground whereon the same are painted, one inch in length, and of a proportionate breadth:

And the driver of any such hackney carriage shall not be required to carry in or by such hackney carriage a greater number of persons than the number painted thereon.

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.

As to what constitutes plying for hire, *see* note to s. xxxviii., *ante*, p. 219.

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.

The prescribed distance means the urban district. (*See* s. 171, *ante*, p. 206.)

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.

LV. No agreement whatever made with the driver, or with any person having or pretending to have the care of any such

hackney carriage, for the payment of more than the fare allowed by any 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. Sec. 171.

It seems that this section would prevent a driver making an agreement for more than his fare, even if at the time of hiring he was not in a street or plying for hire. (*See* remarks of Bramwell, B., in Case *v.* Storey, 4 L. R. Ex. 325.)

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 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.

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

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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.

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.

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.

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: 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. Sec. 171.

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.

LXII. If the driver of any such hackney carriage leave it in any street or at any place of public resort or entertainment, whether it be hired or not, without some one proper to take care of it, any constable may drive away such hackney carriage and deposit it and the horse or horses harnessed thereto, at some neighbouring livery stable or other place of safe custody; and such driver shall be liable to a penalty not exceeding twenty shillings for such offence; and in default of payment of the said penalty upon conviction and of the expenses of taking and keeping the said hackney carriage and horse or horses, the same, together with the harness belonging thereto, or any of them, shall be sold by order of the justice before whom such conviction is made; and after deducting from the produce of such sale the amount of the said penalty, and 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

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has been convicted may direct that the proprietor of such carriage shall pay such a sum not exceeding five pounds as appears to the justice a reasonable compensation for such hurt or damage; and every proprietor who pays any such compensation as aforesaid may recover the same from the driver, and such compensation shall be recoverable from such proprietor, and by him from such driver, as damages.

The Act treats the driver as in the position of servant to the owner of the vehicle; and following similar provisions of the cognate Acts relating to the metropolis (1 & 2 Will. IV. c. 22, and 6 & 7 Vic. c. 86), it has been held that a driver who hires his cab by the day from the proprietor is "the servant or agent of such proprietor with authority to enter into contracts for the employment of the cab on which the proprietor is liable." (Morley *v.* Duncombe, 11 L. T. 199; Powles *v.* Hilder, 6 E. & B. 207, 25 L. J. Q. B. 331.) Subsequently, however, a cabdriver has been allowed to keep a verdict against a proprietor for supplying him with a bad horse, the jury finding that he was a bailee and not servant of the proprietor. (Fowler *v.* Lock, 10 L. R. C. P. 90.) This latter case is, however, very unsatisfactory, it having been originally decided by two judges against one that the relation between the parties was that of bailor and bailee, not of master and servant (cf. 7. L. R. C. P. 272); this judgment was appealed against, and the Court of Exchequer Chamber were divided, but sent the case down for a new trial without giving any judgment on the point. (9 L. R. C. P. 751) The decision first quoted was after the second trial, when the judges were evidently tired of the case.

As to recovery of damages, *see* note to s. xxxiii., *ante*, and *see* p. 176.

If compensation is awarded by the magistrate, that is a bar to any further action against the owner of the hackney carriage to recover damages for the injury sustained. (Wright *v.* London General Omnibus Co., 2 Q. B. D. 271.)

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 nto 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.

LXV. If the driver of any such hackney carriage be sum-

moned 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. Sec. 171.

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.

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.

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

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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 or distance, to be paid for such hackney carriages within the prescribed distance, and for securing the due publication of such fares:

For securing the safe custody and re-delivery of any property accidentally left in hackney carriages, and fixing the charges to be made in respect thereof:

Under 32 & 33 Vic. c. 115, which gives the Secretary of State with respect to the metropolis powers similar to those given by this Act to the local authority in other towns, it has been held that he has power to authorise an indefinite number of fares for hackney carriages instead of one scale binding upon all hirers and all proprietors. Also a regulation requiring a particular mark to be affixed to a hackney carriage stating the fares to be charged is valid. (Bocking *v.* Jones, 6 L. R. C. P. 29; 19 W. R. 227.)

A bye-law that "the several places in the district where painted boards shall be placed to distinguish them as stands shall be stands," &c., has been held to be valid. (Reg. *v.* Bennett, 4 H. & N. 127; 28 L. J. M. C. 203.)

See further as to bye-laws generally, ss. 182–8 of the principal Act, *post*.

And with respect to public bathing:—

LXIX. Where any part of the seashore or strand of any river used as a public bathing-place is within the limits of the

special Act, the commissioners may make bye-laws for the following purposes (that is to say):— Sec. 172.

For fixing the stands of bathing machine on the seashore 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.

These bye-laws should be made in the manner and comply with the general rules laid down in the principal Act. (Sections 182–6.)

This section does not empower the licensees of bathing machines to place them on any part of the seashore which is private property, though there may be a prescriptive right to bathe there and the local authority prohibit bathing unless from bathing machines. (Mace *v.* Philcox, 15 C.B.N.S. 600, 33 L. J. C. P. 124.)

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172. Any urban authority may license the proprietors, drivers and conductors of horses ponies mules or asses standing for hire within the district, in like manner and with the like incidents and consequences as in the case of proprietors and drivers of hackney carriages, and may make bye-laws for regulating stands and fixing rates of hire, and as to the qualification of such drivers and conductors, and for securing their good and orderly conduct while in charge.

Any urban authority may also license the proprietors of pleasure boats and vessels, and the boatmen or other persons in charge thereof, and may make bye-laws for regulating the numbering and naming of such boats and vessels, and the number of persons to be carried therein, and the mooring places for the same, and for fixing rates of hire, and the qualification of such boatmen or other persons in charge, and for securing their good and orderly conduct while in charge.

PART V.

GENERAL PROVISIONS.

CONTRACTS.

Secs. 173, 174.

173. Any local authority may enter into any contracts necessary for carrying this Act into execution.

Local authorities often make contracts to do work themselves for the benefit of others, as, for instance, to make good roads which have been taken up by water or gas companies, and which those companies are bound to repair. This Act gives no power to make such contracts, and they are *ultra vires*. The Metropolis Management Act, 18 & 19 Vic. c. 120, s. 114, gives power to do such work and charge for it.

Local authorities being corporations, cannot enter into binding contracts except under the powers and for the purposes of the Acts for the time being under which they have their powers. The *prima facie* right to contract given by the Legislature to corporations does not extend to cases where the contract is one which from the nature and object of the corporation the corporate body is expressly or impliedly prohibited from making. (*See* Bateson *v.* Ashton-under-Lyne, 3 H. & N. 323, 27 L. J. Ex. 458; London Dock Co. *v.* Synott, 8 E. & B. 347, 27 L. J. Q. B. 129; Shrewsbury and Birmingham Railway Co. *v.* London and North Western Railway Co., 5 Jur. N. S. 781, 6 H. L. Cas. 113.)

174. With respect to contracts made by an urban authority under this Act the following regulations shall be observed (namely):—

(1.) Every contract made by an urban authority whereof the value or amount exceeds fifty pounds shall be in writing and sealed with the common seal of such authority:

Those who are carrying on the concerns of a corporation have an implied authority to do those acts without which the corporation could not exist, and consequently can enter into contracts for those objects, which shall bind the corporation without the necessity of such contracts being under seal. (Sanders *v.* St. Neots Union, 8 Q. B. 810, 15 L. J. M. C. 104; Clarke *v.* Cuckfield Union, 21 L. J. Q. B. 349; Haigh *v.* Bierly Union, E. B. & E. 873, 28 L. J. Q. B. 62; Nicholson *v.* Bradfield Union, 1 L. R. Q. B. 620, 35 L. J. Q. B. 176.) But it has been held that the corresponding section of the former Act, 11 & 12 Vic. c. 63, s. 85, was not merely directory, but created a condition, and therefore that contracts not under seal entered into by boards of health were void. (Frend *v.* Dennett, 4 C. B. N. S. 576, 27 L. J. C. P. 314.) The case subsequently was taken into equity, where Wood, Vice-Chancellor, held that boards of health had no power to make contracts

binding on the rates of their districts unless those contracts were made in the mode prescribed by the Act. (Frend *v.* Dennett, 5 L. T. N. S. 73.) So that urban authorities or their officers cannot make binding contracts for amounts exceeding the prescribed limits unless such contracts are made under their common seal. This has been followed by the Court of Appeal, who have held on the words of this section that an urban authority cannot be made liable, even for the cost of work which a jury found to be necessary, in the absence of a contract under seal. (Hunt *v.* Wimbledon Board, 4 C.P.D. 48, 48 L. J. C.P. 207.) Nor for works ordered in writing by the surveyor to make good deficiencies in the work of a contractor under seal. (Young *v.* Mayor of Leamington, 8 Q. B. D. 579; 51 L. J. Q. B. 292.) Sec. 174.

But if the contract is originally for a sum less than £50, and by accumulation of items the sum due exceeds £50, the contract need not be under seal. (Eaton *v.* Barker, 7 Q. B. D. 529; 50 L. J. Q. B. 444.)

If a corporation profess to make a contract which is not binding on them by reason of not being under seal, they cannot enforce it against the other party. (Mayor of Kidderminster *v.* Hardwicke, 9 L. R. Ex. 13; 43 L. J. Ex. 9.) So also if an urban authority make a good contract for work, and their subordinate vary the terms or order extras to be supplied by parol, they are not bound by his acts, and have no right to pay for such extras out of the rates. (Lamprell *v.* Guardians of Billericay Union, 3 Ex. 283, 18 L. J. Ex. 282.)

(2.) Every such contract 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 specify some pecuniary penalty to be paid in case the terms of the contract are not duly performed.

The provisions in sub-section 2 are imperative and binding on both parties. (*See* Rutledge *v.* Farnham, 2 F. & F. 406.)

(3.) Before contracting for the execution of any works under the provisions of this Act, an urban authority shall obtain from their 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:

Secs. 174, 175. The proviso as to obtaining an estimate is only directory, and an urban authority would be bound by a contract with a third party, although no estimate or report had been obtained from their surveyor previously to entering into the contract. (Nowell *v.* Mayor of Worcester, 9 Ex. 457; 23 L. J. Ex. 139.) No estimate of the cost of repairing any work is necessary where the work when completed will not have to be maintained at the cost of the rates. (Cunningham *v.* Wolverhampton, 7 E. & B. 107; 26 L. J. M. C. 33.)

(4.) Before any contract of the value or amount of one hundred pounds or upwards is entered into by an urban authority 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 such authority shall require and take sufficient security for the due performance of the same:

Ten days' notice at least means exclusive of the day of giving the notice and of the day on which the contract is made. (Reg. *v.* Shropshire Justices, 8 A. & E.)

The notice should be given as directed by s. 266, *post*.

(5.) Every contract entered into by an urban authority in conformity with the provisions of this section, and duly executed by the other parties thereto, shall be binding on the authority by whom the same is executed and their successors and on all other parties thereto and their executors administrators successors or assigns to all intents and purposes. Provided that an urban authority 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 is mentioned in any such contract or in any bond or otherwise, for such sums of money or other recompense as to such authority may seem proper.

Purchase of Lands.

175. Any local authority may for the purposes and subject to the provisions of this Act purchase or take on lease, sell or

exchange any lands, whether situated within or without their district; they may also buy up any water-mill dam or weir which interferes with the proper drainage of or the supply of water to their district.

Where a local authority require property for the improvement of their district, such as widening a street, they are not confined like railway Companies to the narrow limits of the property actually required for the purpose specified, but are at liberty to take more if it suits them to do so. (Quinton *v.* Corporation of Bristol, 17 L. R. Eq. 524, 43 L. J. Ch. 783; Galloway *v.* Mayor of London, 1 L. R. H. L. 34, 35 L. J. Ch. 477.)

But for the power here given, a local authority would have no power to lease their lands (Tupper *v.* Nichols, 18 C. B. N. S. 140). A local authority may be restrained in alienating land it has acquired, if it seem probable that improvements may be facilitated in the district by such land being retained (Attorney-General *v.* Corporation of Sunderland, W. N. 1873, p. 174.)

Land held by a local authority under the powers and for the purposes of this Act is liable to be taken under an elegit for the debts of such authority (Worral Waterworks Co. *v.* Lloyd, 1 L. R. C. P. 719.)

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

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

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

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The Lands Clauses Acts are not printed here, as they would make this volume too bulky, and they do not properly come within its scope. The sections relating to compensation being often referred to in this Act will be found in the Appendix.

The 127th section, which is excluded from incorporation, is the section dealing with the sale of superfluous lands, which railway Companies and similar bodies are required to sell, but which apparently local authorities may keep if they think fit to do so. For a full explanation of that section the reader is referred to the recent case of G. W. R. *v.* May, L. R. 7 H. L. 283; 43 L. J. Q. B. 233.

The words "lands" is defined by s. 4, *ante*, p. 3, to include messuages buildings lands easements and hereditaments of any tenure; but the House of Lords have held that a provisional order for the compulsory purchase of water rights under this section was *ultra vires*, and refused to confirm it. The law officers of the Crown have advised that "in issuing a provisional order" under this section, the Local Government Board cannot confer upon a local authority power to purchase for the purposes of the Act and otherwise than by agreement any right to abstract water from any stream. The Committee appointed to consider the Amendment Bill, 1878, recommended the insertion of clauses to meet this difficulty, but such clauses do not form part of the Act. Further legislation in this direction may perhaps soon be expected. At present the only means of acquiring water rights compulsorily is by a private Act of Parliament. It seems doubtful whether rural authorities have any power to promote private Bills under 35 & 36 Vic. c. 91. If not, they, at any rate, cannot obtain power to take water compulsorily.

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

Publish once at the least in each of three consecutive weeks in the month of November, in some local newspaper circulated in their district, an advertisement describing shortly the nature of the undertaking in respect of which the lands are proposed to be taken, naming a place where a plan of the proposed undertaking may be seen at all reasonable hours, and stating the quantity of lands that they require; and shall further

Serve a notice in the month of December on every owner or reputed owner, lessee or reputed lessee, and occupier of such lands, defining in each case

the particular lands intended to be taken, and requiring an answer stating whether the person so served assents dissents or is neuter in respect of taking such lands. Sec. 176.

See ss. 266-7, *post*, as to service of notices.

(3.) On compliance with the provisions of this section with respect to advertisements and notices the local authority may, if they think fit, present a petition under their seal to the Local Government Board. The petition shall state the lands intended to be taken, and the purposes for which they are required, and the names of the owners lessees and occupiers of lands who have assented dissented or are neuter in respect of the taking such lands, or who have returned no answer to the notice; it shall pray that the local authority may, with reference to such lands, be allowed to put in force the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, and such prayer shall be supported by such evidence as the Local Government Board requires.

The Local Government Board have issued a general order dated August 12th, 1879, which sets out what is required in these matters. The order will be found in the Appendix.

(4.) On the receipt of such petition and on due proof of the proper advertisements having been published and notices served, the Local Government Board shall take such petition into consideration, and may either dismiss the same or direct a local inquiry as to the propriety of assenting to the prayer of such petition; but until such inquiry has been made no provisional order shall be made affecting any lands without the consent of the owners lessees and occupiers thereof:

See ss. 293–296, *post*, as to local inquiries.

(5.) After the completion of such inquiry the Local

Secs. 176-178.

Government Board may, by provisional order, empower the local authority to put in force, with reference to the lands referred to in such order, the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement or any of them, and either absolutely or with such conditions and modifications as the Board may think fit, and it shall be the duty of the local authority to serve a copy of any order so made in the manner and on the person in which and on whom notices in respect of such lands are required to be served.

Provided that the notices by this section required to be given in the months of November and December may be given in the months of September and October or of October and November, but in either of such last-mentioned cases an inquiry preliminary to the provisional order to which such notices refer shall not be held until the expiration of one month from the last day of the second of the two months in which the notices are given.

And any notices or orders by this section required to be served on a number of persons having any right in over or on lands in common, may be served on any three or more of such persons on behalf of all such persons.

177. Any local authority may, with the consent of the Local Government Board, let for any term any lands which they may possess, as and when they can conveniently spare the same.

178. The Chancellor and Council of the Duchy of Lancaster for the time being may, if they think fit (but subject and without prejudice to the rights of any lessee tenant or occupier), from time to time contract with any local authority for the sale of, and may (subject as aforesaid) absolutely sell and dispose of, for such sum as to the said Chancellor and Council may appear sufficient consideration, the whole or any part of any lands belonging to her Majesty her heirs or successors in right of

the said duchy, or any right interest or easement in through over or on any such lands, which for the purposes of this Act such local authority from time to time deem it expedient to purchase; and on payment of the purchase-money, as provided by "The Duchy of Lancaster Lands Act, 1855," the said Chancellor and Council may grant and assure to the said authority, under the seal of the said duchy, in the name of Her Majesty her heirs or successors, the subject of such contract or sale, and such money shall be dealt with as if such subject had been sold under the authority of "The Duchy of Lancaster Lands Act, 1855."

The Act mentioned is 18 & 19 Vic. c. 58.

ARBITRATION.

179. 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 authorised or directed to be settled by arbitration, then, unless both parties concur in the appointment of a single arbitrator, each party shall appoint an arbitrator to whom the matter shall be referred.

Arbitration under this and the following sections is the proper method of assessing compensation where the dispute between the parties is as to the amount of damage, but not where the dispute is as to whether in the abstract the local authority are liable to make compensation for such damage, if any, as may have been sustained. (Reg. *v.* Lancaster and Preston Railway Co. 6 Q. B. 759, 14 L. J. Q. B. 74; Bradby *v.* Southampton Local Board, 4 E. & B. 1014, 24 L. J. Q. B. 232; Reg. *v.* Burslem, 1 E. & E. 1077, 28 L. J. Q. B. 349; affirmed in C. S. 1088, 29 L. J. Q. B. 242.)

A local authority is not bound to give compensation for any damage which it may cause in the exercise of its statutory powers if such damage would not have given a cause of action against an individual acting without statutory powers. (Hall *v.* Mayor of Bristol, 2 L. R. C. P. 322, 36 L. J. C. P. 110; City of Glasgow Railway Co. *v.* Hunter, 2 L. R. Sc. App. 78.) If a statute authorises the doing of any act which would otherwise be illegal, no action will lie against the persons doing that act, and if there is

Secs. 179, 180.

any remedy it must be under the provisions of the statute which authorises the doing of the otherwise wrongful act. If the statute does not provide for compensation being given for such act, there is no remedy. (Hammersmith and City Railway Co. *v.* Brand, 4 L. R. H. L. 171, 38 L. J. Q. B. 365.) This Act, however, by s. 308, *post*, provides that full compensation shall be given where any person sustains any damage by reason of the exercise of any of the powers of the Act. (*See* also notes to that section.)

Compensation is only awarded in respect of damage apparent and capable of being estimated at the time the compensation is awarded, not in respect of all contingent and possible damages which may or may not arise subsequently and cannot be foreseen or even guessed at by the arbitrator at the time when he makes his award. (Lawrence *v.* Great Northern Railway Co., 16 Q. B. 643, 20 L. J. Q. B. 293.) But it has been held under the Lands Clauses Acts (which are incorporated with this Act by s. 176), that no second inquiry can be held to assess compensation for damages which might have been foreseen and for which compensation might have been obtained under the first inquiry. (Croft *v.* London and North-Western Railway Co., 3 B. & S. 436, 32 L. J. Q. B. 113; Chamberlain *v.* West End and Crystal Palace Railway Co., 2 B. & S. 605, 32 L. J. Q. B. 173.) And it has been lately held that compensation may be awarded for all prospective damage to land taken for the purposes of this Act (Uttley *v.* Todmorden Local Board, 31 L. T. N. S. 445); though, of course, the prospective damage here mentioned means such as can reasonably be foreseen by the arbitrator.

An arbitrator acting under this section cannot go into the question of title. (Reg. *v.* Metropolitan Commissioners of Sewers, 1 E. & B. 694, 22 L. J. Q. B. 234.) And an award giving compensation in no way precludes the local authority from disputing the other party's title to any compensation. (Beckett *v.* Midland Railway Co., 1 L. R. C. P. 241, 35 L. J. C. P. 163.) An arbitrator may find that no damage has been done, and award consequently that the claimant is entitled to no compensation. (Reg. *v.* Lancaster and Preston Railway Co., 6 Q. B. 659, 14 L. J. Q. B. 74; Bradby *v.* Southampton Local Board, 24 L. J. Q. B. 239, 4 E. & B. 1,014.)

180. With respect to arbitrations under this Act the following regulations shall be observed (that is to say) :—

The Lands Clauses Acts being incorporated by s. 176, *ante*, it would seem that there are two sets of clauses in this Act which provide for arbitration. It has been held that the assessment of compensation in cases where land is taken compulsorily by a local authority, should follow the rules given by the Lands Clauses Acts, and not those given here. (*Ex parte* Rayner, 3 Q. B. D. 446; 47 L. J. Q. B. 660.) The provisions of the Lands Clauses Act as to arbitration are 8 & 9 Vic. c. 18, ss. 25, *et seq.*, which will be found in the Appendix.

It would seem that the observance of all these regulations is only obligatory where the arbitration is compulsory; if the parties agree to arbitration for determining any question that arises under this Act, they

may agree to waive the strict observance of these regulations. (Collins *v.* South Staffordshire Railway, 7 Ex. 5.)

Sec. 180.

(1.) Every appointment of an arbitrator under this Act when made on behalf of the local authority shall be under their common seal, and on behalf of any other party under his hand, or if such party be a corporation aggregate, under their common seal:

(2.) Every such appointment shall be delivered to the arbitrators, and shall be deemed a submission to arbitration by the parties making the same:

(3.) 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.

(4.) If for the space of fourteen days after any matter by this Act authorised or directed to be settled by arbitration has arisen, and notice in writing by one party who has duly appointed an arbitrator has been given 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 fails 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:

If a local authority dispute their liability to make compensation, it is not safe for them to abstain from appointing an arbitrator, or from going before the arbitrator appointed by the claimant. If that arbitrator proceed *ex parte*, and make an award in a matter apparently within the provisions of the Act, the High Court will not set aside the award on the single ground that the local authority assert their non-liability. (Burgess *v.* Northwich Local Board, 37 L. T. N. S. 355.)

(5.) If before the determination of any matter so referred any arbitrator dies or refuses or becomes incapable to act, the party by whom such arbitrator was appointed may appoint in writing another person in his stead; and if such party fails so to do for the space of seven days after notice in writing from the other party in

Sec. 180.

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:

(6.) If a single arbitrator dies or becomes incapable to act before the making of his award, or fails to make his award within twenty-one days after his appointment, or within such extended time, if any, as may have been duly appointed by him for that purpose, the matters referred to him shall be again referred to arbitration under the provisions of this Act, as if no former reference had been made:

(7.) Where there is more than one arbitrator, the arbitrators shall, before they enter on the reference, appoint by writing under their hands an umpire, and if the person appointed to be umpire dies or becomes incapable to act, the arbitrators shall forthwith appoint another person in his stead; and if the arbitrators neglect or refuse to appoint an umpire for seven days after being requested so to do by any party to the arbitration, the Local Government Board shall, on the application of any such party, appoint an umpire:

Both arbitrators must sign the appointment of the umpire. (*Re* Hopper, 2 L. R. Q. B. 367, 36 L. J. Q. B. 97.)

The appointment of an umpire by the two arbitrators before entering on the reference, though after the expiration of the twenty-one days, and without extending the time for making the award, is good, if made within the time limited by the Act for making the umpirage. (Bradshaw's Case, 12 Q. B. 562, 17 L. J. Q. B. 362; Holdsworth *v.* Barsham, 2 B. & S. 480, 31 L. J. Q. B. 145; affirmed in C. S. 4 B. & S. 1, 32 L. J. Q. B. 289.)

By the Common Law Procedure Act, 1854, 17 & 18 Vic. c. 125, s. 12, power is given to the High Court to appoint an umpire where the arbitrators fail to do so. It would seem that this power applies to all arbitrations, and that the High Court, as well as the Local Government Board, may appoint an umpire under this Act. (*Ex parte* McBryde, 4 C. D. 200.)

(8.) If 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 may have been duly appointed by them for that purpose, the matters referred shall be determined by the umpire: Sec. 180.

An umpire must make his award within twenty-one days of his appointment unless he enlarge the time for so doing; his appointment dates not from the time when it is notified to him that the arbitrators differ, but from the time when they sign the document appointing him, and he can enlarge the time for the reference immediately after he is appointed. The Courts have no power under the 15th section of the Common Law Procedure Act, 1854, to enlarge the time for making an award beyond the three months after the time here limited has expired. (Killett *v.* Tranmere Local Board of Health, 13 W. R. 207, 34 L. J. Q. B. 37.) If an umpire proceed after the time for his so doing has expired, the appearance of one of the parties before him under protest will not estop them from afterwards disputing the validity of the award on the ground of want of jurisdiction. (Ringland *v.* Lowndes, 17 C. B. N. S. 514, 33 L. J. C. P. 337.)

(9.) The time for making an award by arbitrators under this Act shall not in any case be extended beyond the period of two months from the date of the submission, and the time for making an award by an umpire under this Act shall not in any case be extended beyond the period of two months from the date of the reference of the matters to him:

(10.) Before any arbitrator or umpire enters on a reference under this Act he shall make and subscribe the following declaration before a justice of the peace (that is to say)—

"I *A. B.* do solemnly and sincerly 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, 1875.

"*A. B.*"

(11.) Such declaration shall be annexed to the award when made; and any arbitrator or umpire who wilfully acts contrary to such declaration shall be guilty of a misdemeanour:

(12.) Any arbitrator arbitrators or umpire appointed by virtue of this Act may require the production of

Sec. 180.

such documents in the possession or power of either party as they or he may think necessary for determining the matters referred, and may examine the parties or their witnesses on oath:

Neither this section nor the Lands Clauses Acts give the arbitrators any authority to compel the attendance of witnesses before them, only to require the parties to produce such documents as may be necessary, and to examine on oath such witnesses as may be produced. If, however, the submission is made a rule of Court (cf. sub-sec. 14 and notes thereon), the Court or a judge may compel the attendance of necessary witnesses and the production of documents before the arbitrators under the penalties for contempt of Court. (3 & 4 Wm. IV. c. 42, s. 40.)

(13.) The costs of and consequent upon the reference shall be in the discretion of the arbitrator or arbitrators, or (in case the matters referred are determined by an umpire) of the umpire:

By the Lands Clauses Acts, 1869 (32 & 33 Vic. c. 18, s. 1), costs of a reference and award are to be taxed by any one of the taxing-masters of the superior Courts of law if either party so requires. The submission need not therefore be made a rule of Court in order to entitle the party to have his costs taxed. The arbitrator may award costs if he pleases generally, and need not himself tax them or ascertain how much is to be paid. (Holdsworth *v.* Wilson, 4 B. & S. 1, 34 L. J. Q. B. 289.)

Where land is taken compulsorily by a local authority, the assessment of compensation should follow the rules given in the Lands Clauses Acts, and not those given here. Consequently where an award gave more than had originally been offered by the local authority, but was silent as to costs, it was held that the owner of the land so taken could have his costs of the arbitration taxed and recover them from the local authority. (*Ex parte* Rayner 3 Q. B. D. 446, 47 L. J. Q. B. 660.)

(14.) Any submission to arbitration under the provisions of this Act may be made a rule of any of the superior Courts, on the application of any party thereto:

A submission may be made a rule of Court at any time either before or after the award is made (Hemming *v.* Swinnerton, 16 L. J. Ch. 287; Ross *v.* Ross 16 L. J. Q. B. 138), and may be made by one party against the will of the other. (*Ex parte* Harper, 18 L. R. Eq. 539; *see* also *re* Harper and G. E. R. Co., 20 L. R. Eq. 39, 43 L. J. Ch. 507.)

(15.) The award of arbitrators or of an umpire under this Act shall be final and binding on all parties to the reference.

The award, however, is not binding on persons who were not parties to the reference. (Tonbridge Wells Board *v.* Akroyd, 42 L. T. N. S. 640.)

The award (if good) is a final and conclusive judgment as between the parties in respect of all matters referred by the submission to arbitration. There is no appeal directly or indirectly against it. (Wilson *v.* King, 1 Cr. & M. 689; Dudgeon *v.* Martin, 1 H. L. Cas. 714; *ex parte* Wilson, 7 L. R. Ch. 45, 42 L. J. Ch. 164.)

Where an arbitrator executes any document as and for an award, he is *functus officio* and cannot afterwards remedy any mistake he may have made in it, but a superior Court can do so if the reference is made a rule of Court. (Mordue *v.* Palmer, 6 L. R. Ch 22, 40 L. J. Ch. 8.) Unless it is made a rule of Court the Courts have no power to set aside an award under any circumstances. (Bennett *v.* Watson, 5 H. & N. 831, 29 L. J. Ex. 357.)

By 9 & 10 Will. III. c. 15, s. 2, it is enacted that "any arbitration or umpirage procured by corruption or undue means shall be adjudged void and set aside, provided complaint of such corruption or undue practice be made in the Court where the rule is made for submission to such arbitration before the last day of the next term after such arbitration made and published to the parties." This period for complaining against an award is still preserved, though terms for most purposes have been abolished by the Judicature Acts (cf. Christ's College, Brecknock *v.* Martin, 3 Q. B. D. 16). But the Courts for good cause shown will now interfere, though the application is strictly too late. (Warburton *v.* Haslingdon Board, 48 L. J. C. P. 451; Leicester *v.* Grazebrook, 40 L. T. N. S. 883.) The publishing to the parties dates from the time when they have notice that the award is made. (McArthur *v.* Campbell, 5 B. & Ad. 518; Brooke *v.* Mitchell, 6 M. & W. 473.) The last day of the term next after the date when the award was made is not included in the time within which an application to set aside an award may be made. (*Re* Corporation of Huddersfield and Jacomb, 10 L. R. Ch. 92, 44 L. J. Ch. 96.)

The cases in which awards are set aside by the Courts as coming within the above provisions are numerous; in a late case it was laid down that no Court of law or equity will interfere to set aside an award unless corruption, partiality, misconduct or irregularity were distinctly proved against the arbitrator; mere suspicion is not sufficient. (Moseley *v.* Simpson, 16 L. R. Eq. 226, 42 L. J. Ch. 739.) To these heads may be added cases where the arbitrator acts for any reason without authority, and where his decision is therefore bad. (Cf. Killett *v.* Tranmere; Beckett *v.* Midland Railway Co., etc., *supra*.)

181. All questions referable to arbitration under this Act may, when the amount in dispute is less than twenty pounds, be determined at the option of either party before a Court of summary jurisdiction, but the Court may, if it thinks fit, require that any work in respect of which the claim of the local authority

Secs. 181, 182. is made and the particulars of the claim be reported on to them by any competent surveyor, not being the surveyor of the local authority; and the Court may determine the amount of costs incurred in that behalf, and by whom such costs or any part of them shall be paid.

The decision of the Court of summary jurisdiction acting as arbitrators under this section may be given verbally, and need not be in writing like an award by arbitrators under the preceding section. (Boyce *v.* Coombe, 32 L. J. M. C. 67.) It may be a very serious question whether magistrates when acting as arbitrators have any power to make an order as magistrates for the payment of the amount found by them to be due in their capacity of arbitrators, and whether application should not in such cases be made to other magistrates to enforce by distress the order fixing the amount made by the justices sitting as arbitrators. (Cook *v.* Ipswich Local Board, 6 L. R. Q. B. 465, 40 L. J. M. C. 169.)

BYE-LAWS.

182. All bye-laws made by a local authority under and for the purposes of this Act shall be under their common seal; and any such bye-law may be altered or repealed by a subsequent bye-law made pursuant to the provisions of this Act: Provided that no bye-law made under this Act by a local authority shall be of any effect, if repugnant to the laws of England or to the provisions of this Act.

Local authorities have no power to make bye-laws for carrying out the general powers of the Act, but only for the special powers (Reg *v.* Wood, 5 E. & B. 57; Reg. *v.* Rose, 24 L. J. M. C. 130). The bye-laws must be confirmed by the Local Government Board, s. 184, *post*, but it would seem that this confirmation would not make good, bye-laws which would otherwise be bad.

Bye-laws must be under and for the purposes of this Act, otherwise they will be of no effect. (Calder Navigation Company *v.* Pilling, 14 M. & W. 76, 14 L. J. Ex. 223.)

If a bye-law is unreasonable, it will be bad and of no validity. (Elwood *v.* Bullock, 6 Q. B. 383, 13 L. J. Q. B. 330.)

A bye-law may be good in part and bad in part. (Reg. *v.* Faversham, 8 T. R. 352; Reg. *v.* Lundie, 31 L. J. M. C. 157, 10 W. R. 267.)

A bye-law regularly made has the same force within the limits for which it is made, and with respect to the persons on whom it lawfully operates, as an Act of Parliament has upon the subjects of the realm at large. (Hopkins *v.* Swansea, Mayor of, 8 M. & W. 901.)

This Act expressly gives authority to make bye-laws as to the following

matters:—For cleaning streets and removal of refuse, s. 44; regulating common lodging-houses, s. 80, and houses let in lodgings, s. 90; as to offensive trades, s. 113; management of mortuaries, s. 141; as to the construction of new streets and regulation of their sewerage, structure of new buildings and ventilation and drainage of buildings, s. 157; regulation of public pleasure grounds, s. 164; regulation of market places and fairs, s. 167; hired horses and pleasure boats, s. 172; and hop pickers, s. 314. By the incorporation of other Acts this power of making bye-laws is much increased. Thus, the Baths and Washhouses Acts, the powers of which are conferred on local authorities by s. 10, confer a right to make bye-laws for the regulation of baths, washhouses, and open bathing places and swimming baths. Section cxxviii. of the Towns Improvement Clauses Act, *ante*, p. 203, gives power to make bye-laws for the regulation of slaughter houses and knackers' yards, and ss. lxviii. and lxix. of the Towns Police Clauses Act, *ante*, p. 230, give power of making bye-laws as to hackney carriages and public bathing places, and a similar power is given as to cemeteries by virtue of s. 2, sub-sec. 1, of the Public Health Interments Act, 1879, *ante*, p. 126.

183. Any local authority may, by any bye-laws made by them under this Act, impose on offenders against the same such reasonable penalties as they 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 forty shillings for each day after written notice of the offence from the local authority; but 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.

Nothing in the provisions of any Act incorporated herewith shall authorise the imposition or recovery under any bye-laws made in pursuance of such provisions of any greater penalty than the penalties in this section specified.

Continuing offence means an offence which is from its nature capable of continuance, such as improper drainage, smoke, &c. A conviction imposing a repeated penalty on a man for keeping standing a wall built contrary to the regulations of a local board was therefore held to be bad. (Marshall *v.* Smith, 8 L. R. C. P. 416, 42 L. J. M. C. 108.) This case is, however no longer law, at any rate as regards a building, being in contradiction to the express provisions of s. 158, *ante*.

184. Bye-laws made by a local authority under this Act, or for purposes the same as or similar to those of this Act under any local Act shall not take effect unless and until they have been submitted to and confirmed by the Local Government

Secs. 184, 185. Board, which Board is hereby empowered to allow or disallow the same as it may think proper; nor shall any such bye-laws be confirmed—

Unless notice of intention to apply for confirmation of the same has been given in one or more of the local newspapers circulated within the district to which such bye-laws relate one month at least before the making of such application; and

Unless for one month at least before any such application a copy of the proposed bye-laws has been kept at the office of the local authority, and has been open during office hours thereat to the inspection of the ratepayers of the district to which such bye-laws relate, without fee or reward.

The clerk of the local authority shall, on the application of any such ratepayer, furnish him with a copy of such proposed bye-laws or any part thereof, on payment of sixpence for every hundred words contained in such copy.

A bye-law required to be confirmed by the Local Government Board shall not require confirmation allowance or approval by any other authority.

If a local authority exceeds its jurisdiction in making a bye-law, the subsequent confirmation of that bye-law by the Local Government Board will not preclude inquiry into the validity of the bye-law. (Reg. *v.* Wood, 5 E. & B. 49. S.c. nom Reg. *v.* Rose, 24 L. J. M. C. 130.)

The conditions to be complied with by a local authority seeking confirmation of bye-laws are prescribed by a circular of the Local Government Board, the material parts of which will be found in the Appendix. They have also issued model bye-laws as to several of the subjects on which the local authorities have power to make bye-laws. These model bye-laws need not necessarily be adopted, and must usually be modified to suit the requirements of the district for which they are intended; but it will be well to consult them in framing new bye-laws.

185. All bye-laws made by a local authority under this Act, or for purposes the same as or similar to those of this Act under any local Act, shall be printed and hung up in the office of such authority; and a copy thereof shall be delivered to any ratepayer of the district to which such bye-laws relate, on his

application for the same; a copy of any bye-laws made by a rural authority shall also be transmitted to the overseers of every parish to which such bye-laws relate, to be deposited with the public documents of the parish, and to be open to the inspection of any ratepayer of the parish at all reasonable hours.

186. A copy of any bye-laws made under this Act by a local authority (not being the council of a borough), signed and certified by the clerk of such authority to be a true copy and to have been duly confirmed, shall be evidence, until the contrary is proved, in all legal proceedings of the due making confirmation and existence of such bye-laws without further or other proof.

187. Bye-laws made by the council of any borough under the provisions of section 90 of the Act of the 6th Wm. IV. c. 76, for the prevention and suppression of certain nuisances, shall not be required to be sent to a Secretary of State, nor shall they be subject to the disallowance in that section mentioned; but all the provisions of this Act relating to bye-laws shall apply to the bye-laws so made as if they were made under this Act.

The nuisances here referred to are nuisances which were not at the time of the passing of the recited Act (September, 1835) already punishable in a summary manner by virtue of any Act in force within the borough.

188. The provisions of this Act relating to bye-laws shall not apply to any regulations which a local authority is by this Act authorised to make; nevertheless any local authority may cause any regulations made by them under this Act to be published in such manner as they see fit.

As to regulations which a local authority is authorised to make, *see* ss. 10, 125, 143, 189, 200, 202.

OFFICERS AND CONDUCT OF BUSINESS OF LOCAL AUTHORITIES.

Officers of Local Authorities.

189. Every urban authority shall from time to time appoint fit and proper persons to be medical officer of health, surveyor, inspector of nuisances, clerk, and treasurer: Pro-

Sec. 189.

vided that if any such authority is empowered by any other Act in force within their district to appoint any such officer, this enactment shall be deemed to be satisfied by the employment under this Act of the officer so appointed, with such additional remuneration as they think fit, and no second appointment shall be made under this Act. Every urban authority shall also appoint or employ such assistants collectors and other officers and servants as may be necessary and proper for the efficient execution of this Act, and may make regulations with respect to the duties and conduct of the officers and servants so appointed or employed.

The words of the previous Act, 11 & 12 Vic. c. 63, s. 37, were very similar to these, and on them the Queen's Bench recently held that the clerk, and consequently it would seem the other officers of an urban authority, was removeable at pleasure, and that a *quo warranto* could not be granted to inquire into the title by which he held his office. (*Ex parte* Richards, 3 Q. B. D. 368, 47 L. J. Q. B. 498.) So also Fry, J., has held that a Court has no power to interfere with the discretion of the Local Government Board in dismissing a poor law medical officer, and refused an injunction to restrain them from dismissing him without a hearing. (Donahoo *v.* Local Government Board, W. N. 1882, p. 18, 46 L. T. N. S. 300.)

The appointments of clerk and surveyor to a local board of health need not be under seal. (Smith *v.* Hirst, 23 L. T. N. S. 665.) In older cases it has also been held that such appointments need not even be in writing, but that a resolution of the board recorded in their minute-book was sufficient. (Saunders *v.* Owen, 2 Salk. 467; Reg. *v.* Grimshaw, 10 Q. B. 747, 16 L. J. Q. B. 385; Smart *v.* West Ham, 10 Ex. 867, 24 L. J. Ex. 201; Reg. *v.* Greene, 17 Q. B. 793, 21 L. J. M. C. 137; *see*, however, subsequent notes to this section.)

Besides the officers whom the urban authority is under this section obliged to appoint, they may have an additional inspector appointed under the Alkali Act, 1880, by the Local Government Board, to see that the provisions of that Act are enforced. (44 & 45 Vic. c. 37, s. 19.)

Subject, in the case of officers any portion of whose salary is paid out of moneys voted by Parliament, to the powers of the Local Government Board under this Act, the urban authority may pay to the officers and servants so appointed or employed such reasonable salaries wages or allowances as the urban authority may think proper; and subject as aforesaid, every such officer and servant appointed under this Act shall be removeable by the urban authority at their pleasure.

No contract which creates a debt arises from the mere appointment to an office under this section, and no action will lie against the local authority for non-payment of salary in default of an express agreement to do so. (Bogg *v.* Pearse, 13 C. B. 534, 20 L. J. C. P. 99; Edwards *v.* Lowndes, 1 E. & B. 81, 22 L. J. Q. B. 104.) Possibly a mandamus would lie to compel the local authority to pay, but this seems doubtful. Such agreement must be made in the manner provided by the Act, and, if not under seal, where the amount sued for requires it, would probably be void. (Austin *v.* Guardians of Bethnal Green, 9 L. R. C. P. 91.) And it was held that a doctor whose appointment was not under seal could not recover damages for wrongful dismissal. (Dyte *v.* St. Pancras, 27 L. T. N. S. 42; *see* also notes to s. 174, *ante*.)

An attorney who is an officer of a local authority need not deliver a signed bill as condition precedent to recovering his salary secured to him as such officer by a proper agreement. (Bush's Executors *v.* Martin, 2 H. & C. 311, 33 L. J. Ex. 17.)

A local authority may also employ other persons besides their officers, and such persons may sue for their professional charges if they were properly retained in the first instance. (Hall *v.* Taylor, E. B. & E. 107, 27 L. J. Q. B. 311.)

Gratuities to officers cannot lawfully be given out of the rates, and if voted, may be disallowed at the audit, *see* s. 246, &c. (*Ex parte* Mellish, 8 L. T. N. S. 47.)

190. Every rural authority shall from time to time appoint fit and proper persons to be medical officer or officers of health and inspector or inspectors of nuisances; they shall also appoint such assistants and other officers and servants as may be necessary and proper for the efficient execution of this Act.

There may be awarded to the clerk and treasurer of the guardians of any union, in respect of the additional duties of such officers under this Act, such remuneration as the rural authority may, with the approval of the Local Government Board, determine. If the clerk of the union is unable or unwilling to undertake such additional duties, the assistant clerk of the union shall be appointed to discharge the same, with such remuneration as aforesaid.

191. A person shall not be appointed medical officer of health under this Act, unless he is a legally qualified medical practitioner; and the Local Government Board shall have the same powers as it has in the case of a district medical officer of a union with regard to the qualification appointment duties

Sec. 191. salary and tenure of office of a medical officer of health or other officer of a local authority any portion of whose salary is paid out of moneys voted by Parliament, and may by order prescribe the qualification and duties of other medical officers of health appointed under this Act.

A legally qualified medical practitioner is one who is duly registered in accordance with 21 & 22 Vic. c. 90. (*See* also orders of Local Government Board, in Appendix.)

By 4 & 5 Wm. IV. c. 76, s. 46, powers were given to the Poor Law Commissioners, by order under their hands and seal, to direct the overseers or guardians of any parish or union, or of so many parishes or unions as they should in such order declare to be united only for the purpose of appointing and paying officers, to appoint such paid officers with such qualifications as the commissioners should think necessary; and they were further empowered to define the duties of such officers, and the places or limits in which they were to be performed, and to direct the mode of appointment and determine the continuance in office or dismissal of such officers, and to regulate the amount of salaries payable to such officers respectively, and the time and mode of payment thereof and the proportion in which the respective parishes or unions should contribute to such payment. By an order issued by the Poor Law Board, in pursuance of the powers so given, it was ordered that district medical officers should be medical men duly qualified to practice both in medicine and in surgery. It has also been ordered that a district medical officer shall continue to hold his appointment till he dies or becomes legally disqualified to practice or be removed by the board. All the powers of the Poor Law Board were transferred to the Local Government Board by 35 & 36 Vic. c. 70, s. 2. The Local Government Board has issued orders respecting the appointment and duties of medical officers and inspectors of nuisances, which repeal all previous orders and are now in force. These orders will be found in the Appendix.

The same person may, with the sanction of the Local Government Board, be appointed medical officer of health or inspector of nuisances for two or more districts, by the local authorities of such districts; and the Local Government Board shall by order prescribe the mode of such appointment and the proportions in which the expenses of such appointment and the salary and charges of such officer, shall be borne by such authorities.

Any district medical officer of a union may, with the sanction of the Local Government Board and subject to such conditions as the said board may prescribe, be appointed a medical officer of health; and a medical officer of health may exercise any of

the powers with which an inspector of nuisances is invested by this Act. Secs. 191–193.

The sections in which an inspector of nuisances is mentioned by name—36, 41, 49, 116, 118 & 119 of this Act; s. iii. of the Public Health Water Act, 1878, *ante*, p. 75; and s. iv. of the Factory and Workshops Act, p. 93; he is no doubt included in all cases where an officer of a local authority is empowered to act for the suppression of nuisances.

In case of illness or incapacity of the medical officer of health a local authority may appoint and pay a deputy medical officer, subject to the approval of the Local Government Board.

192. 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 be eligible to hold 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 be eligible to hold or shall in any manner assist or officiate in the office of treasurer.

This section is so framed as to avoid the loophole which was found under a similar section of an earlier Act, whereby the clerk was appointed as assistant treasurer, and it was held that unless he knew he was appointed colourably and in evasion of the Act, he was not liable to the penalty (Hawkins *v.* Newman, 4 M. & W. 613).

Any person offending against this enactment 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.

193. Officers or servants appointed or employed under this Act by the local authority shall not in anywise be concerned or interested in any bargain or contract made with such authority for any of the purposes of this Act.

If any such officer or servant is so concerned or interested, or under colour of his office or employment exacts or accepts 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

Secs. 193 196. recovered by any person, with full costs of suit by action of debt.

Any person may sue for the penalty under this section, but an action brought by a common informer must be brought within one year of the commission of the offence (Dyer *v.* Best, 1 L. R. Ex. 152).

See notes to 64 of Schedule II., *post*, as to interest.

194. Before any officer or servant of a local authority enters on 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 authority by whom he is appointed shall 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.

It is not specified what is to happen if the local authority neglect to take sufficient security. Possibly the auditor under the powers of s. 247, sub-s. 7, might surcharge the individual members of the local authority with any sums which were lost in consequence of the absence of sufficient security.

195. Every officer and servant appointed or employed under this Act by a local authority shall, when and in such manner as may be required by such authority, 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, 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 on the balance of accounts.

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

196. If any officer or servant appointed or employed under this Act by a local authority—

Fails to render accounts, or to produce and deliver up

vouchers and receipts, or to pay over any moneys, as and when required by this Act, or

Fails within five days after written notice in that behalf from the local authority to deliver up to the local authority all books papers writings property and things in his possession or power, relating to the execution of this Act, or belonging to such authority,

the local authority may complain to any justice, and such justice shall thereupon summon the party charged to appear before a Court of summary jurisdiction.

On the appearance of the party charged, or on proof that the summons was personally served on him, or left at his last known place of abode or business, if it appears to the Court that he has failed to render any such accounts, or to pay over such moneys, or to produce and deliver up any such vouchers or receipts books papers writings property or things as aforesaid in accordance with the provisions of this Act, and that he still fails or refuses so to do, the Court may commit the offender to gaol, there to remain without bail until he has rendered such accounts, paid over such moneys, and produced and delivered up all such vouchers receipts books papers writings property and things in respect of which the charge was made. Provided that no person shall be imprisoned under this section for a period exceeding six months.

No proceeding under this section shall be construed to relieve or discharge any surety of the offender from any liability whatever.

It is in the discretion of the Court of summary jurisdiction whether to commit or not. If the Court refuse to commit, a mandamus will not lie to compel them to do so. (Reg. *v.* Norfolk, J. J., 4 B. & Ad. 238.)

This summons is in the nature of a civil and not a criminal proceeding. There is therefore no limitation as to the time within which it may be brought, the offence being the retaining of the books, &c. (Mayer *v.* Harding, 17 L. T. N. S. 140.)

Mode of Conducting Business.

197. Every urban authority shall from time to time provide and maintain such offices as may be necessary for

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transacting their business, and that of their officers and servants under this Act.

198. Where an urban authority are the council of a borough they shall, subject to the provisions of this Act, exercise and execute their powers, authorities and duties under this Act according to the laws for the time being in force with respect to municipal corporations in England.

199. Every urban authority (not being the council of a borough) 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 their powers and duties under this Act.

Meetings of local boards shall be held and the proceedings thereat shall be conducted in accordance with the rules as to meetings and proceedings contained in schedule 1 to this Act; and any Improvement Commissioners may, if they think fit, adopt all or any of such rules.

200. Every urban authority may from time to time appoint out of their own number so many persons as they may think fit for any purposes of this Act which in the opinion of such authority would be better regulated and managed by means of a committee: Provided that a committee so appointed shall in no case be authorised to borrow any money to make any rate or to enter into any contract, and shall be subject to any regulations and restrictions which may be imposed by the authority that formed it.

When a committee made certain minutes, which were subsequently submitted to their board, which passed a resolution approving of them, it was held that the minutes thereby became part of the proceedings of the board. (Barnsley *v.* Sedgwick, 2 L. R. Q. B. 185; 36 L. J. M. C. 65.) But a report of a finance committee signed by three of its members and stating that a debt was owed by their board was held not to be such a note in writing as to bind the board. (Bush's Executors *v.* Martin, 2 H. & C. 311; L. J. Ex. 17.) But the members of the committee are not, at any rate in the absence of misrepresentation on their part, personally liable on contracts which they make on behalf of the Board of which they are members, though such contracts are so made as not to bind the Board. (Eaton *v.* Basher, 7 Q. B. D. 529; 50 L. J. Q. B. 444.)

The powers conferred upon a committee must be exercised by the committee as a whole; it is not competent for it to delegate any of its powers to one or more members. There is it seems, however, no objection to the local authority delegating any question, if they think fit, to one of their members as a committee. (Cook *v.* Ward, 2 C. P. D. 255; 46 L. J. C. P. 554.)

201. A rural authority may, at any meeting specially convened for the purpose, delegate for the current year of their office all their powers to a committee consisting wholly of their own members; provided that one-third at least of such committee shall consist of ex officio guardians; but in case an adequate number of such ex officio guardians does not exist, then the number deficient shall be made up of elected guardians; and any such committee shall have the powers by this Act vested in the rural authority by which it was formed, and shall be deemed to be during such year of office as aforesaid the rural authority of the district.

See also s. 9, *ante*, p. 11.

202. A rural authority (including any committee so formed as aforesaid) may, at any meeting specially convened for the purpose, form for any contributory place within their district a parochial committee, consisting wholly of members of such authority or committee or partly of such members and partly of such other persons liable to contribute to the rate levied for the relief of the poor in such contributory place, and qualified in such other manner (if any) as the authority forming such parochial committee may determine.

A rural authority (including any committee so formed as aforesaid) may from time to time add to or diminish the number of the members, or otherwise alter the constitution of any parochial committee formed by it, or dissolve any parochial committee.

A parochial committee shall be subject to any regulations and restrictions which may be imposed by the authority which formed it: Provided that no jurisdiction shall be given to a parochial committee beyond the limits of the contributory

Secs. 202-206. place for which it is formed, and that no powers shall be delegated to a parochial committee except powers which the rural authority could exercise within such contributory place.

A parochial committee shall be deemed to be the agents of the authority which formed it, and the appointment of such committee shall not relieve that authority from any obligation imposed on it by Act of Parliament or otherwise.

A parochial committee may be empowered by the authority which formed it to incur expenses to an amount not exceeding such amount as may be prescribed by such authority; it shall report its expenditure to such authority as and when directed by such authority, and the amount so reported, if legally incurred, shall be discharged by such authority.

203. Any casual vacancy occurring by death resignation disqualification or otherwise in any committee may be filled up within six weeks, by the authority which formed such committee, out of qualified persons.

204. Meetings of any committee appointed under this Act shall be held, and the proceedings thereat shall be conducted (so far as such meetings and proceedings are not regulated by the authority appointing the committee) in accordance with the rules as to meetings and proceedings contained in schedule 1 to this Act.

205. Inspectors of the Local Government Board may attend any meetings of a rural authority or of an urban authority (being a local board) when and as directed by the Local Government Board.

The local authority of the district of Oxford shall not, for the purposes of this section, be deemed to be a local board.

206. Every local authority shall make an annual report, in such form and at such times as the Local Government Board may from time to time direct, of all works executed and of all sums received and disbursements made by them under and for the purposes of this Act during the preceding year, and shall send

a copy to the Local Government Board: an urban authority shall also publish a copy in some local newspaper circulating in their district. Secs. 206, 207.

PART VI.

RATING AND BORROWING POWERS, &c.

EXPENSES OF URBAN AUTHORITY AND URBAN RATES.

207. All expenses incurred or payable by an urban authority in the execution of this Act, and not otherwise provided for, shall be charged on and defrayed out of the district fund and general district rate leviable by them under this Act, subject to the following exceptions (namely) :—

Expenses chargeable on the district fund are those of sewers, ss. 14, 20, 24, 27, 30, 37, 39, 41; scavenging and cleansing streets and houses, 42, 45; water supply, 51, 64, 66, 69 (this is subject to the powers given by s. 10 of the Public Health Water Act, 1878, *ante*, p. 82, for ratepayers to require these expenses to be defrayed by water rents), 70; closing cellar dwellings, 75; abating nuisances in case the person by whose act or default the nuisances arise cannot be found, 100; providing against infection, 120, 124; hospitals, 131, 133; carrying out regulations of the Local Government Board for the prevention of epidemics, 134, 139; mortuaries, 141; places for post mortem examinations, 143; highways, 144, 146, 149, 153, 155; lighting streets, 161, 163; public pleasure-grounds, &c., 164; clocks, 165; markets, 166, 168; slaughter-houses, 169; salaries of officers, 189 (including part of the salary of an additional inspector under the Alkali Act, 1881, 44 & 45 Vic. c. 37, s. 19); expenses attendant on elections of members of local boards, sch. ii. 67; cost of meetings and of polls of owners and ratepayers, sch. iii. 8.

Besides these, which may be termed the ordinary expenses of an urban authority under this Act, they may have to pay damages awarded against them in case of wrongful acts of themselves or their servants, and compensation where they cause injury by the exercise of any of the powers given by the Act (308). Expenses incurred by officers or members of a local authority *bona fide* for the purposes of the Act are to be repaid to them out of the general fund (265).

Payment of auditors is provided for by s. 246, and compensation to officers deprived of their appointments by s. 309. Expenses of obtaining provisional orders by s. 298.

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The costs of litigation in Courts of law or equity properly undertaken by a corporation in a *bona fide* assertion of corporate rights may be charged on and defrayed out of the corporate funds. (Reg. *v.* Mayor of Tamworth, 17 W. R. 231.) A judgment against a local authority is an expense which is to be defrayed out of the rates. (Reg. *v.* Rotherham Local Board of Health, 8 E. & B. 906.) But only if the proceedings which resulted in the judgment were commenced within the six months required by s. 210, *post*. (Burland *v.* Kingston-upon-Hull, 3 B. & S. 271, 32 L. J. Q. B. 17.) It would seem that an urban authority being a corporation could not defray out of the rates costs of proceedings taken against one of their members for something done by him in connection with his official duties. (Pickering *v.* Stevenson, 41 L. J. Ch. 493; Wilmer *v.* Mayor of Liverpool, 41 L. J. Q. B. 175.)

Till recently it was doubtful whether the expenses of conducting legal proceedings and promoting or opposing private bills in Parliament were expenses which could properly be charged upon and defrayed out of rates; but now the Act 35 & 36 Vic. c. 91, s. 2, provides that "when in the judgment of the governing body of any district it is expedient for such governing body to promote or oppose any local and personal bill or bills in Parliament, or to prosecute or defend any legal proceedings necessary for the promotion or protection of the interests of the inhabitants of the district, it shall be lawful for such governing body to apply the borough fund borough rate or other the public funds or rates under the control of such governing body to the payment of the costs and expenses attending the same; and when there are several funds or rates under the control of the governing body, such body shall determine out of which fund or funds rate or rates such expense shall be payable and in what proportions: Provided that nothing in this Act contained shall authorise any governing body to promote any bill in Parliament for the establishment of any gas or waterworks to compete with any existing gas or water Company established under any Act of Parliament: Provided that no powers contained in this clause shall apply in any case where the promotion of or opposition to a bill by a governing body has been decided by a committee of either House of Parliament to be unreasonable and vexatious." Section 10 of the same Act limits the power given by the above section to cases where the object proposed by the bill was not attainable by provisional order. (*See* also s. 43 of this Act, *ante*.)

Before commencing any proceeding in Parliament the local authority should call a meeting of the ratepayers and obtain the assent of their district in the manner provided by sch. iii. of the Act. (cf. Attorney-General *v.* West Hartlepool Improvement Commissioners, 10 L. R. Eq. 152, 39 L. J. Ch. 624; Worksop *v.* Marris, 28 L. T. 266, &c.) It has, however, been held that where they omitted to do this, the members of a local board of health who were parties to a resolution for opposing a gas bill in Parliament were not personally liable for expenses incurred in the opposition. (Bailey *v.* Cuckson, 7 W. R. 16, 32 L. T. 124.) It is not necessary to obtain this assent if the purpose of incurring the expense is to

protect the property of the corporation. (Reg. *v.* Brecon, Mayor of, 40 L. T. N. S. 52.) Sec. 207.

Expenses of joint boards (283), and port authorities (290), which may include all or any of the foregoing, are chargeable on this fund; as are also those incurred by the persons appointed by the Local Government Board to perform the duties of a defaulting local authority (300-302.)

Urban authorities have also powers of spending money under various Acts which are referred to below, and it would seem that under most, if not all of these, they are payable out of the district fund.

Under the Bakehouse Regulation Act, 26-27 Vic. c. 40, s. 7, express power was given to local authorities to defray expenses incurred by them in the execution of the Act out of a rate; this Act is repealed and its place taken by the Factories and Workshops' Act, 1878, 41 Vic. c. 16, which makes no express provisions for expenses of working it, but by s. 4 provides that it shall be the duty of the sanitary authority, on their attention being called to anything in a factory remediable under the law relating to Public Health, to take such action as to them shall seem proper for the sake of enforcing the law. Their powers of incurring expenses in the matter are therefore those given by the Public Health Act.

Expenses under the Artisans' and Labourers' Dwellings Acts are by s. 3 of 31 & 32 Vic. c. 130, directed to be defrayed out of a special rate made for the purpose. Under the Artisans' and Labourers' Dwellings Improvement Act, 1875, 38 & 39 Vic. c. 36, s. 21, expenses of carrying out the provisions of that Act are chargeable on any rate out of which the local authority is authorised to pay any expenses incurred under the Sanitary Acts, and therefore may be payable out of the general district rate. Expenses under the Baths and Washhouses Act are payable in boroughs out of the borough fund, 9-10 Vic. c. 74, s. 4; elsewhere, out of the poor rate, s. 16; whether they are now payable out of the general district rate seems doubtful. (*Vide* note to s. 10, *ante*, p. 15.)

Expenses under the Labouring Classes Lodging House Acts are, by 14 & 15 Vic. c. 34, s. 8, chargeable on the district fund.

The Towns Improvement Clauses Act provides for imposition of special rates; but expenses incurred under the incorporated sections of the Waterworks Clauses Acts and the Towns Improvement Clauses Act must, it seems, be defrayed out of the general fund as here provided. So also under the Towns Police Clauses Act, 10 & 11 Vic. c. 89, and under the Market and Fairs Clauses Act, 10 Vic. c. 14, unless defrayed by tolls.

Expenses of taking a suburban common as a place of recreation (39 & 40 Vic. c. 56, s. 8, p. 185); also those incurred in executing the powers of the Rivers Pollution Prevention Act (39 & 40 Vic. c. 75, s. 8), and under the Canal Boats Act (40 & 41 Vic. c. 60, s. 8); and of providing cemeteries under the Act of 1879, *ante*, p. 125, are general expenses.

That if in any district the expenses incurred by an urban authority (being the council of a borough) in the execution of the Sanitary Acts were at the time of

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the passing of this Act payable out of the borough fund or borough rate, then the expenses incurred by that authority in the execution of this Act shall be charged on and defrayed out of the borough fund or borough rate; and

That if in any district the expenses incurred by an urban authority (being improvement commissioners) in the execution of the Sanitary Acts were at the time of the passing of this Act payable out of any rate in the nature of a general district rate leviable by them as such commissioners throughout the whole of their district, then the expenses incurred by that authority in the execution of this Act shall be charged on and defrayed out of such rate; and for the purposes of this section the council of the borough of Folkestone shall be deemed to be improvement commissioners; and

That where at the time of the passing of this Act the expenses incurred by an urban authority in the execution of certain purposes of the Sanitary Acts were payable out of the borough fund and borough rate, and the expenses incurred by such authority in the execution of the other purposes of the said Acts were payable out of a rate or rates leviable by that authority throughout the whole of their district for paving sewering or other sanitary purposes, then the expenses incurred by that authority in the execution of the same or similar purposes respectively under this Act shall respectively be charged on and defrayed out of the borough fund and borough rate, or out of the rate or rates leviable as aforesaid.

208. Where at the time of the passing of this Act the expenses incurred by an urban authority for sanitary purposes are payable otherwise than in the manner provided by the local government Acts, the Local Government Board may, on the

application of such authority or of any ten persons rated to the relief of the poor within the district, declare by provisional order that the expenses of such authority incurred in the execution of this Act shall be defrayed out of a district fund and general district rate to be levied by them under this Act, subject to the provisions of this Act with respect to the mode of defraying in certain cases the expenses of the repair of highways. Secs. 208-210

That is, under the provisions of private Acts of Parliament, or in some such way as that.

As to these provisions, *see* ss. 216 & 217, *post*.

General District Rate.

209. In the district of every urban authority whose expenses under this Act are directed to be defrayed out of the district fund and general district rate there shall be continued or established a fund called the district fund: a separate account called "the district fund account" of all money carried under this Act to the account of that fund shall be kept by the treasurer of the urban authority; and such moneys shall be applied by the urban authority in defraying such of the expenses chargeable thereon under this Act as they may think proper.

See s. 207, *ante*.

210. For the purpose of defraying any expenses chargeable on the district fund which that fund is insufficient to meet, the urban authority shall from time to time, as occasion may require, make by writing under their common seal, and levy in addition to any other rate leviable by them under this Act, a rate or rates to be called "general district rates."

As to these expenses, *see* note to s. 207, *ante*.

The rate would be bad if not made under the common seal as here directed. (Reg. *v.* Worksop Local Board of Health, 12 W. R. 710, 34 L. J. M. C.)

Any such rate may be made and levied either prospectively in order to raise money for the payment of future charges and expenses, or retrospectively in order to raise money for the

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payment of charges and expenses incurred at any time within six months before the making of the rate. In calculating the period of six months during which the rate may be made retrospectively, the time during which any appeal or other proceeding relating to such rate is pending shall be excluded.

The rate may be made retrospectively in order to raise money for the payment of charges and expenses incurred more than six months before the making of the rate, provided that under the circumstances the delay is shown to be excusable and not undue. (Worthington *v.* Hulton, 1 L. R. Q. B. 63, 35 L. J. Q. B. 61.)

As to charges and expenses, *see* note to s. 207, *ante*. They do not include charges thrown on a local authority by a provisional order duly confirmed, and such charges may therefore be paid out of the rates, though more than six months old. (Ward *v.* Lowndes, 1 E. & E. 940, 29 L. J. Q. B. 40.)

The six months run afresh from the time when the local authority acknowledges the debt to be due, if such acknowledgment be made within six months of the time when the debt was originally incurred. (Reg. *v.* Rotherham Local Board, 8. E. & B. 906, 27 L. J. Q. B. 156.) (Burland *v.* Kingston-upon-Hull, 3 B. & S. 271, 32 L. J. Q. B. 17.) In case of charges found to be due by arbitration, the six months run from the date of making the award. (Ringland *v.* Lowndes, 15 C. B. N. S. 189, 33 L. J. C. P. 25.)

Public notice of intention to make any such rate, and of the time when 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 urban authority 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.

The regular way to give notice of the intention to make the rate is by affixing a written or printed statement of that intention, as provided by s. 266, *post*, to the principal or most usual doors of all the churches and chapels of the Church of England within the district. (Reg. *v.* Whipp, 4 Q. B. 141; Ormerod *v.* Chadwick, 16 M. &. W. 367.) But a rate made under the corresponding section of the former Act has been held not to be made void by reason of non-publication on the church doors, and this section must therefore be read as being directory merely, not imperative. (Le Feuvre *v.* Miller, 8 E. & B. 321; 26 L. J. M. C. 176.)

"At least seven days" means exclusive of the day on which the notice is given and of that on which the rate is made. (Reg. *v.* Shropshire Justices, 8 A. & E. 173.)

211. With respect to the assessment and levying of general district rates under this Act the following provisions shall have effect (namely) :— Sec. 211.

(1.) General district rates shall be made and levied on the occupier of all kinds of property for the time being by law assessable to any rate for the relief of the poor, and shall be assessed on the full net annual value of such property, ascertained by the valuation list for the time being in force, or, if there is none, by the rate for the relief of the poor made next before the making of the assessment under this Act, subject to the following exceptions regulations and conditions (namely) :—

The rate can only be levied on the occupier of property who would be liable to contribute to a poor rate. "Occupation to be rateable must be of property yielding or capable of yielding a net annual value, that is to say, a clear rent over and above the probable annual cost of the repairs, insurance and other expenses, if any, necessary to maintain the property in a state to command such rent." Where property is occupied for the purposes of the government of the country no one is rateable in respect of such occupation, as they in theory belong to the Crown, who is the only occupier not made liable by 43 Eliz. c. 2. Property held for public purposes by individuals, or by trustees for charitable and quasi public purposes is rateable (Mersey Docks *v.* Cameron, 13 W. R. 1,069, 35 L. J. M. C. 1, 11 H. L. Cas. 443.)

Property held for public purposes should be rated only on an estimate of its value subject to use for public purposes, not on an estimate of what the hypothetical tenant would give for the property free from restrictions (Mayor of Worcester *v.* Droitwich Assessment Committee, 2 Ex. D. 46 L. J. M. C. 241.)

The assessment to the poor rate is conclusive as to the valuation of property under this Act, and it is not open to the person rated when sued under this Act for non-payment of rates to contend that he has been erroneously assessed. He should have appealed against his assessment to the poor-rate (Reg. *v.* Recorder of Liverpool, 20 L. J. M. C. 35). If a rate is erroneously calculated, a ratepayer who feels aggrieved must seek his remedy by appeal. While the rate remains good on the face of it he has no right to resist payment. (Bavin *v.* Hutchinson, 6 L. T. N. S. 504, 31 L. J. M. C. 229, and *see, post*, s. 251.)

(*a.*) The owner, instead of the occupier, may at the option of the urban authority, be rated in cases—

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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 so liable 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:

Provided that in cases where the owner is rated instead of the occupier, he shall be assessed on such reduced estimate as the urban authority deem reasonable of the net annual value, not being less than two-thirds nor more than four-fifths of the net 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 rate were levied on the occupiers:

See the similar provisions of the Small Tenements Act, 13 & 14 Vic. c. 99 (now repealed), and Stamper *v.* Sunderland Overseers decided thereon (3 L. R. C. P. 388; 37 L. J. M. C. 137). This section gives the rating authority a power, which under the Poor Law they do not possess, of rating the owners *compulsorily*, whether the property is occupied or not, but if they do so rate it, they must comply with the condition imposed above, and rate the property on an assessment of only one-half the ordinary rateable value. The discretion given to the urban authority is as to whether they choose to rate the owner instead of the occupier; if they do, it must be on the reduced assessment. (Reg. *v.* Barclay, 8 Q. B. D. 486; 51 L. J. M. C. 27.)

(*b.*) 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 be assessed in respect of the same in the proportion of one-fourth part only of such net annual value thereof:

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Tithe rent-charges are made subject to rates by 6 & 7 Wm. IV. c. 71, s. 69, and by s. 70 of that Act and s. 8 of 7 Wm. IV. and 4 Vic. c. 69 are to be assessed on the owner of the tithes, but recoverable from the occupier of the land from which the tithes are derived.

There is a difference of opinion in different localities as to the proper valuation of allotment and other gardens, which are not market or nursery gardens. There is no decision of the High Court on the subject, but it would seem consonant with the intention of the Legislature that such plots of ground, where not appurtenant to a house, should be assessed at the reduced rate, as they do not benefit by the urban expenditure, *i.e.* lighting, roads, &c., in the same proportion as house property does.

A wet dock is land covered with water, and therefore liable to be assessed at one-fourth part of its value only; but land adjacent and forming part of the dock, such as quays, &c., is not rateable on the lower scale. (Newport Dock Co. *v.* Newport, 2 B. & S. 641, 31 L. J. M. C. 266.) A reservoir for waterworks is land covered with water, but pipes and mains running from it are not. (Reg. *v.* Birmingham Waterworks Co., 1 B. & S. 84.) So also land occupied by the filter-beds of a canal company is "land covered with water;" but land used for preparing sand, &c., for the filter-beds and land occupied by pipes, does not come within the definition. (East London Waterworks Co. *v.* Leyton Sewer Authority, 6 L. R. Q. B. 669, 40 L. J. M. C. 190.)

A railway originally constructed without any Parliamentary powers and afterwards sold to a railway Company under an Act of Parliament and enlarged and used for public traffic under the provisions of that Act, and of the general statutes for regulating railways, does not come within the scope of the words "land used only as a railway constructed under the powers of any Act of Parliament for public conveyance," and is not therefore entitled to be rated on the lower scale. (North-Eastern Railway Co. *v.* Leadgate, 5 L. R. Q. B. 157, 39 L. J. M. C. 65.)

Adjuncts of a railway, such as stations, offices, &c., are not to be rated on the lower scale, only the line itself. (South Wales Railway Co. *v.* Swansea, 4 E. & B. 189, 24 L. J. M. C. 30.) But sidings and turntables used for loading trucks and found to be necessary for the working of a railway have been held to be liable only to pay at the lower rate. (Midland Railway Co. *v.* Birmingham, 13 L. T. N. S. 404.)

See s. 297, as to power of provisional orders to modify these exceptions, *post*.

(*c.*) If within any urban district or part of such district any kind of property is 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

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further or otherwise), be exempt from assessment to any general district rates under this Act, unless the Local Government Board by provisional order otherwise direct.

This clause applies only to property which is exempt under the local Act in respect of its nature, not to property which is exempt in respect of its situation. (Tait *v.* Carlisle, 2 E. & B. 492; Luscombe *v.* Plymouth Board of Health, E. B. & E. 691, 27 L. J. M. C. 299.)

(2.) If at the time of making any general district rate any premises in respect of which the rate may be made are unoccupied, such premises shall be included in the rate, but the rate shall not be charged on any person in respect of the same while 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 has 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:

If property is wholly unused it is not rateable. (Reg. *v.* St. Mary the Less, 4 T. R. 477.) But it was held under the Union Assessment Act, 1862, 25 & 26 Vic. c. 103, that it was proper to include in the valuation list houses completely finished and ready for occupation, though not actually occupied. (Reg. *v.* Malden, 4 L. R. Q. B. 326, 38 L. J. M. C. 125.) This clause recognises that case, and provides for the payment of the rate when the premises are occupied.

(3.) If any owner or occupier assessed or liable to any such rate ceases 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 may 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 may 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;

A company which goes into liquidation, and has its business carried on by the liquidators, does not cease to be occupier of its premises at the time of going into liquidation, so as to escape the liability to pay rates made prior to the liquidation. (*Re* Wearmouth Crown Glass Company, 19 C. D. 640.)

(4.) The urban authority may divide their district or any street therein into parts for all or any of the purposes of this Act, and from time to time abolish or alter any such divisions, and may make a separate assessment on any such part for 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 that if any expenses are incurred or to be incurred in respect of two or more parts in common, the same shall be apportioned between them in a fair and equitable manner.

The power given by this clause is discretionary, and if the urban authority do not choose to divide their district, the rate must be paid by the whole district, even though certain parts of it receive no apparent advantage from the works in respect of which the rate is made. (Dorling *v.* Epsom, 5 E. & B. 471, 24 L. J. M. C. 152.) In case of highways falling within the provision of s. 216, sub-s. 3, it has been held that an urban authority cannot divide their district. (*Re* Broughton Local Board, 12 L. T. N. S. 310.) The division may be according to the nature of the land as well as according to its locality. (Reg. *v.* London, Brighton and South Coast Railway, 41 L. T. N. S. 577.)

212. For the purpose of assessing general district rates any person appointed by the urban authority may inspect, take copies of, or make extracts from any valuation list or rate for

Secs. 212-214. the relief of the poor within the district or any book relating to the same.

Any officer having the custody of any such rate or book who refuses to permit such inspection, or the taking of such copies or extract, shall be liable to a penalty not exceeding five pounds.

Private Improvement Rate.

213. Whenever an urban authority have incurred or become liable to any expenses which by this Act are or by such authority may be declared to be private improvement expenses, such authority may, if they think fit, make and levy on the occupier of the premises in respect of which the expenses have been incurred, 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 per centum per annum, in such period not exceeding thirty years as the urban authority may in each case determine.

Provided 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 on and be paid by the owner for the time being of the premises so long as the same continue to be unoccupied.

If a local authority elect to proceed by a private improvement rate for the recovery of expenses incurred by them they cannot afterwards attempt to recover the same expenses summarily. (Eddleston *v.* Francis, 7 C. B. N. S. 586; Gould *v.* Bacup Local Board, *Times*, Feb. 21, 1881. *See* further notes to s. 150, *ante*.) Power to levy private improvement expenses is given by ss. 23, 36, 40, 62, 150 of this Act, and by s. iii. of the Public Health Water Act, 1878, *ante*, p. 76.

Compare s. 257, *post*.

214. Where 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 so made 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 that nothing in this section 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.

Rackrent is defined by s. 4, *ante*, p. 5.

If the rateable value of the premises increase during the occupation of a tenant, his rent remaining the same, he is not entitled to deduct from his rent money paid by him in respect of such increased rateable value, but only in respect of the value at which he was originally rated. (Smith *v.* Humble, 15 C. B. 321.)

215. 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 thereto may redeem the same, by paying to the urban authority 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:

Provided that money paid in redemption of any private improvement rate shall not be applied by the urban authority otherwise than in defraying expenses incurred by them in works of private improvement or in discharging the principal of any moneys borrowed by them to meet those expenses, whether by means of a sinking fund or otherwise.

Highway Rate.

Sec. 216.

216. In any urban district where the expenses under this Act of the urban authority are charged on and defrayed out of the district fund and general district rates, and no other mode of providing for repair of highways is directed by any local Act, the cost of repair of highways shall be defrayed as follows (that is to say): —

(1.) Where the whole of the district is rated for works of paving water supply and sewerage, or for 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 the district are not rated for works of paving water supply and sewerage, or for such of these purposes as are provided for in the district, the cost of repair of highways in those parts shall be defrayed out of a highway rate to be separately assessed and levied in those parts by the urban authority 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:

(3.) Where no public works of paving water supply and sewerage are established in the district the cost of repair of highways in the district shall be defrayed out of a highway rate, to be levied throughout the whole district by the urban authority as surveyor of highways:

Provided that where part of a parish is included within an urban district, and the excluded part was, before the constitution of that district, liable to contribute to the highway rates for such parish, such excluded part shall, unless in the case of an urban district constituted before the passing of this Act a resolution deciding that such excluded part should be formed into a separate highway district has been passed in pursuance of the Local Government Act 1858 Amendment Act 1861,

or unless such excluded part has been included in a highway district under the Highway Acts, for all purposes connected with the repairs of highways and the payment of highway rates, be considered to be and be treated as forming part of such district.

Provided also that in the case of an urban district constituted after the passing of this Act, a meeting of owners and ratepayers of the excluded part (to be convened and conducted in the manner provided by schedule iii. to this Act) may decide that such excluded part shall be a highway parish, and thereupon the excluded part shall for all purposes connected with highways surveyors of highways and highway rates be considered and treated as a parish maintaining its own highways; but the requisition for holding any such meeting shall be made within six months after the constitution of the urban district.

The Court of Quarter Sessions may by order direct that for any such excluded part a waywarden or waywardens shall be elected, and may invest any waywarden elected in pursuance of any such order with all or any of the powers of waywardens under the Highway Acts.

Where part of a township or place not comprised within a district was, before the Local Government Act came into force within the district, liable to contribute to the highway-rate of such township or place, the excluded part for all purposes of highway rates should be considered and treated as forming part of the district. (Reg. *v.* Neild, W. N. 1871, p. 121.)

217. It shall not be necessary for the urban authority, in the case of any highway rate made by them, to do the following acts or any of them (that is to say) :—

To lay such rate before any justices or obtain their allowance;

To annex thereto the signature of such urban authority;

To lay the same before the parishioners assembled in vestry;

To verify before any justices any accounts kept by them of such highway rates;

Secs. 217-220. and all such accounts shall be audited in all respects in the same way as the other accounts of the urban authority.

As to audit, *see* ss. 245–248, *post*.

General Provisions as to Urban Rates.

218. Every urban authority, before proceeding to make a general 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; and

The rateable value of the property assessable; and

The amount of rate which for those purposes it is necessary to make on each pound of such value;

and the estimate so made shall forthwith, after being approved of by the urban authority, be entered in the rate book, and be kept at their office open to public inspection during office hours thereat; but it shall not be deemed part of the rate, nor in any respect affect the validity of the same.

Under the previous public health Act it was held, following the analagous decisions on poor rates (cf. Re Eastern Counties Railway, 5 E. & B. 974; 25 L. J. M. C. 49, *nom.* ex parte Moulton Overseers), that if the estimate contained any objects for which the rate could not properly be levied, the rate was thereby rendered bad (Reg. *v.* Worksop, 5 B. & S. 951; 34 L. J. Q. B. 220). This section, however, expressly provides that the estimate is not to form part of the rate, and that decision is no longer in point.

219. 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; any person who, having the custody of any such estimate or rate, refuses to allow or does not permit such inspection or such copies or extracts to be taken, shall be liable to a penalty not exceeding five pounds.

220. Where the name of any owner or occupier liable to be rated under this Act is not known to the urban authority, 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. Secs. 220-222.

221. An urban authority 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 appears to the urban authority that he has been under-rated or over-rated, 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, 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 an amended rate shall be considered to have been made at the time when he first received notice of the amendment; and an amended rate shall not be payable by any person the amount of whose rate is increased by the amendment, or whose name is thereby newly inserted until seven days after such notice has been given to him.

As to this appeal, *see* s. 269, *post*.

222. All rates made or collected under 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 urban authority may from time to time appoint: Provided that no publication shall be required of any private improvement rate.

Poor rates are ordered by 17 Geo. II. c. 3, s. 1, and 7 Wm. IV. and 1 Vic. c. 45, s. 2, to be published by affixing a notice of their allowance on the church doors on the Sunday next after their allowance by the justices.

Secs. 222-227. This Act does not require any such allowance; the rates should consequently be published on the Sunday next after their making by the urban authority. (*See* s. 210, *ante*.)

See note to s. 210, as to the mode of publishing on church doors.

Non-publication will not make a rate void, though the duty of publishing rates is thrown on the local authority. (Le Feuvre *v.* Miller, 8 E. & B. 321; 26 L. J. M. C. 175. *See* also s. 210, *ante*.)

223. The production of the books purporting to contain any rate or assessment made under this Act shall, without any other evidence whatever, be received as *primâ facie* evidence in the making and validity of the rates mentioned therein.

224. Where it appears to an urban authority that any premises were sufficiently drained before the construction of any new sewer laid down by them, they may deduct from the amount of rates otherwise chargeable in respect of such premises such a sum for such time as they may under all the circumstances of the case deem just.

225. An urban authority may reduce or remit the payment of any rate on account of the poverty of any person liable to the payment thereof.

Under a somewhat similar provision, 54 Geo. III. c. 170, s. 11, it was held that remission of payment of a rate was not a receipt of parochial relief so as to disqualify a man from being registered as a Parliamentary voter. (Mashiter *v.* Dunn, 6 C. B. 30; 18 L. J. C. P. 13.)

226. Nothing in this Act shall alter or affect any lease, contract or agreement, made or entered into between the landlord and tenant of any premises in any place before that place was constituted or included in an urban district.

As to these leases, contracts and agreements, *see* further, s. 214, *ante*. *See* also note to s. 104, *ante*.

227. Any limit imposed on or in respect of any rate by any local Act of Parliament shall not apply to any rate required to be levied for the purpose of defraying any expenses incurred by an urban authority in the execution of this Act.

This section does not give power to impose rates on premises which have previously been exempt under the provisions of the local Act, but only says that, where the local Act has imposed a limit on the amount of

any rate, such limit on its amount shall not apply under the circumstances here contemplated. (*See* remarks of Blackburn, J., in Walton Commissioners *v.* Walford, 10 L. R. Q. B. 180; 44 L. J. Q. B. 144.)

228. Nothing in this Act shall be deemed to alter or interfere with any liability existing at the time of the passing of this Act of the Universities of Oxford and Cambridge respectively to contribute towards the expenses of paving and pitching repairing lighting and cleansing, under the powers of any local Act under which the Oxford and Cambridge commissioners respectively act, the several streets and places within the jurisdiction of such commissioners respectively.

If any difference arises between either of the said universities and the urban authority 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 arbitration in manner provided by this Act.

See ss. 179-181, *ante*.

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.

EXPENSES OF RURAL AUTHORITY.

229. The expenses incurred by a rural authority in the execution of this Act shall be divided into general expenses and special expenses.

General expenses (other than those chargeable on owners and occupiers under this Act) shall be the expenses of the establishment and officers of the rural authority, the expenses in relation to disinfection, the providing conveyance for infected persons, and all other expenses not determined by this Act or by order of the Local Government Board to be special expenses.

Where a rural authority becomes a highway authority under the High-

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ways and Locomotives Amendment Act, 1878, all expenses incurred by them in performance of their duties as such highway board are to be deemed to be general expenses of such authority within the meaning of this section. (41 & 42 Vic. c. 77 s. 5.)

So also expenses incurred by a rural authority in the execution of the Canal Boats Act, 1877, 40 & 41 Vic. c. 60, s. 8.

Special expenses shall be the expenses of the construction maintenance and cleansing of sewers in any contributory place within the district, the providing a supply of water to any such place and maintaining any necessary works for that purpose, if and so far as the expenses of such supply and works are not defrayed out of water rates or rents under this Act, the charges and expenses arising out of or incidental to the possession of property transferred to the rural authority in trust for any contributory place, and all other expenses incurred or payable by the rural authority in or in respect of any contributory place within the district, and determined by order of the Local Government Board to be special expenses.

Where the rural authority make any sewers or provide any water supply or execute any other work under this Act for the common benefit of any two or more contributory places within their district, they may apportion the expense of constructing any such work and of maintaining the same, in such proportions as they think just, between such contributory places, and any expense so apportioned to any such contributory place shall be deemed to be special expenses legally incurred in respect of such contributory place.

The overseers of any contributory place, if aggrieved by any such apportionment, may, within 21 days after notice has been given to them of the apportionment, send or deliver a memorial to the Local Government Board stating their grounds of complaint, and the said Board may make such order in the matter as to it may seem equitable, and the order so made shall be binding and conclusive on all parties concerned.

See note to s. 269, sub-s. 2, *post*, as to this limit of time.

General expenses shall be payable out of a common fund to be raised out of the poor-rate of the parishes in the district

according to the rateable value of each contributory place in manner in this Act mentioned. Secs. 229, 230.

See s. 230 & 232, *post.*

Special expenses shall be a separate charge on each contributory place.

The following areas situated in a rural district shall be contributory places for the purposes of this Act; that is to say:

(1.) Every parish not having any part of its area within the limits of a special drainage district formed in pursuance of the Sanitary Acts or of this Act, or of an urban district; and

(2.) Every such special drainage district as aforesaid; and

(3.) In the case of a parish wholly situated in a rural district, and part of which forms or is part of any such special drainage district as aforesaid, such portion of that parish as is not comprised within such special drainage district; and

(4.) In the case of a parish a part of which is situated within an urban district, such portion of that parish as is not comprised within such urban district, or within any such special drainage district as aforesaid.

230. For the purpose of obtaining payment from the several contributory places within their district of the sums to be contributed by them, the rural authority shall issue their precept to the overseers of each such contributory place requiring such overseers to pay, within a time limited by the precept, the amount specified in such precept to the rural authority or to some person appointed by them, care being taken to issue separate precepts in respect of contributions for general expenses and special expenses, or to make such expenses respectively separate items in any precept including both classes of expenses.

Where a contributory place is part of a parish as defined by this Act, the overseers of such parish shall for the purposes of

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this Act be deemed to be the overseers of such contributory place, and where any part of a contributory place is part of a parish the overseers of such parish shall for the like purposes be deemed to be the overseers of such part of such contributory place.

The overseers shall comply with the requisitions of such precept by paying the contribution required in respect of general expenses out of the poor-rate of their respective parishes, and with respect to special expenses by raising the contribution required by the levy (in the case of an entire parish on the whole of such parish, and in the case of a contributory place or part of a contributory place forming part of a parish, by the levy on such place, or such part thereof, exclusive of the rest of the parish) of a separate rate in the same manner as if it were a rate for the relief of the poor, with this exception (namely) :

That the owner of any tithes or of any tithe commutation rentcharge, or the occupier of any land used as arable meadow or pasture ground only, or as woodlands market gardens or nursery grounds, and the occupier of any land covered with water or used 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 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 :

See s. 211, *ante*, p. 266, as to these exemptions.

Provided that where the amount required by any precept or precepts from a contributory place in respect of special expenses is less than ten pounds, or is so small that a rate less than one penny in the pound would be required to raise the same, the overseers shall not assess and levy any special rate

for the same, but shall pay the amount as if it formed part of the contribution required from them in respect of general expenses. Sec. 230.

A separate rate under this section shall, as respects the powers of the overseers in relation to making assessing and levying such rate, and as respects the appeal against such rate, and all other incidents thereof except the purposes to which it is applicable, and such exemption as aforesaid, and except the allowance of justices which shall not be required, be subject to the same provisions as apply in law to a rate levied for the relief of the poor; and the overseers of a parish shall have the same powers of levying such separate rate in a contributory place or part of a contributory place forming part of their parish as they would have if such contributory place or such part thereof formed the whole of their parish.

Where a contribution for general expenses is required from a contributory place or part of a contributory place which is part of a parish the overseers shall from time to time levy such increase of rate from the contributory place or such part thereof as may be sufficient to recoup the parish for the sum it has paid on account of the contributory place or such part thereof in respect of general expenses under this Act, and carry the same to the general account of the parish, and such increase of rate shall be raised in such contributory place or part of a contributory place by an addition to the poor-rate, or by a separate rate to be assessed made allowed published collected and levied in the same manner as a poor-rate. The officers ordinarily employed in the collection of the poor-rate shall, if required by the overseers, collect any separate rate made under this section, and receive out of such separate rate such remuneration for the additional duty as the overseers with the consent of the vestry may determine.

The overseers shall at the expiration of their term of office pay any surplus in their hands arising from any separate rate levied in pursuance of this Act, above the amount for which

Secs. 230-232.

the rate was made, to the rural authority or to such person as they may appoint, to the credit of the contributory place within which or within part of which such rate was made, and such surplus shall go in reduction of the next call that may be made on such contributory place or such part thereof for the purpose of defraying the expenses incurred by the rural authority.

231. If the amount required by any precept of a rural authority to be paid by the overseers of any parish is not paid in manner directed by such precept, and within the time therein specified for that purpose, the rural authority shall have the like remedy for recovery from the overseers of such amount as is not paid as guardians have for the time being for recovery from overseers of contributions of parishes, and for that purpose the precept of the rural authority requiring the payment shall be conclusive evidence of the amount thereof.

The powers of guardians in this matter are given by 2 & 3 Vic. c. 84, s. 1. The guardians are to apply by their chairman to two justices, acting within the district wherein the parish is situated, for a summons calling on the overseers to show cause why the contribution should not be paid. The justices on hearing the case may issue their warrant for levying the contribution from the overseers by distress, if they think fit. They have not, however, an absolute discretion in the matter, and may be compelled to issue their warrant, if they refuse to do so on insufficient grounds. (Reg. *v.* Boteler, 4 B. & S. 959; 33 L. J. M. C. 101.) A refusal to enforce payment by a distress warrant would be a ground for appeal to a superior Court, under 20 & 21 Vic. c. 43. (London Union *v.* Acocks, 8 C. B. N. S. 760; 8 W. R. 608); *see* also 12 & 13 Vic. c. 103, s. 7, and 14 & 15 Vic. c. 105, s. 9.

232. Whenever a rural authority have incurred or become liable to any expenses which by this Act are or by such authority may be declared to be private improvement expenses, such authority may make and levy a private improvement rate in the same manner as private improvement rates may be made and levied by an urban authority; and all the provisions of this Act applicable to private improvement rates leviable by an urban authority shall apply accordingly to any private improvement rate leviable by a rural authority.

As to the cases in which under this Act expenses are or may be declared to be private improvement expenses, *see* note to s. 213, *ante*.

BORROWING POWERS.

233. Any local authority may, with the sanction of the Local Government Board, for the purpose of defraying any costs charges and expenses incurred or to be incurred by them in the execution of the Sanitary Acts or of this Act, or for the purpose of discharging any loans contracted under the Sanitary Acts or this Act, borrow or re-borrow, and take up at interest, any sums of money necessary for defraying any such costs charges and expenses, or for discharging any such loans as aforesaid.

An urban authority may borrow or reborrow any such sums on the credit of any fund or all or any rates or rate out of which they are authorised to defray expenses incurred by them in the execution of this Act; and for the purpose of securing the repayment of any sums so borrowed, with interest thereon, they may mortgage to the persons by or on behalf of whom such sums are advanced any such fund or rates or rate.

A rural authority may borrow or re-borrow any such sums, if applied or intended to be applied to general expenses of such authority, on the credit of the common fund out of which such expenses are payable, and if applied or intended to be applied to special expenses of such authority, on the credit of any rate or rates out of which such expenses are payable; and for the purpose of securing the repayment of any sums so borrowed, with interest thereon, they may mortgage to the persons by or on behalf of whom such sums are advanced any such fund rate or rates.

234. The exercise of the powers of borrowing conferred by this Act shall be subject to the following regulations (namely):

(1.) Money shall not be borrowed except for permanent works (including under this expression any works of which the cost ought in the opinion of the Local Government Board to be spread over a term of years);

(2.) The sum borrowed shall not at any time exceed, with

Sec. 234.

the balances of all the outstanding loans contracted by the local authority under the Sanitary Acts and this Act, in the whole the assessable value for two years of the premises assessable within the district in respect of which such money may be borrowed:

(3.) Where the sum proposed to be borrowed with such balances (if any) would exceed the assessable value for one year of such premises, the local Government Board shall not give their sanction to such loan until one of their inspectors has held a local inquiry and reported to the said board:

(4.) The money may be borrowed for such time, not exceeding sixty years, as the local authority, with the sanction of the Local Government Board, determine in each case; and subject as aforesaid, the local authority shall either pay off the moneys so borrowed by equal annual instalments of principal or of principal and interest, or they shall 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 with accumulations in the way of compound interest be sufficient after payment of all expenses to pay off the moneys so borrowed within the period sanctioned.

(5.) A local authority may at any time apply the whole or any part of a sinking fund set apart under this Act in or towards the discharge of the moneys for the repayment of which the fund has been established: Provided that they pay into the fund in each year and accumulate until the whole of the moneys borrowed are discharged, a sum equivalent to the interest which would have been produced by the sinking fund or the part of the sinking fund so applied.

(6.) Where money is borrowed for the purpose of discharging a previous loan, the time for repayment of the money so borrowed shall not extend beyond the unexpired portion of the period for which the original loan was sanctioned, unless with the sanction of the Local Government Board, and shall in no case be extended beyond the period of sixty years from the date of the original loan.

Where any urban authority borrow any money for the purpose of defraying private improvement 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 such authority, 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.

235. Where any local authority are possessed of any land works or other property for the purposes of disposal of sewage pursuant to this Act, they may borrow any moneys on the credit of such lands works or other property, and may mortgage such lands works or other property to any person advancing such moneys, in the same manner in all respects as if they were the absolute owner, both at law and in equity, of the lands works or other property so mortgaged. The moneys so borrowed shall be applied for purposes for which moneys may be borrowed under this Act; but it shall not be in any way incumbent on the mortgagees to see to the application of such moneys, nor shall they be responsibe for any misapplication thereof.

The powers of borrowing conferred by this section shall, where the sums borrowed do not exceed three-fourths of the purchase-money of such lands (but not otherwise), be deemed to be distinct from and in addition to the general borrowing powers conferred on a local authority by this Act. Any local authority or joint board may pay out of any rates leviable by them for purposes of this Act the interest on any moneys borrowed by such authority in pursuance of this section.

Secs 235-238.

See Preston *v.* Mayor of Great Yarmouth, 7 L. R. Ch. 655, 41 L. J Ch. 760.

236. 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 be sealed with the common seal of the local authority, and may be made according to the form contained in schedule iv. to this Act, or to the like effect.

See form H., in Appendix.

See further, s. 173, as to powers of local authorities to make contracts generally.

237. There shall be kept at the office of the local authority a register of the mortgages on 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. Every such register shall be open to public inspection during office hours at the said office, without fee or reward; and any clerk or other person having the custody of the same refusing to allow such inspection shall be liable to a penalty not exceeding five pounds.

238. Any mortgagee or other person entitled to any mortgage under this Act 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; and such transfers may be according to the form contained in schedule iv. to this Act, or to the like effect.

See form I., in Appendix.

There shall be kept at the office of the local authority a register of the transfers of mortgage charged on each rate, and within thirty days after the date of such deed of transfer, if executed within the United Kingom, or within thirty days after its arrival in the United Kingdom, if executed elsewhere, the same shall be produced to the clerk of the local authority, who shall, on payment of a sum not exceeding 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 until such entry is made the local authority shall not be in any way responsible to the transferee. Secs. 238, 239.

On the registration of any transfer, the transferee his executors or administrators, shall be entitled to the full benefit of the original mortgage and the principal and interest secured thereby; and any transferee may in like manner transfer his estate and interest in any such mortgage; and no person except the last transferee his executors or administrators shall be entitled to release or discharge any such mortgage or any money secured thereby.

If a transfer is registered, the local authority is thereby estopped from disputing the validity of the original mortgage. (Webb *v.* Herne Bay 5 L. R. Q. B. 642, 39 L. J. Q. B. 221.)

If the clerk of the local authority wilfully neglects or refuses to make in the register any entry by this section required to be made, he shall be liable to a penalty not exceeding twenty pounds.

There is no obligation to register a transfer which is totally unlike the form provided, and calculated to effect other and different objects from those intended by the statute. (Reg. *v.* General Cemetery Co. 6 E. & B. 415, 25 L. J. Q. B. 342.)

239. If at the expiration of six months from the time when any principal money or interest has become due on any mortgage of rates made under this Act and after demand in writing the same is 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 a Court of summary jurisdiction; and such Court may, after hearing the parties, 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 of collection, are fully paid.

On such appointment being made, all such rates, or such competent part thereof as aforesaid, shall be paid to the person

Secs. 239, 240. 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 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 is 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.

240. Where any person has advanced money for any expenses which by this Act are or by the local authority may be declared to be private improvement expenses, the local authority, 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 in schedule iv. to this Act to such person of a yearly rentcharge issuable out of the premises in respect whereof such advance has been made, or out of such part thereof, to be specified in such grant, as the local authority may think proper and sufficient.

See Form K., in Appendix.

Such rentcharge shall be personal estate, and shall begin to accrue from the day of completion of the works on which the money advanced has been expended, and shall 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 said grant, together with interest thereon respectively, at a rate not exceeding six pounds per centum per annum on the sum from time to time remaining unpaid, shall be repaid at the end of the said term.

The provisions of this Act with respect to deduction from the rent of a proportion of private improvement rates, and with respect to redemption of private improvement rates shall, mutatis mutandis, apply to rentcharges granted under this section.

As to these provisions, *see* ss. 214 & 215, *ante*.

241. Rentcharges issued 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 provisions of this Act.

As to rentcharges, *see* ss. 213–215 and 240. Registration is provided for by ss. 237–8.

242. The Public Works Loan Commissioners may, if they see fit, on the application of any local authority, make any loan to such authority for any of the purposes of this Act on the security of any fund or rate applicable to any of the purposes of this Act, without requiring any further or other security.

243. The Public Works Loan Commissioners may, on the application of any local authority and on the recommendation of the Local Government Board, make any loan to such authority in pursuance of any powers of borrowing conferred by this Act, whether for works already executed or yet to be executed, on the security of any fund or rate applicable to any of the purposes of this Act, and without requiring any further or other security, such loan to be repaid within a period not exceeding fifty years and to bear interest at the rate of three and a-half per centum per annum, or such other rate as may, in the judgment of the Commissioners of the Treasury, be necessary in order to enable the loan to be made without loss to the Exchequer:—

Provided—

(1.) That in determining the time when a loan under this section shall be repayable, the Local Government Board shall have regard to the probable duration and continuing utility of the works in respect of which the same is required;

(2.) That this section shall not extend to any loan required for the purpose of defraying expenses incurred by the Local Government Board in the performance of the duty of a defaulting local

Secs. 243-246.

authority after the passing of the Public Health Act, 1872.

In the case of a loan made before the passing of the Public Health Act, 1872, to any local authority in pursuance of any powers conferred by the Sanitary Acts, the Public Works Loan Commissioners may reduce the interest payable thereon to the rate of not less than three and a-half per centum per annum.

244. Joint boards and port sanitary authorities under this Act, and the local board of health of any main sewerage district and any joint sewerage board constituted under any of the Sanitary Acts and existing at the time of the passing of this Act shall, for the purposes of their constitution, have like powers of borrowing on the credit of any fund or rate applicable by them to purposes of this Act or on the credit of any sewage land and plant, as are by this Act conferred on local authorities, and in the exercise of those powers shall be subject to the like restrictions; and the Public Works Loan Commissioners may make any loan to any of the above-mentioned authorities which they may make to a local authority under this Act.

As to these bodies, *see* ss. 279–292, *post*. The powers of borrowing given by this section are new.

AUDIT.

Audit of Accounts of Local Authorities.

245. Accounts of the receipts and expenditure under this Act of every local authority shall be made up in such form and to such day in every year as the Local Government Board may appoint.

246. Where an urban authority are the council of a borough, the accounts of the receipts and expenditure under this Act of such authority 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. Secs. 246, 247.

Each of such auditors shall in respect of each audit be paid such reasonable remuneration, not being less than two guineas for every day in which they are employed in such audit, as such authority from time to time appoint. Any order of such authority 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.

The order may be removed by certiorari into the Court of Queen's Bench, "to be moved for according to the usual practice of the said Court with respect to writs of certiorari, and such order may be disallowed or confirmed upon motion and hearing with costs according to the judgment and discretion of the said Court." (7 Will. IV. and 1 Vic. c. 78, s. 4.)

247. Where an urban authority are not the council of a borough the following regulations with respect to audit shall be observed (namely):—

(1.) The accounts of the receipts and expenditure under this Act of such authority shall be audited and examined once in every year, as soon as can be after the 25th day of March, by the auditor of accounts relating to the relief of the poor *for the union in which the district of such authority or the greater part thereof is situate, unless such auditor is a member of the authority 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 Government Board:*

(2.) *There shall be paid to such auditor in respect of each audit under this Act such reasonable remuneration, not being less than two guineas for every day in which he is employed in such audit, as such authority from time to time appoint, together with his expenses of travelling to and from the place of audit:*

Sec. 247.

The words in *italics* are repealed by the District Auditors Act, 1879, 42 Vic. c. 6. By that Act all district auditors are now paid by the State, and the expenses of audit are charged on the local authority whose accounts are audited by means of ad valorem stamps. By s. 5 of that Act the Local Government Board may from time to time make such regulations as are necessary respecting the audit of accounts. These regulations may apparently over-rule the succeeding portions of this section.

(3.) Before each audit such authority shall, after receiving from the auditor the requisite appointment, give at least fourteen days' notice of the time and place at which the same will be made and of the deposit of accounts required by this section, by advertisement in some one or more of the local newspapers circulated in the district; and the production of the newspaper containing such notice shall be deemed to be sufficient proof of such notice on any proceeding whatsoever:

At least 14 days means exclusive of the day on which the notice is given and of the day on which the audit is held. (Reg. *v.* Shropshire Justices, 8 A. & E. 173.)

(4.) A copy of the accounts duly made up and balanced, together with all rate books account books deeds contracts accounts vouchers and receipts mentioned or referred to in such accounts, shall be deposited in the office of such authority, and be open, during office hours thereat, to the inspection of all persons interested, for seven clear days before the audit, and all such persons shall be at liberty to take copies of or extracts from the same, without fee or reward; and any officer of such authority duly appointed in that behalf neglecting to make up such accounts and books or altering such accounts and books, or allowing them to be altered when so made up, or refusing to allow inspection thereof, shall be liable to a penalty not exceeding five pounds:

By s. 7 of 42 Vic. c. 6, in case a local authority fail duly to make a financial statement, the authority or clerk or treasurer or other officer in default is liable to a fine of £20 for each offence. The fine may be recovered by action in the High Court of Justice.

(5.) For the purpose of any audit under this Act every auditor may, by summons in writing, require the production before him of all books deeds contracts accounts vouchers receipts and 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 receipts 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 receipts 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 on persons guilty of wilful and corrupt perjury. Sec. 247.

Under a similar provision of the Municipal Corporation Act, 5 & 6 Wm. IV. c. 76, it has been held that the penalty for not signing is incurred, though the neglect to do so is neither wilful nor corrupt, unless the defendant shows that he was prevented by some *vis major* from signing. (Reg. *v.* Durrell, 12 A. & E. 460.)

(6.) Any ratepayer or owner of property in the district may be present at the audit, and may 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.

(7.) Any auditor acting in pursuance of this section shall disallow every item of account contrary to law, and surcharge the same on the person making or authorising the making of the illegal payment, and shall charge against any person accounting the

Sec. 247.

amount of any deficiency or loss incurred by the negligence or misconduct of that person, or of any sum which ought to have been but is not brought into account by that person, and shall in every such case certify the amount due from such person, and on 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.

Signature of a cheque for the sake of conformity may be such an authorisation of an illegal payment as to render the party signing liable for the amount of the cheque. (Joint Stock Discount Co. *v.* Brown, 8 L. R. Eq. 404.) A member of an urban authority who dissented from the unauthorised payment would not apparently be liable to be surcharged the amount of such payment. (Attorney-General *v.* Tottenham Local Board of Health, 27 L. T. N. S. 440.)

Compare the similar provisions in 7 & 8 Vic. c. 10, s. 32; *see* notes to s. 253, *post*, as to who is a party aggrieved.

(8.) 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 the Local Government Board, which Board shall have the same powers in the case of the appeal as it possesses in the case of appeal against allowances disallowances and surcharges by the said Poor-law auditors.

The conditions provided in case of disallowances under the Poor-laws are that the party aggrieved must give the auditor notice of his intention to apply for a *certiorari*, such notice to contain a statement of matter com-

plained of, which shall be the only point decided by the Court. The condition of the recognisance is to be to prosecute the *certiorari* without delay, and in the event of being unsuccessful to pay the auditor his taxed costs within a month of the decision of the Court. The auditor may appear at the hearing and defend his decision, at the cost of the district for which he was auditor, unless the Court see fit to order otherwise. The Court may also allow costs to the person prosecuting the *certiorari* if they see fit. (7 & 8 Vic. c. 101, s. 35.) Sec. 247.

As to *certiorari* in case of an attorney's bill, *see post*, s. 249.

(9.) Every sum certified to be due from any person by an auditor under this Act shall be paid by such person to the treasurer of such authority within fourteen days after the same has been so certified, unless there is an appeal against the decision; and if such sum is not so paid and there is no such appeal, the auditor shall recover the same from the person against whom the same has been certified to be due by the like process and with the like powers as in the case of sums certified on the audit of the poor-rate accounts, and shall be paid by such authority all such costs and expenses, including a reasonable compensation for loss of time incurred by him in such proceedings, as are not recovered by him from such person:

The auditor is to proceed as soon as may be to enforce payment of sums certified by him to be due. (7 & 8 Vic. c. 101, s. 32.) And the time within which he may do so is limited to nine months from the date of the audit or from the termination of any appeal therefrom, as the case may be. (12 & 13 Vic. c. 103, s. 9.)

Sums surcharged are to be recovered in the same way as penalties and forfeitures under 4 & 5 Will. IV. c. 76, s. 99, that is by a distress warrant issued by a court of summary jurisdiction. (Reg. *v.* Tyrwhit, 15 Q. B. 249; 19 L. J. M. C. 249.) The certificate of an auditor that a given sum is due is final unless appealed against, and the functions of the Court of summary jurisdiction in making an order for payment and in issuing a distress warrant in default are not judicial but purely ministerial. (Reg. *v.* Linford, 7 E. & B. 93; Reg. *v.* Finnis, 1 E. & E. 935; 28 L. J. M. C. 201.) But the Court may receive evidence to prove payment of the whole or any part of the sum due subsequently to the date when the accounts were made up, though prior to the time of the audit being held. (Reg. *v.* Fordham, 8 L. R. Q. B. 501; 42 L. J. M. C. 153.)

When an audit is closed, the auditor has no power subsequently to re-open

Secs 247-249. the accounts so as to correct an item which is found to have been wrongly passed. (Reg. *v.* Chiddingstone, 2 B. & S. 294; 31 L. J. M. C. 121.)

Costs and expenses include costs incurred in unsuccessfully attempting to enforce a surcharge. (Prest *v.* Royston Union, 33 L. T. N. S. 564.)

(10.) Within fourteen days after the completion of the audit the auditor shall report on the accounts audited and examined, and shall deliver such report to the clerk of such authority, who shall cause the same to be deposited in their office, and shall publish an abstract of such accounts in some one or more of the local newspapers circulated in the district.

Where the provisions as to audit of any local Act constituting a board of improvement commissioners are repugnant to or inconsistent with those of this Act, the audit of the accounts of such improvement commissioners shall be conducted in all respects in accordance with the provisions of this Act.

248. The accounts under this Act of every rural authority shall be audited by the same persons and in every respect in the same manner as the accounts of guardians are audited under the Acts for the relief of the poor for the time being in force.

These accounts will now come before the district auditors, 42 Vic. c. 6.

The accounts of the overseers collecting or paying any money for the purposes of this Act shall be audited in the same manner as the accounts of overseers collecting or paying any money for the purposes of the Acts relating to the relief of the poor for the time being in force.

An auditor shall, with respect to the accounts audited under this section, have the like powers and be subject to the like obligations in every respect as in the case of an audit under the Acts relating to the relief of the poor, and any person aggrieved by the decision of the auditor shall have the like rights and remedies as in the case of such last-mentioned audit.

This includes power for the auditor to see that the accounts are rightly apportioned as well as correct in the gross amount. (Reg. *v.* Calthrop, 4 B. & S. 228.)

249. On the application of any local authority, whose

accounts are required by this Act to be audited, to the Clerk of the Peace of the county in which the district of such authority is wholly or in part situated, the said Clerk or his deputy shall tax any bill due to any solicitor or attorney in respect of legal business performed on behalf of such authority; and the allowance of any sum on such taxation shall be *primâ facie* evidence of the reasonableness of the amount, but not of the legality of the charge.

The Clerk of the Peace shall be allowed for such taxation a remuneration after the rate to be fixed by the Master of the Crown Office, and declared by an order of the Local Government Board.

By an order of the Local Government Board, dated November 29, 1872, it was ordered that the Clerk of the Peace be allowed for taxation of every bill due to any solicitor in respect of legal business performed on behalf of any urban or rural authority at the rate of fourpence per sheet or folio of 70 words.

If any such bill is not taxed by the Clerk of the Peace or some other duly authorised taxing officer before being presented to the auditors or auditor, the decision of the auditors or auditor upon the reasonableness and the legality of the charge shall be final.

The local authority are to apply to have an attorney's bill taxed, and in default of so doing the auditor's decision upon the reasonableness and the legality of the charge in such bill is final as against them and cannot be removed by *certiorari* to be reviewed in case of a disallowance (Reg. *v.* Hunt, 6 E. & B. 408; 25 L. J. Q. B. 296). It would seem, however (though the point has not been expressly decided), that a ratepayer who felt aggrieved at the allowance of such bill would not be deprived of his remedy by *certiorari*.

250. The accounts under this Act of officers or assistants of any local authority who are required to receive moneys or goods on behalf of such authority shall be audited by the auditors or auditor of the accounts of such authority, with the same powers incidents and consequences as in the case of such last-mentioned accounts.

PART VII.

LEGAL PROCEEDINGS.

Prosecution of Offences and Recovery of Penalties, &c.

Sec. 251.

251. All offences under this Act, and all penalties forfeitures costs and expenses under this Act directed to be recovered in a summary manner, or the recovery of which is not otherwise provided for, may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts before a Court of summary jurisdiction.

Court of summary jurisdiction is defined by s. 4, *ante*, p. 8.

By the Summary Jurisdiction Act, 1879, 42 & 43 Vic. c. 49, s. 6, it is provided that "Where under any Act, whether past or future, a sum of money claimed to be due is recoverable on complaint to a Court of summary jurisdiction, and not on information, such sum shall be deemed to be a civil debt, and if recovered before a Court of summary jurisdiction shall be recovered in the manner in which a sum declared by this Act to be a civil debt recoverable summarily is recoverable under this Act, and not otherwise; and the payment of any costs ordered to be paid by the complainant or defendant in the case of any such complaint shall be enforced in like manner as such civil debt, and not otherwise." This will apply to forfeitures costs and expenses which must therefore be recovered, as provided by s. 35 of that Act, that is by distress only. The Court has no power to make an order for commitment on default of payment, unless satisfied that the person making default has the means to pay, and will not.

No action will lie for the recovery of expenses, &c., which under this Act may be recovered in a summary manner or the recovery of which is not otherwise provided for. "May be recovered" should be read as meaning "must be recovered if recovered at all." (Mayor of Blackburn *v.* Parkinson, 1 E. & E. 71, 28 L. J. M. C. 7; St. Pancras Vestry *v.* Batterbury, 2 C. B. N. S. 477, 26 L. J. C. P. 243.) So, too, where a statute creates an offence no other remedy for that offence can be pursued than what the statute gives. (Reg. *v.* Wigg, 2 Salk. 460.) But if the statute merely provide a new remedy for an old offence, either may be taken.

If the proceeding, though nominally criminal, is taken in order to enforce a civil right, the defendant or his wife may now give evidence—(40 Vic. c. 14, s. 1), which is as follows:—

"On the trial of any indictment or other proceeding for the non-repair of any public highway or bridge, or for a nuisance to any public highway river or bridge, and of any other indictment or proceeding instituted for the purpose of trying or enforcing a civil right only, every defendant to such indictment or proceeding, and the wife or husband of any such defendant, shall be admissible witnesses and compellable to give evidence."

Secs. 251, 252.

The Court of summary jurisdiction, when hearing and determining an information or complaint under this Act, shall be constituted of two or more justices of the peace, in petty sessions, sitting at a place appointed for holding petty sessions, or of some magistrate or officer for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace sitting at some Court or other place appointed for the administration of justice.

It has been held under the former Public Health Act that justices not acting for the petty sessional division within which an offence under the Act was committed had no jurisdiction to convict. (Reg. *v.* Brodhurst, 11 W. R. 425, 32 L. J. M. C. 168.)

252. Any complaint or information made or laid in pursuance of this Act, shall be made or laid within six months from the time when the matter of such complaint or information respectively arose.

These words are very general, and seem intended to obviate the difficulty which was found in working the original Summary Jurisdiction Act, 11 & 12 Vic. c. 43, s. 11, which fixed the same limit of time for laying the complaint or information, and under which it was held that proceedings under which the justices had a merely ministerial duty to perform were not thus limited in point of time. (Sweetman *v.* Guest, 3 L. R. C. P. 262, 37 L. J. M. C. 59.)

There is a similar limitation in the Metropolis Local Management Act, 1862, 25 & 26 Vic. c. 102, and on it Malins, V.-C., held that in case of a building the time ran from the date when it was discovered to be in contravention of the Act. (Brutton *v.* St. George's, Hanover Square, 13 L. R. Eq. 339; 41 L. J. Ch. 134.) The Common Pleas, however, refused to follow that case, and held that the clause did not apply to such matters at all. (Bermondsey Vestry *v.* Johnson, 8 L. R. C. P. 441; 42 L. J. M. C. 67.) More recently the Court of appeal from inferior Courts have held that the words of 11 & 12 Vic. c. 43, s. 11, applied to all orders which justices are empowered to make. (Morant *v.* Taylor, 1 Ex. D. 188; 45 L. J. M. C. 78.) And the Queen's Bench have followed and approved of this last case in Paddington Vestry *v.* Snow (45 L. T. N. S. 475). *See* alse Simcox *v.* Handsworth Board (8 Q. B .D. 39; 51 L. J. Q. B. 161). Whichever view of the earlier statutes is correct, it would now seem that this clause applies to all matters dealt with by a Court of summary jurisdiction.

If the complaint is not made within the six months limited by the Act, a conviction under it would be bad. (*Re* Edmundson, 17 Q. B. 67; Eddleston *v.* Francis, 7 C. B. N. S. 586; 3 L. T. N. S. 270.)

The fact that proceedings are instituted too late, or that for any reason the justices have no jurisdiction, is not a sufficient ground for an injunction

Secs. 252, 253. to restrain them. It might be a good answer to the proceedings before the justices, and the High Court will not assume beforehand that the justices will not give due effect to any legal defence to a case before them. (Kerr *v.* Preston Local Board, 6 C. D. 463; 46 L. J. Ch. 409.)

The description of any offence under this Act in the words of this Act shall be sufficient in law.

Any exception exemption proviso excuse or qualification, whether it does or does not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information; and if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant.

253. Proceedings for the recovery of any penalty under this Act shall not, except as is in this Act expressly provided, be had or taken by any person other than by a party aggrieved, or by the local authority of the district in which the offence is committed, without the consent in writing of the Attorney-General.

There has been great difference of opinion as to how far actions for penalties for acting on local boards when disqualified could be brought without the consent of the Attorney-General. Under the former Public Health Act it was held that a ratepayer is not a party aggrieved, so as to maintain an action for a penalty against a member of a board for acting in a matter where he had an interest, and was therefore disqualified. (Boyce *v.* Higgins, 14 C. B. 1, 23 L. J. C. P. 5.) And a defeated candidate at an election is not a party aggrieved, so as to sue a disqualified person, who has been returned and voted as a member of a local board, for the penalties imposed for so doing. (Hollis *v.* Marshall, 2 H. & N. 755, 27 L. J. Ex. 235.) If the Attorney-General's consent has not been duly obtained that is a ground for staying proceedings in the action. *Ib.*

Since the passing of this Act the Queen's Bench Judges have held that a clerk of a Board, who resigned his post from fear of being dismissed is not a party aggrieved so as to institute proceedings against a member of the Board for acting while disqualified. (Rochfort *v.* Atherley, 1 Ex. D. 571; Smith *v.* Fieldhouse, 35 L. T. N. S. 602.) But have subsequently held that a candidate at an election may without the consent of the Attorney-General institute proceedings against persons charged with fabricating voting papers at that election. (Verdin *v.* Wray, 2 Q. B. D. 608, 46 L. J. M. C. 170.) And the Court of Appeal have more recently held that an action for the penalty for acting when disqualified may be maintained without the consent of the Attorney-General by a ratepayer

against a member of a local Board. (Fletcher *v.* Hudson, 5 Ex. D. 287.) Sec. 253.
The authority of the earlier cases of Boyce *v.* Higgins and Hollis *v.* Marshall, must therefore be considered as shaken, even if those cases are not impliedly overruled.

By s. 8 of the Rivers Pollution Prevention Act, 1876, 39 & 40 Vic. c. 75, it is enacted that—

"Every sanitary authority shall, subject to the restrictions in this Act contained, have power to enforce the provisions of this Act in relation to any stream being within or passing through or by any part of their district, and for that purpose to institute proceedings in respect of any offence against this Act which causes interference with the due flow within their district of any such stream, or the pollution within their district of any such stream, against any other sanitary authority or person, whether such offence is committed within or without the district of the first-named sanitary authority.

"Proceedings may also, subject to the restrictions in this Act contained, be instituted in respect of any offence against this Act by any person aggrieved by the commission of such offence."

Section 6 of the same Act is to the following effect:—

"Proceedings shall not be taken against any person under this part of this Act save by a sanitary authority, nor shall any such proceedings be taken without the consent of the Local Government Board: Provided always that if the sanitary authority, on the application of any person interested alleging an offence to have been committed, shall refuse to take proceedings or apply for the consent by this section provided, the person so interested may apply to the Local Government Board, and if that Board on inquiry is of opinion that the sanitary authority should take proceedings, they may direct the sanitary authority accordingly, who shall thereupon commence proceedings.

"The said Board in giving or withholding their consent shall have regard to the industrial interests involved in the case and to the circumstances and requirements of the locality.

"The said Board shall not give their consent to proceedings by the sanitary authority of any district which is the seat of any manufacturing industry, unless they are satisfied, after due inquiry, that means for rendering harmless the poisonous, noxious, or polluting liquids proceeding from the processes of such manufactures are reasonably practicable and available under all the circumstances of the case, and that no material injury will be inflicted by such proceedings on the interests of such industry.

"Any person within such district as aforesaid, against whom proceedings are proposed to be taken under this part of this Act, shall, notwithwithstanding any consent of the Local Government Board, be at liberty to object before the sanitary authority to such proceedings being taken; and such authority shall, if required in writing by such person, afford him an opportunity of being heard against such proceedings being taken, so far as the same relate to his works or manufacturing processes. The sanitary

Secs. 253-255.

authority shall thereupon allow such person to be heard by himself, agents, and witnesses, and after inquiry such authority shall determine, having regard to all the considerations to which the Local Government Board are by this section directed to have regard, whether such proceedings as aforesaid shall or shall not be taken; and where any such sanitary authority has taken proceedings under this Act, it shall not be competent to other sanitary authorities to take proceedings under this Act till the party against whom such proceedings are intended shall have failed in reasonable time to carry out the order of any competent Court under this Act."

It would therefore seem that, practically, proceedings to prevent pollution of streams by mining or manufacturing refuse can only be taken with the consent of the Local Government Board, and that an individual, however much aggrieved, is unable to take proceedings in the matter. Such consent, however, is not required for proceedings which are by the provisions of this Act relating to nuisances or offensive trades authorised to be taken by a local authority in respect of any act or default committed or taking place without their district, or in respect of any house, building, manufactory or place situated without their district.

254. Where the application of a penalty under this Act is not otherwise provided for, one-half thereof shall go to the informer and the remainder to the local authority of the district in which the offence was committed: Provided that if the local authority are the informer they shall be entitled to the whole of the penalty recovered; and all penalties or sums recovered by them on account of any penalty shall be paid over to their treasurer, and shall by him be carried to the account of the fund applicable by such authority to the general purposes of this Act.

See 29 & 30 Vic. c. 90, s. 61, Appendix.

Now the Court of summary jurisdiction may reduce any penalty and allow time for payment or take payment by instalments, 42 & 43 Vic. c. 49, ss. 4 & 6.

255. Where any nuisance under this Act appears to be wholly or partially caused by the acts or defaults of two or more persons, it shall be lawful for the local authority or other complainant to institute proceedings against any one of such persons, or to include all or any two or more of such persons in one proceeding; and any one or more of such persons may be ordered to abate such nuisance, so far as the same appears to the Court having cognisance of the case to be caused by his or their acts or defaults, or may be prohibited from continuing any acts or

defaults which, in the opinion of such Court, contribute to such nuisance, or may be fined or otherwise punished, notwithstanding that the acts or defaults of any one of such persons would not separately have caused a nuisance; and the costs may be distributed as to such Court may appear fair and reasonable.

Under the Nuisances Removal Act, 1855, it was thought doubtful whether proceedings could be taken to prevent a nuisance which was not caused by any one person, but by the collection of matters in themselves innocuous, but collectively a nuisance (Brown *v.* Bussell, 3 L. R. Q. B. 251.) These words are sufficient to meet that doubt. (*See* also St. Helen's Chemical Company *v.* St. Helen's Corporation, 1 Ex. D. 196; 45 L. J. M. C. 150.)

Proceedings 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.

Whenever in any proceeding under the provisions of this Act relating to nuisances, whether written or otherwise, it becomes 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.

Nothing in this section shall prevent persons proceeded against from recovering contribution in any case in which they would now be entitled to contribution by law.

See notes to s. 104, *ante*.

256. If any person assessed to any rate made under this Act by any urban authority fails to pay the same when due and for the space of fourteen days after the same has been lawfully demanded in writing, or if any person quits or is about to quit any premises without payment of any such rate then due from him in respect of such premises and refuses to pay the same after lawful demand thereof in writing, any justice may summon the defaulter to appear before a Court of summary jurisdiction to show cause why the rate in arrear should not be paid; and if the defaulter fails to appear, or if no sufficient cause for non-payment is shown, the Court may make an order for payment of

Secs. 256, 257. the same, and in default of compliance with such order, may by warrant cause the same to be levied by distress of the goods and chattels of the defaulter.

"May summon" should be read here to mean "must summon;" the justice has no discretion in the matter, but must act ministerially. (Reg. *v.* Newman, L. J. M. C. 117.) "When it is said in an Act of Parliament that it shall be lawful for the Court to do a certain thing, it means that it shall be done, in fact it is unlawful to do anything else." (*Per* James, L. J., in *ex parte* Neath Railway, 43 L. J. Ch., at p. 278.)

If the rate is good on the face of it and unappealed against, the Court of summary jurisdiction should not hear any objections, but must order payment, and in default issue their distress warrant. (Luton *v.* Davis, 2 E. & E. 678, 29 L. J. M. C. 173.) They cannot inquire whether a rate is bad, from including property which is not properly rateable, so long as there is no appeal against the rate. (Reg. *v.* Twopenny, 17 L. T. N. S. 266; *see* also Wilson *v.* Churchwardens of Sunderland, 17 C. B. N. S. 694; 34 L. J. C. P. 90; Luton Board of Health *v.* Davis, 2 E. & E. 671; 29 L. J. M. C. 173. Bavin *v.* Hutchinson, 6 L. T. N. S. 604; 31 L. J. M. C. 279.) A person, however, is not bound to appeal against a rate made on him in respect of premises not in his occupation. (Bristol *v.* Waite, 1 A. & E. 264.) And he may raise the question of occupation or no occupation when summoned before the Court of summary jurisdiction for non-payment of such rate—(Reg. *v.* Bradshaw, 2 E. & E. 836)—but not the question of whether his occupation is beneficial or not, which can only be raised by appeal against the rate. (cf. s. 269, *post*; Mersey Dock Co. *v.* Cameron, 4 L. T. N. S. 53, 9 W. R. 484.) So also if a rate is erroneously calculated on too high a scale, the ratepayer who is thereby aggrieved must pay in default of appeal. (Bavin *v.* Hutchinson, 6 L. T. N. S. 504, 31 L. J. M. C. 229.)

The costs of the levy of arrears of any rate may be included in the warrant for such levy.

A local authority claimed to rate several properties for private improvement expenses, and obtained orders for payment of these rates from a Court of summary jurisdiction, notwithstanding the objection of the owners that their property was not liable. The justices agreed to grant a case for the opinion of the Queen's Bench on this point to one owner, and it was understood that the remainder of the rates should abide the decision of that case. The appellant failed to take up the case; and thereupon Vice-Chancellor Malins, on the application of another owner of property affected, granted an injunction to restrain the local authority from enforcing their order for payment till another case could be taken up and the opinion of the Queen's Bench obtained thereon. (Ashworth *v.* Hebden Bridge Local Board, 47 L. J. Ch. 195.)

257. Where any local authority 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 under this Act or by any agreement with the local authority, such expenses may be recovered, together with interest at a rate not exceeding five pounds per centum per annum, from the date of service of a demand for the same till payment thereof, from any person who is for the time being owner of such premises when the works are completed for which such expenses have been incurred, and until recovery of such expenses and interest the same shall be a charge on the premises in respect of which they were incurred. Sec. 257.

As to the cases in which an owner of premises is made liable for expenses under this Act, *see* ss. 21, 23, 26, 36, 41, 46, 47, 49, 62, 70, 98, 104, 120, 150, 284 of this Act; and ss. xlvi., lxix. and lxxii. of the Waterworks Clauses Act, 1847, s. lxxv. of the Towns Improvement Clauses Act, and s. xxxiii. of the Towns Police Clauses Act, which are incorporated with this Act. This section would not, it seems, empower a local authority to recover expenses which an owner of property had agreed to pay under an erroneous notion that they were legally chargeable on his property, if in fact they were not so chargeable. (Lewis *v.* Cardiff Urban Authority, 47 L. J. M. C. 101.) An unsatisfied judgment for the expenses against a former owner of the premises does not prevent the expenses remaining a charge on the premises. (Bermondsey Vestry *v.* Ramsay, 6 L. R. C. P. 247, 40 L. J. C. P. 206.)

The person from whom these expenses may be recovered is the owner of the premises at the time when the work is done; not the owner to whom notice, requiring the work to be done, may have been given. (Hinton *v.* Swindon Board, 40 L. T. N. S. 424.)

Where these expenses are a charge on the premises, the local authority are not restricted to the six months prescribed by s. 252, *ante*, p. 299, as the limit of time for taking summary proceedings. The six months applies to summary proceedings *in personam*, but the right to recover instalments due in respect of a charge on the premises is only limited by the time prescribed by the ordinary statutes of limitation. (Tottenham Local Board *v.* Rowell, 15 C. D. 378; 50 L. J. Ch. 99.) They may be made a charge on the premises even though a mortgagee has become interested in them subsequently to the expenses being incurred and his security is lessened by the charge coming before him. (Birmingham Corporation *v.* Baker, 17 C. D. 782.) If the local authority have declared such expenses to be private improvement expenses, they remain a charge on the premises still, but proceedings can (probably) be only taken for the recovery of any instalments that are due, and not for the recovery of the whole amount. *Ib.* *See* further Sunderland Corporation *v.* Alcock, 51 L. J. Ch. 546. *See* also next note.

In all summary proceedings by a local authority for the recovery of expenses incurred by them in works of private

Sec. 257.

improvement, the time within which such proceedings may be taken shall be reckoned from the date of the service of notice of demand.

This section gives three months to the owner to dispute apportionment of expenses made by the surveyor, and if he chooses, to appeal to the Local Government Board under s. 268. At the expiration of his time for disputing, the right of the local authority to proceed to recover those expenses begins. (Jacomb *v.* Dodgson, 3 B. & S. 461, 32 L. J. M. C. 113.) If the local authority allow the full time for recovering expenses to expire, they cannot afterwards declare the expenses to be private improvement expenses repayable by instalments. (Wilson *v.* Mayor of Bolton, 7 L. R. Q. B. 105, 41 L. J. M. C. 4.)

By s. 256, proceedings cannot be taken to recover any rate till fourteen days have elapsed after the same has been lawfully demanded in writing. The notice of demand required by this section must be such a notice in writing, distinctly claiming payment of a given sum. A mere notice of apportionment of private improvement expenses is not a notice of demand sufficient to comply with the requirements of this section (cf. Greece *v.* Hunt, 2 Q. B. D. 389; 46 L. J. M. C. 202). And consequently a mere notice of apportionment, although it concludes with a demand for payment of the amount apportioned, is not a notice of demand for the purpose of determining the date from which the six months begin to run. (Simcox *v.* Handsworth Board, 8 Q. B. D. 39; 51 L. J. Q. B. 161.)

Where such expenses have been settled and apportioned by the surveyor of the local authority as payable by such owner, such apportionment shall be binding and conclusive on such owner, unless within three months from service of notice on him by the local authority or their surveyor of the amount settled by the surveyor to be due from such owner he shall by written notice dispute the same.

It seems that this apportionment need not be made within any particular period, and will be valid though not made for a considerable time after the completion of the work charged for. (Bradley *v.* Metropolitan Board, 38 L. T. N. S. 849.) If, however, it has been made, and certain owners have acquiesced in it and paid under it, while other owners dispute the apportionment, and their share is consequently settled by arbitration, those who have acquiesced cannot be compelled to pay a different sum arrived at by arbitration. (Tunbridge Wells Board *v.* Akroyd, 42 L. T. N. S. 646.)

See further, notes to s. 150, *ante*, as to this apportionment.

The local authority may, by order, declare any such expenses to be payable by annual instalments within a period not exceeding thirty years, with interest at a rate not exceeding

five pounds per centum per annum, until the whole amount is paid; and any such instalments and interest, or any part thereof, may be recovered in a summary manner from the owner or occupier for the time being of such premises, 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 this Act. Secs. 257, 258.

See s. 251, *ante*, as to recovery of these expenses; *see* also s. 214, as to private improvement rates.

258. No justice of the peace shall be deemed incapable of acting in cases arising under this Act by reason of his being a member of any local authority, or by reason 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 rate or fund out of which any expenses incurred by such authority are under this Act to be defrayed.

Though this section cures the incapacity which would otherwise constantly attach to justices from their position as members of a local authority or as ratepayers, still "any direct pecuniary interest, however small, in the subject of inquiry, does disqualify a person from acting as judge," though the mere possibility of bias in favour of one of the parties does not, *ipso facto*, render them incapable of acting. (Reg. *v.* Rand, 35 L. J. M. C. 157; 1 L. R. Q. B. 230.) And since the passing of the present Act, it has been held that a justice who has any real interest, whether pecuniary or otherwise, so as to be likely to have a real bias in the matter before the Court, is thereby disqualified from being a member of the Court which adjudicates on the question in which he is interested (Reg. *v.* Meyer, 1 Q. B. D. 173), especially if the justices are in the position of prosecutors of the person charged before them. (Reg. *v.* Milledge, 4 Q. B. D. 332; 48 L. J. M. C. 139.) So also a summons granted by a justice, who was a member of a corporation entitled to the penalty which would follow on a conviction, was held to be wrongly issued, and consequently subsequent proceedings before other justices who had no such interest were held to be void. (Reg. *v.* Gibbon, 6 Q. B. D. 168). This case is a decision of Manisty, J., after the death of Cockburn, C. J., who also heard the argument but gave no judgment; it seems directly at variance with the ruling of Field and Manisty, J. J., in White *v.* Redfern, 5 Q. B. D. 15, but not reported on this point, where the objection was taken that a conviction for selling diseased meat, which was made on the information of the inspector of nuisances of a rural authority before two justices who were ex-officio members of that authority, was bad on account of the justices being interested, but the Court, without argument, held the objection untenable. The only distinction between these

Secs. 258-261.

two decisions, to both of which Manisty, J., was a party, seems to be that in the one case the justice, as a member of the corporation which would receive the fine, had a possible *pecuniary* interest in the matter, in the other case, as ex-officio members of a rural authority there was no such interest. Even with that distinction, Reg. *v.* Gibbon appears to go beyond previous decisions, and will probably not be followed in future.

Since the above note was written, the point has again been before the Court, and Field and Cave, J.J., after fully considering all the cases, dissented from Reg. *v.* Gibbon, and refused to follow it, and held that in order to disqualify a justice from acting, "it must be shown that he has such a substantial interest in the result of the hearing as to make it likely that he has a real bias in the matter." (Reg. *v.* Handsley, 8 Q. B. D. 383.) This decision seems to put the matter on a true basis. *See* further, Reg. *v.* Lee and others, W. N. 1882, p. 100.

The parties to a case may waive the objection to an interested justice sitting and adjudicating on it; if they do so, they cannot subsequently dispute his decision. (Wakefield Board *v.* West Riding Railway, 1 L. R. Q. B. 84; 35 L. J. M. C. 69.)

259. Any local authority may appear before any Court or in any legal proceeding by their clerk, or by any officer or member authorised generally or in respect of any special proceeding by resolution of such authority, and their clerk, or any officer or member so authorised, shall be at liberty to institute and carry on any proceeding which the local authority is authorised to institute and carry on under this Act.

260. In any proceeding instituted by or against a local authority under this Act it shall not be necessary for the plaintiff to prove the corporate name of the local authority or the constitution or limits of their district: Provided that this section shall not abridge or prejudice the right of any defendant to take or avail himself of any objection which he might have taken or availed himself of if this Act had not been passed.

261. Proceedings for the recovery of demands below fifty pounds, which local authorities are empowered to recover in a summary manner, may, at the option of the local authority, be taken in the County Court as if such demands were debts within the cognisance of such Courts.

The limitation of time for instituting proceedings under this Act, given by s. 252, applies to proceedings in a County Court as much as to any others. (West Ham Local Board *v.* Maddams, 33 L. T. N. S. 809; Tottenham Local Board *v.* Rowell, 1 Ex. D. 514; 46 L. J. Ex. 432.)

In proceedings under the Rivers Pollution Act, 1876, the County Court is the appointed tribunal. It has power to grant injunctions to prevent pollution of streams, 39 & 40 Vic. c. 75, ss. 10–13.

262. No rate order conviction or thing, made or done or relating to the execution of this Act, shall be vacated quashed or set aside for want of form, or (unless otherwise expressly provided by this Act) be removed or removable by *certiorari* or any other writ or process whatsoever into any of the superior Courts: Provided that nothing in this section shall prevent the removal of any case stated for the opinion of a superior Court, or of any rate order conviction or thing to which such special case relates.

This only applies to things done regularly under the Act. Anything done illegally under the mistaken idea that it was done under the powers of the Act, may be brought up by *certiorari* to be quashed. (Reg. *v.* Wood, 5 E. & B. 49.) If the local authority have done anything irregularly which nevertheless was within their jurisdiction, the section applies; but in case they had originally no jurisdiction at all, then their act may be set aside. (*Re* Broughton Local Board of Health, 12 L. T. N. S. 310.)

In one case where *certiorari* was taken away by statute, the parties agreed to state a case, and the Queen's Bench entertained the question. (Reg *v.* Dickenson, 7 E. & B. 831; 26 L. J. M. C. 204.) This was, however, not followed in the subsequent case of Reg. *v.* Chantrell, 10 L. R. Q. B. 587; 44 L. J. M. C. 94. This Act, however, makes an express exception in favour of a case stated for the opinion of the superior Courts. By the Summary Jurisdiction Act, 1879, 42 & 43 Vic. c. 49, s. 40, a *certiorari* is rendered no longer requisite to bring up a case stated by quarter sessions. Nothing is, however, said as to a case stated by justices, the machinery for bringing that before the High Court remains therefore as it was before.

An application for a *certiorari* to bring up an order of magistrates on which a special case has been granted must be made within six months from the date of the order, and not from the date of the settlement of the special case. (Elliot *v.* Thompson, 24 W. R. 56; 33 L. T. N. S. 339.)

263. Any person who on any examination on oath, under any of the provisions of this Act, wilfully and corruptly gives false evidence shall be liable to the penalties inflicted on persons guilty of wilful and corrupt perjury.

This provision extends to inquiries before inspectors of the Local Government Board, *see* s. 296, as well as before arbitrators or Courts of justice.

264. A writ or process shall not be sued out against or

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served on any local authority, or any member thereof, or any officer of a local authority, or person acting in his aid, for anything done or intended to be done or omitted to be done under the provisions of this Act, until the expiration of one month after notice in writing has been served on such local authority member officer or person, clearly stating the cause of action, and the name and place of abode of the intended plaintiff and of his attorney or agent in the cause; and on 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 notice so served; and unless such notice is proved the jury shall find for the defendant.

Such a provision as this "is intended to protect persons from the consequences of committing illegal Acts, which are intended to be done under the authority of an Act of Parliament, but which by some mistake are not justified by its terms and cannot be defended by its provisions." (Per Blackburn, J., in Selmes *v.* Judge, 6 L. R. Q. B. at p. 727.)

It was held under the corresponding provisions of the earlier Acts that a contractor acting under the direction of the surveyor or other similar officer of a local authority is entitled to notice of any action to be brought against him in respect of work performed by him under such direction. (Newton *v.* Ellis, 5 E. & B. 115, 24 L. J. Q. B. 337; Chambers *v.* Reid, 14 W. R. 370, &c.) But the words here are less comprehensive than they were previously, and the Common Pleas recently decided that a contractor is not under this section entitled to notice of action. (Stringer *v.* Barker, W. N. 1879, p. 127.) Even formerly it was held that a private individual who commits a trespass while endeavouring to comply with the directions of a local authority is not a person acting in aid of their officer so as to be entitled to notice of action. (Doust *v.* Slater, 38 L. J. Q. B. 159; Williams *v.* Golding, 1 L. R. C. P. 69, 35 L. J. C. P. 1.) In order to entitle a person to notice of action, he need not at the time of doing the act complained of have been aware of the existence of the statute giving him protection, nor need he have been acting strictly within the powers given by that statute. (Read *v.* Coker, 13 C. B. 850, 14 L. J. C. P. 201.)

The notice should be served as directed by ss. 266 & 267, *post*. A letter from the plaintiff's attorney, threatening proceedings unless his client's claims are satisfied, is not a good notice of action. (Mason *v.* Birkenhead Improvement Commissioners, 6 H & N. 72, 29 L. J. Ex. 406.) But a notice is sufficient if it calls the attention of the defendants to the general nature of the injury complained of, so that they may inquire into it and see what the nature of the complaint is, and if so advised, tender amends before action. (Smith *v.* West Derby Local Board, 47 L. J. C. P. 607.)

The notice is only required by the statute in the cases of *tort* or *quasi-tort* committed in *bona fide* exercise of the powers conferred by the statute, not in actions for breach of contract. (Davies *v.* Mayor of Swansea, 8 Ex. 808, 22 L. J. Ex. 297.) Sec. 264.

Every such action shall be commenced within six months next after the accruing of the cause of action, and not afterwards, and shall be tried in the county or place where the cause of action occurred, and not elsewhere.

Where the cause of action is the doing of a specific act the time for suing runs from the committal of that act; where the cause of action is damage resulting from an act done, the time runs from the date when the damage results; and where the injury and the cause of action continue, so does the right to sue. (Whitehouse *v.* Fellowes, 10 C. B. N. S. 765, 30 L. J. C. P. 306; Bonomi *v.* Backhouse, E. B. & E. 622, 28 L. J. Q. B. 378; affirmed in House of Lords, 9 H. L. Cas. 503, 34 L. J. Q. B. 181.) This limitation of time does not apply to claims for compensation under the Act, only to hostile actions. (Delaney *v.* Metropolitan Board of Works, 2 L. R. C. P. 532, 3 L. R. C. P. 111.)

If the real object of an action is to recover damages, notice of action must be given, so as to give the local authority an opportunity to make payment or tender of compensation for the damage sustained, and so avoid the expense of an action. If, however, the object of an action is to stop the continuance of a nuisance, the month's notice of action will be dispensed with by the Courts, as to require it would practically deprive the plaintiff of his remedy. (Flower *v.* Low Leyton Local Board, 5 C. D. 347, 46 L. J. Ch. 621; Vice-Chancellor Bacon has also decided this point the same way; A. G. *v.* Hackney Local Board, 20 L. R. 626, 44 L. J. Ch. 545; Baker *v.* Corporation of Wisbeach, W. N. 1877, p. 56.)

By s. 33 of the Judicature Act, 1875, 38 & 39 Vic. c. 77, any enactment inconsistent with that Act is repealed. And by Order 36, Rule 1, it is provided that "there shall be no local venue for any action." It would seem, therefore, as if Parliament had passed this provision only to repeal it. If local venue is not abolished, the Court can of course change the venue of an action begun in the county. (Itchin Bridge Co. *v.* Southampton, 8 E. & B. 801, Pryor *v.* West Ham, 15 L. T. N. S. 250.)

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 in case amends have not been tendered as aforesaid, or in case the amends tendered are insufficient, the defendant may, by leave of the Court, at any time before trial,

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pay into Court under plea such sum of money as he may think proper; and if upon issue joined, or upon any plea pleaded for the whole action, the jury find generally for the defendant, or if the plaintiff be nonsuited or judgment be given for the defendant, then the defendant shall be entitled to full costs of suit, and have judgment accordingly.

In the corresponding section of the Act of 1848 (11 & 12 Vic. c. 63, sec. 139), there was a clause empowering the defendant to plead not guilty by statute. That clause is omitted here, and consequently any special defence must be pleaded as in other actions.

265. No matter or thing done, and no contract entered into by any local authority or joint board or port sanitary authority, and no matter or thing done by any member of any such authority or by any officer of such authority or other person whomsoever acting under the direction of such authority, shall, if the matter or thing were done or the contract were entered into *bona fide* for the purpose of executing this Act, subject them or any of them personally to any action liability claim or demand whatsoever; and any expense incurred by any such authority member officer or other person acting as last aforesaid shall be borne and repaid out of the fund or rate applicable by such authority to the general purposes of this Act.

Even if the thing done be *ultra vires*, and therefore one which cannot be charged on the rates, still no action will lie against individual members who were parties to the resolution approving it, if they acted *bona fide* for the purpose of executing the Act (Bailey *v.* Cuckson, 32 L. T. 124; 7 W. R. 16). So also it has been held that no action would lie against contractors acting under the direction of a board for injuries caused by them while acting under such direction for the purpose of executing the Act. But it has been held that a surveyor is not protected by his position from the consequences of his acts if, acting under the orders of the local authority, he does some wrongful act under the erroneous idea that he is performing part of the duties of his office. The local authority cannot by assuming a jurisdiction which does not belong to them give their servants power to do what otherwise would be unauthorised (Mill *v.* Hawker, 9 L. R. Ex. 309; 10 L. R. Ex. 92; 44 L. J. Ex. 49.)

"Any expense incurred" includes expenses to which such authority, &c., shall have been put in defending an action brought against an individual member, and in which that individual has been successful, on the ground that he was acting *bona fide* in the execution of the Act, and was therefore not personally liable (Ward *v.* Lee, 7 E. & B. 426; 26 L. J. Q. B. 142).

Provided that nothing in this section shall exempt any member of any such authority from liability to be surcharged with the amount of any payment which may be disallowed by the auditor in the accounts of such authority, and which such member authorised or joined in authorising.

See s. 247, sub-s. 7, *ante*, p. 293.

Notices.

266. Notices, orders and other such documents under 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 authority, the signature thereof by the clerk to the local authority or their surveyor or inspector of nuisances shall be sufficient authentication.

267. Notices orders and any other documents required or authorised to be served under this Act may be served by delivering the same to or at the residence of the person to whom they are respectively addressed, or where addressed to the owner or occupier of premises by delivering the same or a true copy thereof to some person on the premises, or if there is no person on the premises who can be so served, by fixing the same on some conspicuous part of the premises; they may also be served by post by a prepaid letter, and if served by post shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the notice order or other document was properly addressed and put into the post.

This section is merely permissive, not obligatory: therefore any service of a notice which would be good at common law will be equally good under this Act. It has been held that a service of a notice on a clerk at the place of business of the person on whom the notice was to be served was a sufficient service at the residence of such person under the old Public Health Act. (Mason *v.* Bibby, 2 H. & C. 881, 33 L. J. M. C. 105.) So also service on a local authority at their place of meeting would be good. (Curtis *v.* Kent Waterworks Co. 7 B. & C. 314.)

If the ordinary course of the post is to deliver letters at the place to which they are addressed, delivery to the post is a sufficient service of the

Secs. 267, 268.

notice, but not where the ordinary course of the post is to keep them at the office till called for. (Lewis *v.* Evans, 10 L. R. C. P. 267, 44 L. J. C. P. 41.)

Any notice by this Act required to be given to the owner or occupier of any premises may be addressed by the description of the "owner" or "occupier" of the premises (naming them) in respect of which the notice is given, without further name or description.

Service on a person who is owner within the meaning of this Act (cf. s. 4, *ante*, p. 3), is service on the real owner so as to make subsequent proceedings binding on him. (Peek *v.* Waterloo, 9 L. T. N. S. 383, 33 L.J.M.C. 11.)

Appeal.

268. Where any person deems himself aggrieved by the decision of the local authority in any case in which the local authority are empowered to recover in a summary manner any expenses incurred by them, or to declare such expenses to be private improvement expenses, he may, within twenty-one days after notice of such decision, address a memorial to the Local Government Board, stating the grounds of his complaint, and shall deliver a copy thereof to the local authority; the Local Government Board may make such order in the matter as to the said Board may seem equitable, and the order so made shall be binding and conclusive on all parties.

As to these cases, *see* notes to ss. 294–6, *post*.

The 21 days run from the date of a claim for payment being made and not from the date of apportionment of expenses, although that apportionment is final by virtue of s. 257, *ante* (Reg. *v.* Local Government Board, *Times*, May 27th, 1882).

The decision of the Local Government Board on any point within their jurisdiction is final, and cannot be reviewed in Courts of law, even though manifestly wrong. (*Ex parte* Bird, 1 E. & E. 391, 28 L. J. Q. B. 223.) But if a body of public functionaries depart from that power which the law has vested in them, and assume to themselves a power which the law does not give them, the Courts no longer consider them as acting under the authority of their commission, but treat them merely as private persons. (Frewin *v.* Lewis, 4 My. & Cr. 249; Attorney-General *v.* Bishop of Manchester, 3 L. R. Eq. 436.)

Any proceedings that may have been commenced for the recovery of such expenses by the local authority shall, on the

delivery to them of such copy as aforesaid, be stayed; and the Local Government Board may, if it thinks fit, by its order, direct the local authority to pay to the person so proceeded against such sum as the said Board may consider to be a just compensation for the loss damage or grievance thereby sustained by him.

269. Where any person deems 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 Court of summary jurisdiction, such person may appeal therefrom, subject to the conditions and regulations following :—

This right of appeal does not extend to any person who may fancy himself aggrieved, only to those who have a legal ground for saying they are aggrieved. (Harrup *v.* Bayley, 6 E. &. B. 218; *see* also note to s. 253, *ante*.)

Where these conditions are different from those given by the Summary Jurisdiction Act, 1879, the appellant may probably follow the latter if he chooses, at any rate if he appeal against a conviction, instead of the conditions here given of 42 & 43 Vic. c. 49, s. 31.

Where there is a remedy by appeal to quarter sessions the Court of Queen's Bench will not as a rule entertain the question whether or not the Court of summary jurisdiction was right in its decision. (Reg. *v.* Newman, 2 E. & E. 420. But *see* Reg. *v.* Dickinson, *ante*, p. 309.)

(1.) The appeal shall be made to the next Court of quarter sessions for the county division or place in which the cause of appeal has arisen, holden not less than twenty-one days after the demand of the rate or the decision of the Court from which the appeal is made :

By the Summary Jurisdiction Act, the appeal is to the Court holden "not less than 15 days after the day on which the decision was given on which the conviction or order was founded."

(2.) The appellant shall, within fourteen days after the cause of appeal has arisen, give notice to the other party and to the authority or Court of summary jurisdiction by whose act he deems himself aggrieved, of his intention to appeal, and of the ground thereof :

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The fourteen days include Sunday. If it is the last day, and the notice is given on the following Monday, such notice is bad. (*Ex parte* Simpkin, 2 E. & E. 392.)

In case of an appeal against a rate, the time within which the appeal may be brought dates from the time when notice of the assessment was given to the appellant, not from the time when the rate was made. (Reg. *v.* Middleton, 1 E. & B. 98.)

In case of an appeal against an order of justices made in the presence of the appellant, the time for appeal runs from the date of the making of the order, and not from the date of its service. (Reg. *v.* Barnet, 1 Q. B. D. 558, 45 L. J. M. C. 105.)

The Summary Jurisdiction Act orders the notice of appeal to be given within the prescribed time, or if no time is prescribed, within seven days after the day on which the decision was given.

(3.) The appellant shall, immediately after such notice, enter into a recognisance before a justice of the peace, with two sufficient sureties, conditioned personally to try such appeal and to abide the judgment of the Court thereon and to pay such costs as may be awarded by the Court, or give such other security by deposit of money or otherwise as the justice may allow :

"Immediately" implies prompt vigorous action, and obliges the appellant to take the necessary steps without delay. Whether he has done so is a question of fact to be decided by the Court of quarter sessions. The Queen's Bench recently refused to disturb a decision of quarter sessions where they had held an interval of four days too long, and had on that ground dismissed an appeal. (Reg. *v.* Berkshire, J. J., 4 Q. B. D. 469, 48 L. J. M. C. 137.) The Summary Jurisdiction Act, 1879, allows the appellant, instead of entering into a recognisance, to "give such other security by deposit of money with the clerk of the Court of Summary Jurisdiction or otherwise as that Court deem sufficient." If the appellant wishes to give security in that way, he must do so before a Court of Summary Jurisdiction, and not as here provided, before one justice.

(4.) Where the appellant is in custody the justice may, on the appellant entering into such recognisance or giving such other security as aforesaid, release him from custody :

The provisions of the Summary Jurisdiction Act in this respect are similar, except that the discretion is vested in the Court and not in one justice.

(5.) On appeals under this Act against any rate the Court

of Appeal shall 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 quarter sessions with respect to amending or quashing any rate or assessment or awarding costs on 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 on the last-mentioned appeals: Provided that, notwithstanding the quashing of any rate appealed against, all moneys charged by such rate shall, if the Court of Appeal 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: Sec. 269.

Power is given to quarter sessions, by 41 Geo. III. c. 23, s. 1, to amend a rate or assessment, either by inserting therein or striking out the name or names of any person or persons, or by altering the sum or sums therein charged on any other person or persons, or in any other manner which the Court shall think necessary for giving relief without quashing or wholly setting aside such rate or assessment, or may quash it if that is necessary for the purpose of giving relief. If any other person than the appellant is to be directly affected by the order, such person should be brought before the Court, and have an opportunity of objecting (s. 6.) (Reg. *v.* Brooke, 9 B. & C. 915.) If the Court discover errors in the assessment or rate which only affect individuals, the proper course is to amend. (Reg. *v.* Ambleside, 16 East, 380.) If, however, they affect classes of people or property, they should quash. (Reg. *v.* Hull Dock Company, 3 B. & C. 516.)

Power to award costs is given by s. 8 of the same Act, which provides that "if upon the hearing of any appeal from any rate or assessment the Court shall order the name of any person to be struck out of such rate or assessment, or the sum or sums rated on any person to be decreased or lowered, and if it appear that such person has, before the hearing, paid in consequence of such rate or assessment any sums which he ought not to have been charged with, the Court shall order such sum to be repaid, together with all reasonable costs charges and expenses occasioned by such person having paid or been required to pay the same." General powers are now given to quarter sessions, by 12 & 13 Vic. c. 45, s. 5, to order the party against whom the appeal shall be decided, to pay to the other party or parties such costs as may appear to the Court to be just and

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reasonable. These costs are recoverable as costs of an appeal against an order or conviction; that is, in case the party against whom costs are ordered is not bound by recognisance to pay them, by warrant of commitment or distress to be issued by any justice of the peace for the place where the party is against whom the order was made. (11 & 12 Vic. c. 43, s. 27.) Costs may be awarded to a successful appellant, though the respondents say they have no funds out of which to pay and dispute the validity of the order. (Austin, *ex parte*, 13 L. T. N. S. 443.)

The proviso as to payment under a quashed rate is available not only for the appellant but for all persons assessed who may have paid it. It does not apply to persons who were not assessed under it but are assessed for the subsequent rate. (Reg. v. Kingston-upon-Thames Justices, E. B. & E. 256, 27 L. J. M. C. 199.)

(6.) In the case of other appeals the Court of appeal may adjourn the appeal, and on the hearing thereof may confirm reverse or modify the decision of the Court of summary jurisdiction, or remit the matter to the Court of summary jurisdiction with the opinion of the Court of appeal thereon or make such other order in the matter as the Court thinks just. The Court of appeal may also make such order as to costs to be paid by either party as the Court thinks just.

Sub.-sec. 5 of s. 31 of the Summary Jurisdiction Act, 1879, is very similar to this, but clears up any doubt as to the constitution of the Court to whom the case is to be remitted, by expressly giving power to remit to a Court acting for the same place as the Court by whom the conviction or order appealed against was made.

(7.) The decision of the Court of appeal shall be binding on all parties: Provided that the Court of appeal may, if such Court thinks fit, state the facts specially for the determination of a superior Court.

The power given by 12 & 13 Vic. c. 45, s. 11, for the parties to agree upon a special case after notice, but before the hearing of the appeal, is not affected by this section. If a case is stated, it is now no longer necessary to obtain a *certiorari* in order to bring it before the superior Court. (42 & 43 Vic. c. 49, s. 40.)

PART VIII.

ALTERATION OF AREAS AND UNION OF DISTRICTS.

Alteration of Areas.

270. The following enactments shall be made as to alteration of areas:— Sec. 270.

(1.) The Local Government Board, by provisional order, may dissolve any local government district, and may merge any such district in some other urban or rural district or districts; or it may, by provisional order, declare the whole or any portion of a local government or a rural district immediately adjoining a local government district to be included in such last-mentioned district; or it may by provisional order declare any portion of a local government district immediately adjoining a rural district to be included in such rural district; and thereupon the included area shall, for the purposes of this Act, be deemed to form part of the district in which it is included by such order; and the remaining part (if any) of the local government district or rural district affected by such order shall continue subject to the like jurisdiction as it would have been subject to if such order had not been made, unless and until the Local Government Board, by provisional order, otherwise directs:—

(2.) In the case of a borough comprising within its area the whole of an Improvement Act district, or having an area co-extensive with such district, the Local Government Board, by provisional order, may dissolve such district and transfer to the council of the borough all or any of the jurisdiction and powers of the Improvement Commissioners of such district remaining vested in them at the time of the passing of this Act:

Secs. 270-272.

(3.) The Local Government Board may by order dissolve any special drainage district constituted either before or after the passing of this Act in which a loan for the execution of works has not been raised, and merge it in the parish or parishes in which it is situated, and the Local Government Board may by provisional order dissolve any such district in which a loan has been raised for the execution of works, and merge it in the parish or parishes in which it is situated.

271. The Local Government Board may, by provisional order, declare any rural district, or any portion of any rural district or districts, to be a local government district; and from and after the commencement of the order the district or portion of the district or districts therein referred to shall become a local government district, and shall be subject to the jurisdiction of a local board, to be elected in manner provided by schedule II. to this Act.

The Local Government Board may, by any order constituting a local government district, under this section, divide such district into wards for the election of members of the local board.

See general rules as to orders, s. 275, *post*.

272. The owners and ratepayers of any place situated in any rural district or districts, and having a known and defined boundary, may, by a resolution passed in manner provided by schedule III. to this Act, declare that it is expedient that such place should be constituted a local government district; and the Local Government Board may, if it thinks fit, by order made not less than six weeks after the receipt of a copy of such resolution by the said board, declare such place to be a local government district, and from and after the commencement of such order such place shall become a local government district, and be subject to the jurisdiction of a local board to be elected in manner provided by schedule II. to this Act.

A collection of houses which have acquired a distinct name, though

situated within a parish, may be a place within the meaning of this section. (Reg. *v.* Local Government Board, 8 L. R. Q. B. 227, 42 L. J. Q. B. 131.) Secs. 272, 273.

If a place have a known and defined boundary for any purpose, that is sufficient for the purposes of this section. (Reg. *v.* Northowram, 1 L. R. Q. B. 110, 35 L. J. Q. B. 90; *see* also Reg. *v.* Hardy, 4 L. R. Q. B. 117, 38 L. J. Q. B. 9.) Though that case seems scarcely applicable here, as s. 14 of the Local Government Act is not re-enacted.

A petition may be presented to the Local Government Board from any place so situated as aforesaid, and not having a known and defined boundary, to settle its boundary for the purposes of this Act; the petition shall state the proposed boundaries of the place, shall be signed by one-tenth of the persons rated to the relief of the poor and resident within such boundaries, and shall be supported by such evidence as the Local Government Board may require. The Local Government Board may, after local inquiry as to the genuineness of the petition, and as to the propriety of the proposed boundaries, either dismiss the petition altogether or make order as to the boundaries of the place, and may also make order as to the costs of the proceedings in relation thereto, and the persons by whom such costs are to be borne.

In cases not having a known and defined boundary, it is doubtful whether the Local Government Board have power to extend the area of the district beyond the limits proposed by the petitioners. (*Ex parte* Smith, *re* Todmorden District, 1 B. & S. 412, 30 L. J. Q. B. 305.)

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.

273. Where not less than one-twentieth of the owners and ratepayers of any 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), in which a resolution has been passed declaring that it is expedient that such place should be constituted a local government district, are desirous that such district should not be constituted, or that any part of such place

Secs. 273, 274. should be excluded therefrom, they may present a petition to the Local Government Board objecting to such resolution, and specifying the grounds of their objection.

Such petition shall be subscribed by the owners and ratepayers presenting the same, and shall be presented within six weeks from the date of the passing of the resolution objected to, and shall, where the exclusion of part of the place is prayed for, state the part of the place proposed to be excluded, accompanied with an explanatory plan.

The Local Government Board may after local inquiry make order with respect to the matter in question, and such order shall be binding on the place in respect of which it is made.

As to local inquiries, *see* s. 293, *post*.

274. Any owner or ratepayer who disputes the validity of the vote for the adoption of the resolution may appeal, within six weeks from the declaration of the decision of the meeting, to the Local Government Board, setting forth the grounds on which he disputes the validity of the vote; and the Local Government Board may on such appeal, after local inquiry, make such order as to the said Board seems fit as to the validity or invalidity of the vote, and any other questions arising on the appeal.

But no objection shall be made, at any trial or in any legal proceeding, to the validity of the vote for the adoption of the resolution, or to any order made in pursuance thereof or to any proceedings on which such order was founded, unless the objector gives fourteen days' notice to the other parties interested in such trial or proceeding of his intention to make the same, specifying fully the nature of the objection to be made; and no objection whatever in respect of the matters mentioned in this section shall be admissible at any trial or in any legal proceeding after the expiration of six months from the date of the constitution of the district.

A person who has been present at the meeting and concurred in the resolution upon which the order appealed against is founded cannot, it seems, appeal. (Harrup *v.* Bayley, 6 E. & B. 218, 35 L. J. M. C. 107.)

The order of the Local Government Board will be final, and no Court will entertain an appeal against it. (*Ex parte* Bird, 1 E. & E. 931, 28 L. J. Q. B. 223; *see* also s. 294, *post*.) Secs. 274, 275.

275. Every order made by the Local Government Board under this part of this Act shall specify a day on which such order shall come into operation (in this Act referred to as the commencement of the order); and from and after the commencement of the order all the powers rights duties capacities liabilities obligations and property which under this Act are exerciseable by or attaching to or vested in the local authority having, under this Act, jurisdiction in any district or part of a district which is by such order included in some other district, shall (so far as the same relate to the district or part of a district so included) pass to and vest in the local authority of such other district:

The liabilities, &c., contemplated under this section are those under the Act, consequently it was held that a local authority taking over a large district were not bound by an injunction against a former local authority of a part of their district preventing a nuisance, it not being shown that any nuisance was caused by the new local authority. (A. G. *v.* Birmingham Main Drainage Board, 17 C. D. 685; 50 L. J. Ch. 786.)

Provided that in the case of the constitution of a new local government district, all the powers rights duties capacities liabilities obligations and property which under this Act are exerciseable by, or attaching to, or vested in any local authority or authorities having, under this Act, jurisdiction in the area so constituted a local government district, shall continue to be exerciseable by, attached to and vested in such authority or authorities, until the day of the first meeting of the local board for the district so constituted.

Any order made in pursuance of this part of this Act may, if necessary, provide for the settlement of any differences, or the adjustment of any accounts or apportionment of any liabilities arising between districts parishes or other places in consequence of the exercise of any powers conferred by this part of this Act, and may direct the persons by whom and to whom any moneys found to be due are to be paid, and the mode of raising such

Secs. 275 277. moneys; and where any local government district is diminished or increased in extent under this part of this Act, the order shall prescribe the number of members to be elected for the district when altered.

The Local Government Board may include in the same order provisions for the dissolution of one district, and for the inclusion of the whole or any part of such district in any other district or districts.

276. The Local Government Board may on the application of the authority of any rural district, or of persons rated to the relief of the poor, the assessment of whose hereditaments amounts at the least to one-tenth of the net rateable value of such district or of any contributory place therein, by order to be published in the London Gazette or in such other manner as the Local Government Board may direct, declare any provisions of this Act in force in urban districts to be in force in such rural district or contributory place, and may invest such authority with all or any of the powers rights duties capacities liabilities and obligations of an urban authority under this Act, and such investment may be made either unconditionally or subject to any conditions to be specified by the Board as to the time, portion of the district, or manner during at and in which such powers rights duties liabilities capacities and obligations are to be exercised and attach.

The sections of the Act which apply only to urban districts are 10, 20, 25, 26, 39, 44, 45, 47, 49, 50, 66, 112–115, 144, 146–149, 154, 157, 161, 162, 164–166, 169, 171, 172.

The incorporated sections of the Towns Improvement Clauses Act, 1847, the Markets and Fairs Clauses Act, 1847, the Towns Police Clauses Act, 1847, also apply only to urban authorities.

Provided that an order of the Local Government Board made on the application of one-tenth of the persons rated to the relief of the poor in any contributory place shall not invest the rural authority with any new powers beyond the limits of such contributory place.

277. It shall be lawful for a rural authority, by resolution

to be approved by the Local Government Board, but not otherwise, to constitute any portion of the area within their jurisdiction a special drainage district, for the purpose of charging thereon exclusively the expenses of works of sewerage water supply or of other works, which by this Act are or by order of the Local Government Board may be declared to be special expenses, and thereupon such area shall become a separate contributory place.

As to special expenses, *see* s. 229, *ante*.

278. On the application of any urban authority (being a local board or improvement commissioners), the Local Government Board may, by order after local inquiry, settle any dispute as to the boundaries of the district of such authority; such order shall be published in some local newspaper circulating in the district to which it relates, and from and after its commencement shall be conclusive on the question determined by it.

Union of Districts.

279. Where, on the application of the local authorities of any urban or rural districts, or of any such authorities, it appears to the Local Government Board that it would be for the advantage of such districts, or any of them, or any parts thereof, or of any contributory places in any rural district or districts to be formed into a united district for all or any of the purposes following (that is to say)—

(1.) The procuring a common supply of water; or

(2.) The making a main sewer or carrying into effect a system of sewerage for the use of all such districts or contributory places; or

(3.) For any other purposes of this Act;

the Local Government Board may by provisional order form such districts or contributory places into a united district.

All costs charges and expenses of and incidental to the formation of a united district shall, in the event of the united district being formed, be a first charge on the rates leviable in the united district in pursuance of this Act.

Secs. 280-282.

280. The governing body of a united district shall be a joint board consisting of such ex officio members and of such number of elective members as the Local Government Board may by the provisional order forming the district determine.

A joint board shall be a body corporate by such name as may be determined by the provisional order, having a perpetual succession and a common seal, with power to hold lands for the purposes of its constitution, without any license in mortmain.

281. The provisional order forming a united district under this Act shall define the purposes for which such united district is formed, and the powers rights duties capacities liabilities and obligations under this Act which the joint board is authorised to exercise or perform, or is made subject to, and shall contain regulations as to the qualification and mode of election of elective members of the joint board, as to their continuance in office, as to casual vacancies in the joint board, as to their meetings and officers, and any other matter or thing, including the adjustment of present and future liabilities and property, with respect to which the Local Government Board may think fit to make any regulations for the better carrying into effect the provisions of this Act with respect to united districts.

Upon the constitution of a joint board the local authorities having jurisdiction in the component districts or contributory places shall cease to exercise therein any powers or to perform any duties or to be subject to any liabilities or obligations which the joint board is authorised to exercise or perform or is made subject to; nevertheless, the joint board may delegate to the local authority of any component district the exercise of any of its powers or the performance of any of its duties.

282. Meetings of any joint board shall be held and the proceedings thereat shall be conducted (so far as such meetings and proceedings are not regulated by the order forming the joint board) in accordance with the rules as to meetings and proceedings contained in Schedule I. to this Act.

283. Any expenses incurred by a joint board in pursuance of this Act, unless otherwise determined by the provisional order, shall be defrayed out of a common fund, to be contributed by the component districts or contributory places in proportion to the rateable value of the property in each district or contributory place, such value to be ascertained according to the valuation list in force for the time being.

284. For the purpose of obtaining payment from component districts of the sums to be contributed by them, the joint board shall issue their precept to the local authority of each component district, stating the sum to be contributed by such authority, and requiring such authority, within a time limited by the precept, to pay the sums therein mentioned to the joint board or to such person as the joint board may direct.

Any sum mentioned in a precept addressed by a joint board to a local authority as aforesaid shall be a debt due from that authority, and may be recovered accordingly, such contribution in the case of a rural authority being deemed to be general expenses.

If any local authority makes default in complying with the precept addressed to it, the joint board may, instead of instituting proceedings for the recovery of a debt, or in addition to such proceedings as to any part of a debt which may for the time being be unpaid, proceed in a summary manner as in this Act mentioned to raise within the district of the defaulting authority such sum as may be sufficient to pay the sum due.

That is, in the manner laid down by ss. 256 and 257, *ante*.

For the purpose of obtaining payment from contributory places of the sums to be contributed by them, the joint board shall have the same powers of issuing precepts and of recovering the amounts named therein as if such contributory places formed a rural district, and the joint board were the authority thereof.

These powers will be found in ss. 230 and 231, *ante*.

285. Any local authority may, with the consent of the local authority of any adjoining district, execute and do in such

Secs. 285, 286.

adjoining district all or any of such works and things as they may execute and do within their own district, and on such terms as to payment or otherwise as may be agreed on between them and the local authority of the adjoining district; moreover two or more local authorities may combine together for the purpose of executing and maintaining any works that may be for the benefit of their respective districts or any part thereof. All moneys which any local authority may agree to contribute for defraying expenses incurred under this section shall be deemed to be expenses incurred by them in the execution of works within their district.

This section gives no power to a local authority to execute any works outside its district without the consent of the local authority of the place where the works are executed. If such consent is obtained, each local authority may raise the necessary funds for carrying out the works, in manner provided by ss. 209–235.

286. Where it appears to the Local Government Board, on any representation made to it, that the appointment of a medical officer of health for two or more districts situated wholly or partially in the same county would diminish expense, or otherwise be for the advantage of such districts, the Local Government Board may by order unite such districts for the purpose of appointing a medical officer of health, and may make regulations as to the mode of his appointment and removal by representatives of the authorities of the constituent districts, and as to the meetings from time to time of such representatives, and the proportion in which the expenses of the appointment and of the salary and expenses of such officer are to be borne by such authorities, and as to any other matters (including the necessary expenses of such representatives) which, in the opinion of the said Board, require regulation for the purposes of this section; and no other medical officer of health shall be appointed for any constituent district, except as an assistant to the officer appointed for the united districts:

Provided that no urban district containing a population of twenty-five thousand and upwards, or (in the case of a borough)

having a separate Court of quarter sessions, shall be included in any union of districts formed under this section without the consent of the local authority of such borough or other district.

Not less than twenty-eight days' notice that it is proposed to make an order under this section shall be given by the Local Government Board to the local authority of any district proposed to be included in the union; and if within twenty-one days after such notice has been given to any such authority they give notice to the Local Government Board that they object to the proposal, the Local Government Board may include their district in the union by a provisional order, but not otherwise.

As to provisional orders, *see* s. 297, *post*; *see* memorandum of Local Government Board, in Appendix, *post*.

There may be assigned by the Local Government Board to the district medical officer of any union comprising or coincident with any constituent district such duties in rendering local assistance to the medical officer of health appointed for such constituent districts as the said Board may think fit; and such district medical officer shall receive, in respect of any duties so assigned to him, such additional remuneration as the local authority or authorities of the district or districts within which his duties under this section are performed as those authorities may, with the approval of the Local Government Board, determine.

PORT SANITARY AUTHORITY.

287. The Local Government Board may, by provisional order, permanently constitute any local authority whose district or part of whose district forms part of or abuts on any part of a port in England or the waters of such port, or any conservators commissioners or other persons having authority in or over such port or any part thereof (which local authority conservators commissioners or other persons are in this Act referred to as a "riparian authority"), the sanitary authority of the whole of such port or of any part thereof (in this Act referred to as the "port sanitary authority").

Sec. 287.

The Local Government Board may also by provisional order permanently constitute a port sanitary authority for the whole or any part of a port, by combining any two or more riparian authorities having jurisdiction within such port or any part thereof, and may prescribe the mode of their joint action; or by forming a joint board consisting of representative members of any two or more riparian authorities, in the same manner as is by this Act provided with respect to the formation of a united district. Moreover the Local Government Board may by provisional order permanently constitute a port sanitary authority for any two or more ports, by forming a joint board consisting of representative members of all or any of the riparian authorities having jurisdiction within such ports, or any part thereof.

As to united districts, *see* ss. 279, *et seq.*, *ante*. As to provisional orders, *see* s. 297, *post*.

In any case in which the Local Government Board are by this section authorised permanently to constitute by provisional order a port sanitary authority, the said Board may, if it thinks fit, until such order has been made and confirmed by Parliament, temporarily constitute by order any such authority, and may from time to time renew any such last-mentioned order, and may by any order so made or renewed make any such provisions as it is by this section empowered to make by provisional order.

Any order constituting a port sanitary authority may assign to such authority any powers rights duties capacities liabilities and obligations under this Act, and direct the mode in which the expenses of such authority are to be paid; and where such order constitutes a joint board the port sanitary authority, it may contain regulations with respect to any matters for which regulations may be made by a provisional order forming a united district under this Act.

A port shall mean a port as established for the purposes of the laws relating to the customs of the United Kingdom.

The nearest riparian authority to a port is usually the port sanitary, the

authority now, and by s. 323, *post*, retains its powers, unless Local Govern- Secs. 287-290.
Board see fit to supersede it.

288. The order of the Local Government Board constituting a port sanitary authority shall be deemed to give such authority jurisdiction over all waters within the limits of such port, and also over the whole of such portions of the district within the jurisdiction of any riparian authority as may be specified in the order.

See 29 & 30 Vic. c. 90, s. 52, Appendix.

289. A port sanitary authority may, with the sanction of the Local Government Board, delegate to any riparian authority within or bordering on their district the exercise of any powers conferred on such port sanitary authority by the order of the Local Government Board, but except in so far as such delegation may extend, no other authority shall exercise any powers conferred on a port sanitary authority by the order of the Local Government Board within the district of such port sanitary authority.

290. Any expenses incurred by a port sanitary authority constituted temporarily in carrying into effect any purposes of this Act shall be defrayed out of a common fund to be contributed by the riparian authorities in such proportions as the Local Government Board thinks just.

Such port sanitary authority, if itself a local authority under this Act independently of its character of a port sanitary authority, shall raise the proportion of expenses due in respect of its own district in the same manner as if such expenses had been incurred by it in the ordinary manner for the purposes of this Act.

For the purpose of obtaining payment from the contributory riparian authorities of the sums to be contributed by them, such port sanitary authority shall issue their precept to each such authority, requiring such authority, within a time limited by the precept, to pay the amount therein mentioned to such port sanitary authority or to such person as such port sanitary authority may direct.

Secs. 290-292.

Any contribution payable by a riparian authority to such port sanitary authority shall be a debt due from them, and may be recovered accordingly, such contribution in the case of a rural authority being deemed general expenses of that authority. If any riparian authority makes default in complying with the precept addressed to it by such port sanitary authority, such port sanitary authority may, instead of instituting proceedings for the recovery of the debt, or in addition to such proceedings, as to any part of the debt which may for the time being be unpaid, proceed in the summary manner in this Act mentioned to raise within the district of the defaulting authority such sum as may be sufficient to pay the debt due.

Where several riparian authorities are combined in the district of one port sanitary authority, the Local Government Board may by order declare that some one or more of such authorities shall be exempt from contributing to the expenses incurred by such authorities.

As to these summary proceedings, *see* ss. 256 and 257, *ante*.

291. The mayor aldermen and commons of the City of London shall be the port sanitary authority of the port of London, and shall pay out of their corporate funds all their expenses as such port sanitary authority.

292. Where any port sanitary authority joint board or other authority are authorised, in pursuance of this Act, to proceed in a summary manner to raise within the district of a defaulting authority such sum as may be sufficient to pay any debt due to them, the authority so authorised for the purpose of raising such sum shall, within the district of the defaulting authority, have, so far as relates to the raising such sum, the same powers as if they were the defaulting authority, and as if such sum were expenses properly incurred by the defaulting authority within the district of such authority.

Where the defaulting authority have power to raise any moneys due for their expenses by levy of a rate from individual ratepayers, the authority so authorised as aforesaid shall have

power to levy such a rate by any officer appointed by them, and the officer so appointed shall have the same powers, and the rate shall be levied in the same manner and be subject to the same incidents in all respects as if it were being levied by the officer of the defaulting authority for the payment of the expenses of that authority; and where the defaulting authority have power to raise moneys due for their expenses by issuing precepts or otherwise requiring payments from any other authorities, the authority so authorised as aforesaid shall have the same power as the defaulting authority would have of issuing precepts or otherwise requiring payment from such other authorities. Sec. 292.

Any precepts issued by the authority so authorised as aforesaid for raising the sum due to them may be enforced in the same manner in all respects as if they had been issued by the defaulting authority.

The authority so authorised as aforesaid may, in making an estimate of the sum to be raised for the purpose of paying the debt due to them, add such sums as they think sufficient, not exceeding ten per cent. on the debt due, and may defray thereout all costs charges and expenses (including compensation to any persons they may employ) to be incurred by such authority by reason of the default of the defaulting authority; and the authority so authorised as aforesaid shall apply all moneys raised by them in payment of the debt due to them, and such costs charges and expenses as aforesaid, and shall render the balance, if any, remaining in their hands after such application to the defaulting authority.

As to this power, *see* ss. 256-257, *ante*.

See further, ss. 299 and 300, *post*.

PART IX.

LOCAL GOVERNMENT BOARD.

Inquiries by Board.

Secs. 293-296.

293. The Local Government Board may from time to time cause to be made such inquiries as are directed by this Act, and such inquiries as they see fit in relation to any matters concerning the public health in any place, or any matters with respect to which their sanction, approval or consent is required by this Act.

See 35 & 36 Vic. c. 76, s. 34, and 35 & 36 Vic. c. 79, ss. 35-38, Appendix.

294. The Local Government Board may make orders as to the costs of inquiries or proceedings instituted by, or of appeals to the said Board under this Act, and as to the parties by whom or the rates out of which such costs shall be borne; and every such order may be made a rule of one of the superior Courts of law on the application of any person named therein.

295. All orders made by the Local Government Board in pursuance of this Act shall be binding and conclusive in respect of the matters to which they refer, and shall be published in such manner as that Board may direct.

Be the *ratio decidendi* good or bad, the orders of the Local Government Board are conclusive and will not be reviewed by any Court of law. (*Ex parte* Bird, 1 E. & E. 931, 28 L. J. Q. B. 223; *see* 35 & 36 Vic. c. 79, s. 48, Appendix.)

296. Inspectors of the Local Government Board shall, for the purposes of any inquiry directed by the Board, have, in relation to witnesses and their examination, the production of papers and accounts, and the inspection of places and matters required to be inspected, similar powers to those which Poor-law inspectors have under the Acts relating to the relief of the poor for the purposes of those Acts.

The powers of Poor-law inspectors are defined in 10 & 11 Vic. c. 109. They are entitled to visit and inspect workhouses and places where any poor person in receipt of relief is lodged, and to be present at and take part in meetings of boards of guardians and any parochial or local meeting held for the relief of the poor, but not to vote. They may summon wit-

nesses upon any matter connected with the execution of any of the powers by law vested in them at such time and place (not being more than ten miles distant from the place of abode of the witness) as they shall name; may examine such witnesses upon oath, or may require them to make and sign a declaration of the truth of their statement under the penalties assigned by law for perjury, and may require the production of documents relating to any such matter (not being documents relating to the title of lands, unless such lands belong to the parish or union). Refusal to attend the summons of the inspectors or to produce documents or give evidence when required to do so is a misdemeanour. Secs. 296, 297.

Provisional Orders by Board.

297. With respect to provisional orders authorised to be made by the Local Government Board under this Act the following enactments shall be made :—

(1.) The Local Government Board shall not make any provisional order under this Act unless public notice of the purport of the proposed order has been previously given by advertisement in two successive weeks in some local newspaper circulating in the district to which such provisional order relates :

(2.) Before making any such provisional order the Local Government Board shall consider any objections which may be made thereto by any persons affected thereby, and in cases where the subject-matter is one to which a local inquiry is applicable, shall cause to be made a local inquiry, of which public notice shall be given in manner aforesaid, and at which all persons interested shall be permitted to attend and make objections :

(3.) The Local Government Board may submit to Parliament for confirmation any provisional order made by it in pursuance of this Act, but any such order shall be of no force whatever unless and until it is confirmed by Parliament :

(4.) If, while the Bill confirming any such order is pending in either House of Parliament, a petition is presented against any order comprised therein, the

Secs. 297, 298.

Bill, so far as it relates to such order, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of private Bills:

(5.) Any Act confirming any provisional order made in pursuance of any of the Sanitary Acts or of this Act, and any Order in Council made in pursuance of any of the Sanitary Acts, may be repealed altered or amended by any provisional order made by the Local Government Board and confirmed by Parliament:

(6.) The Local Government Board may revoke, either wholly or partially, any provisional order made by them before the same is confirmed by Parliament, but such revocation shall not be made whilst the Bill confirming the order is pending in either House of Parliament:

(7.) The making of a provisional order shall be primâ facie evidence that all the requirements of this Act in respect of proceedings required to be taken previously to the making of such provisional order have been complied with:

(8.) Every Act confirming any such provisional order shall be deemed to be a public general Act.

If a provisional order is authorised to be made, the Courts of law have no authority over it and cannot review it in any shape. (Frewen *v.* Hastings, 34 L. J. Q. B. 159.) But if the order professes to do something which is not authorised, the Courts treat it as a nullity. (North-Eastern Railway Co. *v.* Mayor of Tynemouth, 3 L. R. Q. B. 723; 37 L. J. M. C. 183.)

298. The reasonable costs of any local authority in respect of provisional orders made in pursuance of this Act, and of the inquiry preliminary thereto, as sanctioned by the Local Government Board, whether in promoting or opposing the same, shall be deemed to be expenses properly incurred for purposes of this Act by the local authority interested in or affected by such provisional orders, and such costs shall be paid accordingly; and

if thought expedient by the Local Government Board, the local authority may contract a loan for the purpose of defraying such costs.

Reasonable costs in respect of provisional orders implies that the costs should be taxed on a legal and not on a Parliamentary scale. The intention of the Legislature was to have the necessary inquiries conducted before a local tribunal or persons appointed to inquire into the matters locally, more cheaply and more beneficially than could be the case before a Parliamentary committee. It is not necessary to employ Parliamentary agents, or incur great expenses in these local inquiries, and hence the costs allowed ought not to be excessive. (*Re* Morley, L. R. 20 Eq. 17.)

Power of Board to enforce performance of Duty by defaulting Local Authority.

299. Where complaint is made to the Local Government Board that a local authority has made default;

in providing their district with sufficient sewers, or in the maintenance of existing sewers;

See ss. 15 & 23, *ante*, as to their duties in this respect.

or in providing their 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;

Reasonable cost is defined by the Public Health Water Act, 1878, 41 & 42 Vic. c. 25, s. 8, *ante*, p. 81.

or that a local authority has made default in enforcing any provisions of this Act which it is their duty to enforce;

The compulsory provisions of this Act as regards local authorities will be found in ss. 15, 19, 23, 36, 40, 46, 49, 55, 62, 66, 76, 80, 92, 94, 95, 114, 120, 136. It is worth notice that in most of these sections the compulsion is merely nominal, as local authorities are themselves generally the judges of the fact of their interference being needed.

A memorial by an owner of a house objecting to provide a supply of water for the house, on the ground that the local authority "ought themselves to provide a supply of water for the district or contributory place in which the house is situate, or to render the existing supply wholesome," if given effect to by the Local Government Board, is to be deemed a complaint of default entitling the Local Government Board to put in force its compulsory powers against a *rural* authority in order to make them provide

Secs. 299 300. a proper supply of water. (41 & 42 Vic. c. 25, s. 4, *ante*, p. 77). By s. 11 of the same Act, urban authorities may also be subjected, it seem, to the authority of the Local Government Board in respect of water supply.

the Local Government Board, if satisfied after due inquiry that the authority has been guilty of the alleged default, shall make an order limiting a time for the performance of their duty in the matter of such complaint.

If such duty is not performed by the time limited in the order, such order may be enforced by writ of mandamus, or the Local Government Board may appoint some person to perform such duty, 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:

Similar powers were given and exercised under earlier Acts. (*See* Reg. *v.* Cockerell, 6 L. R. Q. B. 252, 40 L. J. M. C. 153.)

And any order made for the payment of such expenses and costs 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.

Any person appointed under this section to perform the duty of a defaulting local authority shall, in the performance and for the purposes of such duty, be invested with all the powers of such authority other than (save as hereinafter provided) the powers of levying rates, and the Local Government Board may from time to time by order change any person so appointed.

300. Any sum specified in an order of the Local Government Board for payment of the expenses of performing the duty of a defaulting local authority, together with the costs of the proceedings, shall be deemed to be expenses properly incurred by such authority, and to be a debt due from such authority and payable out of any moneys in the hands of such authority or of their officers, or out of any rate applicable to the payment of any expenses properly incurred by such authority, which rate is in this part of this Act referred to as

"the local rate." If the defaulting authority refuses to pay any such sum, with costs, as aforesaid, for a period of fourteen days after demand, the Local Government Board may by order empower any person to levy, by and out of the local rate, such sum (the amount to be specified in the order) as may, in the opinion of the Local Government Board, be sufficient to defray the debt so due from the defaulting authority, and all expenses incurred in consequence of the nonpayment of such debt. Secs. 300, 301.

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 would have in the case of expenses legally payable out of a local rate to be raised by such authority; and the said person or persons, after repaying all sums of money so due in respect of the order, shall pay the surplus, if any (the amount to be ascertained by the Local Government Board), to or to the order of the defaulting authority.

That is, by ss. 256 and 257, *ante*.

301. The Local Government Board may from time to time certify the amount of expenses that have been incurred, or an estimate of the expenses about to be incurred, by any person appointed by the said Board under this Act to perform the duty of a defaulting local authority; also the amount of any loan required to be raised for the purpose of defraying any expenses that have been so incurred, or are estimated as about to be incurred; and the certificate of the said Board shall be conclusive as to all matters to which it relates.

Whenever the Local Government Board so certifies a loan to be required, the Public Works Loan Commissioners may advance to the Local Government Board, or to any person appointed as aforesaid, the amount of the loan so certified to be required on the security of the local rate, without requiring any other security; and the Local Government Board, or the person so

Secs. 301-303.

appointed, may, by any instrument duly executed, charge the local rate with the repayment of the principal and interest due in respect of such loan, and every such charge shall have the same effect as if the defaulting local authority were empowered to raise such loan on the security of the local rate, and had duly executed an instrument charging the same on the local rate.

302. Any principal money or interest for the time being due in respect of any loan under this Act made for payment of the expenses incurred or to be incurred in the performance of the duty of a defaulting local authority shall be taken to be a debt due from such authority, and in addition to any other remedies, may be recovered in the manner in which a debt due from a defaulting authority may be recovered in pursuance of the provisions of this part of this Act.

See ss. 284, 290, 292 & 300.

The surplus (if any) of any such loan, after payment of the expenses aforesaid, shall, on the amount thereof being certified by the Local Government Board, be paid to or to the order of the defaulting authority.

"Expenses," for the purposes of the provisions of the part of this Act relating to defaulting local authorities, shall include all sums payable under those provisions by or by the order of the Local Government Board, or the person appointed by that Board.

Powers of Board in relation to Local Acts, &c.

303. The Local Government Board may, on the application of the local authority of any district, by provisional order, wholly or partially repeal alter or amend any local Act, other than an Act for the conservancy of rivers, which is in force in any area comprising the whole or part of any such district, and not conferring powers or privileges on any persons or person for their or his own pecuniary benefit, which relates to the same subject-matters as this Act.

Any such provisional order may provide for the extension of the provisions of the local Act referred to therein beyond

the district or districts within the limits of such Act, or for the exclusion of the whole or a portion of any such district from the application of such Act; and may provide what local authority shall have jurisdiction for the purposes of this Act in any area which is by such order included in or excluded from such district.

Until such application has been made to the Local Government Board, and a provisional order passed by them repealing or altering a local Act, it remains in force, and persons enjoying any privileges or exemptions under it will continue to enjoy them, notwithstanding any contrary provisions in this Act. (Reg. *v.* L. & N. W. R. Company, 46 L. J. M. C. 102; *see* also ss. 340 and 341.) This case has been followed by the Common Pleas Division in Mayor of Monmouth *v.* Churchwardens of Monmouth (38 L. T. N. S. 612), where the Court held that a Corporation could not impose a borough rate for the purposes of this Act, as a local Act gave exemptions to certain people from rating which they would not enjoy if a borough rate were imposed.

See s. 297, *ante*, as to provisional orders.

304. On the application of any authority from whom or to whom any powers rights duties capacities liabilities obligations and property, or any of them, are at any time transferred or alleged or claimed to be transferred in pursuance of this Act, or any provisional order made thereunder, or on the application of any person affected by such transfer, the Local Government Board may by order settle any doubt or difference, and adjust any accounts arising out of or incidental to such powers rights duties capacities liabilities obligations or property, or to the transfer thereof, and direct the parties by whom and to whom any moneys found to be due are to be paid, and the mode of raising such moneys; and any provisions contained in any order so made shall be deemed to have been made in pursuance of and to be within the powers conferred by this section, subject to this proviso, that where any such order directs any rate to be made, or other act or thing to be done, which the party required to make or do would not, apart from the provisions of this Act, have been enabled to make or do by law, such order shall be provisional only until it has been confirmed by Parliament.

Any settlement or adjustment under this section may be included in any provisional order which gives rise to the same.

PART X.

MISCELLANEOUS AND TEMPORARY PROVISIONS.

Miscellaneous.

Sec. 305.

305. Whenever it becomes necessary for a local authority or any of their officers to enter examine or lay open any lands or premises, for the purpose of making plans surveying measuring taking levels making keeping in repair or examining works, ascertaining the course of sewers or drains, or ascertaining or fixing boundaries, and the owner or occupier of such lands or premises refuses to permit the same to be entered upon examined or laid open for the purposes aforesaid or any of them, the local authority may, after written notice to such owner or occupier, apply to a Court of summary jurisdiction for an order authorising the local authority to enter examine and lay open the said lands and premises for the purposes aforesaid or any of them.

In case of lands to be purchased by a local authority there is power given to enter for the purpose of surveying, &c., without asking the consent of the owner, by the Lands Clauses Act, 8 & 9 Vic. c. 18, s. 84, which is incorporated with this Act. This provision gives a more general power of entry, and a means of enforcing it in case the owner objects. Special powers as to entry are also given by ss. 41, 102, 119 of this Act, and by 41 Vic. c. 16, ss. 68, 69, with regard to factories.

Notice should be given as prescribed by ss. 266–7, *ante*.

The Court of summary jurisdiction may, in its discretion, make or refuse this order. In case either party is dissatisfied, the order or refusal cannot be reviewed in the High Court of Justice on a case stated under 20 & 21 Vic. c. 43, s. 2, as there is no information or complaint. (Diss Urban Sanitary Authority *v.* Aldrich, 2 Q. B. D. 179, 46 L. J. M. C. 183.) It would seem that the proper remedy is by appeal to quarter sessions in the manner provided by s. 269. *See* also note to s. 102, *ante*.

This section does not, it seems, empower a local authority to enter land under s. 16 for the purpose of making a sewer. (Lamacraft *v.* St. Thomas Rural Authority, 42 L. T. N. S. 365.)

If no sufficient cause is shown against the application, the Court may make an order accordingly, and on such order being made, the local authority or any of their officers may, at all reasonable times, between the hours of nine in the forenoon and

six in the afternoon, enter examine or lay open the lands or premises mentioned in such order, for such of the said purposes as are therein specified, without being subject to any action or molestation for so doing: Provided that, except in case of emergency, no entry shall be made or works commenced under this section unless at least twenty-four hours' notice of the intended entry, and of the object thereof, be given to the occupier of the premises intended to be entered.

306. Any person who wilfully obstructs any member of the local authority or any person duly employed in the execution of this Act, or who destroys pulls down injures or defaces any board on which any bye-law notice or other matter is inscribed, shall, if the same was put up by authority of the Local Government Board or of the local authority, be liable for every such offence to a penalty not exceeding five pounds.

A person charged under this section is not necessarily entitled to have the case dismissed on the ground that he did the act complained of in the assertion of a right; nor, on the other hand, is the Court of summary jurisdiction justified in refusing as frivolous an application to state a case for the opinion of a superior Court. (Reg. *v.* Pollard, 14 L. T. N. S. 599.)

Where the occupier of any premises prevents the owner thereof from obeying or carrying into effect any provisions of this Act, any justice to whom application is made in this behalf shall, by order in writing, require such occupier to permit the execution of any works required to be executed, provided that the same 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 making of the order such occupier fails to comply therewith he shall be liable to a penalty not exceeding five pounds for every day during the continuance of such non-compliance.

It would seem that the duty of the justice here is simply ministerial, and that he must give the order if satisfied that the occupier prevents the owner from carrying out any of the provisions of the Act.

If the occupier of any premises, when requested by or on behalf of the local authority to state the name of the owner of the premises occupied by him, refuses or wilfully omits to dis-

Secs. 306-308. close or wilfully mis-states the same, he shall (unless he shows cause to the satisfaction of the Court for his refusal) be liable to a penalty not exceeding five pounds.

307. Any person who wilfully damages any works or property belonging to any local authority shall, in cases where no other penalty is provided by this Act, be liable to a penalty not exceeding five pounds.

This section is unnecessary, as in case any property is wilfully damaged a penalty of £5 is incurred under the Malicious Injuries to Property Act, 24 & 25 Vic. c. 97, s. 52, with the alternative of two months' imprisonment with hard labour (which is reduced to a maximum of one month by the 42 & 43 Vic. c. 49, s. 5.) The fine or imprisonment is exclusive of such sum, not exceeding £5, as shall appear to be a reasonable compensation for the injury committed.

308. Where any person sustains any damage by reason of the exercise of any of the powers of this Act, in relation to any matter as to which he is not himself in default, full compensation shall be made to such person by the local authority exercising such powers; and any dispute as to the fact of damage or amount of compensation shall be settled by arbitration in manner provided by this Act; or if the compensation claimed does not exceed the sum of twenty pounds, the same may, at the option of either party, be ascertained by and recovered before a Court of summary jurisdiction.

This section gives very large rights of compensation, and exposes local authorities to very large claims. The question, however, whether compensation is payable under this Act, is by no means always easy to answer. The general rule may be defined as follows:—

If damage is caused in the exercise of any of the powers of this Act by something which but for those powers would have been wrongful and would have entitled the party injured thereby to maintain an action for the damages he had sustained, then the remedy is by compensation in the manner provided by this Act, ss. 179-181, *ante*, pp. 240-245, and the party injured cannot maintain an action. (Brine *v.* Great Western Railway Co., 2 B. & S. 402, 31 L. J. Q. B. 101; Mersey Docks *v.* Gibbs, 1 L. R. H. L. 112; Reg. *v.* Wallasey Local Board, 4 L. R. Q. B. 351, 38 L. J. Q. B. 217.) But if a local authority injure anyone by their own negligence or that of their agents in the exercise of their statutory powers, or while doing anything not authorised by statute, the remedy must be sought by action, and compensation cannot be assessed under this Act (Clothier *v.* Webster, 12 C. B. N.

S. 790, 31 L. J. C. P. 316; Reg. *v.* Darlington Local Board, 13 W. R. 789, 35 L. J. Q. B. 45; Coe *v.* Wise, 1 L. R. Q. B. 711.) Secs. 308, 309.

A recent case in the House of Lords shows well the difference between cases where compensation may be claimed, and cases where the only remedy is by action. It is there laid down that "no action will lie for doing that which the legislature has authorised, if it be done without negligence, although it does occasion damage to some one." The remedy in such a case is by proceeding for compensation under the Act which authorised the damage. "If the person injuriously affected cannot find any clause in the Act of Parliament giving him compensation for the damage which he has received, he cannot obtain compensation for that damage by way of action against the parties who have done no wrong. But an action lies for doing that which the legislature has authorised, if it be done negligently. And if by a reasonable exercise of the powers, either given by statute to the promoters, or which they have at common law, the damage could be prevented, it is negligence not to make such reasonable exercise of their powers." (Geddis *v.* Proprietors of Bann Reservoirs, L. R. 3 App. Cas. 430.)

See also notes to s. 179, *ante*.

309. If any officer of any trustees commissioners or other body of persons intrusted with the execution of any local Act, whether acting exclusively under the local Act or partly under the local Act and partly under the Local Government Acts, or any officer of any sanitary authority under the Sanitary Acts by this Act repealed or of any local authority under this Act, is, by or in pursuance of the Public Health Act, 1872, or of this Act, or of any provisional order made in pursuance of either of those Acts, removed from his office or deprived of the whole or part of the emoluments of his office, and does not afterwards receive remuneration to an equal amount in respect of some office or employment under or by the authority of any district under this Act, the Local Government Board may by order award to such officer such compensation as the said Board may think just; and such compensation may be by way of annuity or otherwise, and shall be paid by the local authority of the district in which such officer held his office out of any rates applicable to the general purposes of this Act within that district.

"Emoluments of his office" mean not the salary, but what the office is worth to the holder. This may be more or less than the actual salary, according to the expenses or allowances incidental to the office. If a saving is made out of allowances, the amount saved should be added to the salary

Secs. 309-311. in calculating what are the emoluments of an office; *e converso*, if there are expenses to be defrayed out of salary, they must be deducted in order to arrive at its true value. (Reg. *v.* Postmaster-General, 3 Q. B. D. 428, 47 L. J. Q. B. 435.) Before this it was held that in awarding this compensation the Local Government Board should take into consideration not only the salary, but the incidental advantages of the office, if there are any (Reg. *v.* Mayor of Norwich, 8 A. & E. 633; Reg. *v.* Poor Law Board, 6 L. R. Q. B. 789, 41 L. J. M. C. 16).

310. Where after the passing of this Act a district or part of a district under the jurisdiction of improvement commissioners, or a district or part of a district under the jurisdiction of a local board, is constituted or included in a borough, all the powers rights duties capacities liabilities obligations and property exerciseable by attaching to or vested in such improvement commissioners or local board (as the case may be) under this Act, or under any local Act for purposes the same as or similar to those of this Act, or under any general Act of Parliament, within or for the benefit of such district or part of a district, shall pass to and be exerciseable by and vested in the council of such borough.

See Hyde *v.* Bank of England, *Times*, June 13th, 1882.

The transfer by virtue of the Public Health Act, 1872, of the powers rights duties capacities liabilities obligations and property of any local board or improvement commissioners to an urban sanitary authority, shall be deemed to have included all powers rights duties capacities liabilities obligations and property exerciseable by attaching to or vested in such local board or improvement commissioners as a burial board under any general Act of Parliament.

As to their general powers as a burial authority, *see ante*, p. 125, *et seq.*

311. Any local board constituted either before or after the passing of this Act may, with the sanction of the Local Government Board, change their name. Every such change of name shall be published in such manner as the Local Government Board may direct. No such change of name shall affect any rights or obligations of the local board, or render defective any legal proceedings instituted by or against the local board; and any legal proceedings may be continued or commenced against

the local board by their new name which might have been continued or commenced against the local board by their former name.

312. The retirement and mode of election of members of any authority invested by any local Act with powers of town government and rating, whose retirement and mode of election were at the time of the passing of this Act regulated by the Local Government Acts, shall be regulated in all respects by the rules for election of local boards contained in schedule ii. to this Act; but this enactment shall not affect the qualification fixed for members of such authority by the local Act under which such authority are constituted, or the qualification and tenure of office of any ex officio members of such authority.

313. Where in any Act or order made by one of Her Majesty's Principal Secretaries of State or by the Local Government Board and in force at the time of the passing of this Act, or in any document, any provisions of any of the Sanitary Acts which are repealed by this Act are mentioned or referred to, such Act order or document shall be read as if the provisions of this Act applicable to purposes the same as or similar to those of the repealed provisions were therein mentioned or referred to instead of such repealed provisions, and were substituted for the same; nevertheless those substituted provisions shall have effect subject to any modification or restriction in such Act order or document expressed in relation to the repealed provisions therein mentioned or referred to.

314. Any local authority may, if they think fit, make bye-laws for securing the decent lodging and accommodation of persons engaged in hop-picking within the district of such authority.

These bye-laws must be in accordance with the requirements of ss. 182-187, *ante*. They are among the model bye-laws issued by the Local Government Board.

By the proposed Public Health (Fruit Pickers' Lodgings) Act, 1882, expected to be passed this session, this power to make bye-laws is extended to "authorise the making of bye-laws for securing the decent lodging and accommodation of persons engaged in the picking of fruit and vegetables."

Secs. 315-320.

315. Any bye-law made by any sanitary authority under the Sanitary Acts which is inconsistent with any of the provisions of this Act shall so far as it is inconsistent therewith be deemed to be repealed.

316. In the construction of the provisions of any Act incorporated with this Act the term "the special Act" includes this Act, and in the case of the Lands Clauses Consolidation Acts, 1845, 1860 and 1869, any order confirmed by Parliament and authorising the purchase of lands otherwise than by agreement under this Act; the term "the limits of the special Act" means the limits of the district; and the urban or rural authority shall be deemed to be "the promoters of the undertaking," "the commissioners," or "the undertakers," as the case may be.

All penalties incurred under the provisions of any Act incorporated with this Act shall be recovered and applied in the same way as penalties incurred under this Act.

See ss. 251, 253, 254, as to penalties under this Act.

317. The schedules to this Act shall be read and have effect as part of this Act.

The forms contained in schedule iv. to this Act, or forms to the like effect, varied as circumstances may require, may be used and shall be sufficient for all purposes.

Temporary Provisions.

318. Nothing in this Act shall affect the rights or position of any clerk or treasurer the tenure of whose office is regulated by section 12 of the Public Health Act, 1872.

319. Nothing in this Act shall affect the making and levying of any special district rates, or the discharge of sums borrowed on the credit of any special district rates, or any right or remedy for the recovery of the same, under any provision of the Local Government Acts in force at the time of the passing of this Act.

320. Where under the provisions of any local Act in that behalf any expenses directed by this Act to be paid in the case of a council of a borough out of the borough fund or borough

rate were, before the passing of the Public Health Act, 1872, divided between landlord and tenant in moieties or otherwise, the Local Government Board may, on the application either of landlord or tenant, by order make provision for the continuance of such division of expenses during the continuance of any contract existing between them at the passing of the last-mentioned Act.

321. Where by any sanction to a loan given or by any provisional order made under the Sanitary Acts it is directed that the sums borrowed shall be repaid within a limited period of years from the date of the borrowing thereof, any security which has been given for a sum so borrowed shall not be invalid by reason of the sum having been made repayable within a period less than the period so limited.

322. Where by any local Act powers are conferred on any turnpike trustees for any purposes the same as or similar to any of the purposes of the Sanitary Acts or of this Act, such trustees shall not be deemed to be an urban authority under this Act, but all their powers and obligations under such local Act for such purposes shall be transferred to the local authority within whose district the area to which such local Act applies is contained.

323. Where any district has been constituted in pursuance of the provisions of the Public Health Act, 1848, for the purposes of main sewerage only, or where a district has been formed subject to the jurisdiction of a joint sewerage board in pursuance of the Sewage Utilisation Act, 1867, the Local Government Board may by provisional order dissolve such district, or may constitute such district a united district subject to the jurisdiction of a joint board in manner provided by this Act, without application previous to the making of any such order; and until an order has been made by the Local Government Board under this section the authority of any such district shall continue to be the authority thereof and their members shall be elected as if this Act had not passed: Provided that

Secs. 323-326.

the provisions of this Act applicable to purposes the same as or similar to those of any enactments of the Sanitary Acts which are in force within the district of any such authority at the time of the passing of this Act and are repealed by this Act shall be deemed to be substituted for those enactments.

Any order made under this section may, if necessary, provide for the settlement of any differences or the adjustment of any accounts or the apportionment of any liabilities arising between districts parishes or other places in consequence of the exercise of any of the powers conferred by this section, and may direct the persons by and to whom any moneys found to be due are to be paid and the mode of raising such moneys.

324. The accounts of any urban or rural sanitary authority under the Sanitary Acts by this Act repealed, not audited at the time of the passing of this Act, shall be deemed for the purposes of audit to be accounts of such authority under this Act.

325. The power conferred by section 20 of "The Public Health Act, 1872," of temporarily constituting a port sanitary authority shall be deemed to have authorised a renewal from time to time of any order made under that section.

See also ss. 287-292 as to port sanitary authorities.

PART XI.

SAVING CLAUSES AND REPEAL OF ACTS.

Saving Clauses.

326. All urban sanitary authorities and rural sanitary authorities existing at the time of the passing of this Act shall be deemed to be urban authorities and rural authorities under this Act; and all joint boards, port sanitary authorities, committees, of rural sanitary authorities, and parochial committees, and all local government districts constituted in pursuance of the sanitary Acts, and existing at the time of the passing of this Act shall be deemed to be joint boards, port sanitary authorities,

committees of rural sanitary authorities, and parochial committees, and local government districts under this Act; and the members of all the above-mentioned bodies shall hold office (subject to the provisions of this Act respecting the election of members of local boards) for such time as they would respectively have held office if this Act had not been passed; and the officers and servants of all the above-mentioned bodies shall continue to hold their several offices and employments on the same terms and subject to the same conditions, as to duties remuneration and otherwise, as they would have held them if this Act had not been passed; and all bye-laws duly made under any of the sanitary Acts by this Act repealed and not inconsistent with any of the provisions of this Act shall be deemed to be bye-laws under this Act; and all the provisions of this Act shall apply to all such bodies existing at the time of the passing of this Act and to their several officers and servants, in substitution for the provisions of the sanitary Acts by this Act repealed but so as not to affect any right acquired or liability incurred under the sanitary Acts or any of them, before the passing of this Act, and existing at the time of the passing of this Act. Secs. 326, 327.

327. Nothing in this Act shall be construed to authorise any local authority—

(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 by any body of persons or person 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

If a local authority injuriously affect any rights within this section without having duly obtained the necessary consent, they are liable to an action for damages caused by such injurious affecting, and may be restrained from proceeding further with the works which cause the injury. (Reg. *v.* Darlington Local Board, 13 W. R. 789, 35 L. J. Q. B. 45; Grand Junction Canal Co. *v.* Shugar, 6 L. R. Ch. 683.)

Sec. 327.

(2.) To disturb or interfere with any lands or other property vested in the Lord High Admiral of the United Kingdom or the Commissioners for executing the office of the Lord High Admiral for the time being, or in Her Majesty's Principal Secretary of State for the War Department for the time being; or

(3.) 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 body of persons or person are or is by virtue of any Act of Parliament entitled to navigate on or use such river canal dock harbour lock reservoir or basin, or to receive any tolls or dues in respect of the navigation thereon or use thereof; or

If the interference with the navigation is only felt at exceptionally dry seasons, still it may be restrained. (Wilts & Berks Canal Co. *v.* Swindon Waterworks Co., 7 L. R. H. L. 697.)

(4.) 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 such body of persons or person as last aforesaid would, if this Act had not passed, have been entitled by law to prevent or be relieved against such interference; or

(5.) To interfere with any bridges crossing any river canal dock harbour or basin, in cases where any body of persons or person are or is 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 thereon or use thereof; or

(6.) To execute any works in through or under any wharves quays docks harbours or basins, to the exclusive use of which any body of persons or person

are or is entitled by virtue of any Act of Parliament, or for the use of which any body of persons or person are or is entitled by virtue of any Act of Parliament to demand any tolls or dues—

Without the consent in every case of such Lord High Admiral or Commissioners for executing the office of Lord High Admiral, Secretary of State, commissioners, body of persons or person, 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 any body of persons not being a corporation under the hand of their clerk or other duly authorised officer or agent. And nothing in this Act shall prejudice or affect the rights privileges powers or authorities given or reserved to any person under such local or private Acts for draining preserving or improving land as are in this section mentioned.

328. Where any matters or things proposed to be done by any local authority, and not being within the prohibition aforesaid, interfere with the improvement of any river canal dock harbour lock reservoir basin or towing-path, which any body of persons or person are or is 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 authority shall give to such body of persons or person a notice specifying the particulars of the matters and things so intended to be done. 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 proposed to be done by the local authority will cause any injury to such river canal dock harbour basin towing-path works or

Secs. 328-331.

land, 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 is not of a nature to admit of being fully compensated by money.

This arbitration would follow the rules laid down by the Act, ss. 179–181, *ante*.

329. The result of any such arbitration shall be final, and the local authority shall do as follows, that is to say:—

(1.) If the arbitrators are of opinion that no injury will be caused, the local authority may forthwith proceed to do the proposed matters and things:

(2.) 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 on payment of the amount so assessed, but not before, the local authority may proceed to do the proposed matters and things:

(3.) 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 authority shall not proceed to do any matter or thing in respect of which such opinion may be given.

330. No transfer of powers and privileges under this Act shall deprive any body of persons or person authorised by virtue of any Act of Parliament to navigate on any river or canal, or to demand for their or his 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.

331. Any body of persons or person, authorised 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 authority, take up divert or alter the level of any sewers drains culverts or pipes constructed by any local authority, and passing under or interfering with such rivers canals docks harbours or basins or the towing-paths thereof, and may do all such things as may be necessary for carrying into effect such taking up, diversion or alteration. Secs. 331-333

332. Nothing in this Act shall be construed to authorise any local authority to injuriously affect any reservoir canal river or stream or the feeders thereof, or the supply quality or fall of water contained in any reservoir canal river stream or in the feeders thereof, in cases where any body of persons or person would if this Act had not passed have been entitled by law to prevent or be relieved against the injuriously affecting such reservoir canal river stream feeders or such supply quality or fall of water, unless the local authority first obtain the consent in writing of the body of persons or person so entitled as aforesaid.

See note to s. 327, *ante*

It was held under the former Acts that the party entitled by law to be relieved cannot oblige the local authority by mandamus to have compensation assessed, but must bring an action to recover the damages he has sustained in cases where the local authority exceeds its power in the manner here contemplated. (*See* Reg. *v.* Darlington Board, 35 L. J. Q. B. 45, 6 B. & S. 562.)

333. Any difference of opinion that may arise between a local authority and any such body of persons or person 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 authority, are equally effectual with those for which they are substituted, or whether the supply quality or fall of water in any such reservoir canal river or stream as last aforesaid is injuriously affected by the exercise of powers under this Act, may, at the option of the

Secs. 333, 334. party complaining, be determined by arbitration in manner by this part of this Act provided. The arbitrators shall decide the same questions as to the alleged injury, and the local authority shall proceed in the same way as is by this Act provided with regard to arbitrations in cases of alleged injury to rivers, canals, docks, harbours and basins.

As to arbitration, *see* ss. 179 & 180, *ante*, and ss. 328 & 329, *ante*.

334. Nothing in this Act shall be construed to extend to mines of different descriptions so as to interfere with or to obstruct the efficient working of the same; nor to the smelting of ores and minerals, nor to the calcining puddling and rolling of iron and other metals, nor to the conversion of pig iron into wrought iron, so as to obstruct or interfere with any of such processes respectively.

The meaning of this section still seems rather doubtful. It was held by the Court of Queen's Bench on the similar words of s. 44 of 18 & 19 Vic. c. 121, that mines and the processes there enumerated were entirely exempt from the scope of that Act. Lush, J., dissented, and said that section did not take away the power to deal with "a class of nuisance which is really a misuse of the premises; nuisances arising not from the *nature of the work* carried on therein, but from the improper and negligent *mode of working*." (Norris *v.* Barnes, 7 L. R. Q. B. 537; 41 L. J. M. C. 154.) This section was recently considered by the Courts (*Re* Corporation of Dudley, 8 Q. B. D. 86) where Denman, J., held that it only applied to existing mines and not to possible future mines, and the Court of Appeal, without alluding to the above judgment of Denman, J., held that the latter words of the section show that it only applies to nuisances, and does not prevent the purchase of mines where the local authority may require to take them. It still seems probable that nuisances caused by the improper working of mines may be dealt with under the Act, notwithstanding this section. In case of workings that pollute streams, it is apparently overridden by s. 5 of the Rivers Pollution Prevention Act, 1876, 39 & 40 Vic. c. 75, which is as follows:—

> "Every person who causes to fall or flow, or knowingly permits to fall or flow or to be carried into any stream any solid matter from any mine in such quantities as to prejudicially interfere with its due flow, or any poisonous noxious or polluting solid or liquid matter proceeding from any mine, other than water in the same condition as that in which it has been drained or raised from such mine, shall be deemed to have committed an offence against this Act, unless in the case of poisonous noxious or polluting matter he shows to the satisfaction of the Court having

cognisance of the case that he is using the best practicable and reasonable available means to render harmless the poisonous, noxious, or polluting matter so falling or flowing or carried into the stream."

Section x. provides that the question as to what are the best practicable means may be remitted to skilled persons to report upon. And s. xi., that a certificate granted by an inspector, of proper qualifications, appointed for the purposes of the Act, by the Local Government Board, that the means used are the best or only practicable and available means under the circumstances of the particular case, shall be conclusive evidence of the fact.

335. 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, shall have the like powers and be subject to the like obligations under this Act as they had or were subject to under the Sewage Utilization Act, 1867; and for that purpose the provisions of this Act applicable to purposes the same as or similar to those of the Sewage Utilization Act, 1865, and the Sewage Utilization Act, 1867, shall apply in substitution for the last-mentioned provisions.

336. Nothing in or done under this Act shall affect any outfall or other works of the Metropolitan Board of Works (although beyond the metropolis) executed under the Metropolis Management Act, 1855, and the Acts amending the same, or take away abridge or prejudicially affect any right power authority jurisdiction or privilege of the Metropolitan Board of Works.

337. Nothing in this Act shall affect the payment or recovery of any yearly sum payable at the time of the passing of this Act in pursuance of the Local Government Act, 1858, Amendment Act, 1861, to any local authority in respect of any premises without their district which have a drain communicating with a sewer within their district: Provided that any such sum shall cease to be payable, if and when the connection between the drain and the sewer is discontinued, from the time of such discontinuance; but if after the discontinuance the connection

Secs. 337 340.

is re-established, the yearly sum shall again become payable, and so from time to time.

338. All rates orders acts or things, made possessed performed or done before the passing of this Act, by any authority purporting to act under the powers conferred on them by a local Act with respect to any sanitary purposes shall be valid, notwithstanding the passing of the Public Health Act, 1872, or of this Act.

339. Nothing in this Act shall affect the composition of any local board constituted by any Order in Council or any provisional order made under the Public Health Act, 1848, and confirmed by Parliament, or the qualification or number of members of any such board; but any such Order in Council, or order so confirmed, or the Act confirming any such last-mentioned order, may be repealed altered or amended in manner provided by this Act.

340. Where within the district of a local authority any local Act is in force, providing for purposes the same as or similar to the purposes of this Act, proceedings may be instituted at the discretion of the authority or person instituting the same, either under the local Act or this Act, or under both, subject to these qualifications:—

(1.) That no person shall be punished for the same offence both under a local Act and this Act; and

(2.) That the local authority shall not, by reason of any local Act in force within their district, be exempted from the performance of any duty or obligation to which they may be subject under this Act.

The words of this section seem sufficiently precise to get over the difficulty which was raised under the Gas Works Clauses Act, in Parry *v.* Croydon Gas Co. (11 C. B. N. S. 579, 15 C. B. N. S. 568), where it was held that a local Act which enabled a common informer to sue for penalties for fouling water by gas refuse was impliedly repealed by the general Act, which gave the right to sue only to a party aggrieved. If a local Act now gives larger rights of proceeding for penalties than this Act gives, it seems that this section will allow to party so proceeding to proceed under the local Act, even though not a party aggrieved within the meaning of s. 253, *ante*.

341. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred 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; and nothing in this Act shall exempt any person from any penalty to which he would have been subject if this Act had not 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.

Oxford.

342. The local government district of Oxford shall be subject to the jurisdiction of a local board consisting of the Vice-Chancellor of the University of Oxford and the Mayor of Oxford for the time being, of forty-five other members, fifteen to be elected by the University of Oxford, sixteen by the town council of Oxford, and fourteen by the ratepayers of the parishes situated within the area formerly 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, and of the members for any parishes or parts of parishes which may have been or may hereafter be added to the Oxford district.

After the passing of this Act a district formed out of the rural sanitary districts of the city of Oxford and the Abingdon Union, to be termed the "Grandpont district," shall be defined by an order of the Local Government Board, and on a day to be mentioned in such order the said district shall form part of the said local government district of Oxford. The election of members of the said local board by the town council and by the ratepayers of the parishes and parts of parishes respectively shall be conducted at the same time, in the same way, and subject to the same regulations in and subject to which such election is conducted at the time of the passing of this Act.

Sec. 342.

As regards the district of Cowley now comprised in the said local government district of Oxford, and the district of Grandpont when added to the same district, the chairman of the said local board or, in his absence, the clerk to the local board, shall summon a meeting of the several persons rated to the relief of the poor in respect of hereditaments situated in the said Cowley and Grandpont districts respectively, by public notices under his hand, to be affixed three clear days previously to the principal doors of every church and chapel in the districts, such meeting to be held on the day when the commissioners for the parishes are elected, and at a place in each such district to be fixed by the chairman or clerk, and the appointment of a chairman and all other the business of such meetings shall be conducted as if the meetings respectively were the meetings of a vestry in a parish.

An election of the member for the Grandpont district shall take place as soon as convenient after that district has been added to the Oxford local government district as aforesaid, and he shall continue in office until the next annual election of the said local board.

The fifteen members to be elected by the university shall be elected as follows: namely, four members shall be elected by the university in convocation, and eleven members shall be elected by the heads and senior resident bursars of the several colleges, entitled by any statute of the university or otherwise to matriculate students, and by the heads of the several halls; any member of the university, being of the degree of Master of Arts Bachelor of Civil Law or Bachelor in Medicine or any superior degree of the university shall be qualified to be elected; 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 or may hereafter be chosen by them respectively, save that in the election of members 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. Secs. 342-343.

Except as above provided, nothing in the Act shall affect the provisions of any order confirmed by Parliament relating to the local government district of Oxford, and in force at the time of the passing of this Act.

Repeal of Acts.

343. The Acts specified in the first and second parts of schedule v. to this Act are hereby repealed to the extent in the third column in the said parts of that schedule mentioned, with the following qualification (that is to say) :—

That so much of the said Acts as is set forth in the third part of that schedule shall be re-enacted in manner therein appearing, and shall be in force as if enacted in the body of this Act.

Provided also that this repeal shall not affect—

(*a.*) Anything duly done or suffered under any enactment hereby repealed; or

(*b.*) Any right or liability acquired accrued or incurred under any enactment hereby repealed; or

(*c.*) Any security given under any enactment hereby repealed; or

(*d.*) Any penalty forfeiture or punishment incurred in respect of any offence committed against any enactment hereby repealed; or

(*e.*) Any investigation legal proceeding or remedy in respect of any such right liability security penalty forfeiture or punishment as aforesaid; and any such investigation legal proceeding and remedy may be carried on as if this Act had not been passed.

A rate duly made under the repealed Acts has been held to come within the protection of this section, and therefore to be good. (Reg. *v.* Justices of West Riding, 1 Q. B. D. 220, 45 L. J. M. C. 97.) So also an order to discontinue a nuisance is a liability within the meaning of this section. (Barnes *v.* Edleston, 1 Ex. D. 102, 45 L. J. M. C. 73.)

APPENDIX.

SCHEDULES.

SCHEDULE I.

RULES AS TO MEETINGS AND PROCEEDINGS.

(1.) *Rules applicable to Local Boards.*

1. EVERY local board shall from time to time make regulations 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 under this Act.

An adjournment, if *bona fide*, is only a continuation of the meeting which is adjourned to it. (Kerr *v.* Wilkie, 8 W. R. 286; 1 L. T. N. S. 501.)

These regulations are not subject to the general provisions of the Act as to bye-laws. (cf. s. 188, *ante*.)

2. No business shall be transacted at any such meeting, unless at least one-third of the full number of members be present thereat, subject to this qualification, that in no case shall a larger quorum than seven members be required.

3. Every local board shall 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.

4. If the chairman, so appointed, dies resigns or becomes 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.

5. If the chairman is 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.

6. The names of the members present, as well as those voting on each question, shall be recorded, so as to show whether each vote given was for or against the question.

7. Every question at a meeting shall be decided by a majority of votes of the members present, and voting on that question.

It has been decided that, in the absence of an express provision such as this, the majority must be an actual majority of the persons present and not merely a majority of those who voted. (*Re* Ratepayers of Eynsham, 12 Q. B. 398 *n.*, 18 L. J. Q. B. 210; Reg. *v.* Overseers of Christchurch, 7 E. & B. 409; affirmed in C. S. 421; 27 L. J. M. C. 23. These cases are, however, expressly overruled as regards local boards by this section.)

8. In case of an equal division of votes the chairman shall have a second or casting vote.

9. The proceedings of a local board shall not be invalidated by any vacancy or vacancies among their members, or by any defect in the election of such board or in the election or selection or qualification of any members thereof.

10. Any minute made of proceedings at a meeting, and copies of any orders made or resolutions passed at a meeting, if purporting to be signed by the chairman of the meeting at which such proceedings took place or such orders were made or resolutions passed, or by the chairman of the next ensuing meeting, shall be received as evidence in all legal proceedings; and until the contrary is proved, every meeting where minutes of the proceedings have been so made shall be deemed to have been duly convened and held, and all the proceedings thereat to have been duly had.

11. The annual meeting of a local board shall be held as soon as may be convenient after the fifteenth of April in each year.

12. The first meeting of a local board for a district consti-

tuted after the passing of this Act shall be held at such place and on such day (not being more than ten days after the completion of the election) as the returning officer may by written notice to each member of the Board appoint; and the members shall appoint one of their number to be chairman at such meeting, and shall also appoint one of their number to be chairman for one year at all meetings at which he is present.

See sch. ii. rule 32, *post*, as to the returning officer.

13. Nothing in these rules contained with respect to the appointment of chairman shall apply to the Oxford district, and in that district a chairman shall be appointed as heretofore.

As to Oxford, *see* s. 342 of the Act, *ante*, p. 359.

(2.) *Rules applicable to Committees of Local Authorities, other than Councils of Boroughs, and to Joint Boards.*

1. A committee or joint board may meet and adjourn as it thinks proper.

See ss. 200–204, as to committees; and 280–282, as to joint boards.

2. The quorum of a committee or joint board shall consist of such number of members as may be prescribed by the authority that appointed the committee or joint board, or, if no number is prescribed, of three members.

3. A committee or joint board may appoint a chairman of its meetings.

4. If no chairman is elected, or if the chairman elected is not present at the time appointed for holding any meeting, the members present shall choose one of their number to be chairman of such meeting.

5. Every question at a meeting shall be determined by a majority of votes of the members present and voting on that question.

6. In case of an equal division of votes the chairman shall have a second or casting vote.

7. The proceedings of a committee or joint board shall not be invalidated by reason of any vacancy or vacancies amongst

their members, or any defect in the mode of appointment of such committee or joint board or of any member thereof.

8. Any minute made of proceedings at a meeting, and copies of any orders made or resolutions passed at a meeting, purporting to be signed by the chairman of the meeting at which such proceedings took place or such orders were made or resolutions passed, or by the chairman of the next ensuing meeting, shall be received as evidence in all legal proceedings; and until the contrary is proved, every meeting where minutes of the proceedings have been so made shall be deemed to have been duly convened and held, and all the proceedings thereat to have been duly had.

SCHEDULE II.

(1.) RULES FOR ELECTION OF LOCAL BOARDS.

Number and Qualification of Members.

1. The number of members of a local board constituted after the passing of this Act shall be such number as is determined by the order forming the district.

2. The Local Government Board may from time to time by order, after local inquiry, increase or diminish the number of members of any local board, and may prescribe at what time or times and in what manner such increase or diminution shall take effect, and may vary temporarily the provisions of this schedule relating to the continuance in office and retirement of members, so far as may be necessary for that purpose.

See ss. 271, 272, 294, 295 & 325.

3. A person shall not be qualified to be a member of a local board unless he is at the time of his election, and so long as he continues 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 is 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 is rated to the relief of the poor of such district or of some parish within the same, on 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.

By the Town Councils and Local Boards Act, 1880, 43 Vic. c. 57, s. 1, "Every person shall be qualified to be elected and to be a member of a local authority who is at the time of election qualified to elect to any membership of that authority." "Local authority" is, however, defined by that Act to mean the council of a borough under the Municipal Corporations Act, 1855, or any Act amending the same; consequently the extension of qualifications applies to the town councils of boroughs, which exercise the powers of urban authorities under this Act, but does not apply to Boards of Health, the members of which must possess the property required by this clause.

The seven miles must be measured in a direct line from the residence of the member to the nearest point of the district. (Reg. *v.* Saffron Walden, 9 Q. B. 76; Lake *v.* Butler, 5 E. & B. 92, 24 L. J. Q. B. 273; Jewel *v.* Stead, 6 E. & B. 350, 25 L. J. Q. B. 294; Stokes *v.* Grissell, 14 C. B. 678, 23 L. J. C. P. 141.) The measurement should not follow the roads. (Mouflet *v.* Cole, 8 L. R. Ex. 34, 42 L. J. Ex. 8.)

The member must actually have his name inserted in a rate which has been duly allowed and published, and not merely possess rateable property. (Reg. *v.* Eddows, 1 E. & E. 330, 28 L. J. Q. B. 84.) But by 31 & 32 Vic. c. 121, s. 38, and 32 & 33 Vic. c. 41, s. 1, when any person occupies any new house or place which was not entered as rateable in the valuation list for the time being in force, the owners may enter the name of such person on the ratebook, and claim a proportionate part of the current rate from him. So that a new comer can very shortly become rated, if he desires to qualify for office. (*See* also note to clause 11, *post.*)

Annual value here means not gross value but rateable value; if the property is not *rated* at the required sum it will not confer a qualification. (Baker *v.* Marsh, 4 E. & B. 144, 24 L. J. Q. B. 1.)

4. Where two or more persons are 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 are 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 seised possessed or rated may be elected, but the same property shall

not at the same time qualify the owner and the occupier thereof.

Compare clause 13, *post*, and also clause 17.

5. A person who is a bankrupt or whose affairs are under liquidation by arrangement, or who has entered into any composition with his creditors, shall be incapable, so long as any proceedings in relation to such bankruptcy liquidation or composition are pending, of being elected member of a local board.

Wards.

6. The Local Government Board may, by order made on application in pursuance of a resolution of owners and ratepayers passed in manner provided by schedule iii. to this Act, and after local inquiry, divide any district into wards; and on the like application from time to time may abolish such wards, or alter the number or boundaries of such wards, and may determine and from time to time alter the proportion of members of the local board to be elected by each ward:

See ss. 293—296, as to inquiries by the Local Government Board.

Provided that where a district has been divided into wards by a provisional order, such wards shall not be abolished or altered otherwise than by a provisional order confirmed by Parliament.

See s. 297.

7. If any member is 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 in the other ward or wards, and shall be filled up as if it were a casual vacancy.

See clause 65, *post*.

8. 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.

9. Subject as aforesaid, any owner or ratepayer may, by notice in writing delivered to the clerk of the local board, or in case of the first election, to the returning officer, 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 does not give such notice he shall not be entitled to vote for any ward in which he does not reside.

The right of nomination (clause 39, *post*) goes with the right of voting. Therefore a person, though qualified, cannot nominate for a ward where he has not elected to vote. (Reg. *v.* Parkinson, 3 L. R. Q. B. 11, 37 L. J. Q. B. 52.)

Qualification of Electors, Scale of Voting, and Register of Owners.

10. The word "owner," when used in relation to the right of voting at any election of a local board, shall mean any person for the time being in the actual occupation of any kind of property in the district or part of a district for which he claims to vote, rateable to the relief of the poor, and not let to him at a rackrent, or any person receiving on his own account or as mortgagee or other incumbrancer in possession the rackrent of any such property.

This definition of "owner" is different from that in s. 4 of the Act, *ante*, p. 3, inasmuch as it introduces the qualification that the property to give a vote in respect of ownership must be rateable to the relief of the poor. No definition of "rackrent" being here given, that in s. 4, *ante*, p. 5, no doubt applies.

11. A person shall not be deemed a ratepayer or be entitled to vote as such at any such election, unless he has 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 has also before that day paid all rates made on him for the relief of the poor in such district or part of a district for the period of one whole year, and all rates due from him under this Act, except

rates which have been made or become due within the six months immediately preceding.

Rated means actually on the list of ratepayers, and not merely liable to be rated. (*See* note to clause 3, *ante*, p. 363.) A person may, however, be qualified without personal payment of the rates. By the Poor-rate Assessment and Collection Act, 1869, 32 & 33 Vic. c. 41, s. 7, "every payment of a rate by an owner, whether he is himself rated instead of the occupier, or has agreed with the occupier or with the overseers to pay such rate, and notwithstanding any allowance or deduction which the overseers are empowered to make from the rate, shall be deemed a payment of the full rate by the occupier for the purpose of any qualification or franchise which, as regards rating, depends on payment of the poor rate."

It has been recently held in an action for a penalty for acting as vestryman without being qualified by being rated for the relief of the poor, as required by the Metropolis Management Act, 1855, 18 & 19 Vic. c. 120, s. 6, that a person who, as a partner, was occupier of and paid rates for property of sufficient value to confer a qualification, but whose name was not entered on the rate books (though he had requested that it should be so) was liable to the penalty as he was not *rated* as required, and therefore not duly qualified. (Goodhew *v.* Williams, 3 C. P. D. 382; 47 L. J. C. P. 313.) This, however, does not affect the case of an occupier whose rates are paid by his landlord, as by 32 & 33 Vic. c. 41, s. 19, he is to be deemed duly rated, and be entitled to every qualification and franchise depending upon rating, though his name shall be omitted and he has made no claim for its insertion. This section has been declared to be of general application by 41 & 42 Vic. c. 26, s. 14, removing the doubt raised by Smith *v.* Seghill (L. R. 10 Q. B. 422; 44 L. J. M. C. 114.)

12. Owners of and ratepayers in respect of property situated within the district for which the election is held 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 is rated to the poor-rate on a rateable value of less than fifty pounds, he shall have one vote; if such rateable value amounts to fifty pounds and is less than one hundred pounds, he shall have two votes; if it amounts to one hundred pounds and is less than one hundred and fifty pounds, he shall have three votes; if it amounts to one hundred and fifty pounds and is less than two hundred pounds, he shall have four votes; if it amounts to two hundred pounds and is less than two hundred and fifty pounds, he

shall have five votes; and if it amounts to or exceeds two hundred and fifty pounds, he shall have six votes.

13. 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.

14. Owners may give their votes either personally or by proxy.

15. The instrument appointing a proxy shall be in writing under the hand of the appointor, or where the appointor is a corporation under their common seal, or where the appointor is a body of persons unincorporate, under the hands of three directors or other persons having the direction or management of the undertaking or business carried on by such body of persons; and every such instrument shall be attested by a witness, and may be in the form M in schedule IV. to this Act.

No stamp is required for this proxy. (Reg. *v.* Strachan, 7 L. R. Q. B. 463, 41 L. J. Q. B. 210.)

16. No member of a corporation or of any such body of persons (other than a partnership firm consisting of not more than six persons) shall be entitled to vote individually as owner in respect of property belonging to such corporation or body of persons.

The form M in schedule iv. provides for corporations appointing proxies under their common seal. No other method for their voting is mentioned, and it seems that the most convenient way is for corporations to appoint their secretary or some other officer their proxy for voting on elections.

17. Partners in a firm consisting of not more than six persons may vote as owners in respect of property of the firm as if that property were equally divided among the partners.

18. An owner or a proxy shall not (except at the first election of a local board constituted after the passing of this Act) be entitled to have a voting paper delivered to him as such, unless his name is on the register hereinafter mentioned.

19. The local board shall cause a register to be made and kept, in which shall be entered the names addresses and qualifications of the owners claiming and entitled to vote, and

the names or descriptions addresses and qualifications of the appointors of proxies, and the names and addresses of proxies duly appointed.

Any such register made before the passing of this Act shall be deemed to be a register or part of a register under this Act.

It was held under the former Act that an owner must claim every year. (Reg. *v.* Morgan, 7 L. R. Q. B. 26, 41 L. J. Q. B. 65.) This seems to be no longer required. (*See* clause 31, *post.*)

20. A claim by an owner or proxy to be entered on the register shall state his name and address within the district, and a description of the nature of the interest or estate in the property giving the qualification, and a statement of the amount of all rent service (if any) received or paid in respect thereof by him or the body of persons for whom he is proxy, and of the persons from whom or to whom the same is received or paid; and in the case of a proxy the claim shall be accompanied by the appointment of the proxy or an attested copy thereof.

21. A claim by an owner or proxy may be made by writing in form L, in schedule iv. to this Act.

22. A person entitled to vote either as owner or ratepayer may object to the keeping of any name on the register, by writing in the form L in the said schedule.

23. Claims and objections shall be sent to the chairman of the local board on some one of the first six days of March, and a claim or objection sent at any other time shall not be admitted by the chairman.

24. A person making an objection shall also give written notice thereof to the person objected to, by leaving the same at the address, within the district, of that person.

The notice may be sent by post by virtue of s. 267 of the Act, *ante.*

25. The chairman shall, between the twentieth of February and the first day of March, publish a notice, in the form L, in schedule iv. to this Act, and signed by him, of the time

within which claims and objections are to be made as aforesaid, and shall cause a copy of such notice to be inserted in some local newspaper circulating in the district and to be affixed at the places where parochial notices are usually affixed.

Parochial notices are affixed on or near the doors of all the churches and chapels within the parish. (7 Wm. IV. and 1 Vic. c. 45, s. 2; *see* note to s. 210, *ante*.)

26. The chairman, on the expiration of the time for sending in claims and objections, shall, with the assistance of such persons (if any) as the local board may appoint, proceed forthwith to revise the register, by entering thereon the names of the persons who have claimed and are proved to his satisfaction to be entitled to vote as owners or proxies respectively, and the other particulars by this schedule required to be entered with respect to owners and proxies, and by expunging from the register the names of owners and proxies who are proved to his satisfaction to be dead or have ceased to be entitled to vote.

27. For the purpose of enabling the chairman to determine the validity of claims and objections, he may examine such persons and call for such evidence from the persons making the same as he may think fit; any person may tender himself to be examined; but no person shall be entitled to be examined or to be heard before the chairman in support either of a claim or an objection.

There is no power given to the chairman to require the attendance of any person for examination, nor to inflict any penalties if the evidence given is untrue. The evidence is not apparently to be given on oath, and s. 263 does not therefore apply. The chairman may refuse to allow a claim or objection if he is not satisfied with the evidence in support of it.

28. Not later than the 16th of March the chairman shall close the revision and sign the revised register, and that register shall continue in force for the 12 months next ensuing.

29. If the chairman is unable or unwilling to conduct the revision of the register, the local board shall appoint some person to conduct the revision, and in default of such appointment the

revision shall be conducted by the clerk to the local board. Any person so appointed or the clerk shall for the purposes of the revision have the same powers and duties as the chairman of the local board.

There is no restriction as to the chairman's choice of a substitute, but the clerk, or some one from his office, is generally the best person to appoint.

30. The register shall be open to the inspection of candidates and other persons interested in any election or in any question at which any such owner or proxy claims to vote, subject to such rules as the local board may prescribe for the prevention of loss injury or disorder.

31. At the first election of a local board constituted after the passing of this Act an owner or proxy shall be entitled to have a voting paper delivered to him, if not less than fourteen days before the last day appointed for delivery of the voting papers he sends a claim in writing to the returning officer containing such particulars as are hereinbefore required to be contained in claims to be entered on the register of owners and proxies.

Returning Officer.

32. The returning officer, for the purposes of the election of a local board, shall be the chairman of the board; or in the case of the first election, if the district is constituted by provisional order, such person as may be appointed by order of the Local Government Board; and if the district is constituted in pursuance of a resolution of owners and ratepayers, the summoning officer of the meeting of owners and ratepayers; and all powers and duties by this Act vested in or imposed on the returning officer, and all other duties requisite to be performed by him in relation to such election, shall be exercised and performed by the chairman or such person as aforesaid.

A returning officer cannot be allowed to return himself at the election over which he presides, as no one can be judge in his own cause. (Reg. *v.* Owens, 2 E. & E. 86, 28 L. J. Q. B. 316) This does not prohibit the mayor of a borough (nor the chairman of a board) from being a candidate for re-election, only from conducting the election; if he is a candidate, he becomes

incapable of performing his duties, and a substitute must perform them for him. (Reg. *v.* White, 2 L. R. Q. B. 557.)

In a late case the Court of Queen's Bench refused to grant a *quo warranto* against a chairman who had irregularly acted in an election after he had himself been nominated as a candidate, no facts appearing to show that his action had in any way prejudiced the election; but at the same time said "that if in any future case it should appear that the chairman wilfully and contumaciously acted in his own election, the Court might well in its discretion order the filing of an information to check the practice." (Reg. *v.* Ward, 8 L. R. Q. B. 210, 42 L. J. Q. B. 126.)

33. If the office of chairman is vacant at the time when any such power or duty must be exercised or performed, or if the chairman or such other person as aforesaid, from illness or other sufficient cause, is unable to exercise or perform such powers or duties, or is absent or refuses to act, some other person shall be appointed (in case of the first election) by the Local Government Board, and (in any other case) by the local board, to exercise or perform such powers and duties.

34. The local board, or (in case of the first election) the returning officer, shall, before or during the election, appoint a competent number of persons to assist the returning officer in conducting and completing the same.

35. If any returning officer appointed by the Local Government Board dies refuses or becomes incapable to act the Local Government Board may appoint another person to act in his stead.

Election.

36. The returning officer shall after the close of the revision of the register, but not less than fourteen days before the last day appointed for delivery to him of nomination papers, publish a notice, signed by him, and specifying—

The number and qualification of the persons to b elected;

The place where the nomination papers hereinafter mentioned are to be delivered or sent to him;

The last day on which they are to be delivered or sent in

The mode of voting in case of a contest;

The day or days on which the voting papers will be delivered and the day on which they will be collected; and

The place for the examination and for the casting up of the votes;

And shall also cause copies of such notice to be affixed at the places where parochial notices are usually affixed.

As to publication of the notice, *see* note to s. 210, *ante*, p. 264.

It was decided on the corresponding provisions of the Public Health Act, 1848, 11 & 12 Vic. c. 63, s. 13, that elections to fill casual vacancies might be held at the same time as the ordinary elections, but the notice must state the difference between the regular vacancies and the casual, otherwise the election would be bad. (Reg. *v.* Rippon, 1 Q. B. D. 217, 47 L. J. Q. B. 188; following Reg. *v.* Rowley, 3 Q. B. 143; affirmed, 6 Q. B. 668; decided on the analogous provisions of the Municipal Corporations Act, 5 & 6 Will. IV. c. 76.) Clause 65 seems now to meet this difficulty, but it would be well to take care that the notice calls specific attention to the fact that some vacancies are only casual.

37. The returning officer may, if he thinks fit, cause to be made an alphabetical list of the persons entitled to vote at the election.

38. 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 the election is held, and having the custody of any books or papers relating to the election of guardians of the poor or of 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 returning officer. Any person having the custody of any such books or papers, who refuses to permit the same to be inspected or copies or extracts to be taken therefrom, shall be liable to a penalty not exceeding five pounds.

39. 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 or persons so qualified (not exceeding the number of persons to be elected).

Where the district is divided into wards, as provided by clause 6, *ante*, the nominator must be entitled to vote for the ward for which he nominates,

or his nomination is bad. (Reg. *v.* Parkinson, 3 L. R. Q. B. 11, 37 L. J. Q. B. 52.) But if a person, qualified to vote in one capacity, erroneously state himself in his nomination paper to be qualified in another capacity, such words are mere surplusage, as the Act only requires a certain description of the nominee and none of the nominator, and the nomination will be good. (Reg. *v.* Morgan, 7 L. R. Q. B. 26; 41 L. J. Q. B. 55.)

40. Every such nomination shall be in writing, and shall state the names and residence and calling or quality of the person or persons nominated, and shall be signed by the person nominating and be delivered or sent to the returning officer.

Under a similar provision of the Municipal Elections Act, 1875, 38 & 39 Vic. c. 40, s. 1, it has been held that a nomination paper putting an initial instead of the Christian name of the candidate was insufficient, and the nomination consequently void (Mather *v.* Brown, 1 C. P. D. 596; 45 L. J. C. P. 547). The signature of the nominator need not be in full (Hands *v.* Turner, 1 C. P. D. 673; 45 L. J. C. P. 550).

If the residence of the person nominated is wrongly described, the nomination is bad (Reg. *v.* Deighton, 5 Q. B. 896; 13 L. J. Q. B. 896); so also if a wrong address is given (Reg. *v.* Coward, 16 Q. B. 819; 20 L. J. Q. B. 359). A place of business is not a residence as required by the Act. (Reg. *v.* Hammond, 17 Q. B. 772, 21 L. J. Q. B. 153.) It has, however, been recently held that an address which was sufficient to prevent mistakes as to the person meant, though not agreeing with his address on the list of voters, was sufficient (Soper *v.* Basingstoke (Mayor of), 2 C. P. D. 440; 47 L. J. C. P. 442.)

41. Any person nominated may withdraw from his candidature by giving notice to that effect, signed by him, to the returning officer.

42. If the number of persons nominated and not withdrawn is the same as or less than the number of persons to be elected, such persons (if duly qualified) shall be deemed and shall be certified by the returning officer under his hand to be elected.

This clause does not provide for the case of there being a casual vacancy to be filled up. If the Board have determined to fill it according to the votes of the electors, and the number of candidates is only equal to the number of regular and casual vacancies together, it would seem that there must be an election conducted in accordance with the subsequent clauses of this schedule, as the number of candidates will then exceed the number of persons to be elected in the ordinary course. (*See* further, notes to clauses 36 and 69.)

43. If the number nominated and not withdrawn exceeds the number to be elected, the returning officer shall cause voting

papers, in the form N, contained in schedule iv. to this Act, to be prepared and filled up, and shall insert therein the names and residence and the calling or quality of each of the persons nominated and not withdrawn, in the alphabetical order of the surnames of such persons, but it shall not be necessary to insert more than once the name of any person nominated.

44. The returning officer shall, three days at least before the day of collection of the voting papers, cause one of such voting papers to be delivered, by persons appointed by him for that purpose, at the address stated in the register or claim of each owner and proxy, and at the residence within the district of each ratepayer entitled to vote therein.

"At least three days" means exclusive of the day on which the papers are delivered and of the day on which they are collected. (Reg. *v.* Shropshire Justices, 8 A. & E. 173.)

45. 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.

It has been held under the Municipal Corporation Act, 5 & 6 Wm. IV. c. 76, s. 32, that the usual signature of the voter is sufficient. (Reg. *v.* Avery, 18 Q. B. 576, 21 L. J. Q. B. 429, and apparently the signature need not be at the foot of the voting paper, if written with the intention of being a signature. (Reg. *v.* Tart, 28 L. J. Q. B. 173; 1 E. & E. 618). If the name is wrongly entered in the register, a signature by the name there entered might be sufficient. (*See* Reg. *v.* Thwaites, 1 E. & B. 704, 22 L. J. Q. B. 238).

46. Any person voting as a proxy shall, in like manner, write his own initials and sign his own name, and state also in writing the name of the person or body of persons for whom he is proxy.

It seems that no stamp is required for either voting paper or proxy (Reg. *v.* Strachan, 7 L. R. Q. B. 463, 41 L. J. Q. B. 210.)

47. Any voter unable to write 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 mark, as well as the initials of such voter against the name of every candidate for whom the voter intends to vote.

The ordinary signature of the attesting witness would probably be

sufficient; the name of the voter had better be written in full to avoid mistakes. (*See*, however, the cases noted to clause 45.)

48. The returning officer shall cause the voting papers to be collected on the day of collection (which shall not be later than the 7th of April), by such persons as he may appoint.

49. No voting paper shall be received or admitted unless the same has been delivered at the address or residence as aforesaid of the voter, nor unless the same is collected by the persons appointed for that purpose: Provided—

(*a.*) That if any person entitled to receive a voting paper has not received a voting paper as aforesaid, he shall, on personal application before the day of collection to the returning officer, 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:

(*b.*) That if any voting paper duly delivered has not been collected, through the default of the returning officer or the persons appointed to collect the same, the voter in person may deliver the same to the returning officer before twelve o'clock at noon on the day or on the first day (as the case may be) appointed for the examination and casting up of the votes.

50. If any person nominated, or any person on his behalf, gives 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, but no such agent shall interfere in any respect in the delivery or collection of the voting papers.

Counting of Votes.

51. The returning officer shall on the day immediately following the day of collection of the voting papers, and on as

many days immediately succeeding as may be necessary, attend at the place appointed for the examination and casting up of the votes, 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; he shall cast up such of the votes as he finds to be valid, and to have been duly given collected or received, and shall ascertain the number of such votes for each candidate.

Any candidate may himself attend or may appoint any agent to attend the examination and casting up of the votes; any candidate or agent so attending who obstructs or in any way interferes with the examination and casting up of the votes may, by order of the returning officer, be forthwith removed from the place appointed for that purpose, and if so removed, shall not be permitted to return.

The returning officer must attend and ascertain the validity of the votes in person. If he is absent, the election is void. (Reg. *v.* Backhouse, 2 L. R. Q. B. 16.) His duties are judicial, to determine who has the majority of good votes, not merely to count them. (Reg. *v.* St. Pancras, 7 E. & B. 954.)

52. The candidates to the number to be elected who, being duly qualified, have obtained the greatest number of votes, shall be deemed and shall be certified by the returning officer under his hand to be elected, and to each person so elected the returning officer shall forthwith send or deliver notice of his election.

It is part of the duty of the returning officer to ascertain that the candidates are duly qualified, as well as to ascertain the validity of the votes as directed by the preceding clause. (*Ex parte* Ross, 7 E. & B. 954; 26 L. J. Q. B. 313.)

The decision of the returning officer as to the validity of a vote cannot be questioned, as his functions in respect to it are judicial and no appeal from him is given by the Act. His duties as to casting up such votes are ministerial only, and consequently his certificate is not conclusive on that point, and can be inquired into and reversed. (Reg. *v.* Collins, 2 Q. B. D. 30, 46 L. J. Q. B. 257.)

53. The returning officer 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 such list, and shall deliver the same, together with the nomination and voting papers which he has received, to the local board at their first or next meeting (as the case may be), who shall cause the same to be deposited in their office.

54. Such list shall during office hours be open to public inspection, together with all other documents relating to the election, for six months after the election, without fee or reward; and the returning officer shall, as soon as may be after the completion of the election, cause such list to be printed, and copies thereof to be affixed at the usual places for affixing parochial notices within the parts for which the election has taken place.

55. The returning officer shall make all his arrangements for the conduct of the election so as to ensure its completion and the ascertainment of the result, on or before the 15th of April in each year; and on that day the candidates elected shall come into office, and until that day the members in whose room they are elected shall continue to hold office.

Provided that the first election of a local board for a district constituted after the passing of this Act may be held at any time mentioned in the order constituting the district, and the members shall come into office on the day appointed for their first meeting, but shall for the purposes of retirement be deemed to have come into office on the 15th of April next following the commencement of the order.

See ss. 271, 272, 275.

Declaration to be made by Members.

56. A person shall not act as a member of a local board (except in administering the following declaration) until he has made and signed before two or more other members of such board a declaration in writing to the effect following (that is to say):—

"I *A.B.* do solemnly declare that I am seised or possessed of

real or personal [*or* real and personal] estate to the value or amount of [*or* that I am rated to the relief of the poor of on the annual value of .]

(Signed) *A.B.*

Made before us, *C.D.* and *E.F.*, members of the Local Board for the District of this day of

57. Such declaration shall be signed by the person making the same, and shall be filed and kept by the clerk of the local board; and any person who falsely or corruptly makes and subscribes such declaration, knowing the same to be untrue in any material particular, shall be deemed guilty of a misdemeanour.

58. Any person who neglects to make and subscribe the declaration required by this Act for the space of three months next after he has become a member of the local board, shall be deemed to have refused to act and shall cease to be a member of such local board, and his office as such shall thereupon become vacant.

Retirement of Members.

59. Subject as hereinafter mentioned, one-third of the number of members elected for the district, or if the district is divided into wards, one-third of the number elected for each ward (being those who have been longest in office) shall go out of office on the fifteenth of April in each year.

The local board might formerly select for retirement, in case of several members of equal standing, those who had become disqualified through non-attendance or for other reasons. (Howitt *v.* Manfull, 6 E. & B. 736, 25. L. J. Q. B. 471. But query, is not this case now overruled by the wording of the Act? *See* next clause, and 64 and 65.

60. The order in which the persons elected at the first election of a local board for a district constituted after the passing of this Act shall go out of office shall be regulated by the local board, and if the number of persons to be elected is not divisible by three, the proportion to go out of office in each year shall be regulated by the local board so that as nearly as may be one-third shall go out of office in each year.

61. No person elected shall in any case continuously remain in office (without re-election) for more than three years: Provided that if the number of persons to be elected for any ward is less than three the persons elected shall go out of office on the fifteenth of April in such year or years as the local board may, with the sanction of the Local Government Board, determine.

62. Before the fifteenth of April in each year a number of persons equal to the number of retiring members shall be elected and so many others as may be necessary to complete the full number of the local board in respect of which the election is held.

63. Any person who has ceased to be a member is re-eligible (if qualified).

Disqualification of Members.

64. Any member who ceases to hold his qualification, or becomes bankrupt, or submits his affairs to liquidation by arrangement, or compounds with his creditors, or is absent from meetings of the local board for more than six months consecutively (unless in case of illness), or accepts or holds any office or place of profit under the local board of which he is member, or in any manner is concerned in any bargain or contract entered into by such board, or participates in the profit thereof or of any work done under the authority of this Act in or for the district, shall, except in the cases next hereinafter provided, cease to be such member, and his office as such shall thereupon become vacant.

There are similar words in s. 52 of the Municipal Corporations Act, 1835, 5 & 6 Wm. IV. c. 16, which disqualify for being members of a town council any mayor, &c., who "shall be declared bankrupt or shall apply to take the benefit of any Act for the relief of insolvent debtors or shall compound by deed with his creditors." These words are extended by s. 21 of 32 & 33 Vic. c. 62 (the Debtors' Act, 1869), to "every arrangement or composition by a mayor, &c., with his creditors under the Bankruptcy Act, 1869, whether the same is made by deed or otherwise." Jessel, M. R., has held that an alderman who proposed to his creditors to pay them a composition, which they accepted by resolution, but without the execution of a composition deed, did not by so doing forfeit his seat on the town council. (Aslatt *v.* Mayor of Southampton, 43 L. T.

N. S. 464; 50 L. J. Ch. 31.) The words here, however, are more general, and if the plaintiff in that case had been a member of a local board, it seems that his composition ought to have disqualified him.

If a man's seat is vacated on the ground of his being absent from meetings of the local board for more than six months, he is not disqualified for re-election at the next general election, and possibly not at the election to fill the vacancy caused by his own disqualification. The latter point, however, has not been expressly decided. (Reg. *v.* Turmine, 4 Q. B. D. 79; 48 L. J. Q. B. 5.)

Being concerned in a contract entered into by the board of which he is a member disqualifies a man for membership, but does not avoid the contract. (Foster *v.* Oxford, Worcester and Wolverhampton Railway Co., 13 C. B. 200.) A mere casual buying and selling is not necessarily such a contract as is contemplated by the statute. (Nicholson *v.* Fields, 7 H. & N. 810; 31 L. J. Ex. 233.) The words used here are, however, very general, and it seems as if a mere supplying of goods to the actual contractor, without participation in the profits of the contract, might now disqualify a member of a local board. (Le Feuvre *v.* Lancaster, 23 L. J. Q. B. 254.) And recently a member of a Board, who was an innkeeper, and for pay supplied the surveyor of the Board with men and horses to do pressing work for the Board, making no profit out of the transaction, was held to have vacated his seat under this clause. (Fletcher *v.* Hudson, 7 Q. B. D. 611; 51 L. J. Q. B. 48.) Any dealings by a member of a board with a person who has contracted with the board, so as indirectly to participate in the profits of a contract with the board, may disqualify the member so dealing and render him liable to the penalty provided by clause 70 for acting as a member when disqualified. (West *v.* Andrews, 5 B. & Ald. 328; Towsey *v.* White, 5 B. & C. 125.) It was held on the similar though not identical words of the Municipal Corporations Act, 5 & 6 Wm. IV. c. 76, that this disqualification ceases on the termination of the contract (Lewis *v.* Carr, 1 Ex. D. 484; 46 L. J. Ex. 314). That case has, however, been doubted by Brett and Cotton, L. J. J. (Fletcher *v.* Hudson, *supra*), and in the opinion at any rate of Cotton, L. J., the disqualification under this clause does not end then.

Provided that no member shall vacate his office—

By reason of his being interested in the sale or lease of any lands or in any loan of money to the local board; or

A lease of a sewage farm from the board comes within this exception, and does not disqualify the lessee from being a member of the board. (Reg. *v.* Gaskarth, 42 L. T. N. S. 688.)

By reason of his being interested in any contract with the local board as a shareholder in any joint-stock company, but he shall not vote at any meeting of the

local board on any question in which such company are interested, save that, in the case of a water company or other company established for the carrying on of works of a like public nature, this prohibition may be dispensed with by the Local Government Board.

See also clause 70 as to the consequences to the member who acts when disqualified.

If a *quo warranto* is moved for against any person to show by what right he exercises the office of member of the board, it must be moved for within 12 months of the disqualification (7 Wm. IV. & 1 Vic. c. 78, s. 23), *i.e.*, from the time of his ceasing to hold the qualification, &c. (*Ex parte* Birkbeck, 9 L. R. Q. B. 256.)

Casual Vacancies.

65. Any casual vacancy, occurring by death resignation disqualification failure duly to elect members or otherwise in a local board, shall be filled up by the local board out of qualified persons within six weeks or within such further period as the Local Government Board may by order allow; 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.

In the event of a casual vacancy, or of an ordinary vacancy which ought to have been filled up at a previous election, being filled up at an annual election, if there is a poll, the member who has been elected by the fewest votes shall be deemed elected to fill such vacancy; if there is no poll the member to be deemed to be elected to fill such vacancy shall be determined by lot.

See notes to clauses 36 & 59, *ante*.

General Provisions.

66. Whenever the day appointed for the performance of any act in relation to any election is a Sunday Christmas Day or Good Friday, a Bank holiday or any day appointed for public fast or thanksgiving, such act shall be performed on the day next following, unless it is one of the days excluded as aforesaid; and in that case on the day following such excluded day.

67. The necessary expenses attendant on any election, and such reasonable remuneration to the returning officer and other persons for services performed or expenses incurred by them in relation thereto as may be allowed by the local board, shall be paid out of the general district rates levied under this Act.

It is in the discretion of the local authority to fix what sum is a reasonable remuneration. (*Ex parte* Metcalfe, 6 E. & B. 287.)

68. If the returning officer refuses or neglects to comply with any of the provisions of this schedule relating to elections, he shall be liable to a penalty not exceeding fifty pounds; and any person employed for the purposes of any such election by or under the returning officer, who is guilty of any such neglect or refusal, shall be liable to a penalty not exceeding five pounds.

"Neglect is the omission to do some duty which the party is able to do." (King *v.* Burrell, 12 A. & E. 460.)

No action however, at any rate without proof of express malice, will lie against the returning officer for such neglect or refusal. (Tozer *v.* Child, 7 E. & B. 377; 26 L. J. Q. B. 151.)

69. Any person who—

Fabricates in whole or in part, alters, defaces, destroys, abstracts, or purloins any voting paper; or

Personates any person entitled to vote at any election; or

Falsely assumes to act in the name or on the behalf of any person so entitled to vote; or

Interferes with the delivery or collection of any voting papers; or

Delivers any voting paper under a false pretence of being lawfully authorised so to do,

shall be liable to a penalty not exceeding twenty pounds, or, in the discretion of the Court, to imprisonment with or without hard labour for any period not exceeding three months.

In order to bring a person within the penalties of this clause he must have a *mens rea*. When, therefore, the wife of a voter made a mark for her husband, and a third party affixed the voter's initials and signed the voting paper himself as witness, this was held not to be a fabrication of a voting paper so as to subject him to the penalty. (Aberdare Local Board *v.* Hammett, 10 L. R. Q. B. 142; 44 L. J. M. C. 49.)

There is no definition given in this Act of what amounts to personation. For parliamentary and municipal elections it is defined by sec. 24 of the Ballot Act, 1872, 35 & 36 Vic. c. 33, which enacts that a person shall be deemed guilty of personation "who applies for a ballot-paper in the name of some other person, whether that name be that of a person living or dead or of a fictitious person, or who having voted once applies at the same election for a ballot-paper in his own name." The words of this clause, however, somewhat narrow this definition, as the offence is personating a person *entitled to vote*, and therefore personating a person who is dead is no offence. (Whiteley *v.* Chappell, 4 L. R. Q. B. 147; 38 L. J. M. C. 51.) As soon as a man by word act or sign holds himself forth as a person entitled to vote, with the object of passing himself off as that person, and exercising the right which that person has, he has personated him, and the offence is complete, though he is found out at once and his vote refused. (Reg. *v.* Hague, 4 B. &. S. 715; 33 L. J. M. C. 81.)

The penalty may be imposed by a Court of summary jurisdiction, and proceedings for it must be taken as required by ss. 251–4. They can only be instituted by the local authority or a person aggrieved, unless the consent in writing of the Attorney-General is first obtained. (Verdin *v.* Wray, 2 Q. B. D. 608; 46 L. J. M. C. 160.)

As to who is a party aggrieved, *see* note to s. 253, *ante*.

70. Any person who, not being duly qualified to act as member of the local board or not having made and subscribed the declaration required of him by this Act or being disabled from acting by any provision of this Act, acts as such member, shall be liable to a penalty of fifty pounds, which may be recovered by any person with full costs of suit by action of debt; 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 of negativing disqualification by reason of non-residence or not being seised or possessed of the requisite real or personal estate or both, shall be on the defendant.

See clauses 3–5 and note to clause 11, as to qualification; clauses 56–58 as to the declaration, and clause 64 as to disqualification.

If a member becomes disqualified by virtue of clause 64, and subsequently acts, he incurs the penalty imposed here. (Fletcher *v.* Hudson, 7 Q. B. D. 611; 51 L. J. Q. B. 48.)

Section 253 of the Act, *ante*, p. 297, requires the consent of the Attorney-General to any proceedings for penalties which are instituted by any person other than a party aggrieved or the local authority of the district in which the offence is committed. In several cases, which are noted to that section, it was held that proceedings for the penalty for acting as a member of a local authority were wrongly instituted, as the plaintiff was not aggrieved. The Court of Appeal has, however, recently held that the words of this clause are so general that any person may bring the action, whether aggrieved or not; s. 253 consequently does not apply. (Fletcher *v.* Hudson, 5 Ex. D. 287.)

But all acts and proceedings of any person disqualified disabled or not duly qualified, or who has not made and subscribed the declaration required by this Act, shall, if done previously to the recovery of the penalty mentioned in this Act, be valid and effectual to all intents and purposes.

As to Local Boards established before the passing of the Local Government Act, 1858.

71. Where the district of a local board established under the Public Health Act, 1848, before the passing of the Local Government Act, 1858, comprises the whole or any part of a borough or boroughs and also parts not within the boundaries of any such borough, the following provisions shall have effect (namely):—

(*a.*) Each person selected by the council of any such borough out of their own number shall be a member of the local board with which he is selected to act, so long as he continues without re-election to be member of the council from whom he was selected and no longer; and a declaration shall not be required to be made by any person so selected:

(*b.*) Each person selected by any such 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:

(*c.*) In case of any vacancy in the number selected, some other qualified person shall be selected by the council

by whom the person causing the vacancy was selected, within one month after the occurrence of the vacancy:

(*d.*) 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 the Act of the session of the fifth and sixth years of the reign of King William IV., intituled "An Act for the Regulation of Municipal Corporations in England and Wales," and any Act amending the same:

(*e.*) If any person is both selected and elected to be a member of any such local board 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 on such choice or determination the person so selected and elected shall be deemed to be member only in respect of the title so chosen or determined, and his office as member in respect of any other title shall thereupon become vacant.

72. Elective members of any local board established under the Public Health Act, 1848, before the passing of the Local Government Act, 1858, shall be elected by such owners of property and ratepayers and in such manner as in this schedule mentioned; and the provisions of this schedule (with the exception of the provisions relating to the number and qualification of members) shall apply accordingly.

Temporary Provisions.

73. All members of local boards existing at the time of the passing of this Act shall, notwithstanding any provision of any Act or order confirmed by Parliament, continue to hold office till the 15th day of April, 1876; and the next election of members

of such local boards shall be held in accordance with the provisions of this schedule.

74. The provisions of section 26 of the Sanitary Law Amendment Act, 1874, shall be deemed not to have been compulsory in the case of the first election of members of any local board elected after the passing of that Act, and before the passing of this Act; and all elections held or purporting to have been held in accordance with such provisions before the passing of this Act, shall be deemed to have been duly held, and to be valid for all purposes.

Oxford.

75. Nothing in the rules in this schedule shall apply to the local government district of Oxford.

As to Oxford, *see* ss. 342, *ante*.

(2.) PROCEEDINGS IN CASE OF LAPSE OF LOCAL BOARD.

1. Where any local board lapses through its members ceasing to hold office and failure to elect new members in manner by this Act provided, any mortgagee or other person entitled to any principal or interest on any mortgage of rates made by such local board may, without prejudice to any other mode of recovery, apply for the appointment of a receiver to a Court of summary jurisdiction. The said Court may, by writing under their hands, appoint a person to make levy and collect the whole or a competent part of the rates liable to the payment of the principal and interest in respect of which the application is made, and to recover all arrears of such rates until such principal and interest, together with the costs of the application and of collection, are paid; and on such appointment being made all such rates competent part thereof and arrears shall be paid to the receiver so appointed, and shall be rateably apportioned by him among the mortgagees or other persons entitled to the same.

2. In the case of any lapse of a local board the owners and ratepayers of the district may, by resolution passed in manner

provided by schedule iii. to this Act, determine to elect, and may accordingly proceed to the election of a new local board in manner provided by this schedule, and the result of such election shall be signified to the Local Government Board by the returning officer; and all the powers rights duties property and liabilities of the lapsed board shall attach to the new board as if there had been no lapse before the election thereof; and from the date of the completion of such election all powers of any receiver to make rates under this schedule shall determine.

If no election takes place in pursuance of this provision within three months from the date of the lapse of the board, the Local Government Board may by order dissolve the district, and declare it to be a rural district or to be included in any adjoining rural district; and from and after a day named in such order all such powers rights duties property and liabilities of the lapsed board as the Local Government Board may direct shall with respect to the dissolved district attach to the rural authority named on the order, and such property shall be held by the rural authority for the benefit of the dissolved district.

The Local Government Board may by order determine any question as to the fact of a local board having lapsed, or as to the date of the lapse of any local board.

SCHEDULE III.

Rules as to Resolutions of Owners and Ratepayers.

1. For the purpose of passing a resolution of owners and ratepayers under this Act, a meeting shall be summoned on the requisition of any twenty ratepayers or owners, or of any twenty ratepayers and owners resident in the district or place with respect to which the resolution is to be passed.

See ss. 272, 273, and the cases there noted.

2. The summoning officer of such meeting shall be—

In boroughs, the mayor;

In Improvement Act districts, the chairman of the improvement commissioners;

In local government districts, the chairman of the local board;

In places situated in any rural district or districts and having known and defined boundaries, the churchwardens or one of them having jurisdiction co-extensive with the place; or if there are no churchwardens, the overseers or one of them having the like jurisdiction; 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 the Local Government Board.

As to what is a place having a known and defined boundary, *see* s. 272 and notes thereto, *ante*.

Where the boundaries of a place are settled by order of the Local Government Board, the Board shall by such order appoint the summoning officer.

If any summoning officer appointed by the Local Government Board dies, becomes incapable or refuses or neglects to act, the Local Government Board may appoint another officer in his room.

3. Ratepayers or owners making a requisition for the summoning of such meeting shall, if required, give security in a bond with two sufficient sureties for repayment to the summoning officer, in the event of the resolution not being passed, of the costs incurred in relation to such meeting or any poll taken in pursuance of any demand made thereat; 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 case of dispute, by a court of summary jurisdiction.

4. The summoning officer shall, on such requisition as afore-

said, fix a time and place for holding such meeting, and shall forthwith give notice thereof—

By advertisement in some one or more of the local newspapers circulated in the district or 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.

It is sufficient if the notice is fixed on the principal or most usual doors of all the churches or chapels of the Established Church in which service is performed. (Ormerod *v.* Chadwick, 16 M. & W. 367, 16 L. J. M. C. 143; Reg. *v.* Whipp, 4 Q. B. 141, 12 L. J. M. C. 164.)

5. The summoning officer shall be the chairman of the meeting, unless he is unable or unwilling to preside, in which case 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 same from time to time.

6. The chairman shall propose to the meeting the resolution, and the meeting shall decide for or against its adoption: Provided that if any owner or ratepayer demands that such question be decided by a poll of owners and ratepayers, such poll shall be taken by voting papers in the form "O" in schedule iv. to this Act, in the same way and with the same incidents and conditions as to the qualification of electors and scale of voting, as to notice to be given by the returning officer, delivery, filling up and collection of voting papers, as to the counting of votes, as to penalties for neglect or refusal to comply with the provisions of the Act, and in all respects whatsoever as is provided by the rules for the election of local boards in schedule ii. to this Act:

A decision by the meeting does not prevent a poll being taken subsequently if properly demanded. (Tear *v.* Freebody, 4 C. B. N. S. 228.) The clauses here referred to are 10-38, 44-51 & 66-70.

Except that in districts or places where there is no register of owners and proxies under this Act, any owner or proxy shall be entitled to have a voting paper delivered to him, if at least fourteen days before the last day appointed for delivery of the

voting papers he sends a claim in writing to the summoning officer, containing the particulars required by schedule ii. to this Act to be contained in claims to be entered on the register of owners and proxies, and except that the provisions with respect to certain specified days of the month shall not apply.

See clauses 20 & 21, *ante*.

For the purposes of such poll the summoning officer shall be the returning officer, and shall have the powers and perform the duties of a returning officer under schedule ii. to this Act, so far as the same are applicable to a poll under this schedule.

Clause 2 of this schedule specifies who is the summoning officer. Clauses 32-35 of schedule ii. prescribe the duties of the returning officer. This clause clears up the difficulty felt under the previous Act as to whether the chairman of the meeting or the summoning officer should conduct the poll. (Cf. *Ex parte* Littleborough Board, 22 L. T. N. S. 437.)

If no poll is demanded, or the demand for a poll is withdrawn by the persons 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.

7. A copy, under the hand of the summoning officer, of every resolution so passed, shall be forwarded by him to the Local Government Board; and it shall be his duty to publish a copy thereof by advertisement for three successive weeks in some one or more of the local newspapers circulated in the district or place, and by causing a copy thereof to be affixed to the principal doors of every church and chapel in the place to which notices are usually affixed.

See note to s. 210, p. 266, and to clause 4 of this schedule.

8. Where in pursuance of a resolution passed in manner provided by this schedule any place is constituted a local government district, all costs incurred by the summoning officer in relation to the meeting and any poll taken in pursuance of any demand made thereat, shall be a first charge on the general district rates leviable within such district; in the case of a resolution so passed by owners or ratepayers in any urban district,

such costs shall be paid out of the fund or rate applicable by the urban authority to the general purposes of this Act.

See s. 207, *ante*, p. 259.

SCHEDULE IV.

Forms.

FORM A.

Form of Notice requiring Abatement of Nuisance.

To [*person causing the nuisance, or owner or occupier of the premises whereon the nuisance exists, as the case may be*].

Take notice that under the provisions of the Public Health Act, 1875, the [*describe the local authority*], being satisfied of the existence of a nuisance at [*describe premises or place where the nuisance exists*], arising from [*describe the cause of nuisance, for instance,* want of a privy or drain; *or, for further instance,* a ditch or drain so foul as to be a nuisance or injurious to health; *or, for further instance,* swine kept so as to be a nuisance or injurious to health], do hereby require you within from the service of this notice to abate the same, and for that purpose to [*state any things required to be done or works to be executed*].

If you make default in complying with the requisitions of this notice, or if the said nuisance, though abated, is likely to recur, a summons will be issued requiring your attendance to answer a complaint which will be made to a Court of summary jurisdiction for enforcing the abatement of the nuisance, and prohibiting a recurrence thereof, and for recovering the costs and penalties that may be incurred thereby.

Dated this day of 18 .

Signature of officer of local authority

FORM B.

Form of Summons (in case of Nuisances).

Summons.

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

County of (*or* borough of, &c. *or* district of *or as the case may be*] to wit.

You are required to appear before [*describe the Court of summary jurisdiction*], 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 that in or on the premises above mentioned [*or* in or on certain premises situated at No. in the street, in the parish of *or such other description or reference as may be sufficient to identify the premises*], in the district, under the Public Health Act, 1875, of [*describe the local authority*], the following nuisance exists [*describing it, as the case may be*], and that the said nuisance is caused by the act or default of the occupier [*or* owner] of the said premises, *or* by you *A. B.* [*or in case the nuisance be discontinued, but likely to be repeated, say*, there existed recently, to wit, on or about the day of on the premises, the following nuisance [*describe the nuisance*], and that the said nuisance was caused [*&c.*]; and although the same has since the said last-mentioned day been abated 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 my hand and seal this day of 18 .

J. S. (L.S.)

FORM C.

Form of Order for Abatement or Prohibition of Nuisance.

To the owner [*or* occupier] of [*describe the premises*] situated [*give such description as may be sufficient to identify the premises*], *or* to *A. B.* of

County of [*or* borough, &c. of *or* district of *or as the case may be*].

Whereas on the day of complaint was made before Esquire, one of Her Majesty's justices of the peace acting in and for the county [*or other jurisdiction*] stated in the margin [*or as the case may be*], by that in or on certain premises situated at in the district under the Public Health Act, 1875, of [*describe the local authority*], the following nuisance then existed [*describing it*]; and that the said nuisance was caused by the act or default of the owner [*or* occupier] of the said premises [*or* was caused by *A. B.*] [*If the nuisance has been removed say*, the following nuisance existed on or about [*the day the nuisance was ascertained to exist*], and that the said nuisance was caused, &c.; and although the same is now removed, the same or the like nuisance is likely to recur on the same premises.]

And whereas the owner [*or* occupier] within the meaning of the said Public Health Act, 1875, [*or* the said *A. B.*] hath this day appeared before us [(*or* me) *describing the court*], 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 on 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 any things required to be done or works to be executed, as, for instance,* to provide for the cleanly and wholesome keeping of, *or* to remove the animal kept so as to be a nuisance or injurious to health; *or, for further instance,* to cleanse, whitewash, purify and disinfect the said dwelling-house; *or, for further instance,* to construct a privy *or* drain; *&c.*; *or, for further instance,* to cleanse *or* to cover *or* to fill up the said cesspool, *&c.*], so that the same shall no longer be a nuisance or injurious to health as aforesaid.

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

In case the nuisance were removed before complaint, say, Now, on proof here had before us [*or* me] 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 [*or* the hand and seal of me, *describing the Court*].

This day of 18 .

J. S. (L.S.)

J. P. (L.S.)

FORM D.

Form of Order for Abatement of Nuisance by Local Authority.

To the Town Council, *&c., as the case may be.*

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

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

Given, *&c.* (*as in last form*).

FORM E.

Form of Order to permit Execution of Works by Owner.

County of [*or* borough, &c.] to wit. Whereas complaint hath been made to me, *E. F.*, Esquire, one of Her Majesty's justices of the peace in and for the county [*or* borough, *&c.*] of by *A. B.*, owner within the meaning of the Public Health Act, 1875, of certain premises [*describe situation of premises so as to identify them*], 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, which the local authority under the said Act of the district of are entitled to use, such sewer being within one hundred feet of the said premises]: 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 18 .

J. S (L.S.)

FORM F.

Order of Justice for Admission of Officer of Local Authority.

Whereas [*describe the local authority*] have by their officer [*naming him*] made application to me *A. B.*, one of Her Majesty's justices of the peace having jurisdiction in and for [*describe the place*], and the said officer has made oath to me that demand has been made pursuant to the provisions of the Public Health Act, 1875, for admission to [*describe situation of premises so as to identify them*], for the purpose of [*describe the purpose, as the case may be*], and that such demand has been refused.

Now, therefore, I, the said *A. B.*, do hereby require you [*name the person having custody of the premises*] to admit the said [*name the local authority*] [*or* the officer of the said *local authority*] to the said premises, for the purpose aforesaid.

Given, *&c.* (*as in last form*).

FORM G.

Form of Notice requiring Owner to Sewer, &c., Private Street.

To the owner of certain premises fronting, adjoining, or abutting on a certain street called within the district of [*describe the local authority*].

Whereas the said street is not sewered levelled paved flagged and channelled to the satisfaction of the above-named

[*local authority*]; 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 authority*] hereby give you notice (in pursuance of the Public Health Act, 1875), 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 the 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 authority*].

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*], 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 authority*], 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 authority*], or their surveyor.

Dated this day of 18

(Signed)

Clerk to the said [*local authority*].

FORM H.

Form of Mortgage of Rates.

By virtue of the Public Health Act, 1875, we the being the local authority under that Act 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 on 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 18 .

[*To be sealed with the common seal of the local authority.*]

FORM I.

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 authority under the Public Health Act, 1875, 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.)

FORM K.

Form of Rentcharge.

By virtue of the Public Health Act, 1875, we, the being the local authority under that Act 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*], situated 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.

[*To be sealed with the common seal of the local authority.*]

FORM L.

Register of Owners for the District of .

Notice of Time for Making Claims and Objections.

I hereby give notice that all persons who are entitled to vote as owners or proxies at the election of members of the local board for the district of , and who are not on the register of owners and proxies now in force, or who being on the register do not retain the qualification or the address described therein, and who are desirous to have their name inserted in the register about to be made for the said district, and all persons who are desirous of objecting to any name on the register now in force, are hereby required to give or send to me, on some one of the first six days of March next, a claim or objection *(as the case may be)* in the form hereunder set forth.

(Signed)

_____Chairman of the local board.

Owner's Claim.

To the Chairman of the local board for the district of

this day of 18 .

I the undersigned claim to have my name inserted in the register of owners and proxies for the district of pursuant to the provisions of the Public Health Act, 1875, as owner of the property hereinafter described, which is situated in the parish of that is to say: *(a)*

I also state that the interest or estate which I have in such property, and the amount of all the rent-service which I receive

or pay in respect thereof, and the names of the persons from whom I receive or to whom I pay such rent-service are set forth in the form hereunder written.

Description of property (*b*)	In respect of which I have an estate or interest of (*c*)	And in respect of which I receive in rent-service the sum of (*d*)	From (*e*)	And in respect of which I pay in rent-service the sum of (*f*)	To (*g*)
		£ *s.* *d.*		£ *s.* *d.*	

_____ Signature of claimant.

_____ Address (*h*) of claimant.

(*a*) Here insert a clear statement of the property, as "house," "building," "house and acres of land."

(*b*) Describe the property by its name, situation, or the name of the occupier, or any other designation by which it may be identified.

(*c*) Describe the estate or interest, as *an estate in fee simple, of freehold, a term of years*, and also whether it is held by the claimant solely or jointly with others; and in the case of a partner claiming, insert the number and names of the other partners in the firm.

(*d*) If the property is let by the owner, insert the amount of rent received from each tenant.

(*e*) Insert the name of tenant or tenants.

(*f*) If the owner is a lessee paying rent, insert the amount of all the rent he pays.

(*g*) Insert the name of the lessor.

(*h*) This need not be the owner's residence, but should be some address within the district.

* A partner must set out the amount of rent-service which he would receive or pay if the qualifying property were equally divided among his co-partners and himself.

Claim of Proxy.

To the Chairman of the local board for the district of this day of 18 .

I, the undersigned, having been appointed by of owner [*or* owners] of the property hereinafter described, which is situated in the parish of to vote as his [*or* their] proxy, pursuant to the provisions of the

Public Health Act, 1875, claim to have my name inserted in the register of owners and proxies for the district of

as such proxy.

I herewith transmit to you (*a*) the writing under the hand [*or* hands, *or in the case of a corporation* the seal] of

appointing me such proxy.

I also state that the interest or estate which has [*or* have] in such property and the amount of the rent-service which he [*or* they] receives or pays [*or* pay] in respect thereof, and the names of the persons from whom he [*or* they] receives [*or* receive] or to whom he [*or* they] pays [*or* pay] such rent-service are set forth in the form hereunder written.

Description of property (*b*)	In respect of which the Appointor has an estate of interest of (*c*)	And in respect of which the Appointor receives in rent-service the sum of (*d*)	From (*e*)	And in respect of which the Appointor pays in rent-service the sum of (*f*)	To (*g*)
		£ *s.* *d.*		£ *s.* *d.*	

_____ Signature of proxy.

_____ Address (*h*) of proxy.

(*a*) If the appointment itself is not sent, insert the words "an attested copy of."

(*b*) Describe the property by its name, situation, or the name of the occupier, or any other designation by which it may be identified.

(*c*) Describe the estate or interest, as *an estate in fee simple, of freehold, a term of years*, and whether it is held by the appointor solely or jointly with others.

(*d*) If the property is let by the appointor, insert the amount of rent received from each tenant.

(*e*) Insert name of tenant or tenants.

(*f*) If the appointor is a lessee paying rent insert the amount of all the rent he pays.

(*g*) Insert the name of the lessor.

(*h*) This need not be the proxy's residence, but should be some address within the district.

Form of objection.

To the Chairman of the local board of the district of

this day of .

I hereby give you notice that I object to the name of the person mentioned and described below being retained on the register of owners and proxies for the district of

Christian and surname of the Owner or Proxy objected to.	Address as described.	Nature of qualification as described.	Description (in case of proxy) of Appointor.

Signature of objector.

Address of objector.

FORM M.

Appointment of Proxy.

To the Chairman of the local board for the district of this day of 18 .

I [*or* we] the undersigned, being the owner [*or* owners] of the property hereinafter described which is situated in the parish of do hereby appoint to vote as my [*or* our] proxy in all cases wherein he may lawfully do so, pursuant to the provisions of the Public Health Act, 1875. And I [*or* we] hereby state that the description of the said property is as follows; viz. [a]

Signature of owner. [b]

Address of owner.

(*a*) Describe the property by its name, situation, or the name of the occupier, or any other designation by which it may be identified.

(*b*) Or of three directors; or in the case of a corporation *say*, Given under our common seal, *and add the name of the person or persons entitled to affix the seal.*

FORM N.

Form of Voting paper at Elections of Members of Local Boards.

Voting Paper.

District of

No. of Voting Paper.	Name and Address of Voter.	Number of Votes.	
		As Owner.	As Ratepayer.

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.	Name of the Nominator or of one of the Nominators.	Address of such Nominator.

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_____

Directions to the Voter.

The voter must write his initials against the name of every person for whom he votes, and must subscribe his name and address at full length.

If the 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 the name of every person for whom the voter intends to vote.

If a proxy votes he must in like manner write his initials, subscribe his own name and address, and add after his signature the name of the body of persons for whom he is proxy.

This paper will be collected on the of between the hours of and .

The Chairman should fill in the number of votes to which a voter is entitled before sending him the voting paper; but omission to fill in the number of votes will not avoid the election. (Reg. *v.* Lofthouse, 1 L. R. Q. B. 433.)

FORM O.

Form of Voting Paper for Poll taken under Schedule III.

Voting Paper No. ( ).

At a meeting held on the day of at in the county of it was agreed that the following resolution should be proposed to the owners and ratepayers of .

(*Set out the resolution*).

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

(Signed)_____

or the mark of_____

Witness to the mark_____

or proxy for_____

Directions to the Voter.

The voter must write his initials under the heading "in

favour" or "against," according as he votes for or against the resolution, and must subscribe his name and address at full length.

If the 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 votes he must in like manner write his initials, subscribe his own name and address, and add after his signature the words "as proxy for," with the name of the body of persons for whom he is proxy.

This paper will be collected on the of between the hours of and

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The following forms, though not given by the Act, may be found useful.

Adapted from form given by 18 & 19 Vic. c. 121 :—

FORM P.

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 Public Health Act, 1875, 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 Public Health Act, 1875.

Adapted from the form given by 18 & 19 Vic. c. 121 :—

FORM Q.

Summons for Non-payment of Costs, Expenses or Penalties.

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

County of [*or* borough of, *or* district of] to wit.

You are required to appear before [*describe the court of summary jurisdiction*] 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 Public Health Act, 1875 [*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 stipendiary magistrate of the day of , in the year of our Lord One thousand eight hundred and

FORM R.

Adapted from the form given by 18 & 19 Vic. c. 121 :—

Order for Payment of Costs, Expenses or Penalties.

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

County, &c., to wit. Whereas complaint has been made before us [*or* me] for that [*recite the cause of complaint*] : And whereas the said [*naming the person against whom the complaint is made*] has this day appeared before us, the said justices, 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 that a true copy of the summons requiring the said [*naming the person charged*] to appear before us this day hath been duly served according to the said Act.] Now, having heard the matter of the said complaint, we 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 proceeding thereon ; and if the said several sums, amounting in the whole to [*or* if any one of the said instalments] be not paid within 14 days after the same is due as aforesaid, we hereby order that the same be levied by distress and sale of 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 hands this day of in the year of our Lord 18 , at in the [county, *or as the case may be*] aforesaid.

FORM S.

Adapted from the form given by 18 & 19 Vic. c. 121 :—

Warrant of Distress.

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

Whereas on last past complaint was made before the undersigned, two of Her Majesty's justices of the peace in and for the said county of [*or as the case may be*], or stipendiary magistrate [*as the case may be*] for that [*&c., as in the order*], and thereupon having considered the matter of the said complaint we [or I] adjudged the said [*set out from previous form 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 such distress the 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 to me to the end that such proceedings may be had therein as 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 T.

The following form is given by the Waterworks Clauses Act, 1863, 26 & 27 Vic. c. 93, which is incorporated with this Act:—

Order to secure Reservoir.

To *A. B.*, of

We, the undersigned, two of Her Majesty's justices of the peace acting for the [county] of do hereby order and direct you [and such person or persons as you may require to aid and assist you herein] forthwith to lower the water in the [*here describe the reservoir and the extent to which the water is to be lowered*], and to do all such works and things as may be requisite to repair and make secure the said reservoir [and you shall do as little injury as possible to the property of the And for acting as you are hereby directed this shall be your sufficient warrant].

Given under our hands this day of 18 .

C. D.

E. F.

The next two forms are given by the Public Health (Water) Act, 1878:—

FORM U.

Form of notice requiring owner to provide a supply of water for an occupied house.

To , the owner of the house occupied by [*state name of occupier*], and situated at [*give such description as may be sufficient to identify the premises*], within the district of [*describe the local authority*].

Whereas it appears to the above-named [*local authority*] on the report of their [*inspector of nuisances or their medical officer of health, as the case may be*] that the said house has not within a reasonable distance an available supply of wholesome water sufficient for the consumption and use for domestic purposes of the inmates of the house by reason of the existing supply not being [*wholesome or sufficient, or within a reasonable distance, as the case may be*], and that the requisite supply can be provided at a reasonable cost; and whereas the said [*local authority*] are of opinion that such supply ought to be provided at your expense as the owner of the said house, or defrayed as private improvement expenses:

Now, therefore, we, the said [*local authority*], in pursuance of the Public Health (Water) Act, 1878, do hereby require you to provide an available supply of wholesome water sufficient for the consumption and use for domestic purposes of the inmates of the said house within a reasonable distance from such house, and to do all such works as may be necessary for that purpose within [*state the time*] from the date of the service hereof.

Dated this day of , .

(Signed)

Clerk to the said [*local authority.*]

FORM V.

Form of second notice to serve where the requirements of the first have not been complied with.

To , the owner of the house occupied by [*state name of occupier*], and situate at [*give such description as may be sufficient to identify the premises*], within the district of [*describe the local authority*].

Whereas on the day of , the above-named [*local authority*], in pursuance of the Public Health (Water) Act, 1878, served on you a notice bearing date the day of , requiring you as the owner of the said house to provide an available supply of wholesome water sufficient for the consumption and use for domestic purposes of the inmates of the said house, within a reasonable distance from such house, and to do all such works as might be necessary for that purpose within [*state the time*] from the date of the service of such notice:

And whereas the said notice has not been complied with: Now therefore, we, the said [*local authority*], do hereby give you notice, that if the requirements of the said first notice dated the day of , are not complied with within one month from the date of the service hereof, we [*describe local authority*] will ourselves provide a supply of water for the said house, and do all necessary works for that purpose, and that the cost which may be incurred therein will be recovered from you summarily, or be recovered as private improvement expenses.

Dated this day of .

(Signed)

Clerk to the said [*local authority*].

The two following forms are given by the Cemeteries Clauses Act, 1847 :—

FORM W.

Form of Grant of Right of Burial.

By virtue of [*here name the Special Act*] we [*here state the name or description of the Company*], in consideration of the sum of to us paid by of do hereby grant unto the said the exclusive right of burial [*or* the right of burying bodies, *as the case may be*] [*or* the right of placing a monument, tablet, or gravestone] in [*here describe the ground intended for the exclusive burial, or for placing a monument, tablet, or gravestone, as the case may be, so as to identify the same, and if a place of exclusive burial, add,* " numbered on the plan of the cemetery made in pursuance of the said Act "], to hold the same to the said in perpetuity [*or the period agreed upon*] for the purpose of burial [*or as the case may be*].

Given under our common seal [*or* under our hands and seals, *as the case may be*], this day of in the year of our Lord .

FORM X.

Form of Assignment of Right of Burial.

I, *A. B.* of in consideration of the sum of paid to me by *C. D.* of do hereby assign unto the said *C. D.* the exclusive right of burial in [*here describe the place*], and numbered on the plan of the cemetery made in pursuance of the said Act, which was granted to me [*or* unto *A. B.* of] in perpetuity [*or as the case may be*] by [*here state the name of the Company*] by a deed of grant bearing date the day of and all my estate, title, and interest therein, to hold the same unto the said *C. D.* in perpetuity [*or as the case may be*, for the remainder of

the period for which the same was granted by the said Company], subject to the conditions on which I held the same immediately before the execution hereof.

Witness my hand and seal this day of

FORM Y.

Form given by Burials Act, 1880.

Form of Certificate of Burial.

I, , of , the person having the charge of (*or* being responsible for) the burial of the deceased, do hereby certify that on the day of , *A. B.*, of aged , was buried in the churchyard [*or* graveyard] of the parish [*or* district] of

To the Rector [*or as the case may be*] of

The following Forms are published by the Local Government Board in their bye-laws:—

FORM Z.

Form of notice that Building is unfit for human habitation.

District of

To

Whereas, by a statement in writing under the hand of Medical Officer of Health (*or Surveyor*) of the sanitary authority for the district of , of which statement a copy is contained in the schedule hereunto annexed, it has been certified to the said sanitary authority that a certain building or part of a building situate at in the said district is unfit for human habitation.

And whereas it has been shown to the said sanitary authority that you are the owner of such building or part of a building;

Now, I clerk of the said sanitary authority, do hereby give you notice that, unless on or before the day of

18 , by a statement in writing under your hand or under the hand of an agent duly authorised by you in that behalf, and addressed to and duly served upon or delivered to the said sanitary authority, you shall show to the said sanitary authority sufficient cause why such building or part of a building shall not be declared unfit for human habitation;

Or, unless you shall attend either personally or by an agent, duly authorised in that behalf before the said sanitary authority at their office in on day the day of 18 , at o'clock in the noon, and shall then and there show to the said sanitary authority sufficient cause why such building or part of a building shall not be declared unfit for human habitation;

The said Sanitary Authority, in pursuance of the powers conferred upon them in that behalf, will, by an order in writing under their seal, declare that such building or part of a building is unfit for human habitation, and direct that, unless and until such building or part of a building shall have been rendered fit for human habitation, the same shall be closed, and the use thereof for human habitation shall be prohibited.

Witness my hand this day of in the year 18 .

Clerk to the Sanitary Authority.

Schedule.

Copy of certificate.

FORM A. A.

Form of Order to close building.

District of _____

To , of , and to all others whom it may concern:

WHEREAS it has been certified to us, the Sanitary Authority

for the district of , that a certain building or part of a building situate at , in the said district is unfit for human habitation;

And whereas due notice of such certificate has been given to , the owner of such building or part of a building, and the said has failed to show sufficient cause why such building or part of a building shall not be declared unfit for human habitation;

Now we, the said Sanitary Authority, in pursuance of the powers conferred upon us in that behalf, do hereby declare that such building or part of a building is unfit for human habitation; and we do hereby direct that, unless and until such building or part of a building shall have been rendered fit for human habitation, the same shall be closed, and the use thereof for human habitation shall be prohibited.

Given under the common seal of the Sanitary Authority for the district of , this

(L.S.) day of , in the year one thousand eight hundred and

Clerk to the Sanitary Authority.

FORM A. B.

Form of application for a licence to erect premises for use and occupation as a Slaughter-house.

To the Sanitary Authority for the district of .

I, , of , , do hereby apply to you for a licence, in pursuance of the statutory provisions in that behalf, for the erection of certain premises to be used and occupied as a slaughter-house; and I do hereby declare that to the best of my knowledge and belief the Schedule hereunto annexed contains a true statement of the several particulars therein set forth with respect to the said premises.

SCHEDULE.

1. Boundaries, area, and description of the proposed site of the premises to be erected for use and occupation as a slaughter-house.	
2. Description of the premises to be erected on such site: (*a.*) Nature, position, form, superficial area and cubical contents of the several buildings therein comprised. (*b.*) Extent of paved area in such buildings, and materials to be employed in the paving of such area. (*c.*) Mode of construction of the internal surface of the walls of such buildings and materials to be employed in such construction. (*d.*) Means of water supply—position, form, materials, mode of construction and capacity of the several cisterns, tanks, or other receptacles for water to be constructed for permanent use in or upon the premises. (*e.*) Means of drainage—position, size, materials, and mode of construction of the several drains. (*f.*) Means of lighting and ventilation. (*g.*) Means of access for cattle from the nearest street or public thoroughfare. (*h.*) Number, position and dimensions of the several stalls, pens or lairs to be provided on the premises. (*i.*) Number of animals for which accommodation will be provided in such stalls, pens or lairs, distinguishing— 1. Oxen. 2. Calves. 3. Sheep or lambs. 4. Swine.	

Witness my hand this day of 18

(*Signature of Applicant.*)

(*Address of Applicant.*)

A. C.

Form of application for a licence for the use and occupation of premises as a Slaughter-house.

To the Sanitary Authority for the District of

I, , of , do hereby apply to you for a licence, in pursuance of the statutory provisions in that behalf, for the use and occupation as a slaughter-house of the premises hereinafter described; and I do hereby declare that to the best of my knowledge and belief the schedule hereunto annexed contains a true statement of the several particulars therein set forth with respect to the said premises.

SCHEDULE.

1. Situation and boundaries of the premises to be used and occupied as a slaughter-house.	
2. Christian name, surname, and address of the owner of the premises.	
3. Nature and conditions of applicant's tenure of the premises: (*a.*) For what term; and whether by lease or otherwise. (*b.*) Whether applicant is sole owner, lessee or tenant; or whether applicant is jointly interested with any other person or persons, and if so, with whom.	
4. Description of the premises: (*a.*) Nature, position, form, superficial area and cubical contents of the several buildings therein comprised.	

SCHEDULE—*continued.*

(*b.*) Extent of paved area in such buildings, and materials employed in the paving of such area.	
(*c.*) Mode of construction of the internal surface of the walls of such buildings and materials employed in such construction.	
(*d.*) Means of water supply—position, form, materials, mode of construction and capacity of the several cisterns, tanks or receptacles for water, constructed for permanent use in or upon the premises.	
(*e.*) Means of drainage—position, size, materials, and mode of construction of the several drains.	
(*f.*) Means of lighting and ventilation.	
(*g.*) Means of access for cattle from the nearest street or public thoroughfare.	
(*h.*) Number, position, and dimensions of the several stalls, pens, or lairs provided on the premises.	
(*i.*) Number of animals for which accommodation will be provided in such stalls, pens, or lairs, distinguishing— 1. Oxen. 2. Calves. 3. Sheep or lambs. 4. Swine.	

Witness my hand this day of 18 .

(*Signature of Applicant.*)

(*Address of Applicant.*)

FORM A. D.

Form of Licence to erect premises for use and occupation as a Slaughter-house.

No. of Licence } ———

Reference to Folio in Register } ———

District of

Whereas application has been made to us, the Sanitary Authority for the district of , by of , for a licence to erect on a site within the said district certain premises for use and occupation as a slaughter-house:

Now, we, the said Sanitary Authority, in pursuance of the powers conferred upon us by the statutory provisions in that behalf, do hereby license the said of , to erect for use and occupation as a slaughter-house upon the site defined or described in the schedule hereunto annexed the premises whereof the description is set forth in the said schedule.

SCHEDULE.

Boundaries, area, and description of the proposed site of the premises to be erected for use and occupation as a slaughter-house.	Description of the premises to be erected for use and occupation as a slaughter-house.

L.S.

Given under the Common Seal of the Sanitary Authority for the district of , this day of , in the year one thousand eight hundred and

Clerk to the Sanitary Authority.

FORM A. E.

Form of Licence for the use and occupation of premises as a Slaughterhouse.

No. of Licence } ———

Folio in Register Reference to } ———

District of

Whereas application has been made to us, the Sanitary Authority for the district of , by , of , , for a licence for the use and occupation of certain premises as a slaughter-house:

Now, we, the said sanitary authority, in pursuance of the powers conferred upon us by the statutory provisions in that behalf, do hereby license the said of , to use and occupy as a slaughter-house the premises whereof the situation and description are set forth in the schedule hereunto annexed.

SCHEDULE.

Situation of the premises to be used and occupied as a slaughter-house.	Description of the premises to be used and occupied as a slaughter-house.

L.S.

Given under the Common Seal of the Sanitary Authority for the district of , this day of , in the year One thousand eight hundred and

Clerk to the Sanitary Authority.

FORM A. F.

Form of Register of Slaughter-houses.

District of

Folio

Date of registration.	Date of licence.	No. of licence.	Christian name, surname, and address of owner or proprietor of slaughter-house.	Christian name, surname, and address of occupier of slaughter-house.	Situation of slaughter-house.	Number of animals for which accommodation is provided on the premises.			

SCHEDULE V.

PART I.

Enactments which have been already repealed are in a few instances included in this repeal, in order to avoid the necessity of reference to previous statutes.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
11 & 12 Vic. c. 63	The Public Health Act, 1848.	The whole Act.
14 & 15 Vic. c. 28	The Common Lodging-houses Act, 1851.	The whole Act, except so far as relates to the Metropolitan Police District.
16 & 17 Vic. c. 41	The Common Lodging-houses Act, 1853.	The whole Act, except so far as relates to the Metropolitan Police District.
18 & 19 Vic. c. 116	The Diseases Prevention Act, 1855.	The whole Act, except so far as relates to the metropolis.
18 & 19 Vic. c. 121	The Nuisances Removal Act for England, 1855.	The whole Act, except so far as relates to the metropolis.
21 & 22 Vic. c. 98	The Local Government Act, 1858.	The whole Act.

SCHEDULE V.—*continued.*

Session and Chapter.	Title or Short Title.	Extent of Repeal.
23 & 24 Vic. c. 77	An Act to amend the Acts for the Removal of Nuisances and the Prevention of Diseases.	The whole Act, except so far as relates to the metropolis.
24 & 25 Vic. c. 61	The Local Government Act (1858) Amendment Act, 1861.	The whole Act.
26 & 27 Vic. c. 17	The Local Government Act Amendment Act, 1863.	The whole Act.
26 & 27 Vic. c. 117	The Nuisances Removal Act for England (Amendment) Act, 1863.	The whole Act, except so far as relates to the metropolis.
28 & 29 Vic. c. 75	The Sewage Utilisation Act, 1865.	The whole Act, except so far as relates to Scotland and Ireland.
29 & 30 Vic. c. 41	The Nuisances Removal (No. 1) Act, 1866.	The whole Act, except so far as relates to the metropolis.
29 & 30 Vic. c. 90	The Sanitary Act, 1866.	Parts I., II. and III., except so far as relates to the metropolis or to Scotland or Ireland.
30 & 31 Vic. c. 113	The Sewage Utilisation Act, 1867.	The whole Act, except so far as relates to Scotland or Ireland.
31 & 32 Vic. c. 115	The Sanitary Act, 1868.	The whole Act except so far as relates to the metropolis.
32 & 33 Vic. c. 100	The Sanitary Loans Act, 1869.	The whole Act, except so far as relates to the metropolis.
33 & 34 Vic. c. 53	The Sanitary Act, 1870.	The whole Act, except so far as relates to the metropolis.
35 & 36 Vic. c. 79	The Public Health Act, 1872.	The whole Act, except so far as relates to the metropolis.
37 & 38 Vic. c. 89	The Sanitary Law Amendment Act, 1874.	The whole Act, except so far as relates to the Metropolitan Police District.

Of the above Acts the following (namely), "The Public Health Act, 1848," and "The Local Government Act, 1858," and "The Local Government Act (1858) Amendment Act, 1861," and "The Local Government Act Amendment Act, 1863," are in this Act referred to as "The Local Government Acts."

PART II.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
12 & 13 Vic. c. 94	The Public Health Supplemental Act, 1849.	The whole Act, except—Section 1 (confirmation of certain provisional orders of the General Board of Health), and section 12 (short title of Act), and the schedule.
13 & 14 Vic. c. 90	The Public Health Supplemental Act, 1850 (No. 2).	The whole Act, except—Section 1 (certain provisional orders of General Board of Health confirmed), and section 7 (short title of Act), and the schedule.
15 & 16 Vic. c. 42	The first Public Health Supplemental Act, 1852	Sections 6 to 12, both inclusive (first election or first selection and election of certain local boards), and section 13 (11 & 12 Vic. c. 63, ss. 68, 69, as to repair of highways), and section 14 (interpretation of year) and section 15 (Act incorporated with Public Health Act).

PART III.

Portions of Repealed Acts which are revived and incorporated with this Act.

11 & 12 Vic. c. 63, s. 83.

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 urban district after the thirty-first day of August one thousand eight hundred and forty-eight; and whosoever shall bury, or cause permit or suffer to be buried, any corpse or coffin in any vault or grave constructed or made 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.

21 & 22 Vic. c. 98, s. 49.

When a vestry of any parish comprised in a local government district resolves to appoint a burial board, the local board may at the option of the vestry be the burial board for such parish, and all expenses incurred by such burial board shall be defrayed out of a rate to be levied in such parish in the same manner as a general district rate.

Provided that if such parish has been declared a ward for the election of members of the local board, such members shall form the burial board for the parish, and shall be deemed to be a burial board elected under the Burials Acts for the time being in force.

24 & 25 Vic. c. 61, s. 21.

Any urban authority constituted a burial board may from time to time repair and uphold the fences surrounding any burial ground which has 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 ground and placing it in a proper sanitary condition ; and they may from time to time pass bye-laws (subject to the provisions of this Act) for the preservation and regulation of all burial grounds within their jurisdiction ; and the expense of carrying this section into execution may be defrayed out of any rates authorised to be levied by any urban authority constituted a burial board.

26 & 27 Vic. c. 17, s. 6.

Where any local government district 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.

29 & 30 Vic. c. 90.

44. When the district of a burial board is included in or conterminous with the district of an urban authority, the burial

board may, by resolution of the vestry and by agreement of the burial board and urban authority, transfer to the urban authority all their estate property rights powers duties and liabilities; and from and after such transfer the urban authority shall have all such estate property rights powers duties and liabilities, as if they had been duly appointed a burial board under the Burial Acts for the time being in force.

51. All penalties imposed by the Act of the sixth year of King George IV., c. 78, intituled "An Act to repeal the several laws relating to Quarantine, and to make other provisions in lieu thereof," may be reduced by the justices or court having jurisdiction in respect of such penalties to such sum as the justices or court think just.

52. 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 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.

35 & 36 Vic. c. 76, s. 34.

Where in any local Acts the consent sanction or confirmation of one of Her Majesty's Principal Secretaries of State is required, with respect to the borrowing of any money, to the giving effect to any bye-laws, or to the appointment of any officer for sanitary purposes, the consent sanction or confirmation of the Local Government Board shall be required instead of that of the Secretary of State.

The consent of the Local Government, and not that of the Treasury, shall be required to the borrowing of money for the purposes of the Baths and Wash-houses Acts.

If any question arises as to what are sanitary purposes within the meaning of this section, the determination of the Local Government Board on such question shall be conclusive.

35 & 36 Vic. c. 79.

35. The powers and duties of the Board of Trade under the

Alkali Act 1863 and any Act amending the same, and under the Metropolis Water Acts 1852 and 1871, shall be exerciseable and performed by the Local Goverment Board, and "the Local Government Board" shall be deemed to be substituted for "the Board of Trade" wherever the latter expression occurs in the said Acts.

36. All powers, duties and acts vested in, imposed on, or required to be done by or to one of Her Majesty's Principal Secretaries of State, by the several Acts of Parliament relating to highways in England and Wales and to turnpike roads and trusts and bridges in England and Wales shall be imposed on and be done by or to the Local Government Board, subject to the conditions liabilities and incidents to which such powers duties and acts were respectively subject immediately before the passing of the Public Health Act, 1872, or as near thereto as circumstances admit.

37. All inspectors, clerks, and other officers, who are by virtue of section thirty-seven of the Public Health Act, 1872, attached to and under the control of the Local Government Board, shall hold their offices and places upon the same terms and conditions, and shall have the same powers privileges and immunities with respect to the performance of their duties, as if this Act had not passed.

The Local Government Board may by order distribute the business to be performed under the Local Government Board amongst such officers and persons in such manner as the Local Government Board may think expedient.

38. Notwithstanding anything contained in any Act of Parliament now in force, there shall be paid out of moneys to be provided by Parliament to the medical officer of the Local Government Board such salary as the Treasury may from time to time determine.

48. Every general order of the Local Government Board, made in pursuance of the Poor-law Amendment Act, 1834, and the several Acts amending the same, shall be published in the London Gazette, and when so published shall take effect in like

manner, and shall be of as much force and validity as any general order of the Poor-law Board made and sent in the manner prescribed by the last-mentioned Acts, and no further proceeding shall be necessary in such behalf: And as regards any single order of the said board, made in pursuance of the said last-mentioned Acts, it shall not be necessary henceforth to send a copy thereof to the clerk to the justices of the petty sessions.

The Lands Clauses Acts are incorporated with the principal Act by sec. 176, *ante, but are not printed in the text, as they would make the work too bulky. The following sections of* 8 & 9 *Vic. c.* 18 *are, however, often needed, and are therefore printed here.*

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.

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.

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 upon 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.

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 land 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.

XXIII. If the compensation claimed or offered in any such case shall exceed fifty pounds, and if the party claiming compensation desire to have the same settled by arbitration, and signify such desire by notice in writing to the promoters of the undertaking before they have issued their warrant to the sheriff to summon a jury in respect of such lands, under the provisions hereinbefore

contained, stating in such notice the nature of the interest in respect of which such party claims compensation, and the amount of the compensation so claimed, the same shall be so settled accordingly; but unless the party claiming compensation shall as aforesaid signify his desire to have the question of such 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;

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 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. If before the matters so referred shall be determined, any arbitrator appointed by either party die or become incapable, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place, and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so, the remaining or other arbitrator may proceed ex parte ; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death or disability as aforesaid.

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.

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.

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.

XXX. If where more than one arbitrator shall have been appointed, either of the arbitrators refuse or for more than 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. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for deter-

mining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

XXXIII. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him, he shall in the presence of a justice make and subscribe the following declaration, that is to say:

"I, *A. B.*, do solemnly and sincerely declare, That I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the Act [*naming the special Act*]. *A. B.*

"Made and subscribed in the presence of ."

And such declaration shall be annexed to the award when made; and if any arbitrator or umpire having made such declaration shall wilfully act contrary thereto, he shall be guilty of a misdemeanor.

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-coroner, shall have power, if he think fit, to appoint a deputy or assessor.

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.

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 being not 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.

XLII. Out of the jurors appearing upon such summons, a jury of twelve persons shall be drawn 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 challenge against any juryman, but no such party shall challenge the array.

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.

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.

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.

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.

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 such evidence.

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.

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 verdicts and judgments, and may have copies thereof, or extracts therefrom, on paying for each inspection thereof one shilling, and for every one hundred words copied or extracted therefrom sixpence, which copies or extracts the clerk of the peace is hereby required to make out, and to sign and certify the same to be true copies.

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.

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.

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 provision 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.

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 the 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; 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 sheriff shall proceed to the trial and adjudication of the matters in question by such jury, and such trial shall be attended in all respects with the like incidents and consequences, and the like penalties shall be applicable, as hereinbefore provided in the case of a trial by common jury.

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.

LVII. No juryman shall, without his consent, be summoned or required to attend any such proceeding as aforesaid more than once in any 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.

LIX. Upon application by the promoters of the undertaking to two justices, and upon such proof as shall be satisfactory to them that any such party is by reason of absence from the kingdom prevented from treating, or cannot after diligent inquiry be found, or that any such party failed to appear on such inquiry before a jury as aforesaid, after due notice to him for that

purpose, such justices shall, by writing under their hands, nominate an able practical surveyor for determining such compensation as aforesaid, and such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof.

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 surveyor shall corruptly make such declaration, or having made such declaration, shall wilfully act contrary thereto, he shall be guilty of a misdemeanor.

LXI. The said nomination and declaration shall be annexed to the valuation to be made by such surveyor, and shall be preserved together therewith by the promoters of the undertaking, and they shall at all times produce the said valuation and other documents, on demand, to the owner of the lands comprised in such valuation and to all other parties interested therein.

LXII. All the expenses of and incident to every such valuation shall be borne by the promoters of the undertaking.

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.

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.

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.

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 within fourteen days after the making of such award, or, in default thereof, the same may be enforced by attachment or recovered with costs by action or suit in any of the superior courts.

LXVII. If the arbitrators shall determine that the sum so deposited was sufficient, the costs of and incident to such arbitration, to be determined by the arbitrators, shall be in the discretion of the arbitrators; but if the arbitrators shall determine that a further sum ought to be paid or deposited by the promoters of the undertaking, all the costs of and incident to the arbitration shall be borne by the promoters of the undertaking.

LXVIII. If any party shall be entitled to any compensation in respect of any lands or of any interest therein, which shall

have been taken for or injuriously affected by the execution of the works, and for which the promoters of the undertaking shall not have made satisfaction, under the provisions of this or the special Act or any Act incorporated therewith; and if the compensation claimed in such case shall exceed the sum of fifty pounds, such party may have the same 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.

The following sections of the Canal Boats Act, 1877, 40 & 41 *Vic. c.* 60, *impose additional duties on sanitary authorities and are therefore printed here, though not actually incorporated in the Public Health Act.*

I. After the expiration of twelve months after the commencement of this Act, or if the regulations of the Local Government Board hereinafter mentioned have not at that time come into force, then after the expiration of six months from the date at which they have come into force, a canal boat shall not be used as a dwelling unless it has been registered in accordance with this Act.

The owner of a canal boat may register that boat with the registration authority hereinafter mentioned as a dwelling for such number of persons of the specified age and sex as may be allowed under the provisions of this Act ; and the boat shall be used as a dwelling only for the number of persons of the age and sex for which it is registered.

If a canal boat is used as a dwelling in contravention of this Act, the master of the boat, and also the owner of the boat, if he is in fault, shall each be liable to a fine not exceeding twenty shillings for each occasion on which the boat is so used.

II. The Local Government Board shall make regulations, and may from time to time revoke and vary such regulations—

(1.) For the registration of canal boats under this Act, including certificates of registration, and the fees in connection with such registration ; and

(2.) For the lettering marking and numbering of such boats ; and

(3.) For fixing the number age and sex of the persons who may be allowed to dwell in a canal boat, having regard to the cubic space, ventilation, provision for the separation of the sexes, general healthiness, and convenience of accommodation of the boat ; and

(4.) For promoting cleanliness in, and providing for the habitable condition of canal boats ; and

(5.) For preventing the spread of infectious disease by canal boats.

The registration authority shall register every canal boat which conforms to the conditions of registration provided by the said regulations for the number of persons allowed by those regulations to dwell therein.

III. Upon the registry of a boat under this Act, the registration authority shall give to the owner thereof two certificates of registry, identifying the owner and the boat, and stating the place to which the boat is registered as belonging, and the number age and sex of the persons allowed to dwell in the boat, and such other particulars as may be provided by regulations under this Act, or may seem fit to the registration authority, and the master shall have the care of one of such certificates.

Every canal boat when registered shall be lettered marked and numbered in some conspicuous manner (as directed by the regulations made under this Act), and such lettering marking and numbering shall include the word "registered," and the name of the place to which the boat is registered as belonging, and the registered number.

Any boat not lettered marked and numbered in conformity with this section, or having the letter mark or number altered, defaced or obliterated shall be deemed, for the purposes of this Act, to be an unregistered canal boat.

IV. Where any sanitary authority within whose district a canal or any part of a canal is situate is informed by the master of a canal boat, or otherwise, that a person on a canal boat is suffering from an infectious disorder, the authority shall cause such steps to be taken as may, by the certificate of their medical officer of health or any other legally qualified practitioner, appear requisite for preventing the said disorder from spreading; and for that purpose may exercise the power of removing a person suffering as aforesaid, and all other powers in relation to provisions against infection conferred by the Public Health Act, 1875: and may also, if need be, detain the boat, but such boat

shall not be detained a longer time than is necessary for cleansing and disinfecting the same.

V. Where any person duly authorised by a registration or sanitary authority or by a justice of the peace, has reasonable cause to suppose, either that there is any contravention of this Act on board a canal boat, or that there is on board a canal boat any person suffering from an infectious disorder, he may, on producing (if demanded) either a copy of his authorisation, purporting to be certified by the clerk as a member of the sanitary authority, or some other sufficient evidence of his being authorised as aforesaid, enter by day such canal boat and examine the same on every part thereof, in order to ascertain whether on board such boat there is any contravention of this Act or a person suffering from an infectious disorder, and may, if need be, detain the boat for the purpose, but for no longer time than is necessary.

The master of the boat shall, if required by such person, produce to him the certificate of registry (if any) of the boat, and permit him to examine and copy the same, and shall furnish him with such assistance and means as such person may require for the purpose of his entry and examination of and departure from the boat in pursuance of this section.

A refusal to comply with the requisition of such person under this section shall be deemed to be an obstruction of such person. If such person is obstructed in the performance of his duty under this Act in the case of any boat, the person so obstructing shall be liable to a fine not exceeding forty shillings.

Section 6 applies only to providing for education, and need not therefore be printed here.

VII. For the purpose of the registration of canal boats the registration authority shall be such one or more of the sanitary authorities having districts abutting on a canal as may from time to time be prescribed by regulation of the Local Government Board.

A canal boat shall be registered with some registration

authority having a district abutting on the canal on which such boat is accustomed or intended to ply.

With a view of determining the place to which a canal boat belongs, for the purpose of the Elementary Education Acts, 1870, 1873, and 1876, the registration authority shall register any canal boat in respect of which an application is made for registration as belonging to some place which is either a school district or is part of a school district, and is situate wholly or partly within the jurisdiction of the registration authority with which it is registered.

VIII. The expenses incurred in the execution of this Act by a local authority shall be defrayed as follows:

(1.) When they are incurred by an urban sanitary authority a rural sanitary authority or a port sanitary authority, they shall be defrayed out of the fund or rate out of which the expenses of such authority, as a sanitary authority under the Public Health Act, 1875, are defrayed; provided that when they are incurred by a rural sanitary authority they shall be deemed to be general expenses; and

(2.) When they are incurred by a vestry or district board in the metropolis they shall be defrayed as expenses incurred by such vestry or board in the execution of the Metropolis Management Act, 1855, and the Acts amending the same.

IX. An order of the Local Government Board making revoking or varying any regulation in pursuance of this Act, shall not come into force until it has lain in a complete form as settled and approved by the Board for forty days before both Houses of Parliament during the session of Parliament.

The Local Government Board shall take steps for enabling all persons interested in any regulations made by that Board in pursuance of this Act to obtain copies thereof at such places in the neighbourhood of canals as the Local Government Board may

prescribe, on payment of such sum not exceeding sixpence as may be prescribed by that Board.

X. If the master of any canal boat illegally detains the certificate of registry of such boat, he may, on summary conviction before two justices, be directed by order of such justices to deliver up such certificate, and shall, in addition thereto, be liable to a fine not exceeding forty shillings, and the justices may direct any part of such fine to be paid to the person injured by the detention of such certificate.

XI. All fees paid in respect of registration under this Act shall be carried to the fund or rate out of which the expenses incurred in the execution of this Act by the authority making such registration are by this Act declared to be payable.

The following memorandum of the Local Government Board relative to the appointment of medical officers of health and inspectors of nuisances for two or more districts jointly, may be found useful.

The memorandum commences by reciting the powers given by ss. 189—191, and then proceeds as follows:—

In those cases in which sanitary authorities, whether urban or rural, propose to make appointments in pursuance of s. 191, sub-s. 2, the following course of proceeding should be adopted:

Each of the authorities proposing to combine should pass a resolution agreeing to combine with the other authorities in the appointment of the same person as medical officer of health or inspector of nuisances, as the case may be; and when an arrangement has been arrived at as to the period for which the appointment is to be made, the amount of the salary to be paid to the officer when appointed, and the proportions to be borne by each authority, copies of the resolutions embodying the proposals should be transmitted to the Local Government Board for their consideration.

If the proposal be sanctioned by the Board, they will then issue the order required by the statute.

The Order will provide:—

(*a.*) For the election of a joint committee, to consist of a certain number of members of each authority, upon whom the appointment of the officer will devolve.

(*b.*) For convening a meeting of the joint committee, at which the appointment is to be made in the mode prescribed by the Order.

(*c.*) For the appointment of the clerk of one of the authorities to act as clerk to the Committee, for the purpose of conducting the requisite proceedings in regard to the appointment.

(*d.*) For the proportions in which the salary and charges of the officer, as well as the expenses of the appointment, including the remuneration of the clerk to the joint committee, shall be borne by the several authorities.

(*e.*) For the tenure of office and duties of the officer; and also for his qualification in the case of a medical officer of health.

(*f.*) For the re-appointment, from time to time, of the person elected under the Order, provided that the sanitary authorities by whom the appointment was made should be desirous of continuing his appointment for a further period.

When the appointment has been duly made, in pursuance of the Order, the clerk to the joint committee should forthwith report the appointment to the Local Government Board for their approval.

GENERAL ORDER OF THE LOCAL GOVERNMENT BOARD, DATED MARCH 8TH, 1880, AS TO APPOINTMENT AND DUTIES OF MEDICAL OFFICERS OF HEALTH WHOSE SALARIES ARE PARTLY REPAID OUT OF MONEYS VOTED BY PARLIAMENT. (N.B. THE WORDS IN ITALICS DO NOT APPLY TO URBAN DISTRICTS.)

Qualification.

Art. 1. A person shall not be qualified to be appointed unless he shall be registered under "the Medical Act" of 1858, and shall be qualified by law to practise both medicine and surgery in England and Wales, such qualification being established by the production to the sanitary authority of a diploma certificate of a degree licence or other instrument granted or issued by competent legal authority in Great Britain or Ireland, testifying to the medical or surgical, or medical and surgical, qualification or qualifications of the candidate for such office.

Provided that the Local Government Board may, upon the application of the sanitary authority, dispense with so much of this regulation as requires that the medical officer of health shall be qualified to practise both medicine and surgery, if he is duly registered under the said Act to practise either medicine or surgery.

Appointment.

Art. 2. A statement shall be submitted to the Local Government Board, in a form to be supplied by them, showing the population and area of the district of the sanitary authority (*or districts for which the sanitary authority propose to appoint a medical officer or medical officers of health*), together with the salary intended to be assigned to each officer, and such other particulars as may be prescribed by such form.

Provided that where any such statement has been submitted to the said Board under the said order of the 11th day of November, 1872, or under this order, no further statement under this Article shall be necessary, unless required by the said Board.

Art. 3. When the approval of the Local Government Board has been given to the proposals contained in the statement so submitted to them, the sanitary authority shall proceed to the appointment of a medical officer (*or medical officers*) of health accordingly.

Art. 4. An appointment of a medical officer of health shall not be made unless (*notice has been given at one of the two ordinary meetings next preceding the meeting at which the appointment is to be made by the sanitary authority, such notice being duly entered on the minutes, or unless*) an advertisement specifying (*the district or districts for which such appointment is to be made, together with*) the amount of salary proposed to be assigned, and the day fixed for such appointment, shall have appeared in some public newspaper circulating in the district of the sanitary authority at least seven days before the day so fixed.

Art. 5. Every such officer shall be appointed by a majority of the members present at a meeting of the sanitary authority (*consisting of more than three members, or by three members, if no more be present*), and voting on the question.

Art. 6. Every appointment shall, within seven days after it is made, be reported to the Local Government Board by the clerk to the sanitary authority.

Art. 7. Upon the occurrence of a vacancy in the office of medical officer of health, the sanitary authority shall proceed to make a fresh appointment, which shall be reported to the Local Government Board as required by Article 6 of this order.

Provided always as follows :—

(1.) If the sanitary authority desire to make any fresh arrangement with respect to (*the district or districts, or*) the terms of the appointment, they shall, before filling up the vacancy, supply the particulars of the arrangement to the Local Government Board in the manner prescribed by Article 2 of this order in regard to the first appointment, and if the approval of the Local Government Board be given, absolutely

or with modifications, the sanitary authority shall then proceed to fill up the vacancy according to the terms of the approval so given.

(2.) If the vacancy arise from notice given by an officer of an intended resignation to take effect on a future day, the sanitary authority may elect a successor to such officer in conformity with the above regulations, at any time subsequent to such notice.

(3.) If the sanitary authority deem it advisable that the vacancy should not be filled up forthwith, they may appoint a person to act temporarily, subject to the approval of the Local Government Board.

(4.) In the case of an officer who holds his office for a specified term, the sanitary authority may provide for the continuance of such officer, or appoint his successor, within three calendar months next before the expiration of such term.

Art. 8. If in the case of an officer who may have been appointed for a specified term, the sanitary authority should desire to renew his appointment for a further term or otherwise in conformity with the provisions of this order, and no fresh arrangement should be proposed with respect to (*the district or districts, or*) the terms of the appointment, it shall not be necessary for that purpose that Articles 2, 3, and 4 of this order should be complied with, but it shall be sufficient if the sanitary authority, at a meeting held after notice given at one of their two ordinary meetings next preceding such meeting pass a resolution renewing the appointment accordingly on the expiration of the term for which it was made, and the Local Government Board sanction such resolution.

Art. 9. If any officer be at any time prevented by sickness or accident, or other sufficient reason, from performing his duties, the sanitary authority may appoint a person qualified as aforesaid to act as his temporary substitute, and may pay him a reasonable compensation for his services; and it shall not be

necessary in any such case that Articles 2, 3, and 4 of this order shall be complied with, but Articles 5 and 6 of this order shall apply in every such case.

Tenure of Office.

Art. 10. Every officer shall continue to hold office for such period as the sanitary authority may, with the approval of the Local Government Board, determine, or until he die, or resign, or be removed by such authority with the assent of the Local Government Board or by the Local Government Board, or be proved to be insane by evidence which that Board shall deem sufficient.

Art. 11. The sanitary authority may at their discretion suspend any officer from the discharge of his duties, and shall, in case of every such suspension, forthwith report the same, together with the cause thereof, to the Local Government Board, and if the Local Government Board remove the suspension of such officer by the sanitary authority, he shall forthwith resume the performance of his duties.

Art. 12. Where any change in the *(district or districts or in the)* duties or salary of any officer may be deemed necessary, and he shall decline to acquiesce therein, the sanitary authority may, with the consent of the Local Government Board, but not otherwise, and after six months' notice in writing, signed by their clerk, given to such officer, determine his office.

Art. 13. A person shall not be appointed who does not agree to give one month's notice previous to resigning the office, or to forfeit such sum as may be agreed upon as liquidated damages.

Salary.

Art. 14. The sanitary authority shall pay to every officer such salary as may be approved by the Local Government Board.

Provided always, that the sanitary authority, with the approval of the Local Government Board, may pay to any officer a reasonable compensation on account of extraordinary services,

or other unforeseen or special circumstances connected with his duties or the necessities of the district (*or districts for which he is appointed*).

Art. 15. The salary of every officer shall be payable up to the day on which he ceases to hold the office, and no longer, subject to any deduction which the sanitary authority may be entitled to make in respect of Art, 13 of this order; and in case he shall die whilst holding such office, the proportion of salary (if any) remaining unpaid at his death shall be paid to his personal representatives.

Provided that an officer who may be suspended and who may, without the previous removal of such suspension, resign or be removed under Art. 10 of this order, shall not be entitled to any salary from the date of such suspension.

Art. 16. The salary assigned to every officer shall be payable quarterly, according to the usual feast days in the year, namely, Lady Day, Midsummer Day, Michaelmas Day and Christmas Day, but the sanitary authority may pay to him at the expiration of every calendar month such proportion as they may think fit, on account of the salary to which he may become entitled at the termination of the quarter.

Art. 17. All salaries shall be considered as accruing from day to day, and be apportionable in respect of time accordingly, in pursuance of the provisions of "The Apportionment Act, 1870."

Duties.

Art. 18. The following shall be the duties of a medical officer of health in respect of the district for which he is appointed; (*or if he shall be appointed for more than one district, or for part of a district, then in respect of each of such districts, or of such part:*)—

(1.) He shall inform himself as far as practicable respecting all influences affecting or threatening to affect injuriously the public health within the district.

(2.) He shall inquire into and ascertain by such means as are at his disposal the causes origin and distribution of diseases within the district, and ascertain to what extent the same have depended on conditions capable of removal or mitigation.

(3.) He shall by inspection of the district, both systematically at certain periods and at intervals as occasion may require, keep himself informed of the conditions injurious to health existing therein.

(4.) He shall be prepared to advise the sanitary authority on all matters affecting the health of the district, and on all sanitary points involved in the action of the sanitary authority; and in cases requiring it, he shall certify, for the guidance of the sanitary authority or of the justices, as to any matter in respect of which the certificate of a medical officer of health or a medical practitioner is required as the basis or in aid of sanitary action.

(5.) He shall advise the sanitary authority on any question relating to health involved in the framing and subsequent working of such bye-laws and regulations as they may have power to make.

(6.) On receiving information of the outbreak of any contagious infectious or epidemic disease of a dangerous character within the district, he shall visit the spot without delay and inquire into the causes and circumstances of such outbreak, and in case he is not satisfied that all due precautions are being taken, he shall advise the persons competent to act as to the measures which may appear to him to be required to prevent the extension of the disease, and, so far as he may be lawfully authorised, assist in the execution of the same.

(7.) Subject to the instructions of the sanitary authority, he shall direct or superintend the work of the inspector

of nuisances in the way and to the extent that the sanitary authority shall approve, and on receiving information from the inspector of nuisances that his intervention is required in consequence of the existence of any nuisance injurious to health, or of any overcrowding in a house, he shall, as early as practicable, take such steps authorised by the Public Health Act, 1875, in that behalf as the circumstances of the case may justify and require.

(8.) In any case in which it may appear to him to be necessary or advisable, or in which he shall be so directed by the sanitary authority, he shall himself inspect and examine any animal carcase meat poultry game flesh fish fruit vegetables corn bread flour or milk exposed for sale, or deposited for the purpose of sale or of preparation for sale, and intended for the food of man, which is deemed to be diseased, or unsound, or unwholesome, or unfit for the food of man, and if he finds that such animal or article is diseased, or unsound, or unfit for the food of man, he shall give such directions as may be necessary for causing the same to be seized taken and carried away, in order to be dealt with by a justice according to the provisions of the statutes applicable to the case.

(9.) He shall perform all the duties imposed upon him by any bye-laws and regulations of the sanitary authority, duly confirmed in respect of any matter affecting the public health, and touching which they are authorised to frame bye-laws and regulations.

(10.) He shall inquire into any offensive process of trade carried on within the district, and report on the appropriate means for the prevention of any nuisance or injury to health therefrom.

(11.) He shall attend at the office of the sanitary authority

or at some other appointed place, at such stated times as they may direct.

(12.) He shall from time to time report in writing to the sanitary authority his proceedings and the measures which may require to be adopted for the improvement or protection of the public health in the district. He shall in like manner report with respect to the sickness and mortality within the district, so far as he has been enabled to ascertain the same.

(13.) He shall keep a book or books, to be provided by the sanitary authority, in which he shall make an entry of his visits and notes of his observations and instructions thereon, and also the date and nature of applications made to him, the date and result of the action taken thereon and of any action taken on previous reports; and shall produce such book or books, whenever required, to the sanitary authority.

(14.) He shall also prepare an annual report, to be made to the end of December in each year, comprising a summary of the action taken during the year for preventing the spread of disease and an account of the sanitary state of his district generally, at the end of the year. The report shall also contain an account of the inquiries which he has made as to conditions injurious to health existing in his district, and of the proceedings in which he has taken part or advised under the Public Health Act, 1875, so far as such proceedings relate to those conditions; and also an account of the supervision exercised by him, or on his advice, for sanitary purposes, over places and houses that the sanitary authority have power to regulate, with the nature and results of any proceedings which may have been so required and taken in respect of the same during the year. It shall also record the action taken by him, or on his advice,

during the year, in regard to offensive trades, and to factories and workshops. The report shall also contain tabular statements (on forms to be supplied by the Local Government Board, or to the like effect) of the sickness and mortality within the district, classified according to diseases ages and localities.

(15.) He shall give immediate information to the Local Government Board of any outbreak of dangerous epidemic disease within the district, and shall transmit to the board a copy of each annual and of any special report.

(16.) In matters not specifically provided for in this order, he shall observe and execute the instructions of the Local Government Board on the duties of medical officers of health, and all the lawful orders and directions of the sanitary authority applicable to his office.

(17.) Whenever the Local Government Board shall make regulations for all or any of the purposes specified in section 134 of The Public Health Act, 1875, and shall declare the regulations so made to be in force within any area comprising the whole or any part of the district, he shall observe such regulations, so far as the same relate to or concern his office.

There are two other orders of the same date, relating to urban and rural authorities respectively, which give regulations for the appointment and duties of medical officers of health, no portion of whose salaries is repaid out of moneys voted by Parliament. The clause as to qualification is the same as that given above, and so are the clauses as to duties, with the addition that the officer is required, within seven days after his appointment, to report the same to the Local Government Board.

These orders were all published in the London Gazette on the 16th of March, 1880.

THE FOLLOWING ORDER OF THE LOCAL GOVERNMENT BOARD, DATED MARCH 8TH, AND PUBLISHED IN THE "LONDON GAZETTE," MARCH 16TH, 1880, PROVIDES FOR THE APPOINTMENT AND DUTIES OF INSPECTORS OF NUISANCES. THE WORDS IN ITALICS DO NOT APPLY TO URBAN AUTHORITIES.

After reciting and repealing a previous order of November, 1872, and reciting the powers given by s. 189 of the Act, the order proceeds as follows :—

And we hereby order as follows with respect to the appointment duties salary and tenure of office of every inspector of nuisances, any portion of whose salary is paid out of moneys voted by Parliament, and who may be appointed by any sanitary authority after the 25th day of March, 1880, or who, having been appointed by such authority under the provisions of the above cited order, may be re-appointed by them after that date.

Appointment.

ART. 1. A statement shall be submitted to the Local Government Board, in a form to be supplied by them, showing the population and area of the district or districts for which the sanitary authority propose to appoint an inspector or inspectors of nuisances, together with the salary intended to be assigned to each officer, and such other particulars as may be prescribed by such form.

Provided that where any such statement has been submitted to the said Board under the said order of the 11th day of November, 1872, or under this order, no further statement under this article shall be necessary unless required by the said Board.

Art. 2. When the approval of the Local Government Board has been given to the proposals contained in the statement so submitted to them, the sanitary authority shall proceed to the appointment of an inspector or inspectors of nuisances accordingly.

Art. 3. An appointment of an inspector of nuisances shall not be made unless (*notice has been given at one of the two ordinary meetings next preceding the meeting at which the appointment is to be made by the sanitary authority, such notice being duly entered on the minutes, or unless*) an advertisement specifying (*the district or districts for which such appointment is to be made, together with*) the amount of salary proposed to be assigned, and the day fixed for such appointment shall have appeared in some public newspaper circulating in the district (*of the sanitary authority*) at least seven days before the day so fixed.

Art. 4. Every such officer shall be appointed by a majority of the members present at a meeting of the sanitary authority (*consisting of more than three members, or by three members, if no more be present*), and voting on the question.

Art. 5. Every appointment shall, within seven days after it is made, be reported to the Local Government Board by the clerk to the sanitary authority.

Art. 6. Upon the occurrence of a vacancy in the office of inspector of nuisances, the sanitary authority shall proceed to make a fresh appointment, which shall be reported to the Local Government Board as required by Art. 5 of this order:

Provided always as follows:—

(1.) If the sanitary authority desire to make any fresh arrangement with respect to the district or districts, or the terms of the appointment, they shall, before filling up the vacancy, supply the particulars of the arrangement to the Local Government Board in the manner prescribed by Art. 1 of this order in regard to the first appointment, and if the approval of the Local Government Board be given, absolutely or with modifications, the sanitary authority shall then proceed to fill up the vacancy according to the terms of the approval so given.

(2.) If the vacancy arise from notice given by an officer of

an intended resignation to take effect on a future day, the sanitary authority may elect a successor to such officer in conformity with the above regulations, at any time subsequent to such notice.

(3.) If the sanitary authority deem it advisable that the vacancy should not be filled up forthwith, they may appoint a person to act temporarily, subject to the approval of the Local Government Board.

(4.) In the case of any officer who holds his office for a specified term, the sanitary authority may provide for the continuance of such officer, or appoint his successor, within three calendar months next before the expiration of such term.

Art. 7. If in the case of an officer who may have been appointed for a specified term, the sanitary authority should desire to renew his appointment for a further term or otherwise in conformity with the provisions of this order, and no fresh arrangement should be proposed with respect to (*the district or districts, or*) the terms of the appointment, it shall not be necessary for that purpose that Arts. 1, 2 and 3 of this order should be complied with, but it shall be sufficient if the sanitary authority, at a meeting held after notice given at one of their two ordinary meetings next preceding such meeting, pass a resolution renewing the appointment accordingly on the expiration of the term for which it was made, and the Local Government Board sanction such resolution.

Art. 8. If any officer be at any time prevented by sickness or accident or other sufficient reason from performing his duties, the sanitary authority may appoint a person qualified as aforesaid to act as his temporary substitute, and may pay him a reasonable compensation for his services; and it shall not be necessary in any such case that Arts. 1, 2 and 3 of this order shall be complied with, but Arts. 4 and 5 of this order shall apply in every such case.

Tenure of Office.

Art. 9. Every officer shall continue to hold office for such period as the sanitary authority may, with the approval of the Local Government Board, determine, or until he die or resign or be removed by such authority with the assent of the Local Government Board or by the Local Government Board, or be proved to be insane by evidence which that Board shall deem sufficient.

Art. 10. The sanitary authority may at their discretion suspend any officer from the discharge of his duties, and shall, in case of every such suspension, forthwith report the same, together with the cause thereof, to the Local Government Board; and if the Local Government Board remove the suspension of such officer by the sanitary authority, he shall forthwith resume the performance of his duties.

Art. 11. Where any change in the duties or salary of any officer may be deemed necessary, and he shall decline to acquiesce therein, the sanitary authority may, with the consent of the Local Government Board, but not otherwise, and after six months' notice in writing, signed by their clerk, given to such officer, determine his office.

Art. 12. A person shall not be appointed who does not agree to give one month's notice previous to resigning the office, or to forfeit such sum as may be agreed upon as liquidated damages.

Salary.

Art. 13. The sanitary authority shall pay to every officer such salary as may be approved by the Local Government Board.

Provided always, that the sanitary authority, with the approval of the Local Government Board, may pay to any officer a reasonable compensation on account of extraordinary services, or other unforeseen or special circumstances connected with his duties or the necessities of the district.

Art. 14. The salary of every officer shall be payable up to

the day on which he ceases to hold the office, and no longer, subject to any deduction which the sanitary authority may be entitled to make in respect of Art. 12 of this order; and in case he shall die whilst holding such office, the proportion of salary (if any) remaining unpaid at his death shall be paid to his personal representatives.

Provided that an officer who may be suspended, and who may, without the previous removal of such suspension, resign or be removed under Article 9 of this order, shall not be entitled to any salary from the date of such suspension.

Art. 15. The salary assigned to every officer shall be payable quarterly, according to the usual feast days in the year, namely, Lady Day, Midsummer Day, Michaelmas Day, and Christmas Day; but the sanitary authority may pay to him at the expiration of every calendar month such proportion as they may think fit, on account of the salary to which he may become entitled at the termination of the quarter.

Art. 16. All salaries shall be considered as accruing from day to day, and be apportionable in respect of time accordingly, in pursuance of the provisions of "The Apportionment Act," 1870."

Duties.

Art. 17. The following shall be the duties of an inspector of nuisances in respect of the district for which he is appointed (*or if he shall be appointed for more than one district, or for part of a district, then in respect of each of such districts, or of such part*):

(1.) He shall perform, either under the special directions of the sanitary authority, or (so far as authorised by the sanitary authority) under the directions of the medical officer of health, or in cases where no such directions are required, without such directions, all the duties specially imposed upon an inspector of nuisances by the Public Health Act, 1875, or by the

orders of the Local Government Board, so far as the same apply to his office.

(2.) He shall attend all meetings of the sanitary authority when so required.

(3.) He shall by inspection of the district, both systematically at certain periods, and at intervals as occasion may require, keep himself informed in respect of the nuisances existing therein that require abatement under the Public Health Act, 1875.

(4.) On receiving notice of the existence of any nuisance within the district, or of the breach of any bye-laws or regulations made by the sanitary authority for the suppression of nuisances, he shall, as early as practicable, visit the spot, and inquire into such alleged nuisance or breach of bye-laws or regulations.

(5.) He shall report to the sanitary authority any noxious or offensive businesses trades or manufactories established within the district, and the breach or non-observance of any bye-laws or regulations made in respect of the same.

(6.) He shall report to the sanitary authority any damage done to any works of water supply, or other works belonging to them, and also any case of wilful or negligent waste of water supplied by them, or any fouling by gas filth or otherwise of water used for domestic purposes.

(7.) He shall from time to time, and forthwith upon complaint, visit and inspect the shops and places kept or used for the sale of butchers' meat poultry fish fruit vegetables corn bread flour or milk, or as a slaughter-house, and examine any animal, carcase meat poultry game flesh fish fruit vegetables corn bread flour or milk which may be therein; and in case any such article appear to him

to be intended for the food of man, and to be unfit for such food, he shall cause the same to be seized, and take such other proceedings as may be necessary in order to have the same dealt with by a justice: Provided that in any case of doubt arising under this clause, he shall report the matter to the medical officer of health, with the view of obtaining his advice thereon.

(8.) He shall, when and as directed by the sanitary authority, procure and submit samples of food drink or drugs suspected to be adulterated, to be analysed by the analyst appointed under "The Sale of Food and Drugs Act, 1875," and upon receiving a certificate stating that the articles of food drink or drugs are adulterated, cause a complaint to be made, and take the other proceedings prescribed by that Act.

(9.) He shall give immediate notice to the medical officer of health of the occurrence within the district of any contagious infectious or epidemic disease; and whenever it appears to him that the intervention of such officer is necessary in consequence of the existence of any nuisance injurious to health, or of any overcrowding in a house, he shall forthwith inform the medical officer thereof.

(10.) He shall, subject to the directions of the sanitary authority, attend to the instructions of the medical officer of health with respect to any measures which can be lawfully taken by an inspector of nuisances under the Public Health Act, 1875, for preventing the spread of any contagious infectious or epidemic disease of a dangerous character.

(11.) He shall enter from day to day, in a book to be provided by the sanitary authority, particulars of his inspections and of the action taken by him in the execution of his duties. He shall also keep a book

or books, to be provided by the sanitary authority, so arranged as to form, as far as possible, a continuous record of the sanitary condition of each of the premises in respect of which any action has been taken under the Public Health Act, 1875, and shall keep any other systematic records that the sanitary authority may require.

(12.) He shall at all reasonable times, when applied to by the medical officer of health, produce to him his books, or any of them, and render to him such information as he may be able to furnish with respect to any matter to which the duties of inspector of nuisances relate.

(13.) He shall, if directed by the sanitary authority to do so, superintend and see to the due execution of all works which may be undertaken under their direction for the suppression or removal of nuisances within the district.

(14.) In matters not specifically provided for in this order, he shall observe and execute all the lawful orders and directions of the sanitary authority and the orders of the Local Government Board which may be hereafter issued, applicable to his office.

INSTRUCTIONS AS TO APPLICATIONS TO THE LOCAL GOVERNMENT BOARD FOR PROVISIONAL ORDERS UNDER THE PUBLIC HEALTH ACT, 1875.

Applications for Provisional Orders to put in force the Compulsory Powers of the Lands Clauses Consolidation Acts.

(1.) The Application must be made by a Petition under the seal of the Sanitary Authority, containing the particulars required by section 176 (3) of the Public Health Act, 1875. The lands proposed to be purchased should be specified in a

schedule to the Petiton, which should correspond with the book of reference mentioned in Instruction 3.

(2.) The Petition must be presented not later than the 1st January, if the advertisements of the proposal were published in September or October, and not later than the 1st February, if they were published in November.

(3.) The Petition should be accompanied by a plan of the proposed undertaking, by a book of reference in duplicate, and by a statutory declaration showing that the requirements of section 176 of the Public Health Act, with respect to advertisements and notices, have been duly complied with. The declaration must be stamped with a half-crown stamp, and copies of the newspapers containing the advertisements, and also of the form of notice, should be annexed to it as exhibits. It should specify the manner in which the notices were served upon the owners, lessees, and occupiers, and so far as relates to these notices, it should be made by the persons who served them. With regard to the mode of service, see section 267 of the Act. The plan should be coloured so as to distinguish the land proposed to be actually purchased, and the several properties should be numbered so as to correspond with the schedule to the petition and the book of reference.

4. The standing orders of both Houses of Parliament require that, *at the same time* as the plan of the undertaking and the book of reference are deposited with the Board, duplicates thereof shall be deposited with the clerk of the Parliaments and at the private bill office, unless the deposit with the Board is made after the prorogation of Parliament and before the 30th November, in which case the deposit with the clerk of the Parliaments, and at the private bill office, must be made on the day last mentioned.

In order that compliance with these requirements may be proved before the examiners of standing orders, the Board should be furnished with an *affidavit*, stamped with a half-crown stamp, and sworn before a justice of the peace or a commissioner

for taking affidavits by the person by whom the deposits have been made.

5. The Board have been advised that two or more sanitary authorities cannot jointly petition for a provisional order to enable them to put in force the compulsory powers of the Lands Clauses Consolidation Acts. Either each sanitary authority must present a separate petition in respect of the particular lands which they require, or else the several sanitary authorities must combine under s. 285 of the Public Health Act, 1875, for the purpose of carrying the proposed scheme into execution, and a petition must be presented by one of them with regard to all the land required. If this course is taken, an agreement under the section should be entered into before application is made for the Provisional Order.

Applications for Provisional Orders to alter the Areas of Sanitary Districts.

6. The application should be made by a resolution of the sanitary authority, a copy of which should be forwarded to the Board.

7. The application must be made not later than the 1st January.

8. The application should be accompanied by (*a*) a statement giving the names of the sanitary authorities whose districts are affected by the proposal, and the grounds upon which the application is made, (*b*) a map showing the present and proposed boundaries of the districts affected, and (*c*) a description, without reference to a map, of the boundaries of the part proposed to be added or detached, or formed into a new district, as the case may be. Where part of a rural sanitary district is affected, the name of the contributory place should be given.

Applications for Provisional Orders to repeal, alter, or amend Local Acts.

9. The application should be made by a resolution of the

sanitary authority, asking the Board in general terms to repeal, alter, or amend the local act wholly or partially, as the case may require. A copy of the resolution should be forwarded to the Board.

10. The application must be made not later than the 1st January, and it is very desirable that it should be sent in before the 15th October.

11. The application should be accompanied by a copy of the local act, and by a statement showing the particular sections which it is proposed should be repealed altered or amended, and the precise alteration desired. The statement should also show the grounds upon which the application is made.

12. Where the effect of the proposed repeal or alteration of the local act will be to extend or diminish the area of a sanitary district, the particulars referred to in Instruction 8, should also be furnished.

N.B.—It is particularly requested that all petitions, statutory declarations, and other such documents may be written on foolscap paper of the usual size.

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