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THE

HOUSING OF THE WORKING CLASSES ACTS.

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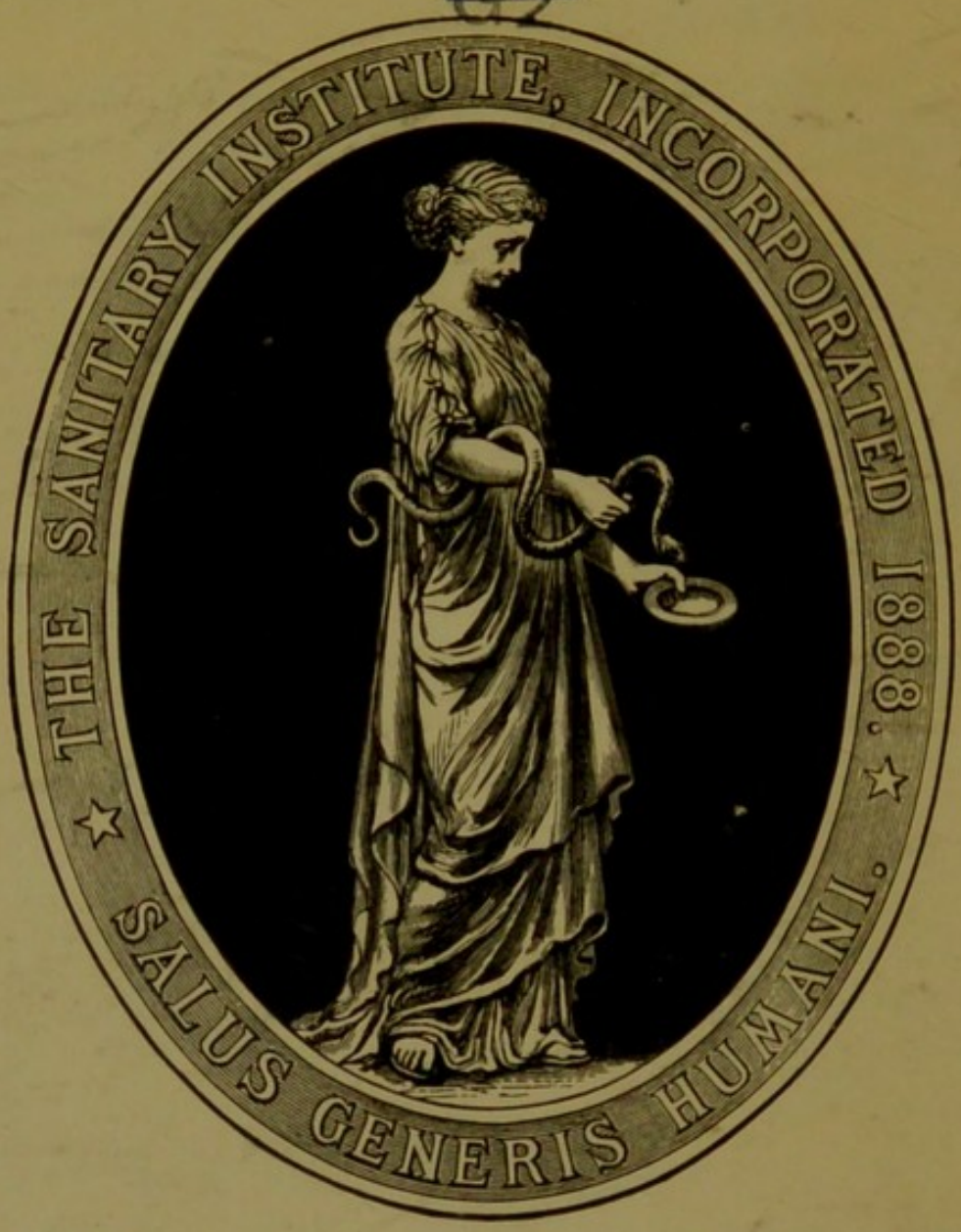

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THE

HOUSING OF THE WORKING CLASSES ACT, 1890, AND AMENDING ACTS.

THE

Housing of the Working Classes

ACT 1890,

AND

AMENDING ACTS,

ANNOTATED AND EXPLAINED,

TOGETHER WITH THE STATUTORY FORMS AND INSTRUCTIONS.

BY

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ASSISTED AS TO THE PRACTICE BY

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PREFACE.

IN preparing this Work on the HOUSING OF THE WORKING CLASSES ACT, 1890, with the Statutes amending it, the Author has endeavoured, by Full Notes and Explanations, to produce a Practical Manual for the use of Lawyers and of Members and Officials of Local Authorities who may have occasion to study or put in force this somewhat involved and complicated, but highly useful piece of legislation. In doing so he has received valuable assistance from FRANCIS J. ALLAN, M.D., D.P.H., Medical Officer of Health to the Strand District Board of Works, who has had considerable experience in carrying out its provisions. The Introduction is intended to afford a general view of the scope and purpose of the Act. The Forms prescribed by the Home Secretary and by the Local Government Board and the Instructions of the latter body as to applications for Provisional Orders under Part I., will be found in the Appendix.

It has been found impossible to include in a work of this kind the numerous statutes referred to or incorporated

in the Act. This will be evident when it is mentioned that among them are the Public Health Acts and the Lands Clauses Acts. The effect, however, has been briefly explained and references given to text books dealing with them at length. The amending Acts dealing exclusively with Scotland and Ireland are set out in the text (although the work is intended to deal more particularly with English law only).

C. E. ALLAN.

12, *King's Bench Walk*,
Temple,
October, 1898.

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(53 & 54 Vict. Cap. 70.)

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INTRODUCTION.

In 1851 the Legislature made the first attempt towards solving the modern social problem of providing proper dwelling accommodation for the working classes of the community. The Act then passed was called the Labouring Classes Lodging House Act, 1851, and it was followed during the next thirty-five years by at least sixteen statutes directed to the same end. For various reasons these statutes failed to produce the result anticipated, and many of them were practically never put into operation. At first, this was largely due to the apathy of local authorities; but latterly, the mass and complexity of the legislation on the subject contributed largely to bring about this failure. It became necessary, therefore, that the law should be consolidated and amended, and this was effected by the Housing of the Working Classes Act, 1890, which Act may be regarded as embodying the principal statutory provisions now in force. It repealed and consolidated practically all of the above-mentioned Statutes (*see* Sched. VII., *post*), with the exception of certain Statutes dealing with labourers' cottages in Ireland, which now with subsequent amending Acts form a separate series of six Statutes under the name of the Labourers (Ireland) Acts, 1883—1896. Certain sections of the Housing of the Working Classes Act, 1885, were also left unrepealed; but such of these sections as are now operative relate to the general sanitary law; they are

Course of legislation.

Consolidating Act.

Labourers (Ireland) Acts.

Housing of Working Classes Act, 1885.

now included among the Public Health Acts as defined by the Short Titles Act, 1896 (59 & 60 Vict. c. 14), and therefore do not fall within the scope of this work.

Subsequent amendments.

Since the Consolidating Act was passed very few amendments have been found necessary, and these relate rather to practice than to principle. There are, however, four short amending Acts on the Statute book. Of these the Housing of the Working Classes Act, 1894 (57 & 58 Vict. c. 55), applies to the United Kingdom, and of the others, one, of 1896 (59 & 60 Vict. c. 31) applies solely to Scotland, and the remaining two, of 1893 and 1896 (56 & 57 Vict. c. 33, and 59 & 60 Vict. c. 11) relate exclusively to Ireland. They are set out hereafter.

Division of Act of 1890.

The Housing of the Working Classes Act, 1890, is divided into seven parts, and there are seven schedules. The parts are :

I. Unhealthy Areas. (Ss. 2—28.)

II. Unhealthy Dwelling-Houses. (Ss. 29—52.)

III. Working-Class Lodging-Houses. (Ss. 53—71.)

IV. Supplemental. (Ss. 72—93.)

V. Application of Act to Scotland. (Ss. 94—97.)

VI. Application of Act to Ireland. (Ss. 98, 101.)

VII. Repeal and Temporary Provisions. (Ss. 102, 103.)

The divisions cannot be considered to be either clear or scientific, and the Act betrays all the faults naturally incident to a consolidating and amending Statute. As an instance, it may be pointed out that there are at least three different procedures under different parts of the Act for the purpose of obtaining power to take land compulsorily, and a distinct way of putting each of these powers into operation. Parts I., II., and III., may be regarded as the operative parts of the Act;

Part IV. containing provisions, some of which are applicable to each of the three previous parts, while others are wholly independent of them.

Powers given by Act.

The powers given by the Act may be summarised generally as enabling local authorities to deal with :—

(1.) Individual houses, by insisting on having them made fit for habitation, or if that is not or cannot be done, by closing or demolishing them.

(2.) Obstructive buildings, which cause other houses to be unhealthy, by enabling the local authority to demolish them.

(3.) Small areas of unhealthy houses, by having them pulled down and reconstructed.

(4.) Large areas or "slums," which can be acquired and pulled down, and an improvement scheme carried out.

(5.) The erection of dwelling or lodging-houses for the working classes in districts where the same are required.

Of these powers the first three fall under Part II., the fourth is dealt with under Part I., while the provisions of Part III. relate to the fifth.

Authorities to enforce Act.

Part II. is applicable to all sanitary districts, and may be enforced by the sanitary authority. Part I. is not applicable to rural districts at all; it may be put into operation by the sanitary authority in the City of London, and in all urban districts of England and Wales. In the County of London (*i.e.*, exclusive of the City) the duty of carrying out Part I. is imposed on the London County Council as the local authority. Part III. is adoptive. The county council in the county of London, is the authority who may there adopt it, but in other parts of England, including the City of London, the sanitary authority is the local authority,

In rural districts, the rural district council may adopt Part III. only to a limited extent, and subject to the sanction of the county council. To sum up, if London is excluded, the local authority to carry out each part of the Act in all districts to which such part is applicable, is the sanitary authority, *i.e.*, the borough council, or urban or rural district council, as the case may be. The same is true of the City of London, where the Common Council now act as sanitary authority. In the County of London, the county council carry out Parts I. and III., and the vestries and district boards as sanitary authorities are the authorities to execute Part II. (*See* s. 92 and Sched. I. *post.*) It will be seen, therefore, that the Act may be regarded as a development of the Public Health Acts, and in all cases where it is enforceable by the sanitary authority, the expenses are payable out of the rates applicable to sanitary purposes.

Part I.—Unhealthy Areas.

Official representation.

This part of the Act deals exclusively with large improvement schemes. Its provisions are set in operation by the medical officer of health, who on his own initiative, or on the complaint of two justices, or of twelve ratepayers, may make a written representation to the local authority that an area is in such an insanitary state, that the sanitary defects cannot be effectually remedied otherwise than by an improvement scheme (ss. 4, 5). In the County of London the local authority, to whom the representation is to be made is the county council, and it may be made by the medical officer to the vestry or district board for the parish or district in which the area is situated, or by a medical officer of the council. In the City of London, and elsewhere in England, the representation

is made to the sanitary authority by its own medical officer.

Complaint by ratepayers.

The medical officer is bound to inspect the area, and to make a representation on the complaint of twelve ratepayers; but if he fail to do so, or reports that the area is not unhealthy, the ratepayers may appeal, if in London, to the Home Secretary, and if elsewhere, to the local government, who are referred to in the Act as the confirming authority. They may order an inquiry by a medical practitioner who may make a representation, if necessary, to the local authority, on which the authority may proceed (s. 16).

Resolution as to scheme.

When a representation has been made, the local authority must inquire into the matter, and, if satisfied of the truth of the representation, and of the sufficiency of their resources, must resolve to proceed with an improvement scheme. If they do not proceed, or resolve not to proceed they must communicate their reasons to the confirming authority, who may direct a local inquiry, but it is doubtful if the confirming authority can enforce the finding of their inquiry (ss. 4 and 10, and notes).

Preparation of scheme.

If the local authority resolve to proceed, they must set about preparing a scheme. This scheme may include land outside the area, if such is necessary for making the scheme efficient. This scheme must be prepared with plans and estimates, and with books of reference, practically in the same manner as if the scheme was to be laid before Parliament as a local bill. The houses and land to be taken compulsorily must be shown by distinctive colour on the maps, and a statement should accompany it showing the number of persons of the labouring class resident in *each* house. (*See* ss. 6 and notes, and instructions, *post*, p. 181.)

In London provision must also be made for accommodating part of the working classes displaced;

and, unless the Local Government otherwise allow, a like provision must be made for districts other than London. (*See* as to these, s. 11, *post*, p. 16).

Notices and advertisements.

The scheme ought, if possible, to be complete by the autumn in any year; for during either September, October, or November, advertisements of the scheme must be published in local newspapers, and in the subsequent months respectively, notices must be served on the owners, lessees, and occupiers of any lands proposed to be taken compulsorily. (*See* as to these, s. 7, *post*, p. 8).

Application to confirming authority.

The next step is to petition the confirming authority for an order confirming the scheme. The petition must be accompanied by the plans, statements, estimates, the official representations, evidence of the publication of the advertisements, and of service of the notices, and such other evidence as the confirming authority may require. (Sect. 8 (1) and (2), and instructions of Local Government Board in Appendix.)

Local inquiry.

If the confirming authority think fit to proceed, they will then direct a local inquiry to be held in or near the area, for the purpose of ascertaining the adequacy of the scheme, and to hear any local objections (sect. 8 (3)). Notice must be given of the intention to hold the inquiry, and anyone desirous of being heard, may appear and be heard. (Sect. 18, *post*, p. 25. As to the costs of such inquiry, *see* ss. 8 (7) and (8), and 85, *post*, pp. 12 and 112.)

Provisional order.

The confirming authority, if satisfied, may make a provisional order authorising the scheme with or without modifications. This order, however, before being put into operation, must be sanctioned by Parliament, and the confirming authority may promote a bill for that purpose. This bill is treated pretty much as any other local Act, and may be petitioned against and opposed before the Committees of either House by

Bill to confirm.

persons entitled to a *locus standi*. (As to costs of such opposition, *see* s. 9 (1), *post*, p. 14.)

Execution of scheme.

After the bill has passed, it is then the duty of the local authority to carry it into execution by acquiring the land and arranging for the making of the new streets, and erection of houses. As to their powers to do this *see* s. 12, *post*, p. 18, and as to expenses and borrowing powers, *see* ss. 24 and 25, *post*, p. 35.)

Modification of scheme.

If necessary the scheme may be subsequently modified under s. 15, *post*, p. 23.

Compensation.

Special provisions have been made in this part of the Act for the purpose of providing safeguards against the payment of excessive compensation in respect of dwellings which have been allowed to get into a state of defective sanitation, or into bad repair, or the rentals of which have been enhanced by over-crowding, or by the houses being used for illegal purposes. These provisions are contained in s. 21, *post*, p. 28, but they apply only to houses in the unhealthy area, and not to houses taken for the purposes of completing the scheme. No allowance for compulsory purchase is likewise to be made in respect of the houses in the insanitary area, but an allowance may he made to tenants for expenses of removal (s. 78). All easements and like rights are to be deemed to be destroyed, but compensation is not payable in respect of these until the owner can prove that he has suffered injury, (s. 22).

Procedure to take land.

A simple and cheaper method is also provided for taking land, for ascertaining the amount of compensation payable, and for the conveyance of the land. This procedure is contained in Sched. II. *post*, and *see* s. 20. The assessing tribunal is an arbitrator appointed by the confirming authority from which the High Court may give leave to appeal to a jury, if satisfied that a failure of justice will take place. (As to costs of the arbitration, *see* Arts. 27 and 29 of Sched. II., *post*.)

Part II.—Unhealthy Dwelling Houses.

Division of Part II.

This part of the Act provides three methods of dealing with unhealthy dwelling-houses:

(1.) By closing and demolishing buildings which are unfit for human habitation (ss. 30—37).

(2.) By removing obstructive buildings (s. 38).

(3.) By reconstructing small areas (ss. 30—40).

It is applicable to every sanitary district, and is put in force by the sanitary authority for each district.

(1.) *Buildings unfit for Human Habitation.*

Inspection of district.

Each sanitary district is required to be inspected from time to time to ascertain the existence of houses which are unfit for human habitation, and representations in regard thereto should be made to the sanitary authority. Four or more householders, and in a rural district, the parish council may also complain of neighbouring houses being unfit for habitation, and proceedings must be taken upon these complaints. If the sanitary authority in urban districts neglect to proceed, the householders may appeal to the Local Government Board (s. 31), while in London, and in rural districts, the same result is attained by a provision requiring representations, complaints and proceedings to be reported to the county council, and in the event of the sanitary authority neglecting to proceed, the county council may do so (s. 45). The medical officer of the county council may also make a representation to that council, which they may forward to the sanitary authority, and which shall have like effect as a representation from their own medical officer (s. 52). It would seem, however, that the sanitary authority need not necessarily proceed under the Housing of the Working Classes Act, as they

Complaint of householders.

may consider that the nuisance may be remedied by proceedings under the Public Health Acts only.

Closing order.

When a house is considered by the sanitary authority to be in such a state as to render it unfit for human habitation, they must take proceedings under the appropriate sections of the Public Health Acts (as to which, *see* Sched. III.), to have the house put into proper condition, or closed. If ordered to be closed the authority must serve notice thereof on the tenants requiring them to leave, and may make them an allowance for the costs of removal, which may be recovered from the owner. If the tenants disobey the notice they become liable to penalties.

Demolition order.

If the house has been closed, and if repairs and alterations have not been done sufficient to render it fit for habitation, and if the building is dangerous to the health of the public, or neighbours, the authority may resolve that it is expedient to order the demolition of the building. A month's notice of this resolution must be served on the owner, and opportunity given him to be heard thereon. If he agree to execute the necessary works, he may be given a reasonable time, but failing such, the authority may resolve that the house be demolished, and order accordingly. It is the owner who should carry out this order, but failing him, the local authority may do so, and sell the material in order to meet the expense (ss. 32—34).

Appeal.

There is an appeal from this order to the Court of Quarter Sessions (s. 35). An owner who is put to expense for repairs which should properly have been borne by some other person having an interest in the house, may obtain a charging order upon the house for such expenses (ss. 36 and 37, *post*), and an owner not in possession may be given power to enter for the purposes of putting the house in a proper state (s. 47).

Charging order.

(2.) *Obstructive Buildings.*

Section 38 deals with the demolition of buildings, which, by reason of their proximity or contact with other buildings render these latter unfit for habitation or injurious to health; or which prevent them from being put into a sanitary condition. The medical officer of health for the district should make a representation to his local authority, when he considers such a building should be pulled down. Four inhabitant householders, and in rural districts the parish council also, may make a representation to the like effect.

Representation as to building.

Report.

On receipt of the representation, the local authority are required to have a report made to them respecting the circumstances of the building, and the cost of pulling it down, and of acquiring the land. If on receipt of this report they resolve to proceed, they must send to the owner a copy of the report and also of the representation, and the owner must be allowed an opportunity of being heard, and of stating his objections. If the local authority do not allow the objection, they must make an order that the building be pulled down. There is an appeal from this order to a Court of Quarter Sessions in the same manner as from a demolition order.

Order to pull down building.

Compensation.

The local authority must then proceed to acquire the land and building, and the procedure is that of the Lands Clauses Acts, with modifications. These modifications are contained in s. 41. By that section the amount of the compensation is to be determined by an arbitrator appointed by the Local Government Board, and similar provisions against excessive compensation are enacted as in s. 21 of Part I. The owner may, however, within one month of the date of the notice to purchase, claim to retain the site, in which case the authority are required to pay compensation only for the pulling down of the building. The authority, also, are

not required to purchase the entire holding of the owner, if in the opinion of the arbitrator the part can be severed without material detriment to the remainder (s. 38 (7)). In assessing the compensation to the owner the benefit caused to the other buildings of the same owner is to be taken into account (s. 41 (2)).

Betterment

There is a further proviso in the nature of a betterment clause, by which the arbitrator may apportion the compensation among the other surrounding houses, to the extent to which they are increased in value by the demolition of the obstructive building, and the same may be recovered by the levy of a private improvement rate (s. 38 (8) and (9)).

If the owner keep the site, no building which may be obstructive can be erected, and if the local authority purchase it, then they must keep as an open space sufficient of it to remedy the evils caused by the obstructive building, and may sell the remainder with the assent, in London of the Home Secretary, and elsewhere in England and Wales, with the assent of the Local Government Board. They may also, if they think fit, dedicate the land so acquired as a highway or other public place (s. 38 (12)).

(3.) *Scheme for Reconstruction.*

Cases for reconstruction scheme.

Two classes of reconstruction schemes are contemplated: (1) The first case is where an order for demolition of a building has been made, and it is desirable that the authority should acquire the area of the dwelling-house of which such building forms part, either to make a highway or open space, to devote it to the erection of workmen's dwellings, or to exchange it for land more suitable for such dwellings; (2) The second case is where an area is too small to be dealt with under Part I., but which by reason of the bad arrangement of the streets and houses, requires to be reconstructed. If

the local authority are satisfied that a scheme is necessary for either of these, then they may pass a resolution to that effect, and direct a scheme to be prepared.

Notices. After the preparation, and at any time of the year, notices of the scheme may be served on owners, lessees, and occupiers in the same way as is provided in s. 7 (*b*) of Part I., but no advertisements appear to be required.

Petition to Local Government Board. After the notices the local authority petition the Local Government Board for an order sanctioning the scheme. This is followed by a local inquiry, and the sanctioning or otherwise of the scheme, with or without conditions or modifications. After the order sanctioning the scheme is obtained, the local authority should proceed to ascertain whether they can purchase the area by

Order. agreement, for if they can, the order is sufficient, and no further steps need be taken. If it is found necessary to obtain compulsory powers, the local authority must publish the order in the London Gazette, and serve notice on all the owners throughout the area, whether they have consented to sell or not. The owners are then given two months to petition against the order; if they do not, or if the petitions have been withdrawn, the Local Government Board may confirm the order, and thereupon it shall come into operation, and the lands may be taken compulsorily as provided in the order.

When confirmation necessary. But if an owner petition against the order, and does not withdraw it, the order is provisional only, and requires to be confirmed by Act of Parliament. The same provisions as to costs before Parliament apply as in the case of a bill confirming a provisional order under Part I.

Procedure to take land. The procedure to take land is that of the Lands Clauses Acts which may be incorporated, but the amount of compensation is settled by an arbitrator

according to the principles contained in s. 41, already referred to in the case of obstructive buildings. The area is also to be deemed free from easements, the owner thereof being entitled to compensation for injury as under Part I. (s. 39 (8)). The provisions of Part I. as to carrying out the scheme are also applicable to schemes under this part of the Act. There is also power given to the Local Government Board to modify the scheme.

Scheme under Part I. or Part II. London.

There are special provisions in Part IV. as to whether a scheme in London should be carried out under Part I. or Part II. If the scheme relates to not more than ten houses, it should be carried out under Part II. by the sanitary authority (s. 72). Other cases must be determined, to some extent, on the ground as to whether the scheme is for the benefit of London as a whole. In such case some, if not all, of the expense, should be borne by the county council, and there are provisions in s. 73 to determine disputes as to this matter, while in s. 46 there are provisions enabling the county council to contribute to schemes by vestries and district boards and *vice versâ*.

In rural districts.

In rural districts, as Part I. is not applicable, schemes can only be carried out under Part II.

In urban districts.

In urban districts, where the authority is the same for both Parts I. and II., and where the expenses in either case will be borne by the same rate, it is not easy to say in any particular case whether the scheme should be carried out under Part I. or Part II. The procedure preliminary to having the value of the land assessed, and the conveyance after the assessment, could no doubt be carried out more cheaply under Part I., and under that part additions and improvements made by owners after the scheme has been advertised, are not to be paid for; but on the other hand, additional advertisements are required, and as a scheme

under Part I. must be confirmed by Parliament, there are many statements and other particulars to be prepared, to enable the confirming authority to comply with the standing orders. Under Part II. the scheme may not come before Parliament at all, and it would appear that whenever a scheme is likely to be confirmed, without resort to Parliament, that it should be carried out under Part II., but when opposition before Parliament is probable, then the more prudent course would appear to be to proceed under Part I. Prior to 1894, local authorities could only borrow money under Part. II. to pay for compensation and purchase-money of land, but by the Housing of the Working Classes Act, 1894 (57 & 58 Vict. c. 55), they can now borrow for any purpose of the scheme.

Part III.—Working Class Lodging Houses.

This part of the Act is intended to facilitate the erection of workmen's houses in neighbourhoods where they are required, and it may also be used as a means of providing accommodation for workmen displaced by improvement schemes under Parts I. and II. The powers given by it may also be used by local authorities to buy up insanitary property from time to time, and erect proper working men's houses on the sites. The expression "lodging-house" used throughout this part is misleading, as it refers to, and includes separate houses, containing one or several tenements, and also cottages, and again, the persons occupying the houses may be lodgers, or they may be tenants as distinct from lodgers (s. 53).

Adoption (ss. 54, 55).

This part may be adopted in the County of London by the county council, in the City of London and in all urban districts by the sanitary authority, and in rural districts by the rural district council with the

consent of the county council, and subject to certain limitations (s. 55).

Acquisition of land (s. 57).

The procedure to acquire land for the purposes of this part of the Act is that provided by the Public Health Act, 1875, ss. 175—178, and this procedure is to be followed in London as well as in other parts of England and Wales (s. 57). These sections incorporate the Lands Clauses Acts, but the compulsory sections cannot be put in force without a provisional order, the procedure to obtain which is set out in s. 176. This order will probably require to be sanctioned by Parliament, although the Act contains no such provision. If the land can be purchased by agreement, the authority can avail themselves of all the clauses in the Lands Clauses Acts other than those relating to compulsory purchase.

Power to erect houses (ss. 58—60).

The local authority are also given power to purchase or lease lodging-houses for the working classes already or hereafter to be built, and, with certain consents, appropriate such houses for the purposes of this part of the Act (s. 57). On land acquired for the purposes of this Act, they may erect suitable working-class lodging houses, or convert buildings to that purpose, and, with certain consents, they may also by sale or exchange, acquire land more suitable for the purpose. Trustees of lodging-houses provided by private subscriptions, may also sell or lease them to the local authority, or make over to them the management thereof (s. 58). The local authority may also fit up and furnish the lodging-houses which they provide (s. 59).

Management (ss. 61—64).

The general management and control of the lodging houses established or acquired by a local authority under this part of this Act, is vested in and should be exercised by the local authority. For the purposes of such management they may make both regulations and

bye-laws. The latter will require confirmation and publication, and a copy or abstract must be put up and kept in every room in the lodging-houses. The regulations require no such formality, and the charges for the tenancy or occupancy may be fixed by regulations. It is only compulsory on the local authority to make bye-laws for such lodging-houses as are not used as separate dwellings, and a list of purposes for which such bye-laws should be made is contained in the Sixth Schedule to the Act.

Persons in receipt of parochial relief, except in case of accident or temporary illness, are disqualified from being tenants of these lodging houses; a provision evidently intended to secure that the houses shall be used for *bonâ fide* members of the working classes. If after being established for seven years, the lodging houses turn out to be unnecessary, or too expensive, the local authority after obtaining the necessary consent, may sell them.

Expenses and borrowing (ss. 65, 66).

The expenses of this part of the Act are to be met in the whole of London out of the Dwelling House Improvement Fund, under Part I. of this Act; in urban districts, as general expenses under the Public Health Acts; and in rural districts, as special expenses subject to the certificate of the county council. In London, the authorities may borrow as provided in Part I. of this Act, and the local authorities elsewhere in England and Wales may borrow in like manner and subject to the like conditions, as for the purpose of defraying the above-mentioned general and special expenses. Fines under bye-laws are also to be paid to the credit of the funds, out of which the expenses of this part of this Act are defrayed (s. 71).

Powers to companies and societies (ss. 67, 68, and 70).

Powers are also given under this part to enable and encourage the erection of lodging houses by public companies for their own workmen, or by societies or

associations established for the purpose of improving the dwellings of the working classes. Trading and manufacturing companies or societies are given express power to erect such houses, notwithstanding any Act or Charter to the contrary, and the Public Works Loan Commissioners may advance money to them for the purpose, and also to associations formed for the purpose of providing dwelling houses for the working classes. All such houses must be open to the inspection of the local authority at all times. Gas and water companies and corporations supplying gas and water are also given power to supply the same to lodging-houses, provided under this part of this Act, either without charge or on such favourable terms as they think fit.

Part IV.—Supplementary.

Many of the provisions in this part have been already referred to in the previous remarks, and attention need only be called to one or two sections. Section 74 enables tenants for life and bodies corporate to sell land for housing the working classes, even although they might get a larger price for it for some other purpose.

Condition as to letting of house.

Section 75 provides that in letting for habitation by persons of the working classes a house or part of a house, there shall be implied a condition that the house is at the commencement of the holding in all respects reasonably fit for habitation. This provision not only enables the tenant to rescind the tenancy in the event of the house not being so fit, but it enables him to recover damages for breach of the condition. In crowded districts where there is a difficulty in obtaining accommodation, it would appear that this provision is not sufficiently stringent, and there appears to be nothing in the section to prevent the tenant from waiving the condition.

By s. 88, a penalty is imposed on members of local authorities voting upon any resolution or question under Part I. or Part II., if it relates to any dwelling house, building, or land in which he is beneficially intrusted.

Parts V. and VI. apply the Act to Scotland and Ireland respectively, and Part VII. repeals all the consolidated Acts as set out in the Seventh Schedule, with the necessary savings in respect of proceedings under them.

THE

HOUSING OF THE WORKING CLASSES ACT, 1890.

(53 & 54 Vict. Cap. 70.)

An Act to consolidate and amend the Acts relating to Artizans and Labourers Dwellings and the Housing of the Working Classes. [18th August 1890.]

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:

1. This Act may be cited as the Housing of the Working Classes Act, 1890. Short title of Act.

The amending Acts to be read with this Act are:
The Housing of the Working Classes Act, 1893 (56 & 57 Vict. c. 33), which relates solely to Ireland;
The Housing of the Working Classes Act, 1894 (57 & 58 Vict. c. 78);
The Housing of the Working Classes (Ireland) Act, 1896 (59 & 60 Vict. c. 11);
The Housing of the Working Classes Act, 1890, Amendment (Scotland) Act, 1896 (59 & 60 Vict. c. 31).

PART I.

This part of the Act consolidates and amends the Artizans and Labourers Dwellings Improvement Acts: 38 & 39 Vict. c. 36; 38 & 39 Vict. c. 49; 42 & 43 Vict. c. 63; 43 Vict. c. 2; 45 & 46 Vict. c. 54, Part I., as amended by 48 & 49 Vict. c. 72. These were commonly known as Cross's Acts.

Unhealthy Areas.

2. In this part of this Act— Definitions.

The expression "this part of this Act" includes any confirming Act, and

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The expression "the Acts relating to nuisances" means—

as respects the county of London and city of London, the Nuisances Removal Acts as defined by the Sanitary Act, 1866, and any Act amending these Acts; and

29 & 30 Vict. c. 90, s. 14.

as respects any urban sanitary district in England, the Public Health Acts;

and in the case of any of the above-mentioned areas, includes any local Act which contains any provisions with respect to nuisances in that area.

"**Any confirming Act.**"—This means an Act passed pursuant to s. 8 (6), *post*, p. 12, for the purpose of confirming a provisional order. It will be evident on reading the sections that the expression "this part of this Act" is used both in its ordinary sense and in its extended sense. In the Clauses Consolidation Acts, which are incorporated with Part I. of this Act, the expression the special Act means "this part of this Act" in its extended sense. See ss. 20 (ii.) and 25, *post*, pp. 26 and 36.

The Nuisances Removal Acts and Acts amending them were consolidated, amended, and repealed by the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76). That Act and the Acts amending it must, therefore, be read as substituted for those in the text.

The Public Health Acts as defined by the Short Titles Act, 1896 (59 & 60 Vict. c. 14), are fourteen in number, and to these must be added the Public Health Act, 1896 (59 & 60 Vict. c. 19), and the Public Health (Ports) Act, 1896 (59 & 60 Vict. c. 20).

For further definitions of expressions used in this Act, see ss. 92 and 93, *post*, p. 115. The expression "confirming authority" is explained in s. 8 (2), *post*, p. 11.

Application of Part I. of Act.

3. This part of this Act shall not apply to rural sanitary districts (*a*).

Scheme by Local Authority.

Local authority on being satisfied by official representation of the unhealthiness of district to make scheme for its improvement.

4. Where an official representation as herein-after mentioned is made to the local authority that within a certain area in the district of such authority either—

(a.) any houses, courts, or alleys are unfit for human habitation, or

(b.) the narrowness, closeness, and bad arrangement, or the bad condition of the streets and houses or

(*a*) Now called "rural districts." (Local Government Act, 1894, s. 21 (2).)

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groups of houses within such area, or the want of light, air, ventilation, or proper conveniences, or any other sanitary defects, or one or more of such causes, are dangerous or injurious to the health of the inhabitants either of the buildings in the said area or of the neighbouring buildings;

and that the evils connected with such houses, courts, or alleys, and the sanitary defects in such area cannot be effectually remedied otherwise than by an improvement scheme for the re-arrangement and reconstruction of the streets and houses within such area, or of some of such streets or houses, the local authority shall take such representation into their consideration, and if satisfied of the truth thereof, and of the sufficiency of their resources, shall pass a resolution to the effect that such area is an unhealthy area, and that an improvement scheme ought to be made in respect of such area, and after passing such resolution they shall forthwith proceed to make a scheme for the improvement of such area.

Provided always, that any number of such areas may be included in one improvement scheme.

"**An official representation.**"—This representation is made by a medical officer of health under the next section, or, in case of his default, by a medical officer appointed under s. 16 by the confirming authority, and transmitted by that authority to the local authority.

"**The narrowness.**"—The corresponding clause of 38 & 39 Vict. c. 36, s. 3, commenced "or that diseases indicating a generally low condition of health amongst the population have been from time to time prevalent in a certain area within the jurisdiction of the local authority, and that such prevalence may reasonably be attributed to the closeness, narrowness," etc.

As these words are omitted, other reasons may be sufficient than the prevalence of disease, but although not always requisite, yet it will be possible in the majority of cases to show that the conditions present have caused injury to health. This can be done by obtaining a list of the deaths of persons in the area and in the rest of the district (Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 28), and, after proper correction, instituting comparisons between the death rates, especially in regard to pulmonary and tubercular diseases and infectious diseases, like enteric fever, typhus fever, and infantile diarrhœa. The infantile mortality should also be determined. Further information may also be obtained as to infectious diseases from the certificates supplied where notification is enforced. Evidence as to the prevalence of a generally low state of health may

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be obtained from the poor law medical officers (Local Government Board Orders, dated February 28th and June 14th, 1879) and from the officers of hospitals and dispensaries in the vicinity.

On the question of narrowness, want of air and light, etc., comparisons may be instituted between the conditions existing in the area and those required by the model bye-laws of the Local Government Board relating to new streets and buildings (No. 4) and by the London Building Act (57 Vict. c. ccxiii.).

"**Local authority**"; "**District.**"—As to the meaning of these expressions, see s. 92, *post*, p.115, and Sched. I., *post*, p. 127. This part of the Act is not applicable to rural districts (s. 3, *ante*), but applies to London and to urban districts. In London, the local authority for the county (exclusive of the city) is the London County Council, and for the city it is now the Common Council. In urban districts, which are boroughs, the local authority is the borough council, and in other urban districts it is the district council.

"**Shall take such representation.**"—This is imperative, but where the representation is made to the London County Council, and does not relate to more than ten houses, that council shall not take any proceedings on such representation, but refer it to a local authority under Part II. of this Act, to be dealt with under that part (s. 72, *post*, p. 101).

"**Shall pass a resolution.**"—This is also imperative, and the authority must proceed with the scheme provided they are satisfied (1) that the representation is true, and (2) that their resources are sufficient. If they fail to pass a resolution, or resolve not to proceed, they are required by s. 10, *post*, p. 15, to send a copy of the resolution, and their reasons for not acting upon it, to the confirming authority, who may direct a local inquiry in respect of the correctness of the official representation. But, although the confirming authority may find the representation to be true, there is no power given in the Act to compel the local authority to proceed. It does not appear that the confirming authority can enforce compliance with the Act; see, for example, *Reg.* v. *Lewisham Union*, [1897] 1 Q. B. 498, where it was held that the applicant for a *mandamus* must have a legal specific right to something which is the subject of the writ. If the representation was originally made by reason of a complaint of twelve ratepayers under s. 5, probably they, as persons aggrieved or personally interested, might obtain a writ of *mandamus* by motion or action, and other persons aggrieved might also be entitled so to proceed. In this connection, attention should be directed to a provision in Article 23 of Sched. II., *post*, that all rights and interests of any party arising under this Act may be enforced by petition, such provision may possibly extend to a case of this kind, although the schedule professes only to deal with the purchase of lands. As to the sufficiency of the authority's resources, this may depend on how far the borrowing powers have been exhausted. As to expenses and borrowing under this part of this Act, see ss. 24 and 25, *post*, pp. 35 and 36.

This section is, however, modified in the case of the London County Council, who, instead of resolving that an improvement

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scheme ought to be made, may pass a resolution that the case is not of general importance to the county of London, and should be dealt with under Part II. See ss. 39 and 73 (1) (b), *post*, pp. 62 and 102, where the subsequent procedure is set out.

It should be noted that a member of a local authority interested in any house, land, or building in the area, is disqualified from voting, and is liable to a heavy penalty (s. 88, p. 114).

"**Any number of such areas.**"—In making a representation under Part I., and in forming a scheme, it is sometimes difficult to decide whether a large area should be dealt with by one or more schemes. It is probably best to include the whole area in one scheme, as although the opposition may be greater, yet the total cost will not be so great as if there were several smaller schemes. It is not necessary, and would be inadvisable to clear the whole of a large area at once, nor does the Act require that the local authority should submit a plan for dealing with the ground at the local inquiry, or before confirmation by Parliament. Local authorities must be guided as to the number of people they may safely displace at one time by the accommodation already existing in the neighbourhood, and by the facilities they possess of erecting new dwellings

If several areas are included in one scheme, the whole will probably be regarded for the purposes of the Lands Clauses Acts as one undertaking, but in a case under the Public Health Act, 1875, where several schemes were included in one provisional order, it was held that they were separate undertakings. (*Governor of Poor of Bristol* v. *Mayor of Bristol*, 18 Q. B. D. 549.)

Official representation by whom to be made.

5.—(1.) An official representation for the purposes of this part of this Act shall mean a representation made to the local authority (*b*) by the medical officer of health of that authority, and in London made either by such officer or by any medical officer of health in London.

(2.) A medical officer of health shall make such representation whenever he sees cause to make the same; and if two or more justices of the peace acting within the district for which he acts as medical officer of health, or twelve or more persons liable to be rated to the local rate (*c*) complain to him of the unhealthiness of any area within such district, it shall be the duty of the medical officer of health forthwith to inspect such area, and to make an official representation stating the facts of the case, and whether in his opinion the said area or any part thereof is an unhealthy area or is no an unhealthy area.

"**An official representation.**"—This also includes a representation of the officer of the confirming authority under s. 16, *post*, p. 24.

(*b*) See note to s. 4. (*c*) See s. 92 and Sched. I., *post*, pp. 115 and 127.

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Section 79 (2), *post*, p. 109, provides that every representation by a medical officer of health must be in writing. There is no provision as to what the representation ought to contain, and it would be a sufficient compliance with the Act if it merely followed the words of s. 4; but it is evident that the medical officer of health should furnish the local authority with sufficient facts to enable the members properly to consider the representation, and to satisfy themselves as to its truth. See note, "*The narrowness*," to last section.

"**Any medical officer.**"—This has reference to medical officers of health appointed by the county council, as to which see s. 76, *post*, p. 107, as well as to medical officers of vestries and district boards. As to appointing deputy medical officers of health, and their powers, see ss. 26 and 79, *post*, pp. 39 and 109. A medical officer of health to a vestry or district board is apparently entitled to make this representation direct to the county council; but it is usual to consult his own vestry or board before doing so.

"**Forthwith to inspect.**"—The medical officer must do this, even if he have recently examined the area and formed an opinion. If he neglect to do so, or if he makes a representation that the area is not unhealthy, the twelve or more ratepayers may appeal to the confirming authority, (s. 16 (1), *post*, p. 24), but there is no similar provision where two or more justices make the complaint. The confirming authority on such appeal must appoint a medical practitioner to inspect the area and report, and the local authority may proceed on his representation.

"**The facts of the case.**"—In this case the medical officer is required by the Act to state the facts of the case. See note to s. 4, "*The narrowness*," etc.

Requisites of improvement scheme of local authority.

6.—(1.) The improvement scheme (*d*) of a local authority (*e*) shall be accompanied by maps, particulars, and estimates, and

(a.) may exclude any part of the area in respect of which an official representation (*f*) is made, or include any neighbouring lands, if the local authority are of opinion that such exclusion is expedient or inclusion is necessary for making their scheme efficient for sanitary purposes; and

(b.) may provide for widening any existing approaches to the unhealthy area or otherwise for opening out the same for the purposes of ventilation or health; and

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(*d*) That is the scheme mentioned in s. 4, *ante*, p. 2.

(*e*) See definition s. 92 and Sched. I., *post*, pp. 115 and 127.

(*f*) Section 4, *ante*, p. 2.

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(c.) shall provide such dwelling accommodation, if any, for the working classes displaced by the scheme as is required to comply with this Act (*g*); and

(d.) shall provide for proper sanitary arrangements.

(2.) The scheme shall distinguish the lands proposed to be taken compulsorily.

(3.) The scheme may also provide for the scheme or any part thereof being carried out and effected by the person entitled to the first estate of freehold in any property comprised in the scheme or with the concurrence of such person, under the superintendence and control of the local authority, and upon such terms and conditions to be embodied in the scheme as may be agreed upon between the local authority and such person.

"**Maps, particulars, and estimates.**"—For maps, particulars, and estimates required by the Local Government Board, see the instructions published by that Board for the session 1898, and printed in the appendix, *post*. The Home Office have not issued any corresponding instructions.

"**Neighbouring lands.**"—Lands which do not form part of the area represented as unhealthy, may be included in a scheme, if their inclusion is necessary to make the scheme efficient. They may be taken compulsorily if included among the lands proposed to be taken compulsorily. In the scheme and plans, the lands to be taken compulsorily must be distinguished; but the lands to be taken as "neighbouring lands" ought also to be distinguished from those to be taken as forming part of the unhealthy area, as the compensation to be paid for the taking of neighbouring lands is assessed upon much more generous principles than in the case of the lands in the unhealthy area. (See s. 21, *post*, p. 28, and note thereto.) Very considerable care must also be exercised in determining which houses and buildings are to be included in the unhealthy area, and which as neighbouring lands, for much of the opposition to schemes is caused by landowners who consider that their own particular houses are, in the matter of healthiness, above reproach; and who are in consequence inclined to oppose any scheme which treats their property as unhealthy both at the local inquiry and subsequently before a parliamentary committee, and a wrong inclusion may therefore entail the local authority in very considerable expense.

"**The first estate of freehold.**"—This expression is meant to exclude leaseholders and copyholders, but would include a freeholder who had leased the land. It seems to refer to a tenant for life as opposed to the remaindermen, or to a tenant in tail as opposed

(*g*) These are contained in s. 11, *post*, p. 16.

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to the person entitled to the fee on reversion. For an example of such an agreement, see London (Churchway, St. Pancras) Provisional Order Confirmation Act, 1897 (60 Vict. c. ii.). By s. 12 (6), *post*, p. 18, the authority have power to contract with the person entitled to the first estate of freehold for the carrying out of the scheme or part of it by him, and it would appear that they have this power independently of the provision referred to in this section. The provision as to the superintendence and control of the authority applies to both alternatives mentioned, namely, whether the freeholder is to carry out the scheme, or whether it is to be carried out with his concurrence.

Confirmation of Scheme.

Publication of notices.

7. Upon the completion of an improvement scheme the local authority shall—

(a.) publish, during three consecutive weeks in the month of September, or October, or November, in some one and the same newspaper circulating within the district of the local authority, an advertisement stating the fact of a scheme having been made, the limits of the area comprised therein, and naming a place within such area or in the vicinity thereof where a copy of the scheme may be seen at all reasonable hours; and

Service of notices.

(b.) during the month next following the month in which such advertisement is published serve a notice on every owner or reputed owner, lessee or reputed lessee, and occupier of any lands proposed to be taken compulsorily, so far as such persons can reasonably be ascertained, stating that such lands are proposed to be taken compulsorily for the purpose of an improvement scheme, and in the case of any owner or reputed owner, lessee or reputed lessee, requiring an answer stating whether the person so served dissents or not in respect of taking such lands;

(c.) Such notice shall be served—

(i.) by delivery of the same personally to the person required to be served, or if such person is absent abroad, or cannot be found, to his agent, or if no agent can be found, then by leaving the same on the premises; or

(ii.) by leaving the same at the usual or last known place of abode of such person as aforesaid ; or,

(iii.) by post addressed to the usual or last known place of abode of such person.

(d.) One notice addressed to the occupier or occupiers without naming him or them, and left at any house, shall be deemed to be a notice served on the occupier or on all the occupiers of any such house.

Advertisements and notices.—By s. 27, *post*, p. 39, the confirming authority are empowered to prescribe the forms of advertisements and notices under this part of the Act. These have been prescribed by the Local Government Board and by the Home Secretary, and will be found in the Appendix, *post*. These notices must be signed by the clerk to the local authority or by his lawful deputy (s. 86 (2), *post*, p. 113). The confirming authority have power to dispense with the advertisements and notices (s. 28, *post*, p. 39) ; but this power, we presume, will only be exercised in very exceptional cases, and it is probably intended to meet cases where there has been a substantial, but not literal, compliance with the Act, so that a mistake or omission may not vitiate the proceedings. The application for dispensation should be made at the same time as the petition is sent in under s. 8.

"**Requiring an answer.**"—It is not necessary to require persons who are merely occupiers to answer. An early date should be fixed within which the answer is required, as the petition for a provisional order should be sent in at the latest by November 30th, or in case of the advertisements being published in November, by December 21st. (See circular letter of Local Government Board of August, 1897, in appendix). A statement as to the owners who have dissented must accompany the petition (s. 8 (2)).

Although the local authority must require an answer from the owners, there does not appear to be any provision which requires the owners to give an answer, and an owner who does not do so will apparently be in no worse position for not doing so. The provision is apparently intended to give the owners an early opportunity of expressing dissent.

"**Three consecutive weeks.**"—It is of importance to note that the three consecutive weeks must all be included in one and the same calendar month, whichever is selected. Thus, it is not a compliance with the Act if the advertisements are published, say, during the last two weeks of September, and the first week of October.

"**Owners.**"—The notices must be served on the owners, etc., during the calendar month next after the month in which the advertisements have been published.

There is no definition of owner in this part of the Act. The provisions as to such notices are similar in their nature to those that are required by the standing orders of the Houses of Parliament relative to private bills, but no definition is given in these either ;

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but doubtless the intention is to give notice to such persons as would have a *locus standi* to oppose the confirmation of the scheme before a parliamentary committee.

The section provides that it is only on owners whose land is proposed to be taken compulsorily that the notices must be served.

It would appear that owners of easements over the lands to be taken are not owners of land to be taken, although by the definition in s. 93 the expression "land" may include any right over land (see *Swainston* v. *Finn and Metropolitan Board of Works*, 48 L. T. (N.S.) 634, and *Badham* v. *Marris*, 45 L. T. (N.S.) 579, cases under the Artizans and Labourers' Dwellings Act, 1875). The case of *Duke of Bedford* v. *Dawson*, L. R. 20 Eq. 353, under s. 18 of the Lands Clauses Consolidation Act, 1845, is based on the same principle. It would follow therefore that notices need not be served on such owners.

Effect of advertisements and notices.—The effect of the publication of the advertisement is that in assessing the compensation any addition to, or improvement of the premises except for repair, made after the date of the publication shall not be taken into account (s. 21 (1) (b), *post*, p. 29, and note). Under s. 176 of the Public Health Act, 1875, similar notices and advertisements must be served and published, and under that Act it was held that the service of such a notice creates no legal relationship between the parties, and that the authority is not bound after such service to take the land, although the provisional order may be confirmed. (*Burges* v. *Bristol Sanitary Authority*, 50 J. P. 455.) If the provisional order is passed and includes any particular house or land, on the owner of which a notice has been served under this Act, it would appear that the authority would be bound to take the house under s. 12 (1), but in the event of the scheme being amended under s. 15 so as to exclude such house, it is not clear what remedy an owner would have for having his land hampered and fettered by the effect of this scheme. (*Cf. Birch* v. *Vestry of St. Marylebone*, 20 L. T. (N.S.) 697.) The notice does not affect the right of an owner as against adjoining owners who may injure his easements. (*Dye* v. *Patman* (1898), 62 J. P. 135.)

Service of notices.—The confirming authority will require evidence of the service of these notices and of the manner in which they have been served (s. 8 (2), *post*, p. 11, and instructions of Local Government Board for session 1898, Appendix, *post*).

Service by post shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. (Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 26.) An affidavit of service by post is insufficient if it does not state that the letter was prepaid. (*Walthamstow Urban District Council* v. *Henwood*, [1897] 1 Ch. 41.)

Making and confirmation of provisional order.

8.—(1.) Upon compliance with the foregoing provisions with respect to the publication of an advertisement and he service of notices, the local authority shall present a

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petition, if it relates to any part of the county or city of London (*g*), to a Secretary of State (*h*), and if it relates to any other place, to the Local Government Board, praying that an order may be made confirming such scheme.

(2.) The petition shall be accompanied by a copy of the scheme, and shall state the names of the owners or reputed owners, lessees or reputed lessees, who have dissented in respect of the taking their lands, and shall be supported by such evidence as the Secretary of State or Local Government Board, according to the circumstances of the case (in this part of this Act referred to as the confirming authority), may from time to time require.

(3.) If, on consideration of the petition and on proof of the publication of the proper advertisements and the service of the proper notices, the confirming authority think fit to proceed with the case, they shall direct a local inquiry to be held in, or in the vicinity of, the area comprised in the scheme, for the purpose of ascertaining the correctness of the official representation (*i*) made as to the area and the sufficiency of the scheme provided for its improvement, and any local objections to be made to such scheme.

(4.) After receiving the report made upon such inquiry, the confirming authority may make a provisional order declaring the limits of the area comprised in the scheme and authorising such scheme to be carried into execution.

(5.) Such provisional order may be made either absolutely or with such conditions and modifications of the scheme as the confirming authority may think fit, so that no addition be made to the lands proposed in the scheme to be taken compulsorily, and it shall be the duty of the local authority to serve a copy of any provisional order so made in the manner and upon the persons in which and upon whom notices in respect of lands proposed to be taken compulsorily are required by this part of this Act to be served (*k*), except tenants for a month or a less period than a month.

(*g*) For definition see s. 93, *post*, p. 116.
(*h*) The Secretary for the Home Department.
(*i*) Section 5, *ante*, p. 5.
(*k*) Section 7 (b).

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(6.) A provisional order made in pursuance of this section shall not be of any validity unless and until it has been confirmed by Act of Parliament; and it shall be lawful for the confirming authority, as soon as conveniently may be, to obtain such confirmation, and any Act confirming any provisional order made in pursuance of this part of this Act, with such modifications as may seem fit to Parliament, shall be a public General Act of Parliament, and is in this part of this Act referred to as the confirming Act.

(7.) The confirming authority may make such order as they think fit in favour of any person whose lands were proposed by the scheme to be taken compulsorily for the allowance of the reasonable costs, charges, and expenses properly incurred by him in opposing such scheme.

(8.) All costs, charges, and expenses incurred by the confirming authority in relation to any provisional order under this part of this Act shall, to such amount as the confirming authority think proper to direct, and all costs, charges, and expenses of any person to such amount as may be allowed to him by the confirming authority in pursuance of the aforesaid power, shall be deemed to be an expense incurred by the local authority under this part of this Act (*l*), and shall be paid to the confirming authority and to such person respectively, in such manner and at such times and either in one sum or by instalments as the confirming authority may order, with power for the confirming authority to direct interest to be paid at such rate not exceeding five pounds in the hundred by the year as the confirming authority may determine, upon any sum for the time being due in respect of such costs, charges, and expenses as aforesaid.

(9.) Any order made by the confirming authority in pursuance of this section may be made a rule of a superior court, and be enforced accordingly.

"**A petition**" (sub-s. (1)).—The petition should be under the seal of the local authority, should be on foolscap paper, as should the other documents, and should be printed or lithographed if doing so will not

(*l*) See ss. 24 and 25, *post*, p. 35.

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nvolve additional expense. (See Instructions of Local Government Board, session 1898, note, Appendix, *post*.)

Full particulars of the documents and evidence to accompany the petition will be found in these instructions. As to dispensing with notices and advertisements, see s. 28, *post*, p. 39.

"**Direct a local inquiry**" (sub-s. (3)).—As to the subjects of the inquiry, see s. 11, *post*, p. 16, and s. p. 17, *post*, 25, and as to giving notice, see s. 18, *post*, p. 25. As to the powers of the officer conducting it, see ss. 19 and 85, *post*, pp. 25 and 112, and as to the costs, see the last of these sections, and sub-s. (8) of this section.

"**Conditions and modifications of scheme**" (sub-s. (5)).—These generally relate to the accommodation of the members of the working classes displaced, and to the exclusion or inclusion of certain lands as unhealthy or as neighbouring lands. It should be noticed that it is only the scheme that the confirming authority can modify, and that there is no power to confer special rights for the protection of individual owners, as is not unfrequently done in local Acts of Parliament. Such provisions may, of course, be added by Parliament in the Confirming Act, and occasionally are so added. (See, for example, London (Clare Market, Strand), Provisional Order Confirmation Act, 1897 (60 & 61 Vict. c. lix).) The confirming authority has likewise no power to modify the Lands Clauses Acts or to exclude any section, nor can any betterment clauses be added. As to modifying the scheme after confirmation, see s. 15, *post*, p. 23.

"**Confirmed by Act of Parliament**" (sub-s. (6)).—There are several of the standing orders relative to private bills with which there must be compliance. (See more particularly Orders 38, 39, and 183a, in the Commons (see Appendix), and Orders 38, 39, and 111 of the Lords.) After the bill to confirm the provisional order is read a first time in either House, it is referred to the examiners, whose duty it is to report as to whether the standing orders have been complied with. (House of Commons, Standing Order 72; House of Lords, Standing Order 70a.)

The various plans, particulars, statements, and declarations required by the confirming authority from the local authority, are for the purpose of enabling the former to comply with the standing orders. By Standing Order, 193a, no bill originating in the House of Commons for confirming a provisional order shall be read the first time after June 1st. As to opposing the bill to confirm, see next section and the note thereto.

Costs of opposing scheme (sub-s. (7)).—These, presumably, mean the costs incurred by a landowner in opposing a scheme at the local inquiry referred to in s. 3. In s. 9, provision is made as to the costs of opposing a scheme before a Parliamentary Committee. From sub-s. (8) it would appear that the confirming authority may fix the amount; but as the order may be made a rule of court, the costs, if no such amount is fixed, might be taxed in the usual way.

"**A rule of a superior court**" (sub-s. (9)).—By a superior court is meant, in England, the Supreme Court (s. 93, *post*, p. 116). When once the order is made a rule of court, it may be enforced as

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a judgment, as provided by 1 & 2 Vict. c. 110, s. 18. It must first, however, be made an order of court, and the procedure is not quite so clear. When submissions were made rules of court as a matter of course, the procedure was for the bill to be drawn up in the proper office upon the signature of counsel. (See Chitty's "Archbold's Practice of the Queen's Bench Division," 14th ed., p. 139.) If both parties agree, this procedure would probably be applicable to make this order a rule of court, but the signature of counsel is apparently not necessary. If the parties do not agree, it would appear that the proper procedure would be to move before the Divisional Court for a rule *nisi* to show cause why the local authority should not pay the amount (*Jones* v. *Williams*, 11 A. & E. 175). Order LII., rr. 2 and 3, of the Rules of the Supreme Court, which abolishes motions for rules *nisi*, does not appear to extend to a proceeding of this kind. (See *Re Phillips and Gill*, 1 Q. B. D. 78.) Probably a *mandamus* to compel the local authority to levy a rate and pay the amount will be found to be the most effectual remedy.

Costs to be awarded in certain cases.

9.—(1.) Where any Bill for confirming a provisional order authorising an improvement scheme (*m*) is referred to a Committee of either House of Parliament upon the petition of any person opposing such Bill, the Committee shall take into consideration the circumstances under which such opposition is made to the Bill, and whether such opposition was or was not justified by such circumstances, and shall award costs accordingly to be paid by the promoters or the opponents of the Bill as the Committee may think just.

(2.) Any costs under this section may be taxed and recovered in the manner in which costs may be taxed and recovered under the Act of the session of the twenty-eighth and twenty-ninth years of the reign of Her present Majesty, chapter twenty-seven.

28 & 29 Vict. c. 27.

(3.) The decision of the majority of the members of the Committee for the time being present and voting on any question under this section shall be deemed to be the decision of the Committee.

Opposing the Bill. — Bills for confirming these provisional orders are, in the House of Commons, referred after the second reading to the Committee of Selection, and are subject to the Standing Orders regulating the proceedings upon private bills so far as they are applicable (Standing Orders 151, 208a), and every opposed bill is referred by the Committee of Selection to a chairman and three members, with or without a referee (Standing Order 108). Persons

(*m*) Section 8 (6).

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who desire to oppose the bill must petition against it not later than seven clear days after the examiner shall have given notice of the day on which the bill will be examined (Standing Order 129). The petition must distinctly specify the ground on which the petitioner objects to any of the provisions of the Bill (Standing Order 128). The referees decide as to the petitioner's right to be heard (Standing Order 89). If the petition asks that the petitioner may be heard before the committee, and he has a right so to do, he may be heard by counsel, agent, or by himself ; in which case counsel may be heard for the bill (Standing Order 210). In the House of Lords, Standing Order 96 provides that every provisional order confirmation bill which is opposed, shall be referred to a select committee of five. The other provisions are similar to those in the Commons. The latest date for presenting a petition to oppose a confirming bill in the House of Lords, which has come from the Commons, is the seventh day after the first reading.

Awarding and recovering costs. — These committees have power to award costs in the case of all provisional order confirmation bills under 34 Vict. c. 3, s. 2, but only under the same circumstances as costs could be awarded in the case of private bills under 28 & 29 Vict. c. 27. This section very largely extends the power of the committee in the matter, as regards such bills, under this Act. The Act referred to in the text (28 & 29 Vict. c. 27) is the Parliamentary Costs Act, 1865 ; ss. 3 and 4 deal with the taxation, and give the taxing officer the powers of examining witnesses, etc., contained in 10 & 11 Vict. c. 69 and 12 & 13 Vict. c. 78 ; ss. 5—8 deal with the recovery of costs ; the procedure is by action in the High Court for the sum mentioned in the certificate of the taxing officer, and the validity of the certificate cannot be questioned.

Inquiry on refusal of local authority to make an improvement scheme.

10. Where an official representation is made to the local authority with a view to their passing a resolution in favour of an improvement scheme, and they fail to pass any resolution in relation to such representation, or pass a resolution to the effect that they will not proceed with such scheme, the local authority shall, as soon as possible, send a copy of the official representation, accompanied by their reasons for not acting upon it, to the confirming authority, and, upon the receipt thereof, the confirming authority may direct a local inquiry to be held, and a report to be made to them with respect to the correctness of the official representation made to the local authority, and any matters connected therewith on which the confirming authority may desire to be informed.

This section is supplementary to s. 4, *ante*, p. 2. See there the note, "*Shall pass a resolution.*"

The holding of the local inquiry will be governed by the provisions in ss. 17—19 and 85, *post*, pp. 25 and 112.

Sect. 11 (1).

Provision of Dwelling Accommodation for Working Classes displaced by Scheme.

Requisites of improvement scheme as to accommodation of working classes.

11.—(1.) Subject as herein-after mentioned, every scheme comprising an area in the county or city of London (*n*) shall provide for the accommodation of at the least as many persons of the working class as may be displaced in the area comprised therein, in suitable dwellings, which, unless there are any special reasons to the contrary, shall be situate within the limits of the same area, or in the vicinity thereof.

Provided that—

(a.) Where it is proved to the satisfaction of the confirming authority (*o*) on an application to authorise a scheme that equally convenient accommodation can be provided for any persons of the working classes displaced by the scheme at some place other than within the area or the immediate vicinity of the area comprised in the scheme, and that the required accommodation has been or is about to be forthwith provided, either by the local authority or by any other person or body of persons, the confirming authority may authorise such scheme, and the requirements of this section with respect to providing accommodation for persons of the working class shall be deemed to have been complied with to the extent to which accommodation is so provided; and

(b.) Where the local authority apply for a dispensation under this section, and the officer conducting the local inquiry (*p*) directed by the confirming authority reports that it is expedient, having regard to the special circumstances of the locality and to the number of artisans and others belonging to the working class dwelling within the area, and being employed within a

(*n*) See definition s. 93, *post*, p. 116.
(*o*) See s. 8 (2) for definition of confirming authority.
(*p*) Section 8 (3), *ante*, p. 11.

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mile thereof, that a modification should be made, the confirming authority, without prejudice to any other powers conferred on it by this part of this Act, may in the Provisional Order authorising the scheme, dispense altogether with the obligation of the local authority to provide for the accommodation of the persons of the working class who may be displaced by the scheme to such extent as the confirming authority may think expedient, having regard to such special circumstances as aforesaid, but not exceeding one half of the persons so displaced.

(2.) Where a scheme comprises an area situate elsewhere than in the county or city of London, it shall, if the confirming authority so require (but it shall not otherwise be obligatory on the local authority so to frame their scheme), provide for the accommodation of such number of those persons of the working classes displaced in the area with respect to which the scheme is proposed in suitable dwellings to be erected in such place or places either within or without the limits of the same area as the said authority on a report made by the officer conducting the local inquiry (*p*) may require.

Effect of section.—The general effect of this section is that in London, unless the Home Secretary otherwise authorises, accommodation must be provided for the members of the working classes displaced within the area or its immediate vicinity. If it is not practicable to house them in the area or its immediate vicinity, then the Home Secretary may allow them in whole or in part to be accommodated in some place or places within a reasonable distance, and he may further dispense with the provision of providing accommodation to the extent of one half of the persons displaced.

In determining the extent of re-housing accommodation required, it is of importance to ascertain the places where the persons displaced are employed; whether in the area and its vicinity or not. The adequacy of the accommodation to be provided at places at some distance from the area, will, of course, depend on whether the new dwellings are within easy access to the places of employment. In determining the ease of access from the site of the proposed dwellings the facility of cheap or free transit would doubtless be of material importance.

In many provisional orders it will be found that provision is made to accommodate part of the working classes displaced in the area, part on land within a reasonable distance; while as to the remainder the obligation to provide accommodation is dispensed with. As a

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rule the scheme is not required to show in what manner the accommodation is to be provided, it is enough if it requires that it shall be provided.

When part of the working classes are to be accommodated in the area it is evident that during the execution of the scheme, which may take several years, there will be no accommodation for many of the working classes displaced. This has caused considerable inconvenience and overcrowding in the neighbourhood, and it appears unfortunate that there is no provision in the Act to meet this difficulty. In some provisional orders there has been inserted a provision requiring the erection of a certain number of houses on land outside the area before any of the houses in the area can be taken, and probably like provisions will be inserted in future orders.

In boroughs and urban districts in England outside London, accommodation will only be required to the extent required by the Local Government Board. Although the local authority need not frame their scheme so as to provide accommodation, yet it would appear from the standing orders of both Houses of Parliament that the Local Government Board must cause an inquiry into the question and formally declare that accommodation is not necessary, in all cases where ten or more houses of members of the working classes are taken. (H. of C. Standing Order, 183a; H. of L. Standing Order, 111.)

"**Persons of the working classes.**"—There is no definition in the Act as to who are the "working classes." Section 75 suggests the rental value of the house as a test; but that is apparently only for the purposes of that section. The definition of "labouring class" in the Standing Orders of Parliament may be taken as fairly representing these classes. That definition is as follows: "The expression 'labouring class' includes mechanics, artizans, labourers and others working for wages; hawkers, costermongers, persons not working for wages, but working at some trade or handicraft without employing others except members of their own family; and persons, other than domestic servants, whose income does not exceed an average of thirty shillings a week; and the families of any such persons who may be residing with them." In estimating the number of the working classes to be displaced, persons not falling within that definition should be excluded.

Some place other than the area.—Other lands belonging to the authority may be appropriated for this purpose (s. 123, *post*, p. 35; and see s. 111 of the Municipal Corporations Act, 1882, *post*). Land may be also purchased by agreement for the purpose (s. 23, *post*, p. 35), but it would appear that the land required might be obtained under Part III. of this Act, either voluntarily or compulsorily by a provisional order. (See ss. 53 and 59, *post*, pp. 85 and 93.)

Execution of Scheme by Local Authority.

Duty of local authority to carry scheme

12.—(1.) When the confirming Act (*q*) authorising any improvement scheme of a local authority under this part of

(*q*) Section 8 (6), *ante*, p. 12.

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when confirmed, into execution.

this Act has been passed by Parliament, it shall be the duty of that authority to take steps for purchasing the lands (*r*) required for the scheme, and otherwise for carrying the scheme into execution as soon as practicable.

(2.) They may sell or let all or any part of the area comprised in the scheme to any purchasers or lessees for the purpose and under the condition that such purchasers or lessees will, as respects the land so purchased by or leased to them, carry the scheme into execution; and in particular they may insert in any grant or lease of any part of the area provisions binding the grantee or lessee to build thereon as in the grant or lease prescribed, and to maintain and repair the buildings, and prohibiting the division of buildings, and any addition to or alteration of the character of buildings without the consent of the local authority, and for the re-vesting of the land in the local authority, or their re-entry thereon, on breach of any provision in the grant or lease.

(3.) The local authority may also engage with any body of trustees, society, or person, to carry the whole or any part of such scheme into effect upon such terms as the local authority may think expedient, but the local authority shall not themselves, without the express approval of the confirming authority (*s*), undertake the re-building of the houses or the execution of any part of the scheme, except that they may take down any or all of the buildings upon the area, and clear the whole or any part thereof, and may lay out, form, pave, sewer, and complete all such streets upon the land purchased by them as they may think fit, and all streets so laid out and completed shall thenceforth be public streets, repairable by the same authority as other streets in the district.

(4.) Provided that in any grant or lease of any part of the area which may be appropriated by the scheme for the erection of dwellings for the working classes (*t*) the local authority shall impose suitable conditions and restrictions as to the elevation, size, and design of the houses, and the

(*r*) Section 20, *post*, p. 26, as to purchasing.

(*s*) Section 8 (2), *ante*, p. 11.

(*t*) Section 6 (1) (c), *ante*, p. 6, and s. 11, *ante*, p. 16.

Sect. 12 (4). extent of the accommodation to be afforded thereby, and shall make due provision for the maintenance of proper sanitary arrangements.

(5.) If the local authority erect any dwellings out of funds (*u*) to be provided under this part of this Act, they shall, unless the confirming authority otherwise determine, sell and dispose of all such dwellings within ten years from the time of the completion thereof.

(6.) The local authority may, where they think it expedient so to do, without themselves acquiring the land, or after or subject to their acquiring any part thereof, contract with the person entitled to the first estate of freehold in any land comprised in an improvement scheme for the carrying of the scheme into effect by him in respect of such land.

This section requires the local authority to put the scheme into execution, and gives them powers necessary to enable them to do so. Unless they make an agreement under sub-s. (6) with the owner of the first estate of freehold, they must, as soon as possible, proceed to acquire the land under s. 20. If they neglect or delay doing so, probably the proper method to compel them is by petition to the High Court under Art. 23 of Sched. II., *post*, and failing that, by *mandamus*. After acquiring the land the authority may proceed to clear the area, and to lay out and complete the streets; but it is not contemplated that they should themselves rebuild except in special circumstances, and the express approval of the confirming authority must first be obtained. They may, however, under sub-s. (2), either sell or let the land subject to covenants to carry out the scheme, and apparently they may do so either before or after the area has been cleared. By sub-s. (3), they may enter into an engagement with a body of trustees, society or person to carry out the scheme. The nature of this engagement is not very clearly specified, but it would appear that the authority may supply the funds out of those provided under this part of the Act, and retain, for a time at least, the property as their own. By sub-s. (5) if the local authority erect any dwellings out of funds to be provided under this part of the Act, they must sell them within ten years of completion of each particular dwelling. Probably dwellings erected under an engagement made pursuant to sub-s. (3), and for which the local authority supplied the funds, would also require to be sold within ten years. It is not so clear, however, as to what is the meaning of the term "dwellings." It may refer to dwellings for the working classes mentioned in sub-s. (4), but in any case it would not appear to include shops and warehouses.

(*u*) As to the funds see s. 24, *post*, p. 35.

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It may be noted in this connection that ss. 127—132 of the Lands Clauses Consolidation Act, 1845, relating to superfluous lands, are incorporated in this part of the Act (s. 20, *post*, p. 26), although it is difficult to see how they can be made to apply.

If the local authority do not complete the scheme, the confirming authority may in certain cases intervene pursuant to s. 13.

"**The first estate of freehold**" (sub-s. (6)).—This contract may be made before the scheme is framed, and a provision to give it effect may be inserted in the scheme. (See s. 6 (3), *ante*, p. 7, and note to same.) The contract, however, may apparently be entered into independently of any provision in the scheme. If the owner of the first estate of freehold is not in possession, or if by reason of his estate being less than the fee simple he cannot deal with the property, it would be the duty of the local authority to acquire the outstanding interests, unless power is given in the scheme to allow the owner to do so. Apart from such power it seems clear that persons entitled to compensation under the Act would be entitled to recover it from the local authority, and the contract here mentioned would not affect their rights as against the local authority. This remark would apparently apply to injury to easements. (See s. 22.)

As to the power of tenants for life to erect dwellings available for the working classes, and to carry out other improvements, see s. 74, *post*, p. 103, and the notes thereto.

Completion of scheme on failure by local authority.

13. If within five years after the removal of any buildings on the land set aside by any scheme authorised by a confirming Act as sites for working men's dwellings, the local authority have failed to sell or let such land for the purposes prescribed by the scheme, or have failed to make arrangements for the erection of the said dwellings, the confirming authority may order the said land to be sold by public auction or public tender, with full power to fix a reserve price, subject to the conditions imposed by the scheme, and to any modifications thereof which may be made in pursuance of this part of this Act (*x*), and to a special condition on the part of the purchaser to erect upon the said land dwellings for the working classes, in accordance with plans to be approved by the local authority, and subject to such other reservations and regulations as the confirming authority may deem necessary.

"**After the removal.**"—The confirming authority have apparently no power to compel the removal of the buildings. (See note to s. 6, *ante*, p. 6, "shall pass a resolution," and see the remarks of JESSEL, M.R., in *Spencer* v. *Metropolitan Board of Works*, 22 Ch. D. 142, p. 166.)

(*x*) See s. 15, as to power to modify, *post*, p. 23.

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The confirming authority can only interfere in the case of land where workmen's dwellings are to be erected, and when the buildings on it have been removed. The object of the section is, apparently, to prevent the displaced workmen from being kept out of conveniently situated dwelling houses for an unreasonable time. Standing Order 183a of the House of Commons, however, provides that the provisional order shall contain a clause conferring on the promoters, and on the central authority (*i.e.*, the confirming authority) respectively, any powers that may be necessary to enable full effect to be given to the scheme. (See Standing Order 111 of the House of Lords to same effect.)

Notice to occupiers by placards.

14. The local authority shall, not less than thirteen weeks before taking any fifteen houses or more, make known their intention to take the same by placards, handbills, or other general notices placed in public view upon or within a reasonable distance of such houses, and the local authority shall not take any such houses until they have obtained a certificate of a justice of the peace that it has been proved to his satisfaction that the local authority have made known, in manner required by this section, their intention to take such houses.

"**Before taking.**"—The intention of this section is evidently to give the occupiers of the houses reasonable notice so as to enable them to find other dwellings or premises into which to remove. It would be enough, therefore, to give the word "take" in this section the meaning of "take possession of" in order to carry out the effect of the section. In *Spencer* v. *Metropolitan Board of Works*, 22 Ch. D. 142, a very similar provision in a local Act was in dispute, and the effect of that case is to throw very considerable doubt as to the meaning of the word "take." It would appear, however, that the notices, etc., need not be given prior to proceeding by agreement or arbitration to have the compensation ascertained; but before the local authority have the title vested in them, under Arts. 16—21 of Schedule II., it would, having regard to that case, be advisable that the notices should have been given thirteen weeks previously. It may be, however, the entering and holding referred to in Arts. 16 and 24 of that schedule, is what is meant by "taking" in this section; that would appear to be the meaning in certain sections of the Lands Clauses Acts. (*Cf. Burkinshaw* v. *Birmingham and Oxford Junction Rail. Co.*, 20 L. J. Ex. 246; *R.* v. *Manley Smith, Re Church and London School Board*, 67 L. T. 197; *Barker* v. *Metropolitan Rail. Co.*, 17 C. B. (N.S.) 785.) The common practice is to give the notice before turning out the tenants.

A local authority may make a reasonable allowance to tenants on account of the expenses of removing (s. 78, *post*, p. 108, and note thereto).

"**Any fifteen houses.**"—This probably means that whenever the scheme involves the taking of more than fifteen houses that the notices must be given.

Sect. 15 (1).

Power of confirming authority to modify authorised scheme.

15.—(1.) The confirming authority (*y*), on application from the local authority (*z*), and on its being proved to their satisfaction that an improvement can be made in the details of any scheme authorised by a confirming Act (*a*), may permit the local authority to modify any part of their improvement scheme which it may appear inexpedient to carry into execution, but any part of the scheme respecting the provision of dwelling accommodation for persons of the working class, when so modified, shall be such as might have been inserted in the original scheme (*b*).

(2.) A statement of any modifications permitted to be made in any part of an improvement scheme in pursuance of this section shall be laid by the confirming authority before both Houses of Parliament as soon as practicable after the permission is given, if Parliament be then sitting, and if not, within one month after the next meeting of Parliament.

Provided always, that if such modification requires a larger public expenditure than that sanctioned by the former scheme, or the taking of any property otherwise than by agreement, or affects injuriously other property in a manner different to that proposed in the former scheme without the consent of the owner and occupier of any such property, the modification must be made by a provisional order to be confirmed by Act of Parliament in the manner provided by this part of this Act on the completion of an improvement scheme (*a*).

Laying before Parliament.—The laying of the statement of the modifications on the table of both Houses is not, apparently, a condition precedent to the validity of the permission. Local authorities will, therefore, be justified in proceeding with the modified scheme without waiting until this sub-section has been complied with, unless, of course, the modification falls within the three exceptions in the proviso. If it does, then the procedure will be the same as that set out in ss. 6—8, *ante*, pp. 6—11.

"**Affects injuriously.**"—Compensation is not given in express terms for injurious affection under this part of this Act, but s. 22, which deals with compensation for the extinction of rights of way

(*y*) For definition, see s. 8 (2), *ante*, p. 11.

(*z*) For definition, see s. 92, *post*, p. 115.

(*a*) Section 8 (6), *ante*, p. 12.

(*b*) As to these, see s. 11, *ante*, p. 16.

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and other easements, to a large extent takes it place. The property may, however, be affected injuriously in other ways than by destruction of easements, as by rendering the access to premises by the public streets less convenient (see note to s. 22, *post*, p. 33).

Inquiries with respect to Unhealthy Areas.

Inquiry on default of medical officer in certain cases

16.—(1.) Where in any district twelve or more ratepayers have complained to a medical officer of health of the unhealthiness of any area within that district, and the medical officer of health has failed to inspect such area, or to make an official representation with respect thereto, or has made an official representation to the effect that in his opinion the area is not an unhealthy area, such ratepayers may appeal to the confirming authority (*c*), and upon their giving security to the satisfaction of that authority for costs, the confirming authority shall appoint a legally qualified medical practitioner to inspect such area, and to make representation to the confirming authority, stating the facts of the case, and whether, in his opinion, the area or any part thereof is or is not an unhealthy area. The representation so made shall be transmitted by the confirming authority to the local authority, and if it states that the area is an unhealthy area the local authority shall proceed therein in the same manner as if it were an official representation made to that authority (*d*).

(2.) The confirming authority shall make such order as to the costs of the inquiry as they think just, with power to require the whole or any part of such costs to be paid by the appellants where the medical practitioner appointed is of opinion that the area is not an unhealthy area, and to declare the whole or any part of such costs to be payable by the local authority where he is of opinion that the area or any part thereof is an unhealthy area.

(3.) Any order made by the confirming authority in pursuance of this section may be made a rule of a superior court, and be enforced accordingly.

This section is supplementary to s. 5, *ante*, p. 5, which provides that any twelve ratepayers may complain to a medical officer of

(*c*) Section 8 (1), (2), *ante*, p. 10, for definition.

(*d*) *i. e.* according to s. 4, *ante*, p. 2.

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health, who ought then to inspect and report. This section gives the ratepayers a right of appeal if they are not satisfied with the action of the local medical officer of health. It should be noticed that sub-s. (1) states that the duty of the medical officer is to "inspect," while sub-s. (2) uses the word "inquiry" in respect to his duty. "Inquiry" in this section does not appear to mean a local inquiry so as to make ss. 17–19 and 85 applicable thereto.

"**A rule of a superior court.**"—See same note to s. 8, *ante*, p. 13.

Proceedings on local inquiry.

17. Where a local inquiry is directed, an officer shall be sent by the confirming authority (*e*) to the area to which such inquiry relates for the purpose of making an inquiry into the correctness of the official representation made to the local authority as to such area being an unhealthy area (*f*), and into the sufficiency of the scheme provided for its improvement, and into any local objections to be made to such scheme, and to any other matter into which he is directed by this Act or the confirming authority to inquire for the purposes of this Act.

"**Local inquiry.**"—This presumably does not refer to the inspection mentioned in the previous section (see note thereto), but to local inquiries under s. 8 (3), *ante*, p. 11, and s. 10, *ante*, p. 15, and see s. 11 (1) (b). See further as to costs of such inquiry, s. 85, *post*, p. 112.

Notice of inquiry to be publicly given.

18. Before commencing such inquiry the officer appointed to conduct the same shall make public by advertisement or otherwise in such manner as he thinks best calculated to give information to the persons residing in the area his intention to make such inquiry, and a statement of a time and place at which he will be prepared to hear all persons desirous of being heard before him upon the subject of the inquiry.

The form of these advertisements may be prescribed under s. 27, *post*, p. 39, but neither the Local Government Board nor the Home Office have yet done so.

Power to administer oath.

19. The officer conducting such inquiry shall have power to administer an oath (*g*); he shall report the result of the inquiry to the confirming authority (*h*), who shall deal with such report in such manner as they think expedient.

(*e*) For definition see s. 8 (1) and (2), *ante*, p. 11.

(*f*) Section 4, *ante*, p. 2.

(*g*) This includes affirmation, Oaths Act, 1888 (51 & 52 Vict. c. 46).

(*h*) Section 8 (1) and (2).

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Acquisition of Land.

Acquisition of land.

20. The clauses of the Lands Clauses Acts, with respect to the purchase and taking of lands otherwise than by agreement shall not, except to the extent set forth in the Second Schedule to this Act (*i*), apply to any lands taken in pursuance of this part of this Act, but save as aforesaid the said Lands Clauses Acts, as amended by the provisions contained in the said schedule, shall regulate and apply to the purchase and taking of lands, and shall for that purpose be deemed to form part of this part of this Act in the same manner as if they were enacted in the body thereof; subject to the provisions of this part of this Act and to the provisions following; that is to say,

(i.) This part of this Act shall authorise the taking by agreement of any lands which the local authority may require for the purpose of carrying into effect the scheme authorised by any confirming Act (*k*), but it shall authorise the taking by the exercise of any compulsory powers of such lands only as are proposed by the scheme in the confirming Act to be taken compulsorily:

(ii.) In the construction of the Lands Clauses Acts, and the provisions in the Second Schedule to this Act, this part of this Act (*l*) shall be deemed to be the special Act, and the local authority shall be deemed to be the promoters of the undertaking; and the period after which the powers for the compulsory purchase or taking of lands shall not be exercised shall be three years after the passing of the confirming Act (*m*).

"**The Lands Clauses Acts.**"—These are, in England and Wales, the Lands Clauses Consolidation Act, 1845 (8 Vict. c. 18); the Lands Clauses Consolidation Acts Amendment Act, 1860 (23 & 24 Vict. c. 106); the Lands Clauses Consolidation Act, 1869 (32 & 33 Vict. c. 18); the Lands Clauses (Umpire) Act, 1883 (46 & 47 Vict. c. 15);

(*i*) *Post*, p. 130.

(*k*) Section 8 (6), *ante*, p. 12.

(*l*) Includes the confirming Act, see definition, s. 2, *ante*, p. 1.

(*m*) Section 123 of the Lands Clauses Consolidation Act is to the like effect.

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the Lands Clauses (Taxation of Costs) Act, 1895 (58 & 59 Vict. c. 11). (See the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 23, where those for Scotland and England are likewise defined.)

"**With respect to the purchase.**"—This section would be made a little clearer if the words "with respect to the purchase and taking of lands otherwise than by agreement" were printed with quotation marks. They are the words which constitute the heading to ss. 16—68 of the Lands Clauses Consolidation Act, 1845, being the principal clauses which deal with the compulsory taking of land and the method of assessing the compensation. These clauses are in no way applicable to taking land under this part of this Act, except to the extent hereinafter mentioned. Their place is taken by ss. 21 and 22, *post*, pp. 28 and 33, as to the subject matter of compensation, and by Sched. II., *post*, p. 130, as to the manner of assessment. The extent to which they are applicable is that mentioned in Art. 27 of Sched. II., *post*, that is when an appeal is allowed to a jury from the arbitrator, then ss. 38—57, both inclusive, except ss. 47 and 51, are to apply. These sections relate to the summoning of the jury and the assessment of the compensation by them. Section 47 relates to default of appearance, and s. 51 to costs, these latter being provided for in Art. 27 of Sched. II. It is of importance to note that s. 68 is omitted; compensation for any injurious affection cannot, therefore, be awarded, unless it is included under s. 22 of this Act, *post*, p. 33.

"**But save as aforesaid.**"—With the exception of ss. 16—68 all the other clauses of the Lands Clauses Acts are to apply, but as amended by Sched. II., and subject to the provisions of this part of this Act. This part of this Act includes the confirming Act, but there does not appear to be any power given otherwise in this Act to enable the local or confirming authority to amend the Lands Clauses Act by the provisional order, although doubtless Parliament could do so, in the confirming Act.

It follows from this incorporation of these sections of the Lands Clauses Acts, that s. 133 of the Lands Clauses Consolidation Act, 1845—which requires that when the promoters of the undertaking take land they must make good the deficiency in the land tax and poor's rate occasioned by such taking,—is applicable to schemes under this Act (*Vestry of St. Leonard, Shoreditch* v. *London County Council*, 72 L. T. 802; [1895] 2 Q. B. 104). The deficiency is to be computed under that section "according to the rental at which such lands, with any building thereon, were valued or rated at the time of the passing of the special Act"; that is, presumably, at the time of the passing of the confirming Act. It is payable until completion of the works. It is difficult to say what is meant by completion in a case of this kind. In *Governor of Poor of Bristol* v. *Mayor of Bristol*, 18 Q. B. D. 549, a case under the Public Health Act, 1875, it was held that the wiping out of the deficiency or the return of the last piece of land to the liability to be assessed, is the completion for the purposes of this section.

Similarly, it was held under the provisions of s. 19 of the Artizans and Labourers Dwellings Improvement Act, 1875, which are the same as above, that s. 121 of the Lands Clauses Consolidation Act, 1845, was applicable to cases under that Act (*Wilkins* v. *Mayor of*

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Birmingham, 25 Ch. D. 78). That section provides that compensation shall be paid to tenants whose interest in the lands is no greater than as tenant for a year or from year to year, if they are required to give up possession before the expiration of their terms.

The Lands Clauses Acts, and the numerous decisions that have been made under them, will be found at length and fully annotated in Balfour Browne and Allan's Law of Compensation.

Provisions contained in the schedule.—The schedule, besides providing a method of taking the land and assessing the compensation different from that under the Lands Clauses Acts, contains many provisions modifying these Acts. Sections 69—80 of the Lands Clauses Act, 1845, dealing with the application of compensation money are unaffected so far as they are applicable (Art. 20, *post*). Sections 81—83, dealing with conveyances, are practically superseded. Sections 84 and 85, as to entry on land before payment of the compensation, are practically superseded by s. 77 and Arts. 24 and 25 of Sched. II. Section 92, which provides that a person shall not be required to sell a part only of any house, etc., is amended by Art. 12, and the local authority will not be obliged to purchase the whole if the arbitrator decide that part can be taken without material damage to the whole. Section 93 is inapplicable, but s. 94 might, in certain cases, become applicable, as it has been held to apply to intersected land whether in a town or not (*Eastern Counties, etc. Rail. Co.* v. *Marriage*, 9 H. L. Cas. 32). Apportionment of rents, etc., under ss. 98, 116, 119 of the Lands Clauses Consolidation Act, 1845, is to be settled by the arbitrator (Art. 11, *post*). As to interests omitted to be purchased, the amount of compensation payable is also to be settled by the arbitrator instead of as provided in s. 124 (Art. 13, *post*). It is doubtful if ss. 127, *et seq.*, dealing with superfluous lands, can be made to apply at all.

"**Subject to the provisions of this Act.**"—It is often a matter of great difficulty to determine how far the provisions of the Lands Clauses Acts are amended or altered by an incorporating Act. Generally the Lands Clauses Acts are to be followed unless the special Act, by express words or necessary intendment, varies or excepts them. There need not be express words if there is something indicating an express intention that the Act shall not apply (see *Metropolitan District Rail. Co.* v. *Sharpe*, L. R. 5 A. C. 425).

Special provision as to compensation.

21.—(1.) Whenever the compensation payable in respect of any lands or of any interests in any lands proposed to be taken compulsorily in pursuance of this part of this Act requires to be assssed—

(a) the estimate of the value of such lands or interests shall be based upon the fair market value, as estimated at the time of the valuation being made of such lands, and of the several interests in such lands, due regard being had to the nature and then condition of the property, and the probable duration

of the buildings in their existing state, and to the state of repair thereof, without any additional allowance in respect of the compulsory purchase of an area or of any part of an area in respect of which an official representation has been made, or of any lands included in a scheme which, in the opinion of the arbitrator, have been so included as falling under the description of property which may be constituted an unhealthy area under this part of this Act; and

(b) in such estimate any addition to or improvement of the property made after the date of the publication in pursuance of this part of this Act of an advertisement stating the fact of the improvement scheme having been made shall not (unless such addition or improvement was necessary for the maintenance of the property in a proper state of repair) be included, nor in the case of any interest acquired after the said date shall any separate estimate of the value thereof be made so as to increase the amount of compensation to be paid for the lands; and

(2.) On the occasion of assessing the compensation payable under any improvement scheme in respect of any house or premises situate within an unhealthy area evidence shall be receivable by the arbitrator to prove—

(1st) that the rental of the house or premises was enhanced by reason of the same being used for illegal purposes or being so overcrowded as to be dangerous or injurious to the health of the inmates; or

(2ndly) that the house or premises are in such a condition as to be a nuisance within the meaning of the Acts relating to nuisances (*n*), or are in a state of defective sanitation, or are not in reasonably good repair; or

(3rdly) that the house or premises are unfit, and not reasonably capable of being made fit, for human habitation;

(*n*) See definition, s. 2, *ante*, p. 3.

Sect. 21 (2). and, if the arbitrator is satisfied by such evidence, then the compensation—

(a) shall in the first case so far as it is based on rental be based on the rental which would have been obtainable if the house or premises were occupied for legal purposes and only by the number of persons whom the house or premises were under all the circumstances of the case fitted to accommodate without such overcrowding as is dangerous or injurious to the health of the inmates; and

(b) shall in the second case be the amount estimated as the value of the house or premises if the nuisance had been abated, or if they had been put into a sanitary condition, or into reasonably good repair, after deducting the estimated expense of abating the nuisance, or putting them into such condition or repair, as the case may be; and

(c) shall in the third case be the value of the land, and of the materials of the buildings thereon.

"**Lands.**"—Although by the definition of land in s. 93, *post*, p. 116, any right over land may be included, yet "lands," as used in this section, evidently refers to corporeal hereditaments only; easements and other rights being dealt with in the next section. As to this see *Great Western Rail. Co.* v. *Swindon & Cheltenham Rail. Co.*, 9 App. Cas. 787, pp. 800, 808.

"**Proposed to be taken compulsorily.**"—These words are of importance in construing Sched. II., Art. 7, as the arbitrator is there given jurisdiction to decide the compensation in every disputed case in which compensation is payable. In many cases, as the tenants hold their houses on very short tenancies, the local authority will not propose to take their interests compulsorily, but will adopt the course usually taken by railway and like companies, and after acquiring the freehold, determine the tenancy by notice. These tenants will, therefore, have no claim to compensation, but perhaps may be allowed a sum for expenses of removal, under s. 78, *post*, p. 108.

Publication of an advertisement.—This refers to the advertisement mentioned in s. 7, *ante*, p. 8.

The effect of a notice given prior to applying for a provisional order does not affect the rights of an owner as against other persons, and if his ancient lights are obscured by the building of an adjoining owner, he can maintain an action to restrain the person so building, and for damages, and will be entitled to costs, even although the subsequent passing of the confirming Act may reduce his damage to nothing. (*Dye* v. *Patman* (1898), 62 J. P. 135.)

Such an owner might suffer damage by such obscuring of his lights, as he might in consequence receive a smaller compensation in respect of his property. **Sect. 21.** NOTE.

COMPENSATION.

In assessing the compensation under this part of this Act, it is necessary to distinguish between lands which are included in the scheme as forming part of the unhealthy area, and those that are included in it under s. 6 (1) (a), *ante*, p. 6, as neighbouring lands for the purpose of making the scheme efficient. They are usually distinguished specifically in the plans and in the provisional order.

(1.) *Neighbouring Lands.*

Property to be assessed.—In considering how the compensation for neighbouring lands is to be ascertained, it is only necessary to refer to sub-s. (1) of the above section. The value is to be estimated at the time at which the valuation actually takes place; but the subject-matter to be assessed is to be ascertained by reference to the condition of the property at the date of the publication, pursuant to s. 7, *ante*, p. 8, of an advertisement stating the fact of the improvement scheme having been made by the local authority. The object of this latter proviso is to prevent owners of land from adding to and improving their land, and thus unnecessarily increasing the amount payable for compensation; otherwise they might do so up to the date of the valuation being made, and receive compensation in respect thereof. (*Higgins* v. *Mayor of Dublin*, 28 L. R. Ir. Q. B. 484). It also prevents new interests being created; thus a lessee whose term has nearly expired cannot obtain a new lease and claim compensation in respect thereof. (*Wilkins* v. *Mayor of Birmingham*, 25 Ch. D. 78.) It would seem, however, that the fact that the owner's rights in the property have been so restricted during the interval between the publication of the advertisement and the valuation, is in itself a matter to be taken into consideration in assessing the compensation. See, for example, *Cranwell* v. *Mayor of London*, L. R. 5 Ex. 284, and see also the note to s. 7, *ante*, p. 8, on the effect of the advertisements.

Allowance for compulsory purchase.—It is to be noted that the proviso preventing any additional allowance being made for compulsory purchase does not apply to neighbouring lands. It was held in an Irish case under the practically identical provision in the Artizans Dwellings Improvement Act, 1875, s. 19 (2), that as to premises not situated within the unhealthy area, compensation for compulsory purchase might be awarded. (*Mayor of Dublin* v. *Dowling*, L. R. Ir. 6 Q. B. 502.)

Principles of assessment.—It is unfortunate that sub-s. (1) (a), does not follow the words of ss. 49 or 63 of the Lands Clauses Consolidation Act, 1845, the meaning of which has now been made clear by a long series of judicial decisions. However, there appears to be no reason why compensation should not be awarded under this Act, according to the same principles as have been laid down in regard to

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these Acts, and in this connection it may be mentioned that on appeals from an arbitrator to a jury under Art. 27 of Sched. II., that s. 49 of the Lands Clauses Consolidation Act, 1845, applies.

Under the Lands Clauses Acts, when land is taken, compensation is awarded in respect of the value of the land in itself, the damage due to severance of the land from other adjoining land of the same owner, and any other injurious affection to such other land. But these three items really make up what is the value of the premises to the owner, and it is the value to the owner that is always what is to be ascertained in determining the compensation under these Acts Under this Act the value is to be based upon the fair market value, but the fair market value can only be ascertained if the owner is to be considered as a possible purchaser, and the price determined which he would pay to remain in possession. On this principle, in ascertaining the fair market value of premises, an allowance should be made for goodwill and loss of profits. (*Mayor of Dublin* v. *Dowling*, *supra*.) Beyond these an owner is entitled to compensation for the damages occasioned by his being turned out of his premises, such as the costs of removal, loss of fixtures, and loss of business profits while removing; the principle of compensation in such case being the same as in trespass. (See *Jubb* v. *Hull Dock Co.*, 9 Q. B. 443; *Gibson* v. *Hammersmith Rail. Co.*, 32 L. J. Ch. 337, and the cases cited in Balfour-Browne and Allan on Compensation, pp. 111—121.) It would appear further that the increase in value to other property of the same owner, by reason of the improvement, is not to be considered.

(2.) *Unhealthy Area.*

Additional allowance for compulsory purchase.—The remarks made as to neigbouring lands would appear to be equally applicable to those in the unhealthy area, subject to the qualifications imposed by sub-s. (2), and to the provision against an additional allowance for compulsory purchase. Thus, it has been decided that loss of profits and goodwill should be taken into account in assessing the value of premises in an unhealthy area. (*Mayor of Dublin* v. *Dowling*, L. R. Ir. 6 Q. B. 502.) There is considerable difficulty in determining what is meant by the expression "additional allowance for compulsory purchase," as there does not appear ever to have been any interpretation of the words in any reported case. There is no provision in the Lands Clauses Acts requiring that any additional allowance shall be given in respect of compulsory purchase, nor is there any legal decision to that effect. It is, of course, a well-known practice of surveyors to calculate the value of property according to certain tables which are commonly in use, and then to add a certain percentage to the amount in the name of compulsory purchase. It was probably against this practice that the provision was directed. If the owner is to be regarded as a possible purchaser in ascertaining the fair market value, then, inasmuch as the amount given by the tables is the value which a willing purchaser might expect, it is clear that something ought, in certain cases, to be added to get the fair market value; in such case the added percentage would therefore be added in respect of some right to which the owner was entitled, and would not necessarily be an allowance for compulsory purchase.

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It may be, however, that this section means that the owner is to be regarded as a person desirous of selling, or perhaps the allowance for compulsory purchase may have regard to those additional items to which an owner is entitled, when the taking of his land is regarded as a trespass, and the compensation calculated as damages would be in the case of such a tort. Section 78, which permits a reasonable allowance to be made to tenants for costs of removing, rather supports this latter view.

Sub-section (2).—The provisions of sub-s. (2) were not contained in the Artizans Dwellings Improvement Act, 1875, but were added by 42 & 43 Vict. c. 63, and this Act. In the absence of these provisions it is doubtful if the evidence therein mentioned would be admissible (See *Gough* v. *Mayor of Liverpool*, 65 L. T. 512 ; 55 J. P. 789, a case under a similar provision in a local Act, and, at a later stage, 56 J. P. 357).

Nuisance.—As regards the premises being in such a condition as to be a nuisance, see more particularly ss. 41, 47 and 91 of the Public Health Act, 1875, and s. 2 of the Public Health (London) Act, 1891. (See Sched. III. of this Act, *post*.)

Unfit for habitation.—By s. 97 of the Public Health Act, 1875, a court may order a house not to be used until it is rendered fit for habitation. Byelaws may also be made under s. 157 of that Act for the closing of houses unfit for habitation, and by s. 30, *et seq.*, of this Act, *post*, p. 42, further powers are given in regard to such houses, including a power to demolish them. As to closing orders under the Public Health (London) Act, 1891, see s. 5 of that Act.

Extinction of rights of way and other easements.

22. Upon the purchase by the local authority of any lands required for the purpose of carrying into effect any scheme, all rights of way, rights of laying down or of continuing any pipes, sewers, or drains on, through, or under such lands, or part thereof, and all other rights or easements in or relating to such lands, or any part thereof, shall be extinguished, and all the soil of such ways, and the property in the pipes, sewers, or drains, shall vest in the local authority, subject to this provision, that compensation shall be paid by the local authority to any persons or bodies of persons proved to have sustained loss by this section, and such compensation shall be determined in the manner in which compensation for lands is determinable under this part of this Act, or as near thereto as circumstances admit.

"Rights of laying down pipes," etc.—If gas, electric lighting, water, and such like companies, desire to have their mains and works protected they must obtain a clause in the confirming Act varying this section. Probably the confirming authority would

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insert such a clause in the confirming bill if the local authority agreed; otherwise it would be necessary to petition Parliament.

NOTE

"**Rights or easements.**"—The meaning of this section is that the land purchased shall be purchased as a clean piece of land, subject to no conditions or obligations other than those which exist in the ordinary case of an owner in fee of land over which there are no rights either existing or accruing. (See *per* ESHER, M.R., in *Barlow* v. *Ross*, 24 Q. B. D. 381, at p. 391.) That case was decided under the Artizans and Labourers Dwellings Improvement Act, 1875 (38 & 39 Vict. c. 36), but section 20 of that Act was identical with the text. Easements of light and of support and all other rights are therefore destroyed, although, as a matter of fact, the owner of these easements or rights may not suffer any loss, or the loss may not happen until long after the land is taken. Whenever the owner suffers the loss, then his claim to compensation arises under this section. Thus, in the case of an easement of light, it will arise when houses are built which obscure that light. (*Badham* v. *Marris*, 45 L. T. (N.S.) 579; 52 L. J. Ch. 237 *n.*) In that case the defendant had leased part of the land, subject to a covenant to erect buildings in conformity with the scheme; the buildings would have blocked the windows of the plaintiff's houses, which were ancient lights, and he claimed an injunction and damages, which were refused on the ground that his rights were extinguished by the Act, and his remedy was to claim compensation. It was followed in *Swainston* v. *Finn and the Metropolitan Board of Works*, 52 L. J. Ch. 235; 48 L. T. 634, an action to restrain the defendants from taking down a neighbouring house, so as to deprive the plaintiff's house of its right to support: the injunction was refused. In *Barlow* v. *Ross*, 24 Q. B. D. 381; the court held that this section extended so far as to prevent an inchoate right to an easement of light from accruing. In that case, at the time the land was taken, the plaintiff had enjoyed an access of light to his house for ten years, and that access had not been obstructed by buildings until a further ten years had elapsed; but it was held that he had not gained an easement of light under the Prescription Act by reason of such twenty years' enjoyment, as any benefit due to the first ten years' user had been swept away. All the members of the court expressed an opinion that the owner would be entitled to compensation.

The cases which have come before the court under this section have all had relation to easements, but wherever a person sustains loss by reason of this section he is entitled to recover compensation. (See the judgments in the Court of Appeal in *Barlow* v. *Ross*, 24 Q. B. D. 381.) Probably the same circumstances that would entitle a person to claim compensation for injurious affection to land under s. 68 of the Lands Clauses Consolidation Act, 1845, would entitle a claimant to succeed in this case. Thus, for example, if the effect of the scheme were such as to render the access to a house more inconvenient either by closing up existing streets or by raising the level of the street, the owner would probably be able to recover compensation. (See *Reg.* v. *Wallasey Local Board*, L. R. 4 Q. B. 351; *Chamberlain* v. *West End and Crystal Palace Rail. Co.*, 2 B. & S. 605, 617; and cases collected in Balfour Browne and Allan's Law of Compensation, p. 137.)

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NOTE.

Procedure.—An owner whose right has been destroyed by virtue of this section should not claim compensation for the destruction of his easement or other right until he has actually suffered injury. He should then make his claim against the local authority, and if no agreement is arrived at the parties should refer the matter to the arbitrator, who should proceed according to Art. 7 of Sched. II. If no arbitrator exists for the purpose of the scheme, the local authority ought to apply to the confirming authority to appoint one under Art. 4. If the local authority refuse to apply for the appointment of an arbitrator, then the remedy would appear to be by petition to the High Court, as provided in Art. 23 of Sched. II., *post*.

Application of lands for accommodation of working classes.

23. A local authority may, for the purpose of providing accommodation for persons of the working classes displaced by any improvement scheme, appropriate any lands for the time being belonging to them which are suitable for the purpose, or may purchase by agreement any such further lands as may be convenient.

In the case of purchase by agreement, ss. 6—15 of the Lands Clauses Consolidation Act, 1845, will be applicable, so that limited owners, as therein mentioned, will be entitled to sell. (See s. 20, *ante*, p. 26. See, also, as to tenants for life, s. 74 (1), *post*, p. 103.)

As to corporations appropriating corporate land, see s. 111 of the Municipal Corporations Act, 1882, *post*, and s. 74 (2). It is doubtful if this section is sufficient to allow land acquired for a specific purpose to be appropriated to this purpose.

Expenses.

Formation of improvement fund for purposes of Act.

24.—(1.) The receipts of a local authority under this part of this Act shall form a fund (in this Act referred to as "the Dwelling-house Improvement Fund"), and their expenditure shall be defrayed out of such fund.

(2.) The moneys required in the first instance to establish such fund, and any deficiency for the purposes of this part of this Act from time to time appearing in such fund by reason of the excess of expenditure over receipts, shall be supplied out of the local rates (*o*) or out of moneys borrowed in pursuance of this Act (*p*).

(3.) In settling any accounts of the local authority in respect of any transactions under this part of this Act, care

(*o*) See s. 92, *post*, p. 115, and Sched. I., col. 3, *post*, for local rates.

(*p*) See s. 25, *post*, for borrowing powers.

Sect. 24 (3). shall be taken that as far as may be practicable all expenditure shall ultimately be defrayed out of the property dealt with under this part of this Act; and any balances of profit made by the local authority under this part of this Act shall be applicable to any purposes to which the local rate (*q*) is for the time being applicable.

(4.) Any limit imposed on or in respect of local rates by any other Act of Parliament shall not apply to any rate required to be levied for the purpose of defraying any expenses under this part of this Act (*r*).

(5.) The local authority may carry to the account of the Dwelling-house Improvement Fund any such money or produce of any property, as is legally applicable to purposes similar to the purposes of this part of this Act; and in case of doubt as to whether, in any particular case, the purposes are so similar the confirming authority (*s*) may decide such doubt, and such decision shall be conclusive.

The confirming Act may provide that the costs of the confirming authority may be made payable out of moneys to be raised under the order. (See Standing Orders of the House of Commons, 183A.)

As to accounts and audit, see s. 80, *post*, p. 109.

In London the expenses incurred under Part III. of this Act are defrayed out of this fund, and doubtless rents and other payments received under Part III. would be carried to this fund. Section 65, *post*, p. 96, of the text would apparently apply to such receipts. As to any other sums, it would probably be prudent to obtain the decision of the confirming authority before carrying them to this account, as it is not clear what money is legally applicable to purposes similar to the purposes of this part of the Act.

Power of borrowing money for the purposes of Part I. of Act.

25.—(1.) A local authority may, in manner in this section mentioned, borrow such money as is required for the purposes of this part of this Act on the security of the local rate (*t*).

(2.) For the purpose of such borrowing, the London County Council may, with the assent of the Treasury, create consolidated stock under the Metropolitan Board of Works Loans Acts, 1869 to 1871, but all moneys required for the

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(*q*) See note (*o*), p. 35.

(*r*) This presumably refers to limits imposed under some local Act.

(*s*) For definition of confirming authority, see s. 8 (1) and (2), *ante*, p. 10.

(*t*) For definition of local rate see s. 92, *post*, p. 115, and Sched. I.

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payment of the dividends on and the redemption of the consolidated stock created for the purposes of this part of this Act shall be charged to the special county account to which the expenditure for the purposes of this part of this Act is chargeable.

(3.) For the purpose of such borrowing, the Commissioners of Sewers for the City of London may borrow and take up at interest such money on the credit of the local rates, or any of them, as they may require for the purposes of this part of this Act, and may mortgage any such rate or rates to the persons by or on behalf of whom such money is advanced for securing the repayment to them of the sums borrowed, with interest thereon, and for the purposes of any mortgages so made by the Commissioners of Sewers, the clauses of the Commissioners Clauses Act, 1847, with respect to the mortgages to be executed by the Commissioners shall be incorporated with this part of this Act; and in the construction of that Act "the special Act" shall mean this part of this Act; "the commissioners" shall mean the Commissioners of Sewers; "the clerk of the commissioners" shall include any officer appointed for the purpose by the Commissioners of Sewers by this part of this Act; and the mortgagees or assignees of any mortgage made as last aforesaid may enforce payment of the arrears of principal and interest due to them by the appointment of a receiver.

10 & 11 Vict c. 16.

(4.) For the purpose of such borrowing, the urban sanitary authority shall have the same power of borrowing as they have under the Public Health Acts for the purpose of defraying any expenses incurred by them in the execution of those Acts.

(5.) The Public Works Loan Commissioners, may, on the recommendation of the confirming authority (*u*), lend to any local authority any money required by them for purposes of this part of this Act, on the security of the local rate (*v*). Such loan shall be repaid within such period, not exceeding fifty years, as may be recommended by the confirming authority.

(*u*) For definition see s. 8 (1) and (2), *ante*, p. 10.
(*v*) For definition of local rate see s. 92, *post*, p. 115, and Sched. I.

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NOTE.

"**London County Council.**"—These Acts are: 32 & 33 Vict. c. 102; 33 & 34 Vict. c. 24; and 34 & 35 Vict. c. 47. See also the London County Council (Money) Act, 1896 (59 & 60 Vict. c. ccxiv.), s. 13 (iv.), of which, likewise, provides that:

"Where the council create consolidated stock for the purpose of any scheme made by the Metropolitan Board of Works, or the council under the Housing of the Working Classes Act, 1890, or any enactments repealed by that Act, all moneys required for payment of dividends on, and the redemption of all consolidated stock created for such purpose, shall be charged to the special county account to which the expenditure for the purposes of the said Acts is chargeable."

The special county account here referred to is evidently the Dwelling-house Improvement Fund mentioned in s. 24 (1), *ante*, p. 35.

The local rate upon which these loans may be secured is the county fund, Sched. I., *post*, p. 127, and as to what the county fund is, see s. 68 of the Local Government Act, 1888.

"**City of London.**"—The commissioners of sewers have now ceased to exist, and their powers and duties have been transferred to the common council of the city of London (60 & 61 Vict. c. cxxxiii.). By the City of London Sewers Acts, 1848 and 1851 (11 & 12 Vict. c. clxiii. and 14 & 15 Vict. c. xci.), they were empowered to levy a sewers rate and a consolidated rate. These rates are the local rate, upon the security of which the money mentioned in the text may be borrowed. (See Sched. I., *post*). They had borrowing powers under 38 Vict. c. iv. The common council have now the same powers of making rates as the commissioners, and in every Act of Parliament, so far as applicable, the common council shall be read and have effect for the commissioners of sewers. The clauses of the Commissioners Clauses Act, 1847, referred to in the text, are ss. 75—88. As to appointing a receiver, see ss. 86 and 87 of that Act.

Urban districts.—The borrowing powers in urban districts will be found in ss. 233—243 of the Public Health Act, 1875. The consent of the Local Government Board will be necessary in each case, and the limit of borrowing of the local authority "under the Sanitary Acts," and that Act shall not exceed at any time the assessable value for two years of the premises assessable within the district in respect of which such money may be borrowed (s. 234 (1) and (2)). The expression Sanitary Acts in that section included the Artizans and Labourers Dwellings Act, and other Acts repealed and consolidated by this Act. (See Public Health Act, 1875, s. 4.) The local rate will, in most cases, be the general district rate, or the borough rate. (See Sched. I., *post*, p. 127.)

"**Public Works Loan Commissioners.**"—Section 83, *post*, p. 111, as amended by 60 & 61 Vict. c. 51, s. 1, makes provision for the rate of interest to be charged for these loans. The Public Works Loans Acts, which regulate these loans, are somewhat numerous. (See 38 & 39 Vict. c. 89; 39 & 40 Vict. c. 31; 41 & 42 Vict. c. 18; 42 & 43 Vict. c. 77; 44 & 45 Vict. c. 38; 45 & 46 Vict. c. 62; 46 & 47 Vict. c. 42; 50 & 51 Vict. c. 37; 55 & 56 Vict. c. 61; 57 & 58 Vict. c. 11; 59 & 60 Vict. c. 42; 60 & 61 Vict. c. 51.)

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Provision in case of absence of medical officer of health.

26. In case of the illness or unavoidable absence of a medical officer of health, the authority, board, or vestry who appointed him may (subject to the approval of the confirming authority (*v*)) appoint a duly qualified medical practitioner, for the period of six months, or any less period to be named in the appointment.

Section 191 of the Public Health Act, 1875, provides for the appointment of a deputy medical officer of health, and so also does the Public Health (London) Act, 1891, s. 109, and see also s. 40 of the Local Government Act, 1888. This section appears, therefore, to be unnecessary. See also s. 79, *post*, p. 109, conferring all necessary powers upon a deputy medical officer of health.

Power of confirming authority as to advertisements and notices.

27. The confirming authority (*x*) may by order prescribe the forms of advertisements and notices under this part of this Act; it shall not be obligatory on any persons to adopt such forms, but the same, when adopted, shall be deemed sufficient for all the purposes of this part of this Act.

Forms of advertisements and notices, as required by s. 7, *ante*, p. 8, have been issued by the Home Secretary and the Local Government Board respectively, and will be found in the Appendix, *post*. They are the only forms which have been prescribed.

Power of confirming authority to dispense with notices in certain cases.

28. The confirming authority may, on the consideration of any petition of a local authority for an order confirming a scheme, dispense with the publication of any advertisement, or the service of any notice, proof of which publication or service is not given to them as required by this part of this Act, where reasonable cause is shown to their satisfaction why such publication or service should be dispensed with, and such dispensation may be made by the confirming authority, either unconditionally or upon such condition as to the publication of other advertisements and the service of other notices or otherwise as the confirming authority may think fit, due care being taken by the confirming authority to prevent the interest of any person being

(*v*) See definition in s. 8 (1) and (2), *ante*, p. 10. (*x*) *Ibid.*

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prejudiced by the fact of the publication of any advertisement or the service of any notice being dispensed with in pursuance of this section.

This section refers to the notices and advertisements required by s. 7, *ante*, p. 8, and see the note thereto as to dispensing with such notices, etc. This section is probably meant to meet cases when there has been a substantial, although not a literal, compliance with the Act, and to prevent a scheme from being postponed for a year by reason of some technical error or oversight.

PART II.

This part of the Act (ss. 29—52) consolidates and amends the Artizans and Labourers Dwellings Act, 1868 (31 & 32 Vict. c. 130), and Acts amending it, namely, Acts of 1879 (42 & 43 Vict. c. 64, and 43 Vict. c. 8); of 1882 (45 & 46 Vict. c. 54, Part II.); and 1885 (48 & 49 Vict. c. 72). It applies to every sanitary district.

UNHEALTHY DWELLING-HOUSES.

Preliminary.

Definitions.

29. In this part of this Act, unless the context otherwise requires—

"Street."

The expression "street" includes any court, alley, street, square, or row of houses:

"Dwelling-house."

The expression "dwelling-house" means any inhabited building, and includes any yard, garden, outhouses, and appurtenances belonging thereto or usually enjoyed therewith, and includes the site of the dwelling-house as so defined.

"Owner."

The expression "owner," in addition to the definition given by the Lands Clauses Acts, includes all lessees or mortgagees of any premises required to be dealt with under this part of this Act, except persons holding or entitled to the rents and profits of such premises for a term of years, of which twenty-one years do not remain unexpired:

"Closing order."

The expression "closing order" means an order prohibiting the use of premises for human habitation made under the enactments set out in the Third Schedule in this Act.

"**Street.**"—This definition is much more restricted than that under the Public Health Acts, which has led to much litigation.

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In this Act it is used in its more natural and popular sense as a roadway with houses on each side, but is extended to alleys, courts and squares, and also to a roadway with a row of houses on one side only. It apparently includes private as well as public streets. (*Cf. Taylor* v. *Corporation of Oldham*, 4 Ch. D. 395.)

"**Dwelling-house.**"—It should be noted that there is nothing in the definition to limit dwelling-houses to those of the artizan or working classes, and there is no preamble to this Act to limit the Act to such houses. The preamble to the Artizans and Labourers Dwellings Act, 1868, from which this definition is adapted, would seem to imply such a limitation ; but it is extremely doubtful if it can be read into this definition, which is in itself quite clear. By s. 32 proceedings can be taken to close a dwelling-house, whether occupied or not, so that in that section the expression "inhabited building" would appear to mean capable of being inhabited (see note thereto, *post*, p. 47).

"**Owner.**"—The only definition of the word "owner" in the Lands Clauses Acts is that contained in s. 3 of the Act of 1845. It provides that "where under the provisions of this or the special Act, or any Act incorporated therewith, any notice shall be required to be given to the owner of any lands, or where any Act shall be authorized or required to be done with the consent of any such owner, the word 'owner' shall be understood to mean any person or corporation who, under the provisions of this or the special Act, would be enabled to sell and convey lands to the promoters of the undertaking." Under s. 7 of that Act, all parties seised, possessed of or entitled to any such lands or any estate or interest therein, may sell, and particularly "corporations, tenants in tail or for life, married women seised in their own right or entitled to dower, guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest."

Where a tenant of premises was in possession as assignee of a lease of which there remained only a few months unexpired, and he was also the assignee of another lease of the same premises for twenty-one years commencing on the expiration of the first lease, it was held that, although the interest of the tenant in the new lease was in law only an *interesse termini*, he had such an interest in the premises at the time when the proceedings were initiated by service of the notices upon him as to make him "owner" within the meaning of the section. When the tenant did the work under the notice and under an order for demolition, there were less than twenty-one years unexpired, but it was further held that the time to be looked at in order to determine who is owner for the purposes of the Act was the date of the service of the notices and not of the making of the order for demolition. (*Reg.* v. *Vestry of St. Marylebone*, 20 Q. B. D. 415 ; 52 J. P. 534.)

In applying the enactments mentioned in Sched. III., the person to be treated as "owner" is the owner as defined in the above section, and not the owner as defined in the statutes from which

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these enactments are taken. A person, therefore, who is receiving the rents and profits as a leaseholder with less than twenty-one years of his lease to run, is not the person to be served under s. 32, *post*, p. 44, and Scheds. III. and IV., although these schedules refer to the Public Health Act, 1875, and the Nuisances Removal Act, 1855, for purposes of procedure, and by those Acts the receiver of the rents and profits is the owner. (*Osborne* v. *The Skinners Co.*, 60 L. J. M. C. 156.) In an unreported case (*Reg.* v. *Bros*) decided in Trin. Sittings, 1892, by WRIGHT and COLLINS, JJ., it was held that the above case of *Osborne* v. *The Skinners Co.* has not been affected by the repeal of the Nuisances Removal Acts by the Public Health (London) Act, 1891.

"**Closing order.**"—As to the application of these enactments, see note to s. 32, *post*, p. 47.

Buildings unfit for Human Habitation.

Representation by medical officer of health.

30. It shall be the duty of the medical officer of health of every district to represent to the local authority of that district any dwelling-house (*y*) which appears to him to be in a state so dangerous or injurious to health as to be unfit for human habitation.

"**Of every district.**"—District and local authority are defined in s. 92, *post*, p. 115, with reference to Sched. I., *post*, p. 127. This part of the Act applies to both rural and urban districts, for which the local authorities are the district council, or borough council, as the case may be; to the city of London, of which the common council is now the local authority; and to the various parishes and districts of the county of London, of which the vestries and boards of works are the local authorities, and Woolwich, where the local board of health is the local authority.

"**To represent.**"—This representation by s. 79 (2) must be in writing, which by the Interpretation Act, 1889, includes printing, lithography, and other modes of representing words in a visible form, so that it may be type written.

As to the duty of the local authority to cause an inspection to be made for the purpose of discovering such houses, see s. 32, *post*, p. 44.

"**Dangerous or injurious to health.**"—This expression evidently means dangerous to health or injurious to health. The distinction between these appears to be this: a house may be dangerous to health if its condition is such that it exposes its inmates to risk in regard to their health, while it would be injurious to health if living in it actually produced illness or injury to the health of the inmates. Structural defects likely to lead to accident, and such want of repair as would not tend to cause the health of the occupier to suffer from a sanitary point of view, do not appear to come within the meaning

(*y*) See definition in s. 29.

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of this section, although they might render the house reasonably unfit for habitation.

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Buildings in London which are structurally dangerous, whether dangerous to the inmates or the public, and neglected structures, may be dealt with under the London Building Act, 1894 (57 Vict. c. ccxiii.), Part IX., ss. 102—117. It was decided in *London County Council* v. *Herring* (1894), 2 Q. B. 522, that these provisions as to dangerous buildings were not confined to buildings dangerous to the public. In urban districts buildings dangerous to neighbours or passengers from structural defects or want of repair may be dealt with under the sections of the Towns Improvement Clauses Act, 1847, with respect to ruinous or dangerous buildings which are incorporated in the Public Health Act, 1875, by s. 160.

It is, perhaps, a doubtful question as to whether a house without a sufficient water supply is dangerous or injurious to health within this section. By s. 48 of the Public Health (London) Act, 1891, such a house is deemed to be unfit for habitation, but it does not necessarily follow that it is unfit by reason of its being dangerous to health.

Representation on householders' complaint.

31.—(1.) If in any district any four or more householders living in or near to any street (*z*) complain in writing to the medical officer of health of that district that any dwelling-house (*z*) in or near that street is in a condition so dangerous or injurious to health as to be unfit for human habitation, he shall forthwith inspect the same, and transmit to the local authority the said complaint, together with his opinion thereon, and if he is of opinion that the dwelling-house is in the condition aforesaid, shall represent (*a*) the same to the local authority, but the absence of any such complaint shall not excuse him from inspecting any dwelling-house and making a representation thereon to the local authority (*b*).

(2.) If within three months after receiving the said complaint and opinion or representation of the medical officer, the local authority, not being in the administrative county of London (*c*), or not being a rural sanitary authority in any other county, declines or neglects to take any proceedings to put this part of this Act in force, the householders who signed such complaint may petition the Local Government Board for an inquiry, and the said Board after causing

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(*z*) For definitions see s. 29, *ante*, p. 40.

(*a*) In writing, s. 79 (2), *post*, p. 109.

(*b*) See s. 32, *post*.

(*c*) That includes the county and city. See s. 93, *post*, p. 116.

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an inquiry (*d*) to be held may order the local authority to proceed under this part of this Act, and such order shall be binding on the local authority.

"**Four or more householders.**"—A householder is not defined, but means generally a resident occupier who is not a lodger. Under the Local Government Act, 1894, s. 6 (2), it is further provided that "a parish council shall have the same power of making any complaint or representation as to unhealthy dwellings or obstructive buildings as is conferred on inhabitant householders by the Housing of the Working Classes Act, 1890, but without prejudice to the powers of such householders." In s. 38, *post*, the expression "inhabitant householder" is used, but probably the word "householder" in this section has the same meaning, but at any rate it would include an "inhabitant householder."

"**Petition the Local Government Board.**"—This sub-section applies only to urban districts. In London and in rural districts the same purpose is served by the provisions of s. 45, *post*, p. 74, which requires complaints to be forwarded to the county council, who are vested with the power to enforce the provisions of the Act where necessary.

Closing Order and Demolition.

Duty of local authority as to closing of dwelling-house unfit for human habitation.

32.—(1.) 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 whether any dwelling-house (*e*) therein is in a state so dangerous or injurious to health as to be unfit for human habitation, and, if on the representation (*f*) of the medical officer, or of any officer of such authority, or information given (*g*), any dwelling-house appears to them to be in such state, to forthwith take proceedings against the owner or occupier for closing the dwelling-house under the enactments set out in the Third Schedule to this Act.

(2.) Any such proceedings may be taken for the express purpose of causing the dwelling-house to be closed whether the same be occupied or not, and upon such proceedings the court of summary jurisdiction may impose a penalty not exceeding twenty pounds, and make a closing order, and the forms for the purposes of this section may be those in the Fourth Schedule to this Act (*h*), or to the like effect,

(*d*) As to inquiries see s. 85, *post*, p. 112.

(*e*) See definition in s. 29, *ante*, p. 40.

(*f*) This refers to s. 30, *ante*, p. 42.

(*g*) See s. 52, *post*, p. 84.

(*h*) *Post*.

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and the enactments respecting an appeal from a closing order shall apply to the imposition of such penalty as well as to a closing order.

(3.) Where a closing order has been made as respects any dwelling-house, the local authority shall serve notice of the order on every occupying tenant of the dwelling-house, and within such period as is specified in the notice, not being less than seven days after the service of the notice, the order shall be obeyed by him, and he and his family shall cease to inhabit the dwelling-house, and in default he shall be liable to a penalty not exceeding twenty shillings a day during his disobedience to the order. Provided that the local authority may make to every such tenant such reasonable allowance on account of his expenses in removing, as may have been authorised by the court making the closing order, which authority the court is hereby authorised to give, and the amount of the said allowance shall be a civil debt due from the owner of the dwelling-house to the local authority, and shall be recoverable summarily.

Inspection of district.—Both under the Public Health Act, 1875, s. 92, and the Public Health (London) Act, 1891, s. 1, it is the duty of the sanitary authority to cause inspection of their district to be made from time to time with a view to ascertain what nuisances exist calling for abatement.

As to meaning of expression "dangerous or injurious to health," see note to s. 30, *ante*, p. 42.

"**Forthwith take proceedings.**"—Questions may arise as to whether the proceedings to be taken are to be under the Sanitary Acts and this Act, or under the former only.

In dealing with houses which are unfit for human habitation, the procedure to be adopted must depend to a certain extent upon the possibility of rendering any particular house fit for habitation. If a house can be rendered fit for habitation, then proceedings may be taken either under this Act or under the Public Health Act. But if it is desired to obtain a demolition order, then it is advisable that the proceedings be commenced under this Act.

The points to be considered in deciding under which Act proceedings shall be taken are:

(1.) As to the "owner" (*i*). Under this Act any proceedings taken may not be against the person responsible for the premises getting into an uninhabitable condition who may be the lessee; but, on the other hand, in such a case the superior landlord would, no doubt, take steps to see that the requirements of the Sanitary Acts were properly carried out by the lessee.

(*i*) See Definition, s. 29, *ante*, p. 40.

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(2.) Under this Act the county council exercise an amount of direct supervision over local authorities in their area, and if a local authority makes default in carrying out the provisions of the Act, the council may take action (s. 45), which they could not do under the Public Health Acts.

(3.) Under this Act (s. 78) compensation may be given to the tenants on account of expenses in removing; this cannot be done under the Public Health Acts.

A "demolition order" would not be made in the case of a house which was capable of being made fit for habitation, but there exists a class of house in which no repairs, however willing the owner may be to make them, can render the house habitable on account of the situation of the house preventing access of light and air, absence of means of erecting sufficient sanitary conveniences, dampness of site, etc. In such cases it is better either to obtain a "demolition order" or to proceed under s. 38, dealing with obstructive buildings.

Dr. Newsholme (medical officer of health, Brighton) strongly recommends that a certain annual sum should be devoted to the purchase of insanitary houses, the demolition of which is necessary to secure a sanitary improvement of narrow streets and courts, the purchase to be strictly limited to the case of houses which cannot, by the execution of structural repairs on the part of the owner, be rendered fit for habitation. This course is adopted in some towns, and in one, advertisements are issued inviting owners of worn-out property to offer it for sale to the corporation. This plan obviates the necessity of requiring the owner to make the premises fit for habitation, which must be done under s. 32 even when the express purpose is to obtain the closure of the premises, and would prevent a useless expenditure of money on his part. This suggestion might be put into force by urban authorities by adopting Part III. of this Act,—then these insanitary buildings might be acquired for the purpose of erecting working men's dwellings on the site of the houses so purchased; but Part III. cannot at present be adopted by vestries and district boards in London. The site of obstructive buildings may be acquired under s. 38, *post*, p. 55.

"**Enactments set out in the Third Schedule.**"—The person to be regarded as owner for these proceedings is the owner as defined in s. 29, and not as defined in the statutes from which these enactments are taken. (See *Osborne* v. *Skinners Co.*, 60 L. J. M. C. 156, and note "*owner*" to s. 29, *ante*, p. 41.) In proceedings it is enough to describe the owner as "the owner" without further name or description (s. 50, *post*, p. 83).

There is a somewhat difficult question connected with these enactments, namely, whether they are to be regarded as substantive enactments incorporated and forming part of this Act, or whether they are merely referred to as portions of other Acts. Both as regards London and Scotland the statutes from which these enactments have been taken have been repealed, consolidated, and amended, and it is not quite clear whether the proceedings should be taken under the enactments in the schedule or under the new Acts. Section 142 (7) of the Public Health (London) Act, 1891, however, provides that "where in any enactment . . . in force at the time of the passing of this Act . . . any Act, or any provisions

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of an Act, are mentioned or referred to which relate to London and are repealed by this Act, such enactment . . . shall be read as if this Act or the corresponding provisions of this Act were therein referred to instead of such repealed provisions, and as if a sanitary authority under this Act were substituted for any nuisance authority mentioned in such repealed provisions." There is a similar provision in s. 193 of the Public Health (Scotland) Act, 1897. From these provisions it would seem to follow that the enactments in the schedule are displaced by the later Acts.

Another point also arises as to whether these sections in the Acts are to be the only sections regarded, or whether all other sections in the Acts applicable to closing orders, and not modified by this Act, are to apply. It would appear that the latter view is the correct one, and that right to appeal against a closing order given in these Acts is applicable to proceedings under this Act, otherwise it is impossible to give any sense to sub-s. (2) of this section. (See note, *infra*.) The case of *Osborne* v. *The Skinners Co.*, 60 L. J. M. C. 156, can only be taken to decide that, so far as the owner is concerned, these Acts have been to that extent modified. Various omissions in this Act would also appear to indicate that the other provisions of the Acts in the schedule are to apply. (See, for example, the third sub-section of this section, and s. 42 and notes thereto.)

For the express purpose of closing.—The procedure is, first, to give notice to the owner or occupier to execute the works necessary to put the house in proper condition; then, if the owner makes default, or if the nuisance is likely to recur, the local authority may summon the owner or occupier before a magistrate or justices, who may make a closing order. As the proceedings may be taken for the express purpose of closing the house, it would seem that they may be taken in cases where it is impossible for the owner to comply with the notices, as, for example, in a case where it would be impossible to properly ventilate a house by reason of the proximity of neighbouring buildings.

"Occupied or not."—A dwelling-house, unless the context otherwise requires, is defined as meaning any inhabited building (s. 29, *ante*, p. 40). It is clear, however, that for the purposes of this sub-section that it need not be inhabited. It seems possible to read this sub-section in two ways, either (1) that proceedings are not to be discontinued, because after the notice to the owner to abate the nuisance the house ceases to be occupied; or (2) that proceedings may be begun against the owner of an empty house if it is in such a state as to be dangerous or injurious to the health of the persons who might inhabit it. Probably it is wide enough to cover both constructions.

Forms.—These will be found, *post*. They are said to have been found defective in practice. (See notes to Sched. III., *post*.)

"An appeal from a closing order."—There is no appeal against a closing order expressly provided in this Act, either in the text or in the schedules. Under s. 269 of the Public Health Act, 1875, there is such an appeal given to quarter sessions; there was a like appeal against a closing order under s. 15 of the Nuisances Removal Act,

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1855, and such appeal now lies under s. 6 (2) of the Public Health (London) Act, 1891. This sub-section evidently has reference to these provisions, and it would seem, therefore, to follow that the proceedings prescribed by s. 32 of this Act under the enactments set out in the schedule are not confined to these specific sections, but that they are, in fact, proceedings under these statutes. (See note, *supra*, upon the enactments in the schedule.) Section 35, *post*, gives an appeal from orders of a local authority, but not from an order made by justices.

"**Occupying tenant.**"—As the expression occupier is not used, this expression apparently was meant to exclude an "occupying owner," and the reason for the exclusion would appear to be that a penalty was already imposed on an owner disobeying an order by s. 98 of the Public Health Act, 1875, and s. 14 of the Nuisances Removal Act, 1855, and that such penalty could be recovered under these sections, or that proceedings may be taken under s. 51, *post*, p. 84.

"**Liable to a penalty.**"—There is an omission to state that the penalty may be recovered before a court of summary jurisdiction, but probably the provision in s. 90, *post*, p. 115, that fines may be recovered in manner provided by the Summary Jurisdiction Acts is enough to cover this omission. Proceedings to recover these penalties appear to be the only means provided for getting rid of these tenants.

"**Reasonable allowance.**"—If proceedings have been taken against the owner the tenant will not be before the court, and if against the occupier the owner who is to pay the amount will not be represented. In such cases it would seem advisable to give whichever is not a party notice of the proceedings to enable them to state or oppose the claim. The owner may claim this under s. 47 (1), *post*, p. 81. The amount will be recovered by an order made upon complaint and recoverable by distress. The defendant cannot be committed to prison except upon a judgment summons and proof of his means to pay. (Summary Jurisdiction Act, 1879, ss. 6, 35 and 51.)

Order for demolition of house unfit for habitation.

33.—(1.) Where a closing order has been made in respect of any dwelling-house, and not been determined by a subsequent order, then the local authority, if of opinion that the dwelling-house has not been rendered fit for human habitation, and that the necessary steps are not being taken with all due diligence to render it so fit, and that the continuance of any building being or being part of the dwelling-house is dangerous or injurious to the health of the public or of the inhabitants of the neighbouring dwelling-houses, shall pass a resolution that it is expedient to order the demolition of the building.

(2.) The local authority shall cause notice of such resolution to be served on the owner of the dwelling-house, and such notice shall specify the time and place appointed by

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the local authority for the further consideration of the resolution, not being less than one month (*k*) after the service of the notice, and any owner of the dwelling-house shall be at liberty to attend and state his objections to the demolition.

(3.) If upon the consideration of the resolution and the objections the local authority decide that it is expedient so to do, then, unless an owner undertakes to execute forthwith the works necessary to render the dwelling-house fit for human habitation, the local authority shall order the demolition of the building.

(4.) If an owner undertakes as aforesaid to execute the said works, the local authority may order the execution of the works, within such reasonable time as is specified in the order, and if the works are not completed within that time or any extended time allowed by the local authority or a court of summary jurisdiction (*l*), the local authority shall order the demolition of the building.

"**A closing order.**"—If the closing order has been made under the Public Health Acts only, and without reference to this Act, it is doubtful if the local authority can proceed to resolve that the building be demolished, although there appears to be no valid reason why they should not. (See definition of closing order in s. 29, *ante*, p. 40.) The difficulty arises owing to "the owner" being differently defined in the two Acts.

"**By a subsequent order.**"—The closing order prohibits the use of the premises for human habitation until they are rendered fit for that purpose. When they are so rendered a subsequent application must be made to the court for an order declaring the house to be habitable. (See Scheds. III. and IV., *post.*) But the magistrate's power to determine a closing order ceases when the local authority make the demolition order, and the only remedy is by appeal under s. 35, *post*, p. 51. (*R.* v. *De Rutzen and Vestry of Chelsea*, 9 T. L. R. 41.) In the same case it was held that the proper procedure when a magistrate refuses to hear the application to determine is to apply for a *mandamus* ordering him to hear it.

"**Shall pass a resolution.**"—The local authority must be satisfied that the continued existence of the building when closed is dangerous to the health of the public or of the inhabitants of neighbouring houses. Thus an isolated and ruinous cottage would not necessarily be dangerous, and ought not to be demolished.

In a considered judgment by the Court of Middlesex Quarter Sessions, presided over by Mr. LITTLER, Q.C., in an appeal from a

(*k*) A calendar month (52 & 53 Vict. c. 63, s. 3).
(*l*) As to this, see s. 47 (3), *post*, p. 81.

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demolition order under this section, it was held that all the three conditions required by sub-s. (1) must co-exist before any order for demolition can be properly made by the local authority, and that by sub-s. (2) of the same section the co-existence of the conditions necessary for the making of an order for demolition is not to be referred back to the date of the resolution, but that the owner is to be heard on further consideration of the resolution, having not less than one month's interval. Therefore if houses have been closed between the date of the resolution and the date of the demolition orders, and it is admitted that so long as they were kept closed their continuance was not dangerous or injurious to the health of the public or of the inhabitants of the neighbouring dwelling-houses, the demolition orders must be quashed. (*Vale* v. *Southall-Norwood Urban District Council*, reported in 60 J. P. 134.)

As to interested persons voting on a resolution, see s. 88, *post*, p. 114.

Serve notice on owner.—Service is regulated under this part of the Act by s. 49, *post*, p. 83. The notice should be signed by the clerk (s. 86, *post*, p. 113). The owner is defined by s. 29, *ante*, p. 40, and see s. 47, *post*, p. 91. There may be many persons who are owners of a house within that definition, and each must be served. All the persons who would require to join in a conveyance of the fee simple free from incumbrances should be served. An owner not in possession may be empowered to enter to do works under s. 47, *post*, p. 81.

"**Order the demolition.**"—The order must be under seal and signed by the clerk (s. 86, *post*, p. 113). As to its execution, see s. 34.

An appeal lies against this order under s. 35, *post*, p. 51.

The order should state which owner, if there are several, is to take down the building.

Execution of an order for demolition, and provision as to site.

34.—(1.) Where an order for the demolition of a building has been made, the owner thereof shall within three months after service of the order proceed to take down and remove the building, and if the owner fails therein the local authority shall proceed to take down and remove the building and shall sell the materials, and after deducting the expenses incident to such taking down and removal, pay over the balance of money (if any) to the owner.

(2.) Where a building has been so taken down and removed, no house or other building or erection which will be dangerous or injurious to health shall be erected on all or any part of the site of such building; and if any house, building, or erection is erected contrary to the provisions of this section, the local authority may at any time order the owner thereof to abate the same, and in the

event of non-compliance with the order, may at the expense of the owner abate or alter the same. **Sect. 34 (2).**

"**Within three months.**"—That is, three calendar months (52 & 53 Vict. c. 63, s. 3). This time may be extended by a court of summary jurisdiction under s. 47 (3), *post*, p. 81. As to an appeal postponing proceedings, see s. 35.

"**To take down the building.**"—The tenants should have been previously removed under s. 32 (3), *ante*, p. 45. If any one resists, proceedings can be taken under s. 51, *post*, p. 84. If the sale results in a loss, the local authority will doubtless have to pay the balance out of the local rate under s. 65, *post*, p. 96. The surplus will probably be payable to the owner ordered to pull down the building, but where other persons have interests he will doubtless be required to divide the money among the parties interested.

Order the owner to abate.—This matter is left wholly in the discretion of the local authority, subject to the right of appeal given by the next section. The order must be under seal and signed by the clerk (s. 86, *post*, p. 113). The owner is not necessarily the person who may have been ordered to pull down the building, but may be a subsequent owner who has acquired the site. In London and in urban districts the bye-laws as to new buildings will probably render this sub-section unnecessary.

There is no provision as to how the expense is to be recovered, but probably it will be recoverable as a debt.

Appeal against order of local authority.

35.—(1.) Any person aggrieved by an order of the local authority under this part of this Act, may appeal against the same to a court of quarter sessions, and no work shall be done nor proceedings taken under any order until after the appeal is determined or ceases to be prosecuted; and section thirty-one of the Summary Jurisdiction Act, 1879 (*m*), respecting appeals from courts of summary jurisdiction to courts of quarter sessions shall apply with the necessary modifications as if the order of the local authority were an order of a court of summary jurisdiction. 42 & 43 Vict. c. 49.

(2.) Provided that—

(a.) Notice of appeal may be given within one month (*n*) after notice of the order of the local authority has been served on such person;

(*m*) See this section in Appendix, *post*.
(*n*) A calendar month (52 & 53 Vict. c. 63, s. 3).

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(b.) The court shall, at the request of either party, state the facts specially for the determination of a superior court, in which case the proceedings may be removed into that court.

"**Person aggrieved.**"—This is not a technical expression; the words are ordinary English words which are to have the ordinary meaning put upon them. A "party grieved" is a person who exists, and on account of his existence and his grievance the statute gives him a remedy (see *per* BRAMWELL, L.J., in *Robinson* v. *Curry*, 7 Q. B. D. 465, at p. 470.) The test is usually whether the party could have maintained an action if the local authority had acted *ultra vires*, *ibid.*, p. 471. Lessees who are not owners are probably persons aggrieved within the meaning of this section.

"**By an order.**"—This is an order of the local authority and not of a court of summary jurisdiction. As to appealing from an order made by such court, see s. 32 and notes, *ante*, p. 44. The orders which a local authority can make are the order for demolition or execution of works in s. 33 (3) and (4); the order to abate, s. 34 (2); the order granting a charge, s. 36 (1); and the order to pull down obstructive buildings, s. 38 (3), and to abate, under s. 38 (10).

"**Served on such person.**"—That is, on a person aggrieved, and which expression includes more than the owner (see note, *supra*). For manner of service, see s. 49, *post*, p. 83.

"**State the facts specially.**"—This can only apply to cases where there is a dispute arising as to what inferences are to be drawn in law or otherwise from the facts; the facts themselves must be found by the court of quarter sessions. This case shall be deemed to be an appeal, and shall be heard by a Divisional Court, and the determination by the Divisional Court shall be final unless leave to appeal is given by that court or by the Court of Appeal. (Judicature Act, 1894 (57 & 58 Vict. c. 16), ss. 1 (5) and 2.)

By s. 40 of the Summary Jurisdiction Act, 1879, it is provided that a writ of *certiorari* or other writ shall not be required for the removal of any order or other determination, in relation to which a special case is stated by a court of general or quarter sessions for obtaining the judgment of a superior court. In *Clark* v. *Alderbury Union Assessment Committee*, 29 W. R. 334, the clerk of the peace, upon the request of the solicitor of the party requiring it, transmitted the special case to the Crown Office. See R. S. C., Order 34, on procedure as to special cases.

Grant of charges by way of annuity to owner on completion of works.

36.—(1.) Where any owner has completed in respect of any dwelling-house any works required to be executed by an order of a local authority under this part of this Act, he may apply to the local authority for a charging order, and shall produce to the local authority the certificate of their surveyor or engineer that the works have been executed to his satisfaction, and also the accounts of and vouchers for

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the costs, charges, and expenses of the works, and the local authority, when satisfied that the owner has duly executed such works, and of the amount of such costs, charges, and expenses, and of the costs of obtaining the charging order which have been properly incurred, shall make an order accordingly, charging on the dwelling-house an annuity to repay the amount.

(2.) The annuity charged shall be a sum of six pounds for every one hundred pounds of the said amount and so in proportion for any less sum, and shall commence from the date of the order, and be payable for a term of thirty years to the owner named in such order, his executors, administrators, or assigns.

(3.) Every such annuity may be recovered by the person for the time being entitled to it by the same means and in the like manner in all respects as if it were a rentcharge granted by deed out of the dwelling-house by the owner thereof.

(4.) Charging orders made under this section shall be made according to the Form marked A. in the Fifth Schedule to this Act, or as near thereto as the circumstances of the case will admit.

"**Any owner.**"—For definition of "owner" see s. 29, *ante*, p. 40. There may be several persons who may be owners, within that definition, of one and the same dwelling-house. Whichever owner executes the works, that owner can obtain an order charging the whole ownership with an annuity, and thus he will be able to make the other owners bear their proportionate share of the expense. See next section as to the incidence of the charges.

"**Works required . . . by an order of the local authority.**"—It should be noticed that this does not apply to works executed under the order of a court of summary jurisdiction, but to orders of the local authority. See these orders specified in the notes to the last section; it is probably the order mentioned in s. 33 (4) that is more particularly referred to. It is doubtful if the notice served by the local authority before proceedings, and requiring the owner to abate, is an order. If not, it would appear to be advisable for a limited owner not in possession, who desires a charging order, to disregard all notices and orders until the resolution for demolition referred to in s. 33 (1), *ante*, p. 48, is passed, and then to intervene on receiving the notice under s. 33 (2).

"**A charging order.**"—This order is made by the local authority, and any person aggrieved by it may appeal under the last section to

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quarter sessions. It charges the house itself, which by the definition includes the site, and takes precedence of mortgages and all other charges, except those mentioned in s. 37 (1). As to the form, see Sched. V., *post*.

NOTE.

Recovery of annuity.—The annuity may be transferred like a mortgage or rentcharge, and the person entitled for the time being can recover the annuity in the same way as if it were a rentcharge.

Under s. 27 of the Artizans and Labourers Dwellings Act, 1868, which was similar to the above sub-s. (3) of this section, it was held that the Act does not place the liability in the rentcharge in any person but that the premises were charged with it, and that the tenant in possession is liable during the continuance of his estate. (*Hyde* v. *Berners*, 53 J. P. 453.)

Section 44 of the Conveyancing Act, 1881, provides the remedies for the recovery of rentcharges. These may be recovered by means of (1) a distress after twenty-one days from the time appointed for payment; (2) entry into possession of the land charged, if charge unpaid for forty days; (3) by demise of the land, if charge unpaid for forty days, to a trustee for a term of years on trust by mortgage, or sale, or demise, or by receipt of income, or by all of those means to raise and pay the annual sum and allowances due.

A rentcharge may also be recovered by an action. (*Thomas* v. *Sylvester*, L. R. 8 Q. B. 368; *Hyde* v. *Berners*, *supra*; *Booth* v. *Smith*, 47 J. P. 759.) As to the effect of the Statute of Limitations, see *Jones* v. *Withers*, 74 L. T. 572.

Incidence of charge.

37.—(1.) Every charge created by a charging order under this part of this Act shall be a charge on the dwelling-house specified in the order, having priority over all existing and future estates, interests, and incumbrances, with the exception of quitrents and other charges incident to tenure, tithe commutation rentcharge, and any charge created under any Act authorising advances of public money; and where more charges than one are charged under this part of this Act on any dwelling-house such charges shall, as between themselves, take order according to their respective dates.

(2.) A charging order shall be conclusive evidence that all notices, acts, and proceedings by this part of this Act directed with reference to or consequent on the obtaining of such order, or the making of such charge, have been duly served, done, and taken, and that such charge has been duly created, and that it is a valid charge on the dwelling-house declared to be subject thereto.

(3.) Every such charging order, if it relates to a dwelling-house in the area to which the enactments relating to the

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registration of land in Middlesex apply or to a dwelling-house in Yorkshire, shall be registered in like manner as if the charge were made by deed by the absolute owner of the dwelling-house.

(4.) Copies of the charging order and of the certificate of the surveyor or engineer, and of the accounts as passed by the local authority, certified to be true copies by the clerk of the local authority, shall within six months after the date of the order be deposited with the clerk of the peace of the county in which the dwelling-house is situate, and be by him filed and recorded.

(5.) The benefit of any such charge may be from time to time transferred in like manner as a mortgage or rentcharge may be transferred. Any transfer may be in the Form marked B. in the Fifth Schedule to this Act, or in any other convenient form.

"**Quitrents and other charges incident to tenure.**"—Quitrents are payable by freehold tenants in fee simple, and also by copyhold tenants. They are quite distinct from ground rents.

Reliefs, heriots, and fines, as being incident to tenure, would thus take precedence of this charging order.

"**Registration.**"—It is not clear whether the charge should not be registered under the Land Charges Registration and Searches Act, 1888 (51 & 52 Vict. c. 51). Probably it will be prudent to do so. A charge under s. 257 of the Public Health Act, 1875, was, however, held not to be a charge within the meaning of that Act (*Reg.* v. *Vice-registrar of Office of Land Registry* (24 Q. B. D. 178).) As to compulsory registration, see the Land Transfer Act, 1897 (60 & 61 Vict. c. 65).

Obstructive Buildings.

Power to local authority to purchase houses for opening alleys, etc.

38.—(1.) If a medical officer of health finds that any building within his district, although not in itself unfit for human habitation, is so situate that by reason of its proximity to or contact with any other buildings it causes one of the following effects, that is to say,—

(a.) It stops ventilation, or otherwise makes or conduces to make such other buildings to be in a condition unfit for human habitation or dangerous or injurious to health; or

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(b.) It prevents proper measures from being carried into effect for remedying any nuisance injurious to health or other evils complained of in respect of such other buildings;

in any such case, the medical officer of health shall represent (*o*) to the local authority the particulars relating to such first-mentioned building (in this Act referred to as "an obstructive building") stating that in his opinion it is expedient that the obstructive building should be pulled down.

(2.) Any four or more inhabitant householders of a district may make to the local authority (*p*) of the district a representation as respects any building to the like effect as that of the medical officer under this section.

(3.) The local authority on receiving any such representation as above in this section mentioned shall cause a report to be made to them respecting the circumstances of the building and the cost of pulling down the building and acquiring the land, and on receiving such report shall take into consideration the representation and report, and if they decide to proceed, shall cause a copy of both the representation and report to be given to the owner of the lands on which the obstructive building stands, with notice (*q*) of the time and place appointed by the local authority for the consideration thereof; and such owner shall be at liberty to attend and state his objections, and after hearing such objections the local authority shall make an order (*r*) either allowing the objection or directing that such obstructive building shall be pulled down, and such order shall be subject to appeal in like manner as an order of demolition of the local authority under the foregoing provisions of this part of this Act.

(4.) Where an order of the local authority for pulling down an obstructive building is made under this section and either no appeal is made against the order, or an appeal

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(*o*) The representation must be in writing (s. 79 (2), *post*).

(*p*) See definition of district and local authority in s. 92, *post*, p. 115.

(*q*) Notice should be in writing and signed by the clerk, s. 86 (2), *post*, p. 113.

(*r*) To be under seal, *ib.*

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is made and either fails or is abandoned, the local authority shall be authorised to purchase the lands on which the obstructive building is erected in like manner as if they had been authorised by a special Act to purchase the same; and for the purpose of such purchase the provisions of the Lands Clauses Acts, with respect to the purchase and taking of lands otherwise than by agreement shall be deemed to be incorporated in this part of this Act (subject nevertheless to the provisions of this part of this Act), and for the purpose of the provisions of the Lands Clauses Acts this part of this Act shall be deemed to be the special Act, and the local authority to be the promoters of the undertaking, and such lands may be purchased at any time within one year after the date of the order, or if it was appealed against after the date of the confirmation.

(5.) The owner of the lands may within one month after notice to purchase the same is served upon him declare that he desires to retain the site of the obstructive building and undertake either to pull down or to permit the local authority to pull down the obstructive building, and in such case the owner shall retain the site and shall receive compensation from the local authority for the pulling down of the obstructive building.

(6.) The amount of such compensation, and also the amount of any compensation to be paid on the purchase of any lands under this section, shall in case of difference be settled by arbitration in manner provided in this part of this Act (*s*).

(7.) Where the local authority is empowered to purchase land compulsorily, it shall not be competent for the owner of a house or manufactory to insist on his entire holding being taken, where part only is proposed to be taken as obstructive, and where such part proposed to be taken can, in the opinion of the arbitrator to whom the question of disputed compensation is submitted, be severed from the remainder of the house or manufactory without material detriment thereto, provided that compensation may be

(*s*) Sect. 41, *post*, p. 68.

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(8.) Where in the opinion of the arbitrator the demolition of an obstructive building adds to the value of such other buildings as are in that behalf mentioned in this section, the arbitrator shall apportion so much of the compensation to be paid for the demolition of the obstructive building as may be equal to the increase in value of the other buildings amongst such other buildings respectively, and the amount apportioned to each such other building in respect of its increase in value by reason of the demolition of such obstructive building shall be deemed to be private improvement expenses incurred by the local authority in respect of such building, and such local authority may, for the purpose of defraying such expenses, make and levy improvement rates on the occupier of such premises accordingly; and the provisions of the Public Health Acts relating to private improvement expenses and to private improvement rates, shall so far as circumstances admit, apply accordingly in the same manner as if such provisions were incorporated in this Act.

(9.) If any dispute arises between the owner or occupier of any building (to which any amount may be apportioned in respect of private improvement expenses) and the arbitrator by whom such apportionment is made, such dispute shall be settled by two justices in manner provided by the Lands Clauses Acts, in cases where the compensation claimed in respect of lands does not exceed fifty pounds.

(10.) Where the owner retains the site or any part thereof, no house or other building or erection which will be dangerous or injurious to health, or which will be an obstructive building within the meaning of this section, shall be erected upon such site or any part thereof; and if any house, building, or erection is erected on the site contrary to the provisions of this section the local authority may at any time order the owner to abate or alter the said house, building, or erection; and in the event of non-compliance with such order may, at the expense of the owner thereof, abate or alter the same.

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(11.) Where the lands are purchased by the local authority the local authority shall pull down the obstructive building, or such part thereof as may be obstructive within the meaning of this section, and keep as an open space the whole site, or such part thereof as may be required to be kept open for the purpose of remedying the nuisance or other evils caused by such obstructive building, and may, with the assent of the Local Government Board, and upon such terms as that Board think expedient, sell such portion of the site as is not required for the purpose of carrying this section into effect.

(12.) A local authority may, where they so think fit, dedicate any land acquired by them under the authority of this section as a highway or other public place.

"**Stops ventilation.**"—This may refer to stagnation of air either around or within the dwelling. See also note to s. 32, *ante*, p. 45.

A well-known class of buildings that fall within the purpose of this section are what are known as back-to-back dwellings, two rows of houses being built with their backs to one another and no air space between. Such houses can have no through ventilation, and statistics have established that they are injurious to health. In order to obviate expense, four schemes have been devised by Dr. Tatham for re-modelling blocks of dwellings built in this manner. These are :

(1.) The removal of one row of dwellings, part of the site being used to widen the street (see sub-s. (12)), and part to provide separate yards to each house of the remaining row.
(2.) The removal of every third pair of back-to-back houses.
(3.) The conversion of half of the back-to-back dwellings of each block into double houses with through ventilation for each, retaining a certain number of single houses with improved lighting and ventilation.
(4.) Removing any alternate pair of houses on one side of a back-to-back street.

"**Any building**" (sub-s. (1)).—This is a wider term than dwelling-house, and is not defined in this Act. It may include a wall which is not merely required as a boundary wall or fence (*Ellis* v. *Plumstead Board of Works*, 68 L. T. 291 ; 57 J. P. 359, decided under the Metropolis Management Act, 1862, and see the cases as to the meaning of building in Lumley's Public Health Acts, 5th ed., p. 17). It would include a building which forms part of a house in the legal sense of the word house ; and as to taking part of such house, see sub-s. (7) of this section.

"**Inhabitant householders**" (sub-s. (2)).—A similar representation may be made by a parish council under s. 6 (2) of the Local Government Act, 1894. See note to s. 31, *ante*, p. 44.

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NOTE.

"**Shall cause a report**" (sub-s. (3)).—This is not in the discretion of the local authority, but is imperative. The authority will probably instruct their surveyor to make the report, but it would appear to be intended that it should be independent of the representation. As to the cost of acquiring the land, see s. 41, *post*, p. 68.

"**Shall take into consideration**" (sub-s. (3)).—The local authority must consider the report; but they have an absolute discretion as to whether or not they will proceed. The local authority in London and in rural districts are, however, bound to forward the representation to the county council under s. 45, *post*, p. 74, and the county council have power to proceed and to charge the district authority with the expense. As to interested persons voting on such occasions, see s. 88, *post*, p. 114.

"**The owner**" (sub-s. (3)).—For the definition of owner, see s. 29, but there may be several persons who are owners within the meaning of that section. In such a case a copy of the report, and representation, and notice should be served upon each owner.

"**Order subject to appeal**" (sub-s. (3)).—The appeal is to quarter sessions, and any person aggrieved may appeal. The time for appealing is within one month after notice of the order has been served, s. 35, *ante*, p. 51. The order should, therefore, be drawn up, sealed, and authenticated by the clerk as provided by s. 86 (1), *post*, p. 113, and served on the owners, and on all other persons who may be aggrieved by the order.

"**The Lands Clauses Acts**" (sub-s. (4)).—As to these Acts, see note to s. 20, *ante*, p. 26. The expression "with respect to the purchase and taking of lands otherwise than by agreement" is the heading to ss. 16—68 of the Lands Clauses Consolidation Act, 1845. These provisions are, however, very considerably modified by s. 41 of this Act, *post*, p. 68, as well as by the other sub-sections of this section. (See sub-s. (6).) It will be observed that the local authority are given compulsory powers of purchase under this section without having to obtain a provisional order, but from sub-s. (5) it will be seen that the compulsion is limited to the building and not to the site.

"**After notice to purchase**" (sub-s. (5)).—This will be a notice to treat under s. 18 of the Lands Clauses Consolidation Act, 1845, and should be served as provided by s. 49, *post*, p. 83, upon all parties interested in such lands, or on the parties enabled by the Lands Clauses Acts to sell and convey. It should, therefore, be served on lessees who are not owners, and who cannot be got rid of within a reasonable time by notice in the ordinary way. It need not be served on persons having easements over the land. If their right is destroyed they can claim compensation subsequently under s. 68 of the Lands Clauses Consolidation Act, 1845.

Lessees holding the premises for a term of which twenty-one years do not remain unexpired, not being owners (s. 29, *ante*, p. 40), cannot claim to retain the site. There seems no reason why a leaseholder for a longer term should not claim the site, although the reversioner wishes to sell. In such a case the local authority would require to purchase the reversion to the site, subject to the lease.

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NOTE.

Part of holding (sub-s. (7)).—A similar provision exists in Sched. II. of this Act in regard to lands taken under Part I. of this Act. (See Art. 12, *post*, and the notes thereto.) Section 92 of the Lands Clauses Consolidation Act, 1845, which requires the whole of a house to be taken, is not incorporated in this section. The arbitrator is appointed pursuant to sub-s. (9). The local authority cannot take the entire holding if part only is obstructive, and it can be severed. If the taking of the whole building would improve the district, they must proceed under s. 39 (1) (a), *post*, p. 62, if they wish to take it, and this would appear to be so, even if the owner is willing to sell the whole (compare *Gordon* v. *Vestry of St. Mary Abbotts, Kensington*, [1894] 2 Q. B. 742; *Teuliere* v. *Vestry of St. Mary Abbotts, Kensington*, 30 Ch. D. 642; *Gard* v. *Commissioners of Sewers of City of London*, 28 Ch. D. 486, cases under Michael Angelo Taylor's Act). But if the local authority desires the building for lodging houses under Part III., probably they could then purchase it.

"**Adds to the value of such other buildings**" (sub-s. (8)).—Such other buildings are the buildings referred to in sub-s. (1), namely, the buildings which are obstructed. If these other buildings belong to the owner of the obstructive building, then this betterment will be taken into account under s. 41 (2) (b) in assessing the compensation of his interest in the obstructive building, and no amount ought then to be apportioned, in respect thereof, under this sub-section. If, however, the owner of the obstructive building also owns the other buildings but has leased them, then an apportionment should be made as against the lessees who thereby benefit; but as part of private improvement expenses may be deducted from the rent by the lessees, great care should be exercised in this and similar cases to see that the owner is not made to pay twice over for the betterment.

"**Private improvement expenses**" (sub-s. (8)).—In urban districts private improvement expenses may be recovered by the urban authority under s. 213 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), by a rate on the premises called a private improvement rate "of such amount as will be sufficient to discharge such expenses together with interest thereon at a rate not exceeding five pounds per cent. per annum in such period not exceeding thirty years as the urban authority may in each case determine." This rate is paid by the occupier if there is one, but in the case of premises becoming unoccupied the rate becomes a charge on and payable by the owner for the time being of the premises so long as the same continue to be unoccupied. By s. 214 the occupier may deduct three-quarters of the amount from his rent if he holds his premises at a rack rent, and in various other proportions according to his tenancy. By s. 215 an owner or occupier may at any time redeem the private improvement rate. In rural districts, s. 232 of the same Act enables the rural authority to make and levy private improvement rates in the same way as an urban authority.

By s. 257 the local authority are given an alternative procedure. They may by order declare private improvement expenses to be payable by annual instalments within a period not exceeding thirty years, with interest at five per cent. per annum. Each instalment may be recovered summarily from the owner or occupier, and

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may be deducted from the rent in the same way as private improvement expenses.

NOTE.

In London the above provisions of the Public Health Act, 1875, are made to apply for the purposes of this Act both to the county and city. See s. 46 (1), *post*, p. 77.

"**Two justices**" (sub-s. (9)).—This refers to ss. 22 and 24 of the Lands Clauses Consolidation Act, 1845. Either party may apply, and the justices will summon the other party to appear. The costs are in the discretion of the justices. The decision is not an order, and the application may be made after six months from the date of the complaint. (*R.* v. *Edwards*, 13 Q. B. D. 586; *R.* v. *Hannay*, 44 L. J. M. C. 27.) In London a police magistrate, and in other places a stipendiary magistrate, has power to do alone what may be done by two justices of the peace (21 & 22 Vict. c. 73, s. 1; 2 & 3 Vict. c. 71, s. 16; 42 & 43 Vict. c. 49, s. 20 (10)). It should be noticed that the dispute referred to is between the arbitrator and the owner or occupier, and that there is no reference to the local authority. It is only the amount to be apportioned that would appear to be matter for the decision of the justices.

"**Owner retains the site**" (sub-s. (10)).—An owner has power to retain the site under sub-s. (5). (See the similar proviso in s. 34 (2), *ante*, p. 50, and notes thereto.) An appeal from this order lies to quarter sessions under s. 35, *ante*, p. 51.

Sub-sections (11) and (12).—The proceeds of sale should be applied as directed by s. 82, *post*, p. 111. In London the assent required for the sale must be obtained from a Secretary of State (s. 46 (4)), *post*, p. 78. The dedication of the site of an obstructive building as a highway or other open place given by this sub-section is quite independent of the provisions contained in sub-s. (1) (a) of the next section.

Scheme for Reconstruction.

Scheme for area comprising houses closed by closing order.

39.—(1.) In any of the following cases, that is to say—

(a) where an order for the demolition of a building (*s*) has been made in pursuance of this part of this Act, and it appears to the local authority that it would be beneficial to the health of the inhabitants of the neighbouring dwelling-houses if the area of the dwelling-house of which such building forms part were used for all or any of the following purposes, that is to say, either—

(i) dedicated as a highway or open space, or

(ii) appropriated, sold, or let for the erection of dwellings for the working classes, or

(*s*) *i.e.*, under s. 33, *ante*, p. 48.

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(iii) exchanged with other neighbouring land which is more suitable for the erection of such dwellings, and on exchange will be appropriated, sold, or let for such erection; or

(b) where it appears to the local authority that the closeness, narrowness, and bad arrangement or bad condition of any buildings, or the want of light, air, ventilation, or proper conveniences, or any other sanitary defect in any buildings is dangerous or prejudicial to the health of the inhabitants either of the said buildings or of the neighbouring buildings, and that the demolition or the reconstruction and re-arrangement of the said buildings or of some of them is necessary to remedy the said evils, and that the area comprising those buildings and the yards, outhouses, and appurtenances thereof, and the site thereof, is too small to be dealt with as an unhealthy area under Part I. of this Act,

the local authority shall pass a resolution to the above effect and direct a scheme to be prepared for the improvement of the said area.

(2.) Notice of the scheme may at any time after the preparation thereof be served in manner provided in Part I. of this Act with respect to notices of lands proposed to be taken compulsorily under a scheme made in pursuance of that part of this Act, on every owner or reputed owner, lessee or reputed lessee, and occupier of any part of the area comprised in the scheme, so far as those persons can reasonably be ascertained.

(3.) The local authority shall, after service of such notice, petition the Local Government Board for an order sanctioning the scheme, and the Board may cause a local inquiry to be held, and, if satisfied on the report of such local inquiry that the carrying into effect of the scheme either absolutely, or subject to conditions or modifications would be beneficial to the health of the inhabitants of the said buildings or of the neighbouring dwelling-houses, may by order sanction the scheme with or without such conditions or modifications.

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(4.) Upon such order being made, the local authority may purchase by agreement the area comprised in the scheme as so sanctioned, and if they agree for the purchase of the whole area, the order, save so far as it provides for the taking of land otherwise than by agreement, shall take effect without confirmation. If they do not so agree, the order shall be published by the local authority by inserting a notice thereof in the London Gazette, and by serving notice thereof on the owners of every part of the area.

(5.) Any owner may, within two months after such publication, petition the Local Government Board against the order, and if such petition is presented and is not withdrawn, the order shall be provisional unless it is confirmed by Act of Parliament.

(6.) If the Local Government Board are satisfied that the order has been duly published, and that two months after such publication have expired, and that either a petition has not been presented, or if presented has been withdrawn, they shall confirm the order, and thereupon such order shall come into operation, and have effect as if it were enacted by this Act.

(7.) The order may incorporate the provisions of the Lands Clauses Acts, and for the purpose of those provisions this Act shall be deemed to be the special Act, and the local authority to be the promoters of the undertaking, and the area shall be acquired within three years after the date of the confirmation of the order: Provided that the amount of compensation shall, in case of difference, be settled by arbitration in manner provided by this part of this Act.

(8.) The provisions of Part I. of this Act relating to costs to be awarded in certain cases by a committee of either House of Parliament (*t*), to the duty of a local authority to carry a scheme when confirmed into execution (*u*), to the completion of a scheme on failure by a local authority (*x*), and to the extinction of rights of way and other easements (*y*),

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(*t*) Section 9, *ante*, p. 14.
(*u*) Section 12, *ante*, p. 18.
(*x*) Section 13, *ante*, p. 21.
(*y*) Section 22, *ante*, p. 33.

shall, with the necessary modifications, apply for the purpose of any scheme under this section in like manner as if it were a scheme under Part I. of this Act.

(9.) The Local Government Board, on being satisfied by the local authority that an improvement can be made in the details of any scheme under this section, may by order permit the local authority to modify any part of the scheme which it may appear inexpedient to carry into execution: Provided that—

(a) if the order sanctioning the scheme was confirmed by Parliament, a statement of such modification shall be laid by the Local Government Board before both Houses of Parliament as soon as practicable; and

(b) in any case, if the modification requires a larger expenditure than that sanctioned by the original scheme, or authorises the taking of any property otherwise than by agreement, or injuriously affects any property in a manner different from that proposed in the original scheme, without the consent of the owner or occupier of such property, notice of the order authorising the modification shall be published, and the order may be petitioned against and shall be subject to confirmation in like manner as if it were an order sanctioning an original scheme under this section.

Area of dwelling-house (sub-s. (1) (a)).—If the building ordered to be demolished is itself the dwelling-house, then it is not necessary to proceed under this section, as by s. 38 (11) and (12), the local authority may dedicate the space as a highway or public place, or otherwise keep it open. But if the building demolished is only part of the dwelling-house, and can be severed from the rest of the dwelling-house, then in such case the dwelling-house cannot be touched under the previous sections of this part of the Act, but a provisional order must be obtained under this section. In London, if it is only desired to widen, improve, or lengthen a street or public place, then the local authority should consider whether they cannot act under the simpler procedure provided by Michael Angelo Taylor's Act (57 Geo. 3, c. cxxix.), ss. 80—96).

"**Bad condition of any buildings**" (sub-s. (1) (b)).—This part of this section is quite independent of the previous sections, and does not over-ride them. If a house is unfit for habitation the local authority ought to proceed under s. 32, *ante*, p. 44, and also for an

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order for demolition, if the premises are a nuisance when closed. Whether the houses are closed or not, the local authority can proceed under this section.

As to the evidence to show that such buildings are prejudicial to health, see the note to s. 4, *ante*, p. 4.

Area too small for Part I. (sub-s. (1) (b)).—This section is intended to provide a simpler procedure than that contained in Part I. for the purpose of enabling the local authority to deal with a small block of buildings. The local authority must consider first whether the reconstruction of the area is necessary, and secondly whether the size of the area is such as can be properly dealt with under this part of the Act. In rural districts, as Part I. does not apply, it may be taken that all areas are to be dealt with under this part of the Act. In urban districts as the district or municipal council is the local authority under both parts, the question as to whether they are to proceed under Parts I. or II. seems wholly under their discretion, subject, of course, to the consent of the Local Government Board to the scheme. There is no measure provided as to the size, but probably any scheme dealing with not more than ten houses ought to be carried out under this section. (See note to next section, *post*, p. 68, and s. 70, *post*, p. 101.)

In the city of London the matter is likewise in the discretion of the Common Council.

In the county of London, as the local authority under Part I. is the county council, and as the local authorities under Part II. are the vestries and district boards, questions arise as to whether schemes should be carried out under Part I. or Part II., or, in other words, whether the expense of the improvement should be borne by the whole of London or by the district in which the area is situated, or partly by both. If the scheme will benefit the whole of London, it is only fair that the expense should be borne, in part at least, by the whole. Special provisions have been made in ss. 46 (5) and (6), and 72 and 73 to meet these difficulties. The result of these provisions appears as hereunder:

The vestry or district board should proceed:

(1.) When the scheme affects not more than ten houses (s. 72).

(2.) When the scheme is not of general importance and can be carried out under Part II. (s. 73 (1)).

(3.) When the scheme is of general importance to London, but should be carried out under Part II., and the county council agree to pay or contribute to the expenses (s. 46).

The county council should proceed:

(1.) When the scheme by reason of its size or otherwise should be under Part I. (s. 73 (1), (6)).

(2.) When the scheme is of general importance to London, although such scheme may be carried out under Part I. or Part II., and provided it relates to more than ten houses, and there has been no agreement to pay or contribute to the expenses of the vestry or district board carrying it out.

Disputes arising between the county council and the vestry or district board as to which body is to carry out the scheme may be referred to the Home Secretary under s. 73, *post*, p. 102.

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"**Shall pass a resolution**" (sub-s. (1)).—Interested members may not vote on this resolution (s. 88, *post*, p. 114).

"**A scheme to be prepared.**"—This scheme should show clearly the number and site of the houses to be taken, and there should be a statement as to how it is proposed to deal with the area, and it should be accompanied with plans. The instructions issued by the Local Government Board for schemes under Part I. (see *post*) should be consulted.

"**Notice of the scheme**" (sub-s. (2)).—This notice must be served as stated in s. 7, (b), (c), and (d); but at any time; and no advertisements are required.

"**Petition the Local Government Board**" (sub-s. (3)).—The petition in all cases must be sent to the Local Government Board. This is so in the case of the county and city of London as well as in that of other places in England, although under Part I. the Home Secretary is the confirming authority for London. The inquiry will be held pursuant to s. 85, *post*, p. 112, and the order will be made according to the sections of the Public Health Act, 1875, which are made applicable by that section. As to incorporating the Lands Clauses Acts, see sub-s. (7), *ante*, p. 64.

"**Upon such order being made**" (sub-ss. (4)—(6)).—If the local authority can agree with all the owners to purchase, then this order becomes final and no further confirmation is required; but it does not enable the local authority to acquire part only of the land and to clear it. All the owners must agree, otherwise the order is merely provisional. The local authority ought to proceed at once, however, to endeavour to enter into the agreements for purchase (see sub-s. (8)), but notices to treat should not be served. If compulsory powers are required in regard to any part of the area, then the order must be published, and a notice of it served as provided by s. 49, *post*, p. 83, on the owners of every part of the area. Any owner, whether there has been any previous agreement or not, may then petition the Local Government Board against the order, and if there is such a petition and it is not withdrawn, the order requires confirmation by Act of Parliament; if there is no such petition, or it is withdrawn, the Local Government Board may confirm the order. An owner who desires to continue to oppose the scheme may do so by petitioning against the confirming bill, and may be heard before the Parliamentary committees in either House (see notes to s. 8, *ante*, p. 13). It is not clear whether the word "owner" in this sub-section includes the owner of an easement which will be destroyed, or whose land will be injuriously affected. (Compare sub-s. (9) (b).)

"**The Lands Clauses Acts**" (sub-s. (7)).—As to these, see note to s. 20, *ante*, p. 26. The procedure to assess the compensation and the amount thereof is determined by s. 41, *post*, p. 68, which considerably modifies the Lands Clauses Acts. The power given to the Local Government Board is to incorporate these Acts, and it may be questioned whether this gives the Board power to incorporate part only. It would appear as if it did not. Section 92, which prevents part of a house being taken compulsorily, and s. 133 which requires

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the local authority to make good the deficiency in the land tax and poors' rate would therefore be included. As to procedure see note to s. 41, *post*, p. 71.

"**Easements**" (sub-s. (8)).—The owner of these will be entitled to claim compensation, under s. 22, *ante*, p. 33, and this sub-section, whenever he can prove that he has sustained any loss. If a local authority acquiring all the land by agreement under an order not confirmed by the Local Government Board made under sub-ss. (4), (5), and (6), it would appear that they can destroy an easement without the consent of the owner, but the point is not free from doubt. (Compare *Kirby* v. *Harrogate School Board*, [1896] 1 Ch. 437, a case under the Elementary Education Act, 1870.)

Modification of scheme (sub-s. (9)).—This refers to a modification after an order has been made and confirmed. If the modification entails any of the matters mentioned in clause (b), then the modification must be treated as a new scheme and proceedings taken as mentioned in sub-ss. (4), (5), and (6) of this section. (Compare the similar provision in s. 15 of Part I., *ante*, p. 23.)

Provisions for accommodation of persons of the working classes.

40. The Local Government Board shall in any order sanctioning a scheme under this part of this Act require the insertion in the scheme of such provisions (if any) for the dwelling accommodation of persons of the working classes displaced by the scheme as seem to the Board required by the circumstances.

Compare the provisions under Part I. of this Act in s. 11, *ante*, p. 16.

If ten or more houses of the working classes are to be taken, the Local Government Board must inquire into the dwelling accommodation of the persons to be displaced, and make the necessary provision in order to comply with the House of Commons Standing Order 183A (1) (a), and House of Lords Standing Order 111, in case a bill may be necessary to confirm the provisional order.

Settlement of Compensation.

Provisions as to arbitration.

41. In all cases in which the amount of any compensation is, in pursuance of this part of this Act, to be settled by arbitration, the following provisions shall have effect; (namely,)

(1.) The amount of compensation shall be settled by an arbitrator to be appointed and removable by the Local Government Board.

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(2.) In settling the amount of any compensation—

(a.) The estimate of the value of the dwelling-house shall be based on the fair market value as estimated at the time of the valuation being made of such dwelling-house, and of the several interests in such dwelling-house, due regard being had to the nature and then condition of the property and the probable duration of the buildings in their existing state, and to the state of repair thereof, and without any additional allowance in respect of compulsory purchase; and

(b.) The arbitrator shall have regard to and make an allowance in respect of any increased value which, in his opinion, will be given to other dwelling-houses of the same owner by the alteration or demolition by the local authority of any buildings.

(3.) Evidence shall be receivable by the arbitrator to prove—

(1st) that the rental of the dwelling-house was enhanced by reason of the same being used for illegal purposes or being so overcrowded as to be dangerous or injurious to the health of the inmates; or

(2ndly) that the dwelling-house is in a state of defective sanitation, or is not in reasonably good repair; or

(3rdly) that the dwelling-house is unfit, and not reasonably capable of being made fit, for human habitation;

and, if the arbitrator is satisfied by such evidence, then the compensation—

(a) shall in the first case so far as it is based on rental be based on the rental which would have been obtainable if the dwelling-house was occupied for legal purposes and only by the number of persons whom the dwelling-house was under all the circumstances of the case fitted to accommodate without such overcrowding as is dangerous or injurious to the health of the inmates; and

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(b) shall in the second case be the amount estimated as the value of the dwelling-house if it had been put into a sanitary condition, or into reasonably good repair, after deducting the estimated expense of putting it into such condition or repair; and

(c) shall in the third case be the value of the land, and of the materials of the buildings thereon.

(4.) On payment or tender to the person entitled to receive the same of the amount of compensation agreed or awarded to be paid in respect of the dwelling-house, or on payment thereof in manner prescribed by the Lands Clauses Acts, the owner shall, when required by the local authority, convey his interest in such dwelling-house to them, or as they may direct; and in default thereof, or if the owner fails to adduce a good title to such dwelling-house to the satisfaction of the local authority, it shall be lawful for the local authority, if they think fit, to execute a deed poll in such manner and with such consequences as are mentioned in the Lands Clauses Acts.

8 & 9 Vict. c. 18.

(5.) Sections thirty-two, thirty-three, thirty-five, thirty-six, and thirty-seven of the Lands Clauses Consolidation Act, 1845, shall apply, with any necessary modifications, to an arbitration and to an arbitrator appointed under this part of this Act.

(6.) The arbitrator may, by one award, settle the amount or amounts of compensation payable in respect of all or any of the dwelling-houses included in one or more order or orders made by the local authority; but he may, and, if the local authority request him so to do shall, from time to time make an award respecting a portion only of the disputed cases brought before him.

(7.) In the event of the death, removal, resignation, or incapacity, refusal, or neglect to act of any arbitrator before he shall have made his award, the Local Government Board may appoint another arbitrator, to whom all documents relating to the

matter of the arbitration which were in the possession of the former arbitrator shall be delivered.

(8.) The arbitrator may, where he thinks fit, on the request of any party by whom any claim has been made before him, certify the amount of the costs properly incurred by such party in relation to the arbitration, and the amount of the costs so certified shall be paid by the local authority.

(9.) The arbitrator shall not give such certificate where the arbitrator has awarded the same or a less sum than has been offered by the local authority in respect of such claim before the appointment of the arbitrator, and need not give such certificate to any party where he considers that such party neglected, after due notice from the local authority, to deliver to that authority a statement in writing within such time, and containing such particulars respecting the compensation claimed, as would have enabled the local authority to make a proper offer of compensation to such party before the appointment of the arbitrator.

(10.) If within seven days after demand the amount so certified be not paid to the party entitled to receive the same, such amount shall be recoverable as a debt from the local authority with interest at the rate of five per cent. per annum for any time during which the same remains unpaid after such seven days as aforesaid.

(11.) The award of the arbitrator shall be final and binding on all parties.

"**Cases . . . to be settled by arbitration.**"—These cases are where an obstructive building is demolished under s. 38 (see sub-ss. (4), (6) and (7)), *ante*, p. 55, and when land is taken under a scheme made pursuant to s. 39, *ante*, p. 62, and also for the destruction of easements and like injuries under (sub-s. (8)) of s. 39, as to which see notes to s. 22, *ante*, p. 33.

Appointment of arbitrator (sub-s. (1)).—The arbitrator is to be appointed by the Local Government Board in the county and city of London as well as throughout England and Wales.

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When land is to be taken compulsorily, a notice to treat should first be served by the local authority pursuant to s. 18 of the Lands Clauses Consolidation Act, 1845, upon all the parties having interests therein, except the owners of easements. The notice should state the particulars of the land required and request the owner to state the particulars of his claim. If the parties are unable to agree it would appear that either party may apply to the Local Government Board to appoint an arbitrator. As to the power of the local authority to enter for the purpose of valuing, see s. 77, *post*.

When land has been injuriously affected, or been entered upon and used under s. 85 of the Lands Clauses Consolidation Act, 1845, it will be for the owner to take the initiative and claim compensation under s. 68 of the Lands Clauses Consolidation Act, 1845. In that case, on failure to agree, the local authority should apply to have an arbitrator appointed before the end of three weeks.

"Settling the amount" (sub-ss. (2) and (3)).—Sub-s. (2) (a) is practically identical with s. 21 (1) (a), *ante*, p. 28, and sub-s. (3) with s. 21 (2). Reference should be made to the notes to that section.

Sub-s. (2) (b) of this section has no equivalent in Part I. In cases where an obstructive building is taken down under s. 38, the cost of taking down may be in part apportioned on the adjoining owners whose houses are increased in value (sub-s. (8), *ante*, p. 58, and see notes thereto). But it appears that in a scheme under s. 39, adjoining owners are not to bear any part of the cost if no part of their land is taken.

Conveyance by owner (sub-s. (4)).—The local authority pay all costs connected with the conveyance. (See ss. 81—83 of the Lands Clauses Consolidation Acts, 1845.) In cases where the owner is incapacitated, or refuses to convey, the money is payable into the Bank. (See ss. 69—80 of that Act.)

Sub-section (5).—These sections would be included in the ordinary course in an order which incorporated the Lands Clauses Acts, and are already incorporated by s. 38 (4) in regard to an arbitration as to the compensation payable in respect of an obstructive building. Section 34, which is omitted, deals with the costs of the arbitration, but the provisions in sub-ss. (8) and (9) of this section take its place.

Section 32 of the Lands Clauses Consolidation Act, 1845, enables the arbitrator to call for the production of documents and to examine witnesses on oath. Section 33 requires the arbitrator to make a declaration before a justice, and such declaration shall be annexed to the award. Section 35 requires the arbitrator to deliver his award in writing to the promoters of the undertaking—that is, to the local authority (s. 38 (4) and s. 39 (7)). The promoters retain the same and must forthwith, on demand, at their own expense, furnish a copy thereof to the other party, and produce it at all times for inspection when required. Section 37 provides that the submission may be made a rule of court. (See these sections set out and annotated in Browne and Allan's Law of Compensation, pp. 70—83.)

It should be remembered, however, that the Arbitration Act, 1889, will apply to this arbitration in so far as it is not expressly varied by the provisions of this Act. (See s 24 thereof.)

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"**By one award**" (sub-s. (6)).—This is probably to save expense. There is a similar provision as regards Part I. in Art. 9 of the schedule, *post*. (See note thereto.)

"**Certify the amount of the costs**" (sub-s. (8)).—This is apparently to be done after the award. The costs are in the discretion of the arbitrator, subject to the provisions in sub-s. (9). The intention of this provision is evidently to save the expense of taxation. Where the Lands Clauses Acts are incorporated in the Order, the taxation would take place in ordinary course under the Lands Clauses (Taxation of Costs) Act, 1895 (58 & 59 Vict. c. 11), but the provision in the section apparently takes the place of that Act. (See also Art. 28 of Sched. II. as to costs of arbitration under Part I.)

"**Before the appointment of the arbitrator**" (sub-s. (9)).—Note that this is not before application for appointment, nor before the notice of appointment is received, but before the actual appointment.

The application for particulars of claim will be made in ordinary course in the notice to treat, pursuant to the provision in s. 18 of the Lands Clauses Consolidation Act, 1845.

"**Amount . . . recoverable as a debt**" (sub-s. (10)).—An action for the costs cannot be begun until demand has been made and seven days allowed to expire. The costs will then be recoverable by action in the ordinary way, and this action is quite independent of the payment of the compensation and of the conveyance of the land; as to which, see sub-s. (4), *supra*.

"**The award shall be final**" (sub-s. (11)).—This is always subject to the statement of a special case, and to the liability to be set aside for excess of jurisdiction. (See note to Art. 9 of Sched. II., *post*.)

Expenses and Borrowing.

Expenses of local authority.

42.—(1.) All expenses incurred by a local authority in the execution of this part of this Act shall be defrayed by them out of the local rate; and that authority, notwithstanding any limit contained in any Act of Parliament respecting a local rate, may levy such local rate, or any increase thereof, for the purposes of this part of this Act.

(2.) Any expenses incurred by a rural sanitary authority under this part of this Act, other than the expenses incurred in and incidental to proceedings for obtaining a closing order, shall be charged as special expenses on the contributory place in respect of which they are incurred.

The local rate is defined in s. 92, *post*, p. 115, and Sched. I. (See also note to s. 24, *ante*, p. 35.)

The expenses incidental to proceedings for obtaining a closing order by a rural district council will be governed by the Public

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Health Act, 1875, under which such proceedings will be taken. (See note to s. 32 as to the enactments in the schedule, *ante*, p. 46.) They will, therefore, be payable as general expenses; the other expenses will be special expenses. As to the expenses of a rural sanitary authority, now a rural district council, see ss. 229—232 of the Public Health Act, 1875.

Provision as to borrowing.

43.—(1.) A local authority may borrow for the purpose of raising sums required for purchase money or compensation payable under this part of this Act in like manner, and subject to the like conditions, as for the purpose of defraying the expenses of the execution by such authority of the Public Health Acts.

(2.) The Public Works Loan Commissioners may, if they think fit, lend to any local authority the sums borrowed in pursuance of this part of this Act.

This section does not apply to London. The necessary powers as regards London, are contained in s. 46 (2), (3), *post*, p. 77.

This section enabled local authorities to borrow merely for the purpose of paying the purchase-money and compensation, and not for otherwise carrying out the scheme. By the Housing of the Working Classes Act, 1894 (57 & 58 Vict. c. 55), s. 1, *post*, if the scheme or order sanctioning the scheme, authorises the authority to borrow for any other purpose, they may borrow as provided in this section, and in London as provided in s. 46.

For the provisions as to borrowing, see ss. 233—243 of the Public Health Act, 1875, and see the cases collected in Lumley's Public Health Acts, 5th ed., p. 314, *et seq.* The sums borrowed will be on the security of the local rate.

As to the rate of interest on loans by Public Works Loan Commissioners, see s. 83, *post*, p. 111.

Annual account to be presented by the local authority.

44. Every local authority shall every year present to the Local Government Board, in such form as they may direct, an account of what has been done, and of all moneys received and paid by them during the previous year, with a view to carrying into effect the purposes of this part of this Act.

As to the keeping and auditing of accounts of receipts and expenditure under this Act, see s. 80, *post*, p. 109.

In London, the account mentioned in this section must be sent to a Secretary of State (see s. 46 (4), *post*, p. 78). See form in Appendix, *post*.

Powers of County Councils.

Powers of county councils.

45.—(1.) Where the medical officer of health or any inhabitant householders make a representation or complaint,

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or give information to any vestry or district board in the administrative county of London or to the local board of Woolwich, or to any rural sanitary authority elsewhere (which vestry, board, or authority is in this Act referred to as the district authority) or to the medical officer of such authority either respecting any dwelling-house being in a state so dangerous or injurious to health as to be unfit for human habitation, or respecting an obstructive building, and also where a closing order has been made as respects any dwelling-house, the district authority shall forthwith forward to the county council of the county in which the dwelling-house or building is situate, a copy of such representation, complaint, information, or closing order, and shall from time to time report to the council such particulars as the council require respecting any proceedings taken by the authority with reference to such representation, complaint, information, or dwelling-house.

(2.) Where the county council—

(a) are of opinion that proceedings for a closing order as respects any dwelling-house ought to be instituted, or that an order ought to be made for the demolition of any buildings forming or forming part of any dwelling-house as to which a closing order has been made, or that an order ought to be made for pulling down an obstructive building specified in any representation under this part of this Act; and

(b) after reasonable notice, not being less than one month, of such opinion has been given in writing to the district authority, consider that such authority have failed to institute or properly prosecute proceedings, or to make the order for demolition, or to take steps for pulling down an obstructive building;

the council may pass a resolution to that effect, and thereupon the powers of the district authority as respects the said dwelling-house and building under this part of this Act (otherwise than in respect of a scheme), shall be vested in the county council, and if a closing order or an order for

Sect. 45 (2). demolition or for pulling down an obstructive building is made, and not disallowed on appeal, the expenses of the council incurred as respects the said dwelling-house and building, including any compensation paid, shall be a simple contract debt to the council from the district authority.

(3.) Any debt to the council under this section shall be defrayed by the district authority as part of their expenses in the execution of this part of this Act.

(4.) The county council and any of their officers shall, for the purposes of this section, have the same right of admission to any premises as any district authority or their officers have for the purpose of the execution of their duties under the enactments relating to public health, and a justice may make the like order for enforcing such admission.

"**Make a representation.**"—This section refers more particularly to representations and complaints made under ss. 30, 31 (1), and 38 (1) and (2), but appears to extend to information given in a less formal manner (see s. 32). It does not apply to urban district authorities, except the local board of Woolwich. As regards urban districts, the householders who may have made a complaint under s. 31, may petition the Local Government Board under sub-s. (2) of that section, but there appears to be no like provision as regards s. 38. A parish council has the same powers of making a representation or complaint as four householders under 56 & 57 Vict. c. 73, s. 6 (2), and their complaint must likewise be forwarded to the county council under this section. In London, any report of the medical officer of health under this Act is to be deemed a special report, and copies must be sent to the Local Government Board and to the county council. (Sanitary Officers (London) Order, December 8th, 1891.)

"**Reasonable notice . . . to district authority.**"—The district authority are given at least a calendar month to carry out their duties under this Act, but if they neglect to do so, at the end of that period the county council may pass a resolution that proceedings should be taken, and then the county council can undertake the duties (except making a scheme under s. 39), and proceed to carry out the Act in the same way as a district authority, and at their expense. As to expenses, see s. 42, *ante*, p. 73. In London, where a scheme is required under s. 39, the county council may undertake it under s. 46 (5), in place of the vestry or district board. The expenses are regulated by s. 46, (5), (6).

In a case before the county court judge of Seaham Harbour (Judge MEYNELL), it was held that in the expenses recoverable by the county council from the district council, there could not be included any charge for the time of the medical officer of health and inspector of nuisances of the county council, taken up in obtaining a closing order, where these officials were permanent whole time servants of the council, and no fees had been paid to them. (*County Council of Durham* v. *Easington District Council*, 61 J. P. 121.)

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As regards obtaining a closing order, the local authority might, it seems, proceed under the Public Health Acts only, and not under this Act. In such a case, if the county council desired a demolition order, it is doubtful if they could proceed under s. 33, *ante*, p. 48, and see note.

"**Same right of admission**" (sub-s. (4)).—In the Public Health Acts there is no general power enabling officers to enter premises, This provision probably refers to s. 102 of the Public Health Act, 1875, which enables officers to enter premises for the purpose of examining as to the existence of a nuisance, and after an order for abatement, to abate it if it has not been complied with. If admission is refused a justice under that section may authorise the officer to enter. There are also certain powers of entry given by s. 305 of the same Act.

The Public Health (London) Act, 1891, ss. 10, 115, confers wider powers of entry. See also s. 51 of this Act, *post*, p. 84.

Special Provisions as to London.

Application of part of Act to London.

46. This part of this Act shall apply to the administrative county of London with the following modifications:—

(1.) The provisions of the Public Health Acts relating to private improvement expenses and to private improvement rates shall, for the purpose of this part of this Act, extend to the county and to the city of London, and in the construction of the said provisions, as respects the county of London, any local authority in that county, and as respects the city of London the Commissioners of Sewers (*z*), shall be deemed to be the urban authority.

(2.) The raising of sums required for purchase money or compensation payable under this part of this Act shall be a purpose for which the London County Council or the Commissioners of Sewers (*z*) of the city of London, may borrow under Part One of this Act, and a purpose for which a vestry or district board may borrow under the Metropolis Management Act, 1855, and the provisions of Part One of this Act with respect to borrowing, and sections one hundred and eighty-three to one hundred and ninety-one of the Metropolis Management Act, 1855, shall apply and have effect accordingly.

18 & 19 Vict. c. 120.

(*z*) Now the Common Council; see note, *ante*, p. 38.

Sect. 46 (3).

(3.) The London County Council may, if they think fit, lend to a local authority in the administrative county of London the sums borrowed in pursuance of this part of this Act.

(4.) For the purpose of the assent required for the sale of any portion of the site of an obstructive building by a local authority, and of the account to be presented by a local authority of what has been done by them and of moneys received and paid by them during the previous year a Secretary of State shall be substituted for the Local Government Board.

(5.) Where it appears to the county council, whether in the exercise of the powers of a vestry or district board or on the representation of a vestry or district board or otherwise, that a scheme under this part of this Act ought to be made, the council may take proceedings for preparing and obtaining the confirmation of a scheme, and the provisions of this Act respecting the scheme shall apply in like manner as if they were the vestry or district board, and all expenses of and incidental to the scheme and carrying the same into effect shall, save as herein-after mentioned, be borne by the county fund.

(6.) Where the council consider that such expenses, or a contribution in respect of them, ought to be paid or made by a vestry or district board, they may apply to a Secretary of State, and the Secretary of State, if satisfied that, having regard to the size of the area, to the number, position, structure, sanitary condition, and neighbourhood of the buildings to be dealt with, the vestry or district board ought to pay, or make a contribution in respect of, the said expenses, the Secretary of State may order such payment or contribution to be made, and the amount thereof shall be a simple contract debt from the vestry or district board to the council.

Sect. 46 (7).

(7.) The county council may, if they think fit, pay or contribute to the payment of the expenses of carrying into effect a scheme under this part of this Act by a vestry or district board, and if a vestry or district board consider that the expenses of carrying into effect any scheme under this part of this Act, or a contribution in respect of those expenses, ought to be paid or made by the county council, and the county council decline or fail to agree to pay or make the same, the vestry or district board may apply to a Secretary of State, and if the Secretary of State is satisfied that, having regard to the size of the area, to the number, position, structure, sanitary condition, and neighbourhood of the buildings to be dealt with, the council ought to pay or make a contribution in respect of the said expenses, he may order such payment or contribution to be made, and the amount thereof shall be a simple contract debt from the council to the vestry or district board.

(8.) In the application of this section to Woolwich, the local board of health shall be deemed to be a district board, but the raising of any sums required for purchase money or compensation payable under this part of this Act shall be a purpose for which they may borrow under the Public Heath Acts, and the Public Health Acts shall apply accordingly.

"Private improvement expenses" (sub-s. (1)).—These sections are required for the purpose of obtaining from neighbouring owners the increased value of their houses caused by the taking down of an obstructive building ; they are extended to London as there are no equivalent provisions in the London Acts. (See s. 38 (8), *ante*, p. 58, and the notes thereto, p. 61.)

Borrowing powers (sub-s. (2)).—The borrowing powers are now extended to any purpose for which the local authority are authorised to borrow by the scheme or the order sanctioning it (Housing of the Working Classes Act, 1894, *post*). The borrowing powers in the county or city under Part I. will be found in s. 25 (2) and (3), *ante*, p. 36. The borrowing powers of vestries and district boards are regulated by the Metropolis Management Act, 1855, ss. 183—192. (See these set out and annotated in Woolrych's Metropolis Local Management Acts, 3rd ed., p. 117, and Hunt's London Local Government, p. 188.)

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NOTE.

County council may lend (sub-s. (3)).—Section 12 of the London County Council (Money) Act, 1896 (59 & 60 Vict. c. ccxiv.), provides that where under the authority of any Act the council lend any money to any corporation or public body, the exercise of whose powers of borrowing is subject to the consent of the Local Government Board, the sanction of that Board to the borrowing of such money shall in every such case be conclusive evidence that such corporation, etc., had, when such condition was granted, power to borrow such money. A like provision is contained in all recent London County Council Money Acts.

"Secretary of State" (sub-s. (4)).—That is the Secretary of State for the Home Department. The assent required is that mentioned in s. 38 (11), *ante*, p. 58, and the account is that mentioned in s. 44, *ante*, p. 74.

Scheme by county council (sub-s. (5)).—By s. 45, *ante*, p. 74, the county council may intervene to obtain a closing order or demolition of a building under ss. 32 and 38, *ante*, pp. 44 and 45, in cases where the local or district authority neglect to do so; but under that section there is no power to make and carry out a scheme under s. 39, *ante*, p. 62. This sub-section gives the London County Council that power, both when the local authority neglect to proceed, and also without any neglect or refusal on the part of the local or district authority. By s. 72, *post*, p. 101, if the scheme affects no more than ten houses, it must be referred to the local authority whose duty it is to deal with it under Part II.; but if they fail to do so the county council could then proceed under this sub-section. Similarly if the scheme is not of general importance to London and should be dealt with under Part II., then the local authority and not the county council should proceed under s. 73 (1) (b), *post*, p. 103; but there may be cases where the scheme is of general importance to the county of London and yet should be dealt with under Part II., then in such case the county council ought to proceed under Part II. pursuant to this sub-section. (See note to s. 39, *ante*, p. 66.)

As to the county fund, see Sched. I., *post*, p. 127.

"A contribution" (sub-s. (6)).—If the vestry or district board have neglected to perform their duties under the Act, and the council have intervened, then doubtless an order will be made by the Home Secretary ordering the district authority to pay the whole or part of the expenses. As this sub-section uses the expression "such expenses" it evidently refers to the expenses of a scheme under Part. II. as mentioned in sub-s. (5), and the vestry or district board cannot be called upon under this sub-section to contribute to expenses under Part I.

"County council may . . . contribute" (sub-s. (7)).—This relates to schemes under Part II. carried out by the vestry or district board, which schemes are of some general importance to the county of London. (See s. 73, *post*, p. 130.) Disputes have arisen as to whether the contribution by the county council should be a proportionate part of the gross or net expenses. In connection with a scheme by the Shoreditch Vestry, the Home Secretary sanctioned an agreement by which the council agreed to pay a lump sum equal to half the estimated net cost.

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NOTE.

"Woolwich" (sub-s.(8)).—The parish of Woolwich was constituted a district under the Public Health Act, 1848. Under this section and s. 45, it is to be deemed a district board, but the borrowing powers are not those mentioned in sub-s. (2) of this section, which are not applicable, but those referred to in this sub-section, which are the same as in s. 43, *ante*, p. 74, namely, ss. 233—243 of the Public Health Act, 1875. The power to borrow is extended by the Housing of the Working Classes Act, 1894, *post*. (See note to sub-s. (2), *supra*.)

Supplemental.

Provision as to superior landlord.

47.—(1.) Where an owner of any dwelling-house is not the person in receipt of the rents and profits thereof, he may give notice of such ownership to the local authority, and thereupon the local authority shall give such owner notice of any proceedings taken by them in pursuance of this part of this Act in relation to such dwelling-house.

(2.) If it appears to a court of summary jurisdiction on the application of any owner of the dwelling-house that default is being made in the execution of any works required to be executed on any dwelling-house in respect of which a closing order has been made (*a*), or in the demolition of any building or any dwelling-house (*b*) or in claiming to retain any site (*c*), in pursuance of this part of this Act, and that the interests of the applicant will be prejudiced by such default, and that it is just to make the order, the court may make an order empowering the applicant forthwith to enter on the dwelling-house, and within the time fixed by the order to execute the said works, or to demolish the building or to claim to retain the site, as the case may be, and where it seems to the court just so to do, the court may make a like order in favour of any other owner.

(3.) A court of summary jurisdiction may in any case by order enlarge the time allowed under any order for the execution of any works or the demolition of a building, or the time within which a claim may be made to retain the site of a building.

(*a*) Section 32, *ante*, p. 44.
(*b*) Section 33, *ante*, p. 48.
(*c*) Section 38 (5), *ante*, p. 55.

Sect. 47 (4).

(4.) Before an order is made under this section notice of the application shall be given to the local authority.

"Owner of any dwelling-house."—The term "owner" is defined by s. 29, *ante*, p. 40, and from that definition it follows that there may be several persons who may be owners. Thus, if the dwelling-house has been leased for a long term, of which more than twenty-one years is unexpired, the owner, who would in ordinary course be served in respect of a closing order, would be the lessee. Under this section, sub-s. (1), the reversioner may intervene to protect his interest in the subsequent proceedings. Then again, under s. 32, proceedings for a closing order may be served on an occupier, and if he neglects to abate the nuisance any owner may apply to a court of summary jurisdiction, under sub-s. (2), to execute the works, demolish the building, or to claim the site. If there are several owners the court may make the order in favour of any owner, and it will probably be made in favour of the owner of the first estate. The court, under sub-s. (3), may modify the previous orders by allowing the owner longer time to do the work, or give him longer time than the month allowed by s. 38 (5) to claim to retain the site.

"Court of summary jurisdiction."—The Interpretation Act, 1889, s. 13 (11), (52 & 53 Vict. c. 63), provides that "the expression 'court of summary jurisdiction' shall mean any justice or justices of the peace, or other magistrate by whatever name called, to whom jurisdiction is given by, or who is authorised to act under, the Summary Jurisdiction Acts whether in England, Wales, or Ireland, and whether acting under the Summary Jurisdiction Acts or any of them, or under any other Act, or by virtue of his commission or under the common law."

The application, it would appear, should be made in open court (s. 20, Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49)), and a summons will, in most cases, be necessary to be served on the person in default, notice must also be given to the local authority under sub-s. (4), *supra*, and it would seem advisable also to give a notice to owners of prior estates and interests.

Remedies of owner for breach of covenant, etc. not to be prejudiced.

48. Nothing in this part of this Act shall prejudice or interfere with the right or remedies of any owner for the breach, non-observance, or non-performance of any covenant or contract entered into by a tenant or lessee in reference to any dwelling-house in respect of which an order is made by a local authority under this part of this Act; and if any owner is obliged to take possession of any dwelling-house in order to comply with any such order, the taking possession shall not affect his right to avail himself of any such breach, non-observance, or non-performance that may have occurred prior to his so taking possession.

As it is the owner who is to be served under this part of this Act, this section is to prevent the tenant or lessee from escaping from the

liability entailed by the covenants into which he has entered. Entry on the part of a lessor usually determines the lease, but this section preserves all the lessor's rights, and he will be able, notwithstanding such entry, to sue in respect of breaches of covenants to keep in repair or otherwise. The same rights are preserved even if the freeholder or owner intervenes under the last section, or if the house is closed or demolished.

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NOTE.

Service of notices.

49.—(1.) Where the owner (*d*) of any dwelling-house (*d*) and his residence or place of business are known to the local authority, it shall be the duty of the clerk of the local authority, if the residence or place of business is within the district of such local authority, to serve any notice by this part of this Act required to be served on the owner, by giving it to him, or for him, to some inmate of his residence or place of business within the district; and in any other case it shall be the duty of the clerk of the local authority to serve the notice by post in a registered letter addressed to the owner at his residence or place of business.

(2.) Where the owner of the dwelling-house or his residence or place of business is not known to, and after diligent inquiry cannot be found by the local authority, then the clerk of the local authority may serve the notice by leaving it, addressed to the owner, with some occupier of the dwelling-house, or if there be not an occupier, then by causing it to be put up on some conspicuous part of the dwelling-house.

(3.) Notice served upon the agent of the owner shall be deemed notice to the owner.

Notices should be in writing and signed by the clerk (s. 86). It would appear to be enough if the clerk causes them to be served; it cannot be intended that the clerk should serve each personally.

Unless the contrary is proved the service will be deemed to have been effected at the time at which the letter would be delivered in the ordinary course of post. (Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 26.)

Description of owner in proceedings.

50. Where in any proceedings under this part of this Act it is necessary to refer to the owner of any dwelling-house, it shall be sufficient to designate him as the "owner" thereof without name or further description.

(*d*) See definition in s. 29, *ante*, p. 40.

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NOTE.

It is usual, and is advisable, to insert the name of the owner and his description when it is known, otherwise it may lead to considerable confusion, especially when there may be several persons who are "owners." (See s. 29, *ante*, p. 40.)

Penalty for preventing execution of Act.

51.—(1.) If any person being the occupier of any dwelling-house prevents the owner thereof, or being the owner or occupier of any dwelling-house prevents the medical officer of health, or the officers, agents, servants, or workmen of such owner or officer from carrying into effect with respect to the dwelling-house any of the provisions of this part of this Act, after notice of the intention so to do has been given to such person, any court of summary jurisdiction on proof thereof may order such person to permit to be done on such premises all things requisite for carrying into effect, with respect to such dwelling-house, the provisions of this part of this Act.

(2.) If at the expiration of ten days after the service of such order such person fails to comply therewith, he shall for every day during which the failure continues be liable on summary conviction to a fine not exceeding twenty pounds: Provided that if any such failure is by the occupier, the owner, unless assenting thereto, shall not be liable to such fine.

There is a provision under s. 32 (3) enabling the local authority to get rid of tenants when a closing order is made. Other cases of obstruction may be dealt with under this section or under the enactments relating to the public health. The section appears wide enough to apply to cases of refusal to allow the medical officer of health to inspect a house as to its fitness for habitation, or as to its being an obstructive building. Under sub-s. (1), as an order must be made, a complaint will be necessary, and the defendant should probably be summoned. As to fines, see also s. 90, *post*, p. 115. An information should in this case be laid and the defendant convicted. The proviso probably applies to a case where the owner has been ordered to do something, and he has not been able to do so by reason of the opposition of the occupier.

Report to local authority by county medical officer. 45 & 46 Vict. c. 50.

52. A representation from the medical officer of health of any county submitted to the county council and forwarded by that council to the local authority of any district in the county, not being a borough as defined by the Municipal Corporations Act, 1882, shall, for the purposes of this part

of this Act, have the like effect as a representation from the medical officer of health of the district. Sect. 52.

By s. 17 (1) of the Local Government Act, 1888, the council of any county may appoint one or more medical officers of health. By sub-s. (2) the county council and district council may arrange for such officer rendering his services regularly available in the district of the district council, and the medical officer shall have within such district all the powers and duties of a medical officer appointed by the district council, in which case the district council need not appoint a separate medical officer.

The section in the text does not appear to apply to such an arrangement, but to cases where the medical officer is simply the servant of the county council. A representation so forwarded will then amount to a representation of their own medical officer (see s. 32 (1), *ante*, p. 44, and s. 38 (1), *ante*, p. 55), and the district council ought to proceed accordingly, failing which, in London and in rural districts, the county council may intervene and do so under s. 45, *ante*, p. 74.

PART III.

This part of the Act consolidates and amends the Labouring Classes Lodging Houses Acts, namely, 14 & 15 Vict. c. 34 (Labouring Classes Lodging Houses Act, 1851); 29 & 30 Vict. c. 28 (Labouring Classes Dwelling Houses Act, 1866); 30 & 31 Vict. c. 28 (Labouring Classes Dwelling Houses Act, 1867). These Acts were amended by the Housing of the Working Classes Act, 1885 (48 & 49 Vict. c. 72).

This part of the Act requires to be adopted, and is not in force until adopted. (See s. 54.)

WORKING CLASS LODGING HOUSES.

Adoption of Part III.

Definition of lodging houses and cottage.

53.—(1.) The expression "lodging houses for the working classes" when used in this part of this Act shall include separate houses or cottages for the working classes, whether containing one or several tenements, and the purposes of this part of this Act shall include the provision of such houses and cottages.

(2.) The expression "cottage" in this part of this Act may include a garden of not more than half an acre, provided that the estimated annual value of such garden shall not exceed three pounds.

"**Lodging-houses.**"—This interpretation extends the ordinary meaning of lodging-house so as to include separate tenements, and does away with the somewhat difficult questions that arise as to

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NOTE.

whether persons are lodgers or tenants; as to which, see *Bradley* v. *Baylis*, 8 Q. B. D. 195. This part of the Act appears to contemplate the erection of buildings which may be let to persons as tenants or as lodgers, or which may be utilised as common lodging-houses. (See, for example, ss. 61 and 62.)

"**Cottage.**"—"Estimated annual value" is an unusual expression. Annual value means net annual value, that is, the rateable value (*Dobbs* v. *Grand Junction Waterworks Co.*, 9 App. Cas. 49), and probably the expression in the text means the same. The word estimate may have been added to imply that the rateable value of the garden, if there were no cottage, must not exceed 3*l*.

Adoption of this part of Act.

54. This part of this Act may be adopted in the several districts mentioned in the First Schedule to this Act by the local authorities in that behalf in that schedule mentioned: Provided that in the case of any rural sanitary district in England, the adoption shall be only after such certificate and such delay as herein-after mentioned.

This part of the Act may be adopted in the county of London by the county council, and in the city by the common council, but cannot be adopted by vestries or district boards. In urban districts it may be adopted by the borough or district council and in rural districts by the rural district council, subject to the consent and direction of the county council as set out in the next section.

There is no provision as to how this part may be adopted in London or in urban districts; the Act of 1851 contained provisions as to adoption, but these have not been included in this Act. Section 10 of the Public Health Act, 1875, gives urban authorities power to adopt the Labouring Classes Lodging Houses Acts, but contains no provisions for adopting. It is generally considered that a resolution passed by the local authority formally adopting this part of the Act will be sufficient.

Provisions in case of adoption by rural sanitary authority.

55.—(1.) A rural sanitary authority (*e*) in any district desiring to adopt this part of this Act may apply to the county council of the county in which the area herein-after mentioned is wholly or as to the larger part thereof in extent situate for the certificate required for such adoption, and shall specify in such application the area in which they consider that accommodation is necessary for the housing of the working classes, and thereupon the county council shall direct a local inquiry to be held by a member of the council or any officer or person appointed by the council for the

(*e*) Now a rural district council.

Sect. 55 (1).

purpose, and if after such local inquiry the person holding the inquiry certifies that accommodation is necessary in such area for the housing of the working classes, and that there is no probability that such accommodation will be provided without the execution of this part of this Act, and that having regard to the liability which will be incurred by the rates, it is under all the circumstances prudent for the said authority to undertake the provision of the said accommodation under the powers of this part of this Act, the county council may if they think fit publish that certificate in one or more local newspapers circulating in the district, and thereupon the sanitary authority may adopt this part of this Act: Provided that—

(a) unless the county council state in publishing such certificate that, by reason of the date of the next ordinary election of members of such authority or otherwise, an emergency renders it necessary to adopt this part of this Act immediately, such adoption in pursuance of the certificate shall not take place before the ordinary election of members of such authority which is held next after the date of the local inquiry; and

(b) after the end of twelve months from the date of the certificate, this part of this Act shall not be adopted without a fresh certificate; and

(c) no land shall be acquired, nor buildings erected under this part of this Act outside of the area mentioned in the certificate except after a fresh application, inquiry, and certificate.

(2.) Where the rural sanitary authority think it just that the burden of the expenses of the execution of this part of this Act should be borne by some contributory place or places only in their district, instead of by the whole of their district, the authority may in their application to the county council request permission to limit the burden of such expenses to such contributory place or places, and thereupon the justice of such limitation shall be inquired into at the local inquiry, and the county council, if satisfied after the local inquiry that the circumstances of the contributory

Sect. 55 (2).

place or places and of the rest of the district render such limitation just, may make an order to that effect, and thereupon the expenses of the execution of this part of this Act in the area mentioned in the order shall be borne by the contributory place or places named in the order instead of by the whole district. The provisions of this enactment with respect to the burden of the expenses shall apply upon every application for a fresh certificate.

(3.) Any expenses incurred by a county council in holding a local inquiry under this part of this Act shall be a simple contract debt to the council from the rural sanitary authority, and shall be defrayed as part of the expenses of such authority in the execution of this part of this Act (*f*).

Certificate for adoption.—Under the earlier Act the inquiry was carried out by the Local Government Board; but this Act transfers the duty to the county council.

It should be noticed that the granting of the certificate does not amount in itself to an adoption of the Act. The certificate is only a condition precedent to such adoption, or rather it is the publication of the certificate by the county council in one or more local newspapers that gives the rural district council power to adopt. After this publication the rural authority may adopt or not as they please. If the lodging-houses are required immediately this should be stated in the application to the county council, and if the council are of that opinion they may so state in the publication of the certificate, giving the reasons mentioned in sub-s. (1) (a). This statement is apparently to be in the publication and not necessarily in the certificate. Failing this statement the adoption is postponed until after the next election of the district council. (See note, *infra*.) The adoption may take place, it would appear, by the district council passing a resolution formally adopting this part of the Act.

"**The ordinary election.**"—If the publication of the certificate does not state that it may be adopted at once, then its adoption must be postponed until the next election of district councillors has taken place. Prior to the Local Government Act, 1894, the guardians were the rural sanitary authority and were, with certain exceptions, elected annually. The rural sanitary authority is now the rural district council. By ss. 20 (6) and 24 (4) of that Act, the term of office of a rural district councillor shall be three years, and one third of the council shall go out of office on April 15th, and their places shall be filled by the newly elected members, but the county council, on the application of the district council, may provide that all the members shall retire together on April 15th in every third year.

(*f*) See s. 65, *post*, p. 96.

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NOTE.

"A fresh certificate."—The certificate is operative only for twelve months from the date of the certificate, not of its publication. Therefore the adoption must not be unduly delayed, otherwise a new certificate must be obtained and the same proceedings will be necessary.

Acquiring land, etc.—These powers are contained in the next four sections.

"Contributory place or places."—By s. 93, *post*, "contributory place" is defined as having the same meaning as in the Public Health Act, 1875. By s. 229 of that Act, it is provided that the following areas in a rural district shall be contributory places:

(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.

Special drainage districts may now be formed under s. 277 of the same Act.

The expenses, whether payable by one or more contributory places or by the whole district, are special expenses, unless it is declared at the time of publishing the certificate that they are to be general expenses. (See s. 65, *post*, p. 96.) The incidence of these expenses should therefore be considered before application is made for a certificate, but the order would appear to be independent of the certificate.

Execution of Part III., by Local Authority.

Powers of local authority.

56. Where this part of this Act has been adopted in any district (*g*), the local authority shall have power to carry it into execution (subject to the provisions of this part of this Act with respect to rural sanitary authorities) (*h*), and for that purpose may exercise the same powers whether of contract or otherwise as in the execution of their duties in the case of the London county council under the Metropolis Management Act, 1855, and the Acts amending the same, or in the case of sanitary authorities under the Public

18 & 19 Vict. c. 120.

(*g*) As to adoption, see s. 54, *ante*, p. 86.
(*h*) See s. 55, *ante*, p. 86.

Sect. 56.

Health Acts, or in the case of the Commissioners of Sewers under the Acts conferring powers on such Commissioners.

38 & 39 Vict. c. 55.

"**London County Council.**"—Section 149 of the Metropolis Management Act, 1855, enables the county council to enter into all such contracts as they may think necessary for carrying this Act into execution. Contracts over 10*l.* must be in writing and sealed. Sections 150—156 of the same Act enable the county council to acquire land for the purposes of that Act, but it would appear that these provisions are not applicable to this Act, notwithstanding the provision in the text that the county council are to have "the same powers of contract or otherwise" as they have under the Metropolis Management Act, 1855, for there are express provisions in the next section as to the acquisition of land.

"**Sanitary authorities.**"—The powers of contracting of sanitary authorities are contained in ss. 173 and 174 of the Public Health Act, 1875. A rural district council must contract in writing under seal in all cases, except where it would lead to great inconvenience, as for example, where the matter is too insignificant to be worth the trouble of affixing the seal. Urban district councils may contract verbally or in writing without the seal in contracts under 50*l.* For contracts above that sum the conditions of s. 174 must be followed so far as the same are applicable. (See these sections fully noted in Lumley's Public Health Acts, 5th ed., p. 238.)

City of London.—For the Commissioners of Sewers read now the Common Council of the city of London (60 & 61 Vict. c. cxxxiii.) and see note to Schedule I., *post*, p. 127. Their powers of contracting were given by the City of London Sewers Act, 1848 (11 & 12 Vict. c. clxii.), and these powers are now transferred to the Common Council.

Acquisition of land.

57.—(1.) Land for the purposes of this part of this Act may be acquired by a local authority in like manner as if those purposes were purposes of the Public Health Act, 1875, and sections one hundred and seventy-five to one hundred and seventy-eight, both inclusive, of that Act (relating to the purchase of lands), shall apply accordingly, and shall for the purposes of this part of this Act extend to London in like manner as if the Commissioners of Sewers (*i*) and London County Council respectively were a local authority in the said sections mentioned, and a Secretary of State were substituted for the Local Government Board.

38 & 39 Vict. c. 55.

(2.) The local authority may, if they think fit, contract for the purchase or lease of any lodging houses for the

(*i*) The Common Council.

working classes already, or hereafter to be built and provided. Sect. 57 (2).

(3.) The local authority may, if not a rural sanitary authority with the consent of the Local Government Board, and if a rural sanitary authority with the consent of the county council of the county in which the land is situate, appropriate, for the purposes of this part of this Act, any lodging houses so purchased or taken on lease, and any other land which may be for the time being vested in them, or at their disposal.

Acquisition of land.—According to this section land is to be acquired for the purposes of this Act in the same way as if the land was wanted for purposes of the Public Health Act, 1875, and this is so whether the land is in London or not. It is provided that ss. 175—178 of that Act shall apply and be extended to London. Section 175 gives the local authority power to purchase, take on lease, sell or exchange any land. The power to sell and exchange does not appear to be included, as these sections are only made applicable to the acquisition of land, but further provision as to sale and exchange are contained in s. 60, *post*, p. 93. Section 177 gives the local authority power to let lands, and s. 178 makes power as to lands belonging to the Duchy of Lancaster.

Section 176 of the Public Health Act incorporates the Lands Clauses Acts with the exception of ss. 127, 150 and 151 of the Act of 1845; but before putting into force the compulsory powers a provisional order must be obtained. In London application for such order is to be made to the Secretary of State, and elsewhere in England and Wales to the Local Government Board. Before such application is made certain advertisements must be published, and certain notices served. After the application a local inquiry must be held, after which the Secretary of State or Local Government Board may make a provisional order empowering the local authority to take the land mentioned therein.

There is no provision in s. 176, nor in the other sections mentioned in the text, for the confirmation of this provisional order. Section 297 of the Public Health Act, 1875, contains such provisions, and enacts that any provisional order authorised to be made by the Local Government Board under that Act shall be of no force whatever unless and until it is confirmed by Parliament. A question then arises as to whether that section is applicable, and, although it is perhaps straining the words of the section, the writer inclines to the opinion that it does so apply, and that such provisional order must be confirmed. It is contrary to the whole practice of our legislation to allow land to be taken compulsorily when the owner is in no way in default without the authority first having obtained the sanction of Parliament. A few exceptions to this practice are to be found in the Defence Acts and in the Light Railways Act, 1896. In the latter other safeguards have been provided, and in the former the needs of the country may not admit of delay. Even under s. 39 of

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this Act, where the owner may to some extent be in default, he can, if he so desire, have the order brought before Parliament and be heard before the committees of both Houses.

NOTE.

It may be noted, however, that in s. 85, *post*, that while ss. 296 and 298 of the Public Health Act, 1875, are applied to this Act that s. 297 is omitted, but on the other hand it would not be applicable to Parts I. and II. of this Act.

There is also another omission in this section of the Housing of the Working Classes Act, namely, an omission to provide as to what is to be "the special Act," and who are to be "the promoters of the undertaking" in interpreting the Lands Clauses Acts. Such a provision is so universal that it would appear that the draftsman omitted it because there was already such a provision in s. 316 of the Public Health Act, 1875. By that section 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 local authority are the promoters of the undertaking.

It is of importance to note that the Lands Clauses Acts are incorporated whether the land is to be taken compulsorily or not. It follows that the local authority have therefore the powers given by them, and are subject to the liabilities imposed.

Thus, where land was purchased by agreement under this part of the Act, it was held that the local authority must make good the deficiency of the land tax and poor's rate during the execution of the work under s. 133 of the Lands Clauses Consolidation Act, 1845. (*Vestry of St. Leonards, Shoreditch* v. *London County Council*, 72 L. T. 802; 59 J. P. 423.)

Section 92 of the same Act which prevents part only of a house or building being taken if the owner desire that the whole shall be purchased, and s. 123 which requires the compulsory powers to be exercised within three years, will both be applicable. On the other hand the limited owners may sell to the local authority under ss. 6—15, without the necessity of a provisional order.

For the above provisions of the Public Health Acts, 1875, and the cases thereon, see Lumley's Public Health Acts, 1875, 5th ed., pp. 244—250, and for the Lands Clauses Acts, and cases thereon, see Browne and Allan's Law of Compensation.

Purchase and lease of lodging houses.—The compulsory powers given in the previous section do not, it is presumed, extend to the purchase of lodging houses under sub-s. (2). This sub-section is the complement of the next section enabling trustees to sell.

Appropriate land.—There is a like proviso in s. 23 of Part I. of this Act, *ante*, p. 35. As to the appropriation of land belonging to a municipal corporation for this purpose, see s. 111 of the Municipal Corporations Act, 1882, *post*.

Land acquired under this part of the Act may be used for providing accommodation for persons of the working classes displaced under Part I., and the provision of accommodation under this part will be a compliance with s. 11, *ante*, p. 16.

Local authority may

58. The trustees of any lodging houses for the working classes for the time being provided in any district by private

subscriptions or otherwise, may, with the consent of a majority of the committee or other persons by whom they were appointed trustees, sell or lease the lodging houses to the local authority of the district, or make over to them the management thereof. purchase existing lodging houses.

Sub-s. 2 of the previous section enables the local authority to purchase or lease such houses. As to management, see s. 61. It is doubtful if the power to furnish and fit up lodging houses given by s. 59, extends to those mentioned in this section.

59. The local authority may, on any land acquired or appropriated by them (*k*), erect any buildings suitable for lodging houses for the working classes, and convert any buildings into lodging houses for the working classes, and may alter, enlarge, repair, and improve the same respectively, and fit up, furnish, and supply the same respectively with all requisite furniture, fittings, and conveniences. Erection of lodging houses.

This section enables the local authority both to build the lodging houses and, if necessary, to furnish them and make them in every way ready for use.

60. A local authority may, if not a rural sanitary authority with the consent of the Local Government Board, and if a rural sanitary authority with the consent of the county council of the county in which the land is situate, sell any land vested in them for the purposes of this part of this Act, and apply the proceeds in or towards the purchase of other land better adapted for those purposes, and may in like manner and with the like consent exchange any land so vested in them for land better adapted to the purposes of this part of this Act, either with or without paying or receiving any money for equality of exchange. Sale and exchange of lands.

The consent of the Local Government Board is apparently necessary for such a sale or exchange in London, although by s. 57 the provisional order for purchasing the land is made by the Secretary of State. It may be noticed that s. 175 of the Public Health Act, 1875, which applies to the acquisition of land under s. 57, *ante*, p. 90, also contains a power of sale or exchange, but that power is probably not applicable to this Act.

(*k*) That is acquired or appropriated by them for the purpose under s. 57, *ante*.

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Management of Lodging Houses.

Management to be vested in local authority.

61.—(1.) The general management, regulation, and control of the lodging houses established or acquired by a local authority under this part of this Act shall be vested in and exercised by the local authority.

(2.) The local authority may make such reasonable charges for the tenancy or occupation of the lodging houses provided under this part of this Act as they may determine by regulations.

Lodging houses, the management of which is made over to the local authority by trustees under s. 58, would appear to come within this section.

These lodging houses may either be let as lodgings in the ordinary meaning of the term, or they may be let as tenements. (See note to s. 53, *ante*, p. 85.) The power to repair and to furnish these lodging houses is given to the local authority by s. 59, *ante*, p. 93.

Regulations are not byelaws. As to byelaws, see next section. Regulations apparently require no confirmation, and may be published and altered according to the discretion of the local authority.

Byelaws for regulation of lodging houses.

62.—(1.) The local authority may make byelaws for the management, use, and regulation of the lodging houses, and it shall be obligatory on the local authority, except in the case of a lodging house which is occupied as a separate dwelling, by such byelaws to make sufficient provision for the several purposes expressed in the Sixth Schedule to this Act.

(2.) A printed copy or sufficient abstract of the bye-laws relating to the management, use, and regulation of the lodging houses shall be put up and at all times kept in every room therein.

Byelaws are made in London according to the provisions of the Metropolis Management Act, 1855, and elsewhere in England under those of the Public Health Act, 1875. (See s. 84, *post*, p. 111.) In London they must be approved by a Secretary of State, and elsewhere they must be confirmed by the Local Government Board They must be placed in every room, not merely in each separate tenement. The local authority need not make any such byelaws except in case of lodging houses not occupied as separate dwellings, but in houses not so occupied they must make byelaws for the purposes set out in Sched. VI., *post*. It is not quite clear as to what are separate dwellings. (See *Carlisle Café Co.* v. *Muse*, 67 L. J. Ch. 53 ; 77 L. T. 515.) From the nature of the purposes

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set out in the schedule, it would appear that common lodging houses and houses of that or a similar class, are the houses for which the byelaws are intended; thus a house, where the lodgers had separate rooms in which to sleep but took their meals in common, could not be regarded as a separate dwelling.

The lodging houses referred to in this section are evidently the houses established or acquired by a local authority, and the byelaws here mentioned do not apply or extend to dwelling houses erected for workmen by companies under ss. 67 and 68, *post*, p. 97 and 100.

No model byelaws have been issued by the Local Government Board or the Home Office, either under this section or under Sched. VI., and in London it seems to be the practice to register these houses as common lodging houses, as the byelaws relating to these carry out the provisions of the schedule.

Disqualification of tenants of lodging houses on receiving parochial relief.

63. Any person who, or whose wife or husband, at any time while such person is a tenant or occupier of any such lodging house, or any part of such a lodging house, receives any relief under the Acts relating to the relief of the poor other than relief granted on account only of accident or temporary illness, shall thereupon be disqualified for continuing to be such a tenant or occupier.

It appears to be the object of this section to keep these houses for *bonâ fide* members of the working classes. The general intention of this part of the Act is to supply at the expense of the rates, suitable houses and accommodation for workmen who, by the exigencies of their occupation, are required to live within certain areas.

The practical working of this section is not quite clear. The receipt of relief would appear *ipso facto* to determine the tenancy or occupation, and it would follow that the local authority should thereupon eject any tenant or lodger receiving such relief; but there seems to be no reason why such person should not be again admitted as a tenant or occupier after he has ceased to receive the relief, as such disqualification cannot be meant to continue permanently. Relief to a child under sixteen is by 4 & 5 Will. 4, c. 76, s. 56, relief to the father, but it is doubtful if this section does not exclude that provision, as by the same Act relief to the wife is relief to the husband, and that case is provided for in the text.

When lodging houses are considered too expensive they may be sold.

64. Whenever any lodging houses established for seven years or upwards under the authority of this part of this Act are determined by the local authority to be unnecessary or too expensive to be kept up, the local authority may, if not a rural sanitary authority with the consent of the Local Government Board, and if a rural sanitary authority with the consent of the county council of the county in which the lodging houses are situate, sell the same for the

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best price that can reasonably be obtained for the same, and the local authority shall convey the same accordingly.

It would appear from this section that a local authority must keep the lodging houses they have established for seven years, although they may become unnecessary in the interval. It would, therefore, follow that if lodging houses are required for a shorter period in any district, as, for example, during the execution of some work, that such houses ought not to be erected by the local authority.

Expenses and Borrowing of Local Authorities.

Payment of expenses.

65. All expenses incurred by a local authority in the execution of this part of this Act shall be defrayed—

(i.) in the case of an authority in the administrative county of London, out of the Dwelling House Improvement Fund under Part I. of this Act;

(ii.) in the case of an urban sanitary authority, as part of the general expenses of their execution of the Public Health Acts; and

(iii.) in the case of a rural sanitary authority, as special expenses incurred in the execution of the Public Health Acts, and, save where the burden of such expenses is by order of the county council who published the certificate to be borne by one contributory place only, shall be deemed to be incurred for the common benefit of all the contributory places liable to bear such expenses.

Provided that if on the application of the rural sanitary authority it is so declared at the time of the publication of the certificate by the county council who published the same, then the said expenses of the rural sanitary authority shall be defrayed as general expenses of the said authority in the execution of the Public Health Acts, and if such expenses are not to be borne by the whole of the district, shall be paid out of a common fund to be raised in manner provided by the Public Health Act, 1875, but as if the contributory places which are to bear those expenses constituted the whole of the district.

London.—"Administrative county" means both the county and the city (see s. 93, *post*, p. 116). As to the fund referred to, see s. 24, *ante*, p. 35.

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"**Urban sanitary authority.**"—The expenses are payable as general expenses, as to which see ss. 207 and 208 of the Public Health Act, 1875. These are payable out of the local rate as defined in Sched. I. of this Act, *post*, p. 127, and that rate is either a borough rate or a general district rate. It may also be a rate levied under a local Act, as to which see the note which forms part of Sched. I.

Rural sanitary authorities.—These are now rural district councils. As to the county council publishing the certificate, see s. 55, *ante*, p. 86, and as to what is a contributory place, see note to that section. The county council may by s. 55 (2) declare that the expense shall be borne by one or more contributory places instead of by the whole district. By s. 229 of the Public Health Act, 1875, the expenses of a rural district council are divided into general and special expenses. General expenses are payable out of a common fund raised out of the poor rate of the parishes; special expenses are a separate charge on each contributory place. General expenses are assessed on lands and buildings equally; but special expenses are levied by a separate rate, and for that rate, tithes, lands used as arable meadows and pasture ground only or as woodlands, market gardens or nursery grounds, land covered with water or used as a canal, towing path for the same, or as a public railway, are assessed in respect of one-fourth only of their rateable value (s. 230 of the Public Health Act, 1875).

The effect of this section is that the expenses of executing this part of this Act are to be assessed as special expenses in every case, unless the order directs they are to be general expenses, in which case, even if payable by one contributory place, they will be raised out of the poor rate as a general expense.

Borrowing for purposes of Part III.

66. The London County Council and the Commissioners of Sewers may borrow for the purpose of the execution of this part of this Act, in like manner and subject to the like conditions as they may borrow for the purposes of Part. I. of this Act, and a sanitary authority may borrow for the purpose of the excution of this part of this Act in like manner and subject to the like conditions as for the purpose of defraying the above-mentioned general or special expenses.

For Commissioners of Sewers read now the Common Council. As to the powers of borrowing of the London County Council and the Common Council of the city under Part I., see s. 25, *ante*, p. 38.

District councils may borrow according to ss. 233—243 of the Public Health Act, 1875. (See note to s. 25.)

Loans to and Powers of Companies, Societies, and Individuals.

Loans by Public Works Commissioners.

67.—(1.) In addition to the powers conferred upon them by any other enactment, the Public Works Loan Commissioners may, out of the funds at their disposal, advance

Sect. 67 (1). on loan to any such body or proprietor as herein-after mentioned; namely—

(a.) any railway company or dock or harbour company, or any other company, society, or association established for the purpose of constructing or improving, or of facilitating or encouraging the construction or improvement of dwellings for the working classes, or for trading or manufacturing purposes (in the course of whose business, or in the discharge of whose duties persons of the working classes are employed);

(b.) any private person entitled to any land for an estate in fee simple, or for any term of years absolute, whereof not less than fifty years shall for the time being remain unexpired;

and any such body or proprietor may borrow from the Public Work Loan Commissioners such money as may be required for the purpose of constructing or improving, or of facilitating or encouraging the construction or improvement of dwellings for the working classes.

38 & 39 Vict. c. 89.

(2.) Such loans shall be made in manner provided by the Public Works Loans Act, 1875, subject to the following provisions:—

(a.) Any such advance may be made whether the body or proprietor receiving the same has or has not power to borrow on mortgage or otherwise, independently of this Act; but nothing in this Act shall repeal or alter any regulation, statutory or otherwise, whereby any company may be restricted from borrowing until a definite portion of capital is subscribed for, taken, or paid up.

(b.) The period for the repayment of the sums advanced shall not exceed forty years.

(c.) No money shall be advanced on mortgage of any land or dwellings solely, unless the estate therein proposed to be mortgaged shall be either an estate in fee simple, or an estate for a term of years absolute, whereof not less than fifty years shall be unexpired at the date of the advance.

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(d.) The money advanced on the security of a mortgage of any land or dwellings solely shall not exceed one moiety of the value, to be ascertained to the satisfaction of the Public Works Loan Commissioners, of the estate or interest in such land or dwellings proposed to be mortgaged; but advances may be made by instalments from time to time as the building of the dwellings on the land mortgaged progresses, so that the total advance do not at any time exceed the amount aforesaid; and a mortgage may be accordingly made to secure such advances so to be made from time to time.

(3.) For the purpose of constructing or improving or facilitating or encouraging the construction or improvement of dwellings for the working classes, every such body as aforesaid is hereby authorised to purchase, take, and hold land, and if not already a body corporate shall, for the purpose of holding such land under this part of this Act, and of suing and being sued in respect thereof, be nevertheless deemed a body corporate with perpetual succession.

As to the rate of interest on the loan, see s. 83, *post*, p. 111.

The Public Works Loans Act, 1875, and the regulations made pursuant thereto, will be found in Lumley's Public Health Acts, 5th ed., pp. 1028—1043.

"**A body corporate.**"—An unincorporated association or society is, by sub-s. (3), to become incorporated for the purpose of holding land, and of suing and being sued in respect of that land. For all other purposes it will not be a corporate body, and it will apparently have no common seal. Contracts to purchase land need not, therefore, be under seal. The provision is probably intended to do away with the necessity of conveying land to trustees to hold for the society, and the troubles incident to the fact that the trustees may frequently be changed, and new conveyances required, and that they would become liable on the covenants, and require indemnity from the other members. Any body, whether fully incorporated or not, is allowed to hold land for the purposes of providing dwelling-houses for the working classes. But for this enactment, a corporate body might have been prevented from holding land by the Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42). If the land is conveyed for charitable uses it would require to conform to Part II. of the last-mentioned Act; but in populous places such assurances, if the charitable use is for housing the working classes, need not, in certain cases, so conform. (See the Working Classes Dwellings Act, 1890 (53 & 54 Vict. c. 16), *post*.)

This section and the next seem somewhat out of place in this part of the Act. They enable certain trading companies to erect houses

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for their workmen, although there may be no such power in the Acts incorporating them or in the memorandum of association, and, further, they may borrow money for such purpose from the Public Works Loan Commissioners, who may also lend to private trading companies and to associations established to provide dwelling-houses for workmen. The powers given by these sections appear to be quite independent of the provisions as to adopting this part of the Act (ss. 53—55, *ante*, p. 85), and it will be noticed that the expression "lodging houses," with which this part of the Act is supposed to deal, is not used in these sections, but instead the expression "dwelling-house" is used. These provisions are adapted from "The Labouring Classes Dwelling Houses Act, 1866," which was, however, to be read and construed together with the Labouring Classes Lodging Houses Act, 1851. It does not appear that the provisions as to the management in ss. 61—64, *ante*, p. 91, have any application to houses erected under these sections, but probably the provisions of ss. 69 and 70 do apply. The provisions of this section do not appear to be limited to the lending of money for erecting houses only, they seem to authorise a loan to purchase land for such erection.

Powers to companies.

68. Any railway company, or dock or harbour company or any other company, society, or association, established for trading or manufacturing purposes in the course of whose business or in the discharge of whose duties persons of the working class are employed, may and are hereby (notwithstanding any Act of Parliament, or charter, or any rule of law or equity to the contrary) authorised at any time to erect, either on their own land or on any other land (which they are hereby authorised to purchase and hold for the purpose, and to pay for out of any funds at their disposal), dwellings for the accommodation of all or any of the persons of the working class employed by them.

See note to previous section.

Cottages built by a railway company for their servants must conform to the bye-laws of the local authority under s. 157 of the Public Health Act, 1875. The proviso to that section that such provisions shall not apply to buildings belonging to any railway company, and used for the purposes of such railway, does not exempt such cottages as they are not "used for the purposes of the railway" (*Manchester, Sheffield, and Lincolnshire Rail. Co.* v. *Barnsley Union*, 56 J. P. 149).

In the London Building Act, 1894, there are special provisions relating to houses of the working classes. (See s. 13 (5), and *London County Council* v. *Davis* (1898), 62 J. P. 68.)

Power to water and and gas companies to

69. Any commissioners of waterworks, trustees of waterworks, water companies, gas companies, and other corporations, bodies, and persons having the management of any

waterworks, reservoirs, wells, springs, or streams of water, and gasworks respectively, may, in their discretion, grant and furnish supplies of water or gas for lodging-houses provided under this part of this Act, either without charge or on such other favourable terms as they think fit.

supply water and gas to lodging houses.

The lodging-houses here mentioned evidently include dwelling-houses erected under the two previous sections by companies and associations, or individuals. (See definition in s. 53, *ante*, p. 85.) Local authorities who supply gas and water in their districts, may also, under this section, supply their own lodging-houses with gas and water gratuitously or on special terms.

70. A lodging-house established in any district under this part of this Act, shall be at all times open to the inspection of the local authority of that district or of any officer from time to time authorised by such authority.

Inspection of lodging-houses.

As to the penalty for obstructing an officer of the local authority authorised to inspect such lodging-houses, see s. 89, *post*, p. 114. This provision, apparently, extends to dwelling-houses erected pursuant to ss. 67 and 68, *ante*, p. 97.

71. Any fine for the breach of any byelaw under this part of this Act shall be paid to the credit of the funds out of which the expenses of this part of this Act are defrayed.

Application of penalties.

As to the funds referred to in this section, see s. 65, *ante*, p. 96. As to byelaws under this part of this Act, see s. 62. Fines other than those recovered for the breach of any byelaw are unappropriated, and are dealt with as directed by s. 31 of the Summary Jurisdiction Act, 1848. (See note to s. 90, *post*, p. 115.)

PART IV.

SUPPLEMENTAL.

72. Where an official representation made to the London county council in pursuance of Part I. of this Act relates to not more than ten houses, the London county council shall not take any proceedings on such representation, but shall direct the medical officer of health making the same to represent the case to the local authority under Part II. of this Act, and it shall be the duty of the local authority to deal with such case in manner provided by that part of this Act.

Limit of area to be dealt with on official representation.

This and the next section relate exclusively to the county of London, exclusive of the city. The representation referred to is

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that of a medical officer of health under ss. 4, 5, *ante*, pp. 2 and 5, or under s. 16, *ante*, p. 24; it may be made either by an officer of the vestry or district board, or by one of the medical officers appointed by the county council under s. 76, *post*, p. 107.

The county council may contribute towards the scheme under s. 46 (7), *ante*, p. 79.

Provisions as to parts of Act under which reports are to be dealt with in county of London.

73.—(1.) In either of the following cases:

(a.) Where a medical officer of health has represented to any local authority in the county of London under Part II. of this Act that any dwelling-houses are in a condition so dangerous or injurious to health, as to be unfit for human habitation, or that the pulling down of any obstructive buildings would be expedient, and such authority resolve that the case of such dwelling-houses or buildings is of such general importance to the county of London that it should be dealt with by a scheme under Part I. of this Act; or

(b.) Where an official representation as mentioned in Part I. of this Act has been made to the London county council in relation to any houses, courts, or alleys within a certain area; and that council resolve that the case of such houses, courts, or alleys is not of general importance to the county of London and should be dealt with under Part II. of this Act;

such local authority or council may submit such resolution to a Secretary of State, and thereupon the Secretary of State may appoint an arbitrator, and direct him to hold a local inquiry, and such arbitrator shall hold such inquiry, and report to the Secretary of State as to whether, having regard to the size of the area, to the number of houses to be dealt with, to the position, structure, and sanitary condition of such houses, and of the neighbourhood thereof, and to the provisions of Part I. of this Act, the case is either wholly or partially of any and what importance to the county of London, with power to such arbitrator to report that in the event of the case being dealt with under Part II. of this

Act, the London county council ought to make a contribution in respect of the expense of dealing with the case. Sect. 73 (1).

(2.) The Secretary of State, after considering the report of the arbitrator, may, according as to him seems just, decide that the case shall be dealt with either under Part II. of this Act, or under Part I. of this Act, and the medical officer of health or other proper officer shall forthwith make the representation necessary for proceedings in accordance with such decision.

This section provides a means of settling disputes between the district board or vestry and the county council, as to which body is to carry out a new scheme under this Act; such disputes arise by reason of the fact that a scheme under Part II. carried out by a district board or vestry will be done at the expense of the local rate, whereas if the scheme is carried out under Part I. by the county council, the expense will be payable out of the county fund (see Sched. I., *post*, p. 127). The provisions for contribution towards the expenses of such schemes, contained in s. 46 (6), (7), will probably enable these public bodies to come to an agreement without having recourse to the Home Secretary under this section.

Sub-s. (1) (a) refers more particularly to s. 39, *ante*, p. 62, and see note, p. 66; and paragraph (b) refers to a representation made under s. 5, *ante*, p. 5; and modifies s. 4, *ante*, p. 2. It should be noticed that this sub-section does not exhaust all the possible cases. Thus, the vestry or district board might decide that the scheme for various reasons should be dealt with under Part I., although it is not of general importance to the county. In such a case the proper course would appear to be to direct their medical officer of health to make the representation to the county council, under s. 5. Again, paragraph (b) requires the council to resolve two matters, (1) that the scheme is not of general importance to the county, and (2) that the scheme should be dealt with under Part II. If it is resolved that it is of general importance but that it should be dealt with under Part II., then this section is inapplicable; but the county council may proceed under Part II. pursuant to s. 46 (5), *ante*, p. 78, obtaining contribution in proper cases from the vestry or district board. (Section 46 (6).)

The local inquiry will be held pursuant to s. 85, *post*, p. 112. If the Home Secretary order a contribution under this section, the amount is, probably, a simple contract debt under s. 46 (7), *ante*, p. 79.

According as the Home Secretary decides, the medical officer will make a representation under s. 5 or s. 30.

74.—(1.) The Settled Land Act, 1882, shall be amended as follows:— Amendment of 45 & 46 Vict. c. 38, as regards erection of

(a.) Any sale, exchange, or lease of land in pursuance of the said Act, when made for the purpose of the

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buildings for working classes.

erection on such land of dwellings for the working classes, may be made at such price, or for such consideration, or for such rent, as having regard to the said purpose, and to all the circumstances of the case, is the best that can be reasonably obtained, notwithstanding that a higher price, consideration, or rent might have been obtained if the land were sold, exchanged, or leased for another purpose.

(b.) The improvements on which capital money may be expended, enumerated in section twenty-five of the said Act, and referred to in section thirty of the said Act, shall, in addition to cottages for labourers, farm servants, and artizans whether employed on the settled land or not, include any dwellings available for the working classes, the building of which in the opinion of the Court is not injurious to the estate.

(2.) Any body corporate holding land may sell, exchange, or lease the land for the purpose of the erection of dwellings for the working classes at such price, or for such consideration, or for such rent as having regard to the said purpose and to all the circumstances of the case is the best that can reasonably be obtained, notwithstanding that a higher price, consideration, or rent might have been obtained if the land were sold, exchanged, or leased for another purpose.

Sale of settled land.—Sub-s. (1) (a) is an amendment of ss. 4 and 7 of the Settled Land Act, 1882. Section 4 (1), (2) of that Act provides that every sale by a tenant for life shall be for the best price that can be reasonably obtained, and every exchange for the best consideration in land, or land and money, that can reasonably be obtained. Section 7 (2) provides that the lease shall reserve the best rent that can reasonably be obtained. This sub-section amends these by providing that if the land is sold, exchanged, or leased for the purpose of erecting dwelling-houses for the working classes, that it will be a compliance with the Settled Land Act if the best price, consideration, or rent obtainable for the land for these purposes is paid, although a better price, consideration, or rent might have been obtained if the land had been devoted to other purposes.

The above provision was contained in s. 11 of the Housing of the Working Classes Act, 1885, and the Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 18, enacts that:

"The provisions of section eleven of the Housing of the Working

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Classes Act, 1885, and of any enactment which may be substituted therefor, shall have effect as if the expression 'working classes' included all classes of persons who earn their livelihood by wages or salaries: Provided that this section shall apply only to buildings of a rateable value not exceeding one hundred pounds per annum."

"**Improvements.**"—Section 21 of the Settled Land Act provides that capital money arising under that Act may be applied in payment for any improvement authorised by that Act. Section 25 authorises the erection of "cottages for labourers, farm servants, and artizans employed on the settled land or not." Section 30 extends s. 9 of the Improvement of Land Act, 1864 (27 & 28 Vict. c. 114), so as to include the improvements mentioned in s. 25. This section extends the list of improvements so as to include any dwellings available for the working classes, but apparently an order of court must be obtained, and the court must be satisfied that the building of such dwellings is not injurious to the estate.

If the tenant for life desires to carry out a large scheme of improvement, he can do this in conjunction with the local authority pursuant to Part I. of the Housing of the Working Classes Act, 1890. (See s. 6 (3), *ante*, p. 7, and s. 12 (6), *ante*, p. 20, and this section.) The approval of the court will usually be necessary.

By s. 27 of the Settled Land Act, 1882, the tenant for life may join or concur with any other person interested in executing any improvement authorised by that Act or in contributing to the cost thereof.

"**Body corporate.**"—This sub-section is in effect an amendment of the Lands Clauses Acts, which are or may be incorporated with variations under Parts I., II., and III. of this Act. Section 7 of the Lands Clauses Consolidation Act, 1845, empowers corporations to sell land required. By s. 9 they cannot sell for less than an amount to be ascertained by the valuation of two surveyors. It will be enough if the surveyors value the land on the basis that it is to be used for erecting dwellings for the working classes.

Condition to be implied on letting houses for the working classes.

75. In any contract made after the fourteenth day of August one thousand eight hundred and eighty-five for letting for habitation by persons of the working classes a house or part of a house, there shall be implied a condition that the house is at the commencement of the holding in all respects reasonably fit for human habitation. In this section the expression "letting for habitation by persons of the working classes" means the letting for habitation of a house or part of a house at a rent not exceeding in England the sum named as the limit for the composition of rates by section three of the Poor Rate Assessment and Collection Act, 1869, and in Scotland or Ireland four pounds.

32 & 33 Vict. c. 41.

This section reproduces s. 12 of the Housing of the Working Classes Act, 1885, in which statute this provision was first enacted.

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It is a modification of the common law rule that there is no implied covenant on the part of a lessor of a house that it is reasonably fit for habitation (*Hart* v. *Windsor*, 12 M. & W. 68 ; *Lane* v. *Cox*, [1897] 1 Q. B. 415).

"**A condition.**"—The section has been the subject of only one reported decision in the High Court, namely, *Walker* v. *Hobbs*, 23 Q. B. D. 458. In that case the plaintiffs, a husband and wife, took three rooms in a block of buildings in Bermondsey, at a rent of less than 8*s*. a week, sufficiently less, it is presumed, to make the rent under 20*l*. per annum. At the time of letting, the plaster on the ceiling was insecure, and soon after some fell, and some months after some more fell, which latter injured the female plaintiff. The action was brought to recover damages under s. 12 of the Act of 1885, and it was contended for the defence (1) that the section only made the fitness of the premises "a condition," which, according to the strict common law meaning of condition, merely gives the tenant the power to repudiate the contract, but implies no promise on the part of the landlord ; and (2) that the Act referred only to the sanitary state of the premises, and not to defective repair generally. The court decided against both these contentions, holding that the section implied a promise from the landlord, upon which promise if it is broken the tenant can sue, and the plaintiffs were held entitled to recover. The condition, it will be noticed, is not that it shall not be so dangerous to health as not to be reasonably fit for habitation, but that "in all respects" it shall be reasonably fit.

That decision practically places the letting of such houses as come under this section on the same legal basis as furnished houses, which are also exempt from the above general rule of the common law. When furnished houses are let, and probably this principle extends to furnished lodgings, there is an implied covenant on the part of the lessor that the house is fit for occupation at the commencement of the tenancy (*Smith* v. *Marrable*, 11 M. & W. 5 ; *Campbell* v. *Wenlock*, 4 F. & F. 716 ; *Wilson* v. *Finch-Hatton*, L. R. 2 Ex. D. 336). In the last of these cases the house was unfit for occupation by reason of the condition of the drains, and although they were soon afterwards put right, it was held that the lessee was entitled to repudiate the contract and to cease to be liable in respect of it. It has also been held that a tenant may repudiate his contract for the lease of a furnished house which, at the commencement of the tenancy, was unfit for habitation by reason of its being infected by measles (*Bird* v. *Lord Greville*, 1 C. & E. 317). It has also been decided that where a tenant has not at first discovered the defects in a furnished house until some time after, but if they were in fact existing at the commencement of his tenancy, he may recover damages for illness and other expenses caused by breach of the implied covenant (*Harrison* v. *Malet*, 3 T. L. R. 58 ; *Charsley* v. *Jones*, 5 T. L. R. 412). It is of importance to note that this principle only applies to the commencement of the tenancy, there is no implied condition that the house shall continue fit for habitation during the term for which it is let (*Sarson* v. *Roberts*, [1895] 2 Q. B. 395). It will be noticed that the provision in the section is likewise expressly limited to the commencement of the holding ; in this connection it is important to note that a weekly tenancy does not determine without notice at the end of

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each week, so that there is not in fact a re-letting at the expiration of each week. It is, therefore, at the date of the original letting that the landlord is bound to see that the house is reasonably fit for habitation (*Bowen* v. *Anderson*, [1894] 1 Q. B. 164; *Jones* v. *Mills*, 10 C. B. (N.S.) 788). The same principle applies in the case of a yearly letting (*Gandy* v. *Jubber*, 5 B. & S. 78; 9 B. & S. 15).

It has not been decided whether or not the parties can contract out of this section, and if so questions may arise as to how far knowledge on the part of the tenant is a waiver of the condition.

Value of house.—The section of 32 & 33 Vict. c. 41, referred to in the text, is as follows:

"3. In case the rateable value of any hereditament does not exceed twenty pounds if the hereditament is situate in the metropolis, or thirteen pounds if situate in any parish wholly or partly within the borough of Liverpool, or ten pounds if situate in any parish wholly or partly within the city of Manchester or the borough of Birmingham, or eight pounds if situate elsewhere, and the owner of such hereditament is willing to enter into an agreement in writing with the overseers to become liable to them for the poor rates assessed in respect of such hereditament, for any term not being less than one year from the date of such agreement, and to pay the poor rates whether the hereditament is occupied or not, the overseers may, subject nevertheless to the control of the vestry, agree with the owner to receive the rates from him, and to allow to him a commission not exceeding twenty-five per cent. on the amount thereof."

By s. 12 of the same Act, it is enacted that the word "metropolis" shall include only the metropolis as defined by the Metropolis Management Act, 1855. That Act has been amended, and for a list of the parishes and districts now included, see note to Sched. I., *post*, p. 130. But it appears that by a local Act the above section of 32 & 33 Vict. c. 41, is "in force in the parish of West Ham, as if such parish were situate in the metropolis"; and in a recent case of *Manning* v. *Simpson*, before his Honour Judge FRENCH, Q.C., at Bow County Court, it was held that this provision brought West Ham within the metropolis for the purposes of s. 75 of the Housing of the Working Classes Act, 1890. (See a note of the case in the "Times" of February 24th, 1898, and in 62 J. P. 137.)

It is probable that other local Acts may have brought other parishes near London within the metropolis for the same purpose. The Act 32 & 33 Vict. c. 41, does not extend to Scotland or Ireland, hence the separate provision in the text.

Medical officer of health in county of London.

76.—(1.) The London county council may, with the consent of a Secretary of State, at any time appoint one or more legally qualified practitioner or practitioners, with such remuneration as they think fit, for the purpose of carrying into effect any part of this Act.

(2.) Any medical officer of health appointed by the London county council, and any officer appointed under this

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section by the London county council, shall be deemed to be a medical officer of health of a local authority within the meaning of this Act.

Every county council has power under the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 17, to appoint one or more medical officers of health, but this section gives the London County Council additional powers to appoint such officers exclusively for the purposes of carrying into effect any part of this Act. As to the qualification of such medical officer, see s. 18 of the same Act.

This officer will have power to make representations under Parts I., II., and III. of this Act to the proper local authority for each part. Thus, if a closing order is required in regard to any premises under Part II., he may make a representation under s. 30 to the vestry or district board for the district in which the premises are situated, and for that purpose he is to be deemed to be an officer of that board or vestry. As to the local authorities under Parts I., II., and III., see s. 92, *post*, p. 115, and Sched. I., *post*, p. 127.

Power to local authority to enter and value premises.

77. Any person authorised by the local authority may at all reasonable times of the day, on giving twenty-four hours notice in writing to the occupier of his intention so to do, enter any dwelling-house, premises, or building which the local authority are authorised to purchase compulsorily under Part I. or Part II. of this Act for the purpose of surveying and valuing such dwelling-house, premises, or building.

This section is only applicable after the local authority have been authorised to purchase compulsorily, *i.e.*, after the scheme is finally confirmed under Parts I. and II. If the authority desire to enter before they are authorised to take compulsorily, they can only do so on permission from the occupier, or, in certain cases, under the powers given under the Public Health Acts. (See note to s. 45, *ante*, p. 74, and s. 89, *post*, p. 114.)

The above section is a modification of s. 84 of the Lands Clauses Consolidation Act, 1845, which gives similar power of entry for purposes of surveying, but under that Act not less than three nor more than fourteen days' notice must be given to the owner or occupier.

Compensation to tenants for expense of removal.

78. Where a building or any part of a building purchased by the local authority in pursuance of a scheme under Part I. or Part II. of this Act is not closed by a closing order, and is occupied by any tenant whose contract of tenancy is for less than a year, the local authority, if they require him to give up possession of such building or part for the purpose of pulling down the building, may make to

the said tenant a reasonable allowance on account of his expenses in removing.

As to a closing order, see s. 32, *ante*, p. 44. That section (sub-s. (3)) provides for the occupying tenant receiving an allowance on account of his expenses of removing.

The meaning of this section is not quite clear. If a tenant is required to give up possession before the expiration of his term, then in those cases where s. 121 of the Lands Clauses Consolidation Act, 1845, is applicable, he will be entitled to compensation for compulsory purchase, and such compensation may, and in some cases ought to, include the costs of removal. Thus, if a house is included in a scheme under Part I. as neighbouring land for the purpose of completing the scheme, the tenant would be entitled to such costs; but if the house is in the unhealthy area, or is part of a scheme under Part II., s. 39, *ante*, p. 62, he might not, as of right, be entitled to these costs, as nothing is to be given as compensation for compulsory purchase, and costs of removal might be said to fall under that heading. (See note to s. 21, *ante*, p. 32.) There is, however, another class of case, namely, where the local authority acquires the superior interest and determines the tenancy in the usual way, by notice to quit. This section appears wide enough to apply to such a case, and although such a tenant can scarcely have any real grievance, it seems to be in the discretion of the authority to make such a tenant an allowance also, and the amount of the allowance is also in their discretion. In practice such an allowance is commonly made.

Duties of medical officer of health.

79.—(1.) Anything which under Part I. or Part II. of this Act is authorised or required to be done by or to a medical officer of health may be done by or to any person authorised to act temporarily as such medical officer of health.

(2.) Every representation made by a medical officer of health in pursuance of this Act shall be in writing.

Section 26, *ante*, p. 40, contains a power to appoint a temporary medical officer of health under Part I. Deputy medical officers of health may also be appointed under s. 191 of the Public Health Act, 1875, and s. 109 of the Public Health (London) Act, 1891.

"**In writing.**"—By the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 20, "writing" includes "printing, lithography, photography, and other modes of representing or reproducing words in a visible form." The representation may therefore be type-written. As to representations, see ss. 5, 30, and 38, *ante*.

Accounts and audit.

80.—(1.) Separate accounts shall be kept by the local authority and their officers of their receipts and expenditure under each part of this Act.

(2.) Such accounts shall be audited in the like manner and with the like power to the officer auditing the same, and

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with the like incidents and consequences, as the accounts of the local authority are for the time being required to be audited by law.

As to payment of expenses under Part I., see s. 24, *ante*, p. 35; under Part II., see s. 42, *ante*, p. 73; and under Part III., see s. 65, *ante*, p. 96.

As to sending an account to the Local Government Board, see s. 44, *ante*, p. 74.

The accounts of a county council are audited by district auditors appointed by the Local Government Board, in like manner as accounts of an urban authority, under ss. 247—250 of the Public Health Act, 1875, and Acts amending them. (Section 71 of the Local Government Act, 1888 (51 & 52 Vict. c. 41).) Sections 245—250 of the Public Health Acts, are the sections which deal with the audit of the accounts of rural and urban districts, but these have been amended by the District Auditors Act, 1879 (42 Vict. c. 6), and by the Local Government Act, 1894, s. 58, by sub-s. (3), of which the Local Government Board is further empowered to make rules modifying the enactments as to publication of notice of the audit, and of the abstract of accounts, and the report of the auditor. (See Macmorran and Dill's Local Government Act, 1894, 3rd ed., pp. 230—234 and 294.)

The audit of the accounts of vestries and district boards is regulated by ss. 192, 194—197 of the Metropolis Management Act, 1855.

Power of local authority to appoint committees.

81. For the purposes of this Act, a local authority acting under this Act may 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.

Section 56 of the Local Government Act, 1894, provides that a district council, exclusive of a council of a borough, may appoint committees, either wholly or partly of members of the council, for the exercise of any powers. Such committee cannot hold office beyond the next annual meeting of the council, and the Acts of such committee must be submitted to the council for their approval. This provision, however, does not apparently repeal that in the text, and the acts of the committee do not, it is presumed, require confirmation under this Act. Section 200 of the Public Health Act, 1875, is almost identical with this section, but is expressly repealed by the Local Government Act, 1894, except as regards councils of boroughs.

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Application of purchase money.

82. Where a local authority sell any land acquired by them for any of the purposes of this Act, the proceeds of the sale shall be applied for any purpose, including repayment of borrowed money, for which capital money may be applied, and which is approved by the Local Government Board.

As to carrying the proceeds to the account of the Dwelling House Improvement Fund, see s. 24 (5), *ante*, p. 35.

Rates of loans by Public Works Loan Commissioners. 38 & 39 Vict. c. 89.

83. Any loan advanced by the Public Works Loan Commissioners in pursuance of this Act or for labourers dwellings in pursuance of the Public Works Loans Act, 1875, or any Act amending the same, shall bear such rate of interest not less than three pounds two shillings and sixpence per cent. per annum, as the Treasury may from time to time authorise as being in their opinion sufficient to enable such loans to be made without loss to the Exchequer.

The minimum rate of interest mentioned herein has been reduced from $3\frac{1}{8}$ to $2\frac{3}{4}$ per cent. per annum by the Public Works Loans Act, 1897 (60 & 61 Vict. c. 51), s. 1.

The Public Works Loan Commissioners may lend money under s. 24 (5), *ante*, p. 35, s. 43 (2), *ante*, p. 74, ss. 66 and 67, *ante*, p. 97.

Application of certain provisions as to byelaws. 18 & 19 Vict. c. 120. 38 & 39 Vict. c. 55

84. With respect to byelaws authorised by this Act to be made—

(a) sections two hundred and two and two hundred and three of the Metropolis Management Act, 1855, where such byelaws are made by the London county council, or any nuisance authority in the administrative county of London; and

(b) the provisions of the Public Health Act, 1875, relating to byelaws, where such byelaws are made by a sanitary authority,

shall apply to such byelaws, and a fine or penalty under any such byelaw may be recovered on summary conviction.

London.—By s. 202 of the Metropolis Local Management Act, 1855, boards and vestries are given power to make byelaws for certain purposes. They must be confirmed at a subsequent meeting of the board or vestry, and no penalty shall be imposed under a byelaw unless the same be approved by a Secretary of State. By

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s. 303 all bye-laws so made and confirmed shall be printed and hung up in the principal office of the board or vestry, and be open to public inspection without payment, and copies must be sold for a price not exceeding 2*d*. The expression "nuisance authority" mentioned in the text was defined by the Sanitary Act, 1866 (29 & 30 Vict. c. 90), s. 15, as any authority empowered to execute the Nuisances Removal Acts. By the Public Health (London) Act, 1891, which repeals the Sanitary Act, 1866, the expression "sanitary authority" is used instead of nuisance authority (s. 99). The sanitary authority means in London those authorities defined in Sched. I., *post*, p. 127, of this Act as the "local authority" for Part II. for places in London, and includes the Common Council of the City, which has taken the place of the commissioners of sewers.

NOTE.

Sanitary authority.—The provisions of the Public Health Act, 1875, relating to byelaws are contained in s. 182—188.

By s. 182, a byelaw must be under seal, and may be altered and repealed by a subsequent byelaw. Section 183 gives power to impose penalties. Section 184 enacts that the byelaws shall not take effect until confirmed by the Local Government Board, and contains provisions as to notices before applying for such confirmation. Section 185 provides for printing and publication of byelaws; s. 186 as to their being given in evidence; s. 187 as to byelaws of a borough relating to nuisances falling henceforth under the Public Health Act, 1875; and s. 188 enacts that the provisions as to byelaws shall not apply to regulations.

As to byelaws under this Act, see more particularly s. 62, *ante*, p. 94; and as to recovery of penalties, see s. 90, *post*, p. 115.

Local inquiries.

85.—(1.) For the purposes of the execution of their duties under this Act the Local Government Board may cause such local inquiries to be held as the Board see fit, and the costs incurred in relation to any such local inquiry, and to any local inquiry which any other confirming authority (*l*) holds or causes to be held, including the salary or remuneration of any inspector or officer of or person employed by the Board or confirming authority engaged in the inquiry not exceeding three guineas a day, shall be paid by the local authorities and persons concerned in the inquiry, or by such of them and in such proportions as the Board or confirming authority may direct, and that Board or authority may certify the amount of the costs incurred, and any sum so certified and directed by that Board or authority to be paid by any local authority or person shall be a debt to the Crown from such local authority or person.

(*l*) In London the Secretary of State for the Home Department.

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(2.) Sections two hundred and ninety-three to two hundred and ninety-six and section two hundred and ninety-eight of the Public Health Act, 1875, shall apply for the purpose of any order to be made by the Local Government Board or any local inquiry which that Board cause to be held in pursuance of any part of this Act.

Local inquiries may be held by the Local Government Board or other confirming authority under ss. 8, 31, 39, 57, and 73. As to local inquiries under Part I., see further ss. 17—19, *ante*, p. 25.

Section 293 of the Public Health Act, 1875, gives the Local Government Board power to hold inquiries as directed, and as they see fit in relation to matters relating to the public health in any place, or to any matters with respect to which their sanction, approval, or consent is required. It probably somewhat extends the power of holding inquiries expressly given by this Act.

Section 294 gives the Local Government Board power to make orders as to costs, and provides for their recovery by making the order a rule of court, as to which see note to s. 8, *ante*, p. 13. Section 295 provides that the orders shall be binding and conclusive, and shall be published as the Local Government Board may direct. Section 296 gives the inspectors of the Board power to examine witnesses on oath, and call for production of papers. They are to have the same power as poor law inspectors under the Acts relating to poor law, as to which see 4 & 5 Will. 4, c. 76, s. 12, and 10 & 11 Vict. c. 109, ss. 20, 21.

Section 298 relates to costs incurred by a local authority in respect of provisional orders. If such costs are sanctioned by the Local Government Board, they may be paid, and a local authority, if that Board think expedient, may contract a loan for the purpose of defraying such cost.

Orders, notices, etc.

86.—(1.) An order in writing made by a local authority under this Act shall be under their seal and authenticated by the signature of their clerk or his lawful deputy.

(2.) A notice, demand, or other written document proceeding from the local authority under this Act shall be signed by their clerk or his lawful deputy.

Orders must be under seal; notices do not require sealing. For an example of an order, see s. 38 (3), *ante*, p. 56.

Service of notice, etc., on the local authority.

87. Any notice, summons, writ or other proceeding at law or otherwise required to be served on a local authority in relation to carrying into effect the objects or purposes of this Act, or any of them, may be served upon that authority

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by delivering the same to their clerk, or leaving the same at his office with some person employed there.

Service by a local authority under different parts of the Act is specially provided for in previous sections (s. 7, *ante*, p. 8; s. 39, *ante*, p. 62; and s. 49, *ante*, p. 83).

Prohibition on persons interested voting as members of local authority.

88.—(1.) A person shall not vote as member of a local authority or county council or any committee thereof upon any resolution or question which is proposed or arises in pursuance of Part I. or Part II. of this Act, if it relates to any dwelling-house, building, or land in which he is beneficially interested.

(2.) If any person votes in contravention of this section he shall, on summary conviction, be liable for each offence to a fine not exceeding fifty pounds; but the fact of his giving the vote shall not invalidate any resolution or proceeding of the local authority or county council.

Resolutions are specifically referred to in s. 4, *ante*, p. 2, as to an area being unhealthy, and in s. 33 (1), that a building be demolished; but the text probably includes all resolutions of the authority incidental to the carrying out of Parts I. and II. of the Act, including those referred to in s. 73, *ante*, p. 102. As to the recovery of this fine, see s. 90. The information, it would appear, may be laid by anyone.

Penalty for obstructing the execution of Act.

89. Where any person obstructs the medical officer of health, or any officer of the local authority, or of the confirming authority mentioned in Part I. of this Act, in the performance of anything which such officer or authority is by this Act required or authorised to do, such person shall, on summary conviction, be liable to a fine not exceeding twenty pounds.

As to the duty of a medical officer to inspect an area in a district to see if it is unhealthy, see s. 5, *ante*, p. 4, and as to an officer of the confirming authority doing so, see s. 16, *ante*, p. 24. For definition of confirming authority, see s. 8 (2), *ante*, p. 11.

A medical officer's duty as to inspection under Part II. arises under ss. 30—32. The officers of a county council, when such council intervenes under s. 45, have the same rights of admission, etc., as officers of the local authority (see s. 45 (4), *ante*, p. 76). As to obstructing officers under Part II., see s. 51, *ante*, p. 84.

The fine is recoverable in manner provided by the next section.

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Punishment of offences and recovery of fines.

90. Offences under this Act punishable on summary conviction may be prosecuted and fines recovered in manner provided by the Summary Jurisdiction Acts.

The Summary Jurisdiction Acts are defined by the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 13. In England they are: The Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), and the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), and any Act, past or future, amending those Acts or either of them. Of the amending Acts, see more particularly the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43).

The fines will be recovered in London before a police magistrate, and elsewhere before a stipendiary or two justices. The fines paid under byelaws made pursuant to Part III. are appropriated by s. 71, *ante*, p. 101. Other fines are not appropriated, and are payable as provided by the Summary Jurisdiction Act, 1848, s. 31.

Powers of Act to be cumulative.

91. 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 a local authority shall not, by reason of any local Act relating to a place within its jurisdiction, be exempted from the performance of any duty or obligation to which such authority are subject under any part of this Act.

By s. 33 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), it is provided that:

"Where an act or omission constitutes an offence under two or more Acts, or both under an Act and at common law, whether any such Act was passed before or after the commencement of this Act, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of those Acts or at common law, but shall not be liable to be punished twice for the same offence."

Definition of local authority, districts, local rate.

92. In this Act, unless the context otherwise requires, "district," "local authority," and "local rate," mean respectively the areas, bodies of persons, and rates specified in the table contained in the First Schedule to this Act, but in Part III. of this Act and in reference to any power given by that part, or any act to be done in pursuance

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thereof shall mean such area, bodies of persons, and rate only in cases where that part of this Act is adopted or being adopted.

For Sched. I., see *post*, p. 127.
As to the adoption of Part III., see ss. 54 and 55, *ante*, p. 86.

Definitions:

93. In this Act, unless the context otherwise requires—

"Land."

The expression "land" includes any right over land:

"Sanitary district."

The expression "sanitary district" means the district of a sanitary authority:

"Sanitary authority."

The expression "sanitary authority" means an urban sanitary authority or a rural sanitary authority:

"Urban and rural sanitary authority"; "contributory place."

The expressions "urban sanitary authority" and "rural sanitary authority" and "contributory place" have respectively the same meanings as in the Public Health Act, 1875:

"Superior court."

The expression "superior court" means the Supreme Court:

"County of London."

The expression "county of London," except where specified to be the administrative county of London, means the county of London exclusive of the city of London.

"**Land.**"—In many cases the word land is limited to corporeal hereditaments, and as a general rule it does not include a stratum of land. (See, for example, *Great Western Rail. Co.* v. *Swindon and Cheltenham Rail. Co.*, 9 App. Cas. 787, 800, 808; *Hill* v. *Midland Rail. Co.*, 21 Ch. D. 143.)

Sanitary authorities are now called either urban district councils or borough councils, and in rural districts, rural district councils. (Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 21.)

"**Contributory place.**"—See note to s. 55, *ante*, p. 89.

"**County of London.**"—The Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 40 (1), constituted the metropolis an administrative county, but sub-s. (3) provided that for various purposes the county of the city of London shall continue a separate county. By s. 100 of the same Act, "metropolis" means the city of London and the parishes and places mentioned in Scheds. A., B., and C. of the Metropolis Management Act, 1855, as amended by subsequent Acts.

PART V.

APPLICATION OF ACT TO SCOTLAND.

In the application of this Act to Scotland the following provisions shall have effect,—

Modification as respects reference to Scotch Acts.

94.—(1.) A reference to any sections of the Lands Clauses Consolidation Act, 1845, shall be construed to mean a reference to the corresponding sections of the Lands Clauses Consolidation (Scotland) Act, 1845.

(2.) Where a dispute under this Act is to be settled by two justices in manner provided by the Lands Clauses Acts in cases where the compensation claimed in respect of lands does not exceed fifty pounds such dispute shall be settled in Scotland by the sheriff in manner provided by the Lands Clauses Consolidation (Scotland) Act, 1845, in similar cases. 8 & 9 Vict. c. 19.

(3.) The Public Health (Scotland) Act, 1867, and the Acts amending the same shall be substituted for the Public Health Acts and in particular— 30 & 31 Vict. c. 101.

(a.) With respect to the purchase of land a reference to section ninety of the said Public Health (Scotland) Act, 1867, shall be substituted for a reference to sections one hundred and seventy-five to one hundred and seventy-eight of the Public Health Act, 1875:

(b.) Local inquiries by the Board of Supervision shall be held under sections ten to thirteen of the Public Health (Scotland) Act, 1867, and local inquiries by the Secretary for Scotland under the Local Government (Scotland) Act, 1889, and the provisions of sub-section one of section eighty-five of this Act shall apply to such inquiries by the Board of Supervision: 52 & 53 Vict. c. 50.

(c.) The provisions as to private improvement expenses and the defraying thereof shall not apply to Scotland; and the local authority shall be entitled to recover in a summary manner the amount apportioned to any building in respect of its

Sect. 94 (3).

increase in value by reason of the demolition of any obstructive building, from the owner or occupier thereof, according to their respective interests in such increase of value.

(4.) The Acts relating to nuisances mean, as respects any place in Scotland, the Public Health (Scotland) Act, 1867, and any Act amending the same, and the Local Government (Scotland) Act, 1889, and any local Act which contains any provisions with respect to nuisances in that place.

The Public Health (Scotland) Act, 1867, and the Acts amending it, have been repealed and consolidated by the Public Health (Scotland) Act, 1897 (60 & 61 Vict. c. 38), which must now be taken as substituted for those mentioned in the text.

The Board of Supervision has now ceased to exist, and its place is taken by the Local Government Board for Scotland. (Local Government (Scotland) Act, 1894 (57 & 58 Vict. c. 58), s. 3.)

Modifications as regards legal proceedings in Scotland.

95.—(1.) A charging order under Part II. of this Act shall be recorded in the appropriate register of sasines.

(2.) Superior court means in Scotland the Court of Session, and where any order, certificate, or other Act under this Act may be made a rule of a superior court, the Court of Session in Scotland may, on the application of the Lord Advocate, on behalf of the confirming authority, or on the application of any person interested, interpose their authority to any such order, certificate, or act, and grant decree conform thereto upon which execution and diligence may proceed in common form.

(3.) An appeal from an order of a local authority under Part II. of this Act shall, in Scotland, be to the sheriff, and the same procedure shall apply as on an appeal from the sheriff substitute to the sheriff, but with the same provisoes as apply to the appeal in England from the order of the local authority to a court of quarter sessions.

(4.) Offences under this Act punishable on summary conviction may be prosecuted and fines recovered before the sheriff or two justices or in burghs before the magistrates in manner provided by the Summary Jurisdiction (Scotland) Acts, and all necessary jurisdiction is hereby conferred

on such sheriff or two justices, or any two magistrates of a burgh. Sect. 95 (4).

Miscellaneous modifications

96.—(1.) This Act shall be read and construed as if for the expression "the Local Government Board," wherever it occurs therein, the expression "the Secretary for Scotland" were substituted, except that the provisions of this Act with respect to the adoption and execution of Part III. of this Act by a rural sanitary authority shall apply to the adoption and execution thereof by a local authority, being a district committee, and the Board of Supervision for the Relief of the Poor in Scotland shall be substituted in the said Part for the county council.

(2.) The expenses incurred by a local authority under this Act may be defrayed in the same manner as general expenses under section ninety-four, sub-section two, of the Public Health (Scotland) Act, 1867, and money may be borrowed for the purposes of this Act in the same manner and subject to the same conditions as nearly as may be as money may be borrowed for the erection of hospitals under the Public Health (Scotland) Amendment Act, 1871 (*m*); provided that (*n*) the assessment therefor shall be levied only within the parish or parishes in respect of which such expenses are incurred.

(3.) The Edinburgh Gazette shall be substituted for the London Gazette.

(4.) The expression "medical officer of health" means medical officer.

(5.) The expression "person entitled to the first estate of freehold in" means owner of.

(6.) The expression "court of quarter sessions" means the sheriff.

(7.) The expression "urban sanitary authority" means the local authority under the Public Health (Scotland) Act, 1867, being a town council or police commissioners or trustees exercising the functions of police commissioners.

(*m*) Insert here the words "and any Acts amending the same."

(*n*) Insert here the words "in the case of a rural sanitary authority." These additions are required by the Housing of the Working Classes Act, 1890, Amendment (Scotland) Act, 1896 (59 & 60 Vict. c. 31), *post*.

Sect 96 (8).

(8.) The expression rural sanitary authority" means a district committee, or where a county has not been divided into districts under the Local Government (Scotland) Act, 1889, the county council.

(9.) The expression "contributory place" means a parish.

(10.) The expression "court of summary jurisdiction" means the sheriff or any two justices of the peace sitting in open court, or any magistrate or magistrates within the meaning of the Summary Jurisdiction Acts.

(11.) The expression "executors, administrators, or assigns" means heirs, executors, or assignees.

(12.) The expression "mortgage" means bond and disposition in security.

(13.) The reference to quitrents and other charges incident to tenure, and to tithe commutation rentcharge shall be read as applicable to feu duties, casualties, and teinds.

(14.) With respect to byelaws authorised by this Act to be made, the provisions of the Public Health (Scotland) Act, 1867 (*o*), relating to rules and regulations for common lodging houses shall apply to such byelaws with the necessary variations, and a fine or penalty under any such byelaw may be recovered on summary conviction.

(15.) An order in writing made by a local authority under this Act, where such local authority have not a seal, shall be authenticated by the signature of any two or more members of the local authority and of their clerk or his lawful deputy.

(16.) The provisions of Part II. of this Act with respect to the powers of county councils shall not apply to Scotland.

Provision as to superior of lands for purpose of Part II.

97.—(1.) The superior of any lands and heritages may give notice of his right of superiority to the local authority, and thereupon the local authority shall give such superior notice of any proceedings taken by them in pursuance of Part II. of this Act in relation to such lands and heritages;

(*o*) For the Public Health (Scotland) Act, 1867, read now the Public Health (Scotland) Act, 1897.

Sect. 97 (2).

(2.) If it appears to the sheriff, on the application of such superior that default is being made in the execution of any works required to be executed on such lands and heritages in respect of which a closing order has been made, or in the demolition of a building on such lands and heritages, or in claiming to retain any site, in pursuance of Part II. of this Act, and that the interests of the applicant will be prejudiced by such default, and that it is just to make the order, the sheriff may make an order empowering the applicant forthwith to enter on the lands and heritages, and within the time fixed by the order to execute the said works, or to demolish the building, or to claim to retain the site, as the case may be:

(3.) The sheriff may in any case, by order, enlarge the time allowed under any order for the execution of any works or the demolition of a building, or the time within which a claim may be made to retain the site of a building;

(4.) Before an order is made under this section notice of the application shall be given to the local authority.

PART VI.

APPLICATION OF ACT TO IRELAND.

Modification in application of Act to Ireland.

98. In the application of this Act to Ireland the following provisions shall have effect—

(1.) The Public Health (Ireland) Act, 1878, shall be substituted for the Public Health Act, 1875, and in particular the references in this Act to sections one hundred and seventy-five, one hundred and seventy-six and one hundred and seventy-seven of the Public Health Act, 1875, shall be respectively taken to be references to sections two hundred and two, two hundred and three, and two hundred and four, respectively, of the Public Health (Ireland) Act, 1878, and the reference to sections two hundred and ninety-three to two hundred and ninety-six, two hundred and ninety-eight of the Public Health Act, 1875, shall be taken to be a

41 & 42 Vict. c. 52.

Sect. 98 (1).

reference to sections two hundred and nine, two hundred and ten, two hundred and twelve, two hundred and thirteen, and two hundred and fifteen of the Public Health (Ireland) Act, 1878.

(2.) The Acts relating to nuisances mean as respects any place in Ireland the Public Health (Ireland) Act, 1878, and any local Act which contains any provisions with respect to nuisances in that place.

(3.) The expression "quarter sessions" means, in towns and boroughs where there are separate quarter sessions, the quarter sessions of the said towns and boroughs, and in towns and boroughs where there are no separate quarter sessions, the quarter sessions of the division of the counties in which such towns or boroughs are situate.

11 & 15 Vict. c. 93.

(4.) The provisions of section twenty-four of the Petty Sessions (Ireland) Act, 1851, respecting appeals from courts of summary jurisdiction authorised by that section, and any enactment amending the same, shall in Ireland apply in the case of appeals from an order of a local authority to a court of quarter sessions under Part II. of this Act, as if such order was an order of a court of summary jurisdiction, but with the same provisioes as apply under this Act in the case of such an appeal in England.

(5.) The Local Government Board for Ireland shall be substituted for the Local Government Board.

(6.) The Commissioners of Public Works in Ireland acting with the consent of the Treasury shall be substituted for the Public Works Loan Commissioners.

(7.) The medical officer of health in Ireland shall include the medical superintendent officer of health appointed under the Public Health (Ireland) Act, 1878.

(8.) The Dublin Gazette shall be substituted for the London Gazette.

(9.) Every charging order under Part II. of this Act shall be registered in the office for registering deeds, conveyances, and wills in Ireland.

Sect. 98 (10).

(10.) An order in writing made by a local authority under this Act, where such local authority have not a seal, shall be authenticated by the signature of any two or more members of the local authority and of their clerk or his lawful deputy.

(11.) The accounts of the local authority under this Act shall be audited in the like manner and with the like power to the officer auditing the same, and with the like incidents and consequences, as the accounts of that authority as a sanitary authority are for the time being required to be audited by law.

(12.) The consent of the Treasury shall in Ireland be substituted for the consent of the Local Government Board required under Part III. of this Act to the appropriation of land for lodging houses, to the sale and exchange of land, and to the sale of lodging houses when considered too expensive.

As to adapting the forms in Sched. IV. so as to be in conformity with the forms usually used in Ireland under the Petty Sessions (Ireland) Act, 1851, see the Housing of the Working Classes (Ireland) Act, 1896 (59 & 60 Vict. c. 11) s. 2, *post*.

Large powers for the erection of labourers' cottages in Ireland are given to local authorities in Ireland by the Labourers (Ireland) Acts, 1883—1896: 46 & 47 Vict. c. 60; 48 & 49 Vict. c. 77; 49 & 50 Vict. c. 59; 54 & 55 Vict. c. 71; 55 & 56 Vict. c. 7; and 59 & 60 Vict. c. 53, some of the provisions of which have, however, been repealed by the Local Government (Ireland) Act, 1898 (61 & 62 Vict. c. 37).

Adoption of Part III. of Act by town commissioners of small towns in Ireland

99.—(1.) In a town not being an urban sanitary district Part III. of this Act may be adopted by any town commissioners for the time being existing for the paving, lighting, or cleansing of that town under any Public Act of Parliament or any charter, and the Act when adopted shall be carried into execution by such town commissioners, and for that purpose they shall be deemed to be a local authority within the meaning of the said part.

(2.) Such commissioners shall give not less than twenty-eight nor more than forty-two days public notice of their intention to take into consideration the propriety of adopting the said part of this Act, and of the time and place for holding the meeting when they will take it into consideration.

Sect. 99 (3).

(3.) If at that meeting there is presented to the commissioners a memorial in writing signed by not less than one-tenth in value of the persons liable to be rated to rates made by such commissioners requesting them to postpone the said consideration for a period of one year, then the consideration shall be so postponed, and shall be entered upon as soon after the expiration of the year as the commissioners think fit.

(4.) If the said part of this Act is adopted, the local rate shall be any rate which the commissioners have power to impose for the purpose of paving, lighting, cleansing, or otherwise improving the town, and such rate may, with the approval of the Treasury, be increased for the purpose.

(5.) The net income arising from any lodging-houses or dwellings provided by the commissioners in pursuance of the said part of this Act, after the payment of all outgoings, including the interest and instalments of principal of any loan, shall be paid to the town commissioners fund, or otherwise in aid of the rates which have been applied to the payment of the expenses.

As to the power to these commissioners to acquire land, see s. 1 of 59 & 60 Vict. c. 11, *post*; and as to their power to borrow and pay expenses, see the Housing of the Working Classes Act, 1893 (56 & 57 Vict. c. 33), *post*.

Incorporation of sections of 10 & 11 Vict. c. 16, for purposes of Part. III. of Act.

100. Sections fifty-six to sixty-four, both inclusive, and sections ninety-nine to one hundred and three, both inclusive, of the Commissioners Clauses Act, 1847, shall be incorporated with Part III. of this Act, so far as regards any town commissioners or any dock or harbour company or commissioners; and in the construction of the said sections for the purposes of the part of this Act with which they are so incorporated, the expression "commissioners" shall mean any such commissioners or company as aforesaid, and the expression "special Act" shall mean this Act.

Power of making byelaws for

101.—(1.) Any company, society, or association establishing lodging-houses in pursuance of Part III. of this Act shall have the same power of making byelaws for the

regulation of such lodging-houses as a local authority have under the said part. Sect. 101 (1).

labourers dwellings in Ireland.

(2.) Any byelaw made for the regulation of lodging-houses in pursuance of Part III. of this Act shall not be valid until approved by the Local Government Board, and a production of a copy of the byelaws purporting to be sealed with the seal of the Local Government Board and signed by the President or by the Under Secretary to the Lord Lieutenant or by the Vice-President, or by two other members of the Board both signing, shall be sufficient evidence of such approval in all courts of justice and elsewhere.

(3.) Where a byelaw has been so approved, any fine imposed by the same may be recovered before a court of summary jurisdiction; and one-half of any fine so recovered shall be paid to the informer and the other half to the authority who made the byelaw, and shall be applied by them in aid of the expenses of the lodging-houses.

PART VII.

REPEAL AND TEMPORARY PROVISIONS.

Repeal Acts.

102. The Acts mentioned in the Seventh Schedule to this Act are hereby repealed to the extent in the third column of that schedule specified.

Provided that:—

(1.) Where the Labouring Classes Lodging Houses Acts, 1851 to 1885, have been adopted in any district, that adoption shall be deemed to be an adoption of Part III. of this Act, and this Act shall apply accordingly;

(2.) Any officer appointed under any enactment hereby repealed shall continue and be deemed to be appointed under this Act;

(3.) Any dwelling houses acquired by the local authority under the Artizans Dwellings Acts, 1868 to 1885, and vested in them at the commencement of this Act, shall be held by such local authority as if

Sect. 102 (3).

they had been acquired under the provisions of Part III. of this Act, and any land or premises other than dwelling houses so acquired and held by them at the commencement of this Act shall be held as if the same had been acquired as a site of an obstructive building in pursuance of Part II. of this Act, but may with the consent of the authority authorised by the said part of this Act to consent to the sale of land so acquired be appropriated for the purposes of Part III. of this Act.

Section 2 of the Housing of the Working Classes Act Amendment (Scotland) Act, 1896, provides that land acquired under the Artizans and Labourers' Dwellings Improvement (Scotland) Acts, 1875—1880, and still held by the local authority, shall be deemed to be held for the purposes of Part I. of this Act.

For provision rendering valid loans made by the Public Works Loan, Commissioners to public bodies, associations, etc., under the Labouring Classes Dwelling Houses Act, 1866 (29 & 30 Vict. c. 28), and the Labouring Classes Lodging Houses and Dwellings (Ireland) Act, 1866 (29 & 30 Vict. c. 44), see the Public Works Loans Act, 1881 (44 & 45 Vict. c. 38), s. 11.

Temporary provisions.

103. The provisions of this Act relating to compensation, to the power of the local authority to enter and value premises, to the compensation of tenants for expense of removal, shall be applicable in the case of all improvement schemes which have been confirmed by Act of Parliament during the session in which this Act is passed.

SCHEDULES.

FIRST SCHEDULE.

Sections 54, 92 [*ante*, pp. 85 and 115].

ENGLAND AND WALES.

District.	Local Authority.	Local Rate.
Throughout Act.		
Urban sanitary district -	The urban sanitary authority.	The rate out of which the general expenses of the execution of the Public Health Acts are defrayed.
The city of London - -	The Commissioners of Sewers.	The sewer rate and the consolidated rate levied by such Commissioners, or either of such rates.
(1.) *For the purpose of Parts I. and III.*		
The county of London - -	The County Council of London.	The county fund and the amount payable shall be deemed to be required for special county purposes.
(2.) *For the purposes of Part II.*		
A parish other than the parish of Woolwich mentioned in Schedule A. to the Metropolis Management Act, 1855, as amended by the Metropolis Management (Amendment) Act, 1885, and the Metropolis Management (Battersea and Westminster) Act, 1887.	The Vestry elected under the Metropolis Management Act, 1855.	The general rate leviable by such vestry or board under the Metropolis Management Act, 1855.
A district mentioned in Schedule B. to the Metropolis Management Act, 1855, as amended by the Metropolis Management (Amendment) Act, 1885, and the Metropolis Management (Battersea and Westminster) Act, 1887.	The Board of Works for the district elected under the Metropolis Management Act, 1855.	
Parish of Woolwich - -	The local board of health.	The district fund and general district rate.

Schedule 1.

District.	Local Authority.	Local Rate.
(3.) *For the purposes of Parts II. and III.*		
Rural sanitary district- -	The rural sanitary authority.	The rate out of which the "general" or "special" expenses, as the case may be, of the execution of the Public Health Acts are defrayed.

SCOTLAND.

Throughout Act.

Districts under the Public Health (Scotland) Act, 1867, exclusive of parishes or parts thereof over which the jurisdiction of a town council or of police commissioners, or trustees exercising the functions of police commissioners, does not extend.	The local authorities under the Public Health (Scotland) Act, 1867, in those districts.	The public health rate.

Under Parts II. and III.

Districts under the Public Health (Scotland) Act, 1867, as amended by the Local Government (Scotland) Act, 1889.	The local authorities under the Public Health (Scotland, Act, 1867, in those districts.	The public health rate.

IRELAND.

Under Parts I. and III.

Urban sanitary district -	The urban sanitary authority.	The rate out of which the general expenses of the execution of the Public Health (Ireland) Act, 1878, are defrayed in these districts

Sched. 1.

District.	Local Authority.	Local Rate.
	Under Part II.	
Urban sanitary district -	The urban sanitary authority.	The rate out of which the general expenses of the execution of the Public Health (Ireland) Act, 1878, are defrayed in the district.
Rural sanitary district - -	The rural sanitary authority.	The rate out of which the special expenses of the execution of the Public Health (Ireland) Act, 1878, are defrayed in the district.

NOTE.—In any case in the United Kingdom where an urban sanitary authority does not levy a borough rate or any general district rate, but is empowered by a local Act or Acts to borrow money and to levy a rate or rates throughout the whole of their district for purposes similar to those or to some of those for which a general district rate is leviable, it shall be lawful for such sanitary authority to defray the expenses incurred in the execution of Part III. of this Act by means of money to be borrowed, and a rate or rates to be levied, under such Local Act or Acts.

Urban districts.—Urban sanitary districts are now called urban districts, and urban sanitary authorities where they are boroughs are borough councils, and in other cases are district councils. (See the Local Government Act, 1894, s. 21 (56 & 57 Vict. c. 73), and the Public Health Act, 1875, s. 6 (38 & 39 Vict. c. 55), and in Ireland the Local Government (Ireland) Act, 1898 (61 & 62 Vict. c. 37).)

The local rate in urban districts is usually the general district rate leviable by urban authorities under the Public Health Act, 1875, ss. 207 and 210, but in boroughs it may be the borough rate, as provided in s. 207, or it may be a rate raised under a local Act. (See note to this schedule.)

City of London.—The Commissioners of Sewers no longer exist, the commission having been dissolved, and their powers and duties transferred to and vested in the mayor, commonalty, and citizens of the city of London, to be exercised by them through the Common Council. (See City of London Sewers Act, 1897 (60 & 61 Vict. c. cxxxiii.).) By s. 7 of that Act the Common Council is to be substituted for the Commissioners of Sewers in every Act of Parliament.

The sewer rate and consolidated rate were leviable by the commissioners under the City of London Sewers Acts, 1848 and 1851 (11 & 12 Vict. c. clxiii. and 14 & 15 Vict. c. xci.), and will now be leviable by the Common Council.

The county of London.—The county of London means the county, exclusive of the city (s. 93, *ante*, p. 116). The county fund is described in s. 68 of the Local Government Act, 1888 (51 & 52 Vict. c. 41) That section provides:

"(1.) All receipts of the county council, whether for general or

Sched. 1.

NOTE.

special county purposes, shall be carried to the county fund, and all payments for general or special county purposes shall be made in the first instance out of that fund."

"(3.) In this Act the expression 'special county purposes' means any purposes from contribution to which any portion of the county is for the time being exempt, and also includes any purposes where the expenditure involved is by law restricted to a hundred, division, or other limited part of the county."

The following are the parishes, other than the parish of Woolwich, mentioned in Schedule A. to the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), as amended by 48 & 49 Vict. c. 33, and 50 & 51 Vict. c. 17, 56 & 57 Vict. c. 55, of which the vestry is the local authority :

St. Marylebone.
St. Pancras.
Lambeth.
St. George, Hanover Square.
Islington, St. Mary.
Shoreditch, St. Leonard.
Paddington.
St. Matthew, Bethnal Green.
St. Mary, Newington, Surrey.
Camberwell.
St. James, Westminster.
St. James and St. John, Clerkenwell.
Chelsea.
Kensington, St. Mary Abbott.
St. Luke, Middlesex.
St. George-the-Martyr, Southwark.
Bermondsey.
St. George-in-the-East.
St. Martin-in-the-Fields.
Hamlet of Mile End Old Town.
Rotherhithe.
St. John, Hampstead.
Fulham.
Hammersmith.
St. Mary, Battersea (excluding Penge).
St. Margaret and St. John the Evangelist, Westminster.
Plumstead.
St. Mary, Stoke Newington.
Hackney.

The following are the districts mentioned in Schedule B. as amended by the same Acts, of which the district board is the local authority :

Whitechapel.
Greenwich.
Wandsworth.
St. Giles.
Holborn.
Strand.
Limehouse.
Poplar.
St. Saviour, Southwark.
Lee.
Lewisham.
St. Olave, Southwark.

As to the general rate, see s. 161 of 18 & 19 Vict. c. 120.

Rural sanitary authority.—Now rural district council (Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 21, and in Ireland, 61 & 62 Vict. c. 37, ss. 22 and 33). As to general and special expenses see ss. 229 and 230 of the Public Health Act, 1875, and note to s. 65 of this Act, *ante*, p. 96.

Scotland.—For "The Public Health (Scotland) Act, 1867," read now "The Public Health (Scotland) Act, 1897" (60 & 61 Vict. c. 38), and for "the public health rate" read "the public health general assessment" under the latter Act. (See s. 193 thereof).

SECOND SCHEDULE

PROVISIONS WITH RESPECT TO THE PURCHASE AND TAKING OF LANDS IN ENGLAND OTHERWISE THAN BY AGREEMENT, AND OTHERWISE AMENDING THE LANDS CLAUSES ACTS. Section 20.

This Schedule takes the place of ss. 16—68 of the Lands Clauses Consolidation Act, 1845, and amends the other sections of the Lands Clauses Acts. (See s. 20, *ante*, p. 26.) The provisions are taken from the Artizans Dwellings Improvement Acts, 1875, 1879 and 1882. (See marginal notes.)

Deposit of Maps and Plans.

(1.) The local authority shall as soon as practicable after the passing of the confirming Act (*a*), cause to be made out, and to be signed by their clerk or some other principal officer appointed by them, maps and schedules of all lands proposed to be taken compulsorily, (which lands are hereinafter referred to as the scheduled lands,) together with the names, so far as the same can be reasonably ascertained, of all persons interested in such lands as owners or reputed owners, lessees or reputed lessees, or occupiers. 1—4, 38 & 39 Vict. c. 36 Sch.

These maps and lists of names will have already been prepared in accordance with ss. 6 and 8, but in case of error as to, or alteration of ownership, these can be altered before deposit.

(2.) The maps made by the local authority shall be upon such scale and be framed in such manner as may be prescribed by the confirming authority.

These do not appear to have been prescribed. A scale of 40 feet to the inch appears to be usual. Each house, court, or street should have a consecutive number marked upon the plan, and each house should also have its number in the street marked.

(3.) The local authority shall deposit such maps and schedules at the office of the confirming authority (*b*), and shall deposit and keep copies of such maps and schedules at the office of the local authority.

(*a*) See s. 8 (6) *ante*, p. 12.
(*b*) See definitions s. 8 (1), (2), *ante*, p. 10.

Sched. 2 (4).

Appointment of Arbitrator.

(4.) After such deposit at the office of the confirming authority as aforesaid, it shall be lawful for the confirming authority, upon the application of the local authority, to appoint an arbitrator between the local authority, and the persons interested in such of the scheduled lands, or lands injuriously affected by the execution of such scheme, so far as compensation for the same has not been made the subject of agreement.

It would appear that the local authority can delay this application until they have endeavoured to settle with all the various owners. In case of undue delay, a person interested may petition the court to require the local authority to apply for the appointment of such arbitrator, if they have neglected or refused to do so (Art. 23, *post*, p. 143). Provision is made in Art. 31, *post*, for the appointment of a new arbitrator if the first should become incapable of acting.

The expression "lands injuriously affected" in this section, no doubt means injuriously affected within the meaning of s. 22, *ante*, p. 33. The claim in respect of such injurious affection may not arise until long after the lands have been taken. (See note to s. 22.)

Notice before appointment.—Before the arbitrator is appointed the local authority should serve a notice upon the owners requiring them in writing to deliver to the authority a statement of their claim and such particulars as to their interest in the land, so as to enable the local authority to make a proper offer of compensation. If the authority do so, and the owner refuses or neglects to furnish the required particulars within the time mentioned, he will not be entitled to his costs incurred in the arbitration. Further, he will not be entitled to costs if the amount offered by the local authority before the appointment of the arbitrator, equals or exceeds the sum awarded by the arbitrator. (Art. 29, *post*.)

Proceedings on Arbitration.

The proceedings during the arbitration will be governed by the Arbitration Act, 1889, in so far as it is not inconsistent with this Act, as s. 24 of the former Act provides that it shall apply to every arbitration under any Act passed before or after the commencement of that Act, as if the arbitration were pursuant to a submission. (See *Tabernacle Permanent Building Society* v. *Knight*, [1892] A. C. 298, pp. 303 and 306.) In this schedule the arbitration does not appear to be pursuant to a submission, as there is no provision as in s. 25 of the Lands Clauses Consolidation Act, 1845, as to what is to be deemed to be a submission.

Sched. 2 (5).

45 & 46 Vict. c. 54, Sch. (1.) *a—f*

(5.) Before any arbitrator enters upon any inquiry he shall, in the presence of a justice of the peace, 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 Housing of the Working Classes Act, 1890.

A.B.

'Made and subscribed in the presence of .'

And such declaration shall be annexed to the award when made; and if any arbitrator, having made such declaration wilfully act contrary thereto, he shall be guilty of a misdemeanor.

This declaration must be annexed to the award, and should be made by the arbitrator before he enters upon the inquiry. As one award is only contemplated as to all disputed cases, only one declaration would be necessary. There is a similar provision in s. 33 of the Lands Clauses Consolidation Act, 1845. Under that provision it is held to be sufficient if the declaration is made before the arbitrator actually enters upon the consideration of the matters referred to him (*Bradshaw's Arbitration*, 12 Q. B. 562). The parties can waive this provision (*Palmer* v. *Metropolitan Rail. Co.*, 31 L. J. Q. B. 259), and will be deemed to have done so if they continue the arbitration knowing that the declaration has not been made (*Re Levick and the Epsom and Leatherhead Rail. Co.*, 1 L. T. (N.S.) 60).

The declaration may be made before a justice of any county, and need not be made before a justice of the peace of the county within which the dispute arose (*Davies* v. *South Staffordshire Rail. Co.*, 21 L. J. M. C. 52).

(6.) As soon as an arbitrator has been appointed as aforesaid, the confirming authority shall deliver to him the maps and schedules deposited at their office, and the local authority shall publish once in each of three successive weeks the following particulars:—

(1.) The appointment of the arbitrator; and

(2.) The deposit at the office of the local authority of the copies of such maps and schedules as aforesaid, with a description of the situation of such office, and a statement of the time at which such copies may be inspected by any person desirous of inspecting the same.

Sched. 2 (6).

42 & 43 Vict. c. 63, Sch. Art. 1.

Such publication shall be made not only by advertisement, but also by placards and handbills affixed in conspicuous places on or near the lands to be taken, and also by leaving a notice thereof at each house proposed to be taken, and also by sending a notice thereof by post to the persons interested in such lands as owners or reputed owners, lessees or reputed lessees, so far as they can be reasonably ascertained.

As to service by post, see note to s. 7, *ante*, p. 8.

The advertisements should appear in one and the same newspaper circulating in the district (Art. 32, *post*).

Forms of advertisement may be prescribed by the confirming authority under s. 27, *ante*, p. 38, but neither the Local Government Board or the Home Secretary have done so.

Under the corresponding clause in the Artizans and Labourers Dwellings Improvement Act, 1875, s. 69, sched., Art. 6, the local authority was required to publish a requisition directing the owners and others interested to deliver to the arbitrator a short statement of their claims. This provision was held in *Wilkins* v. *Mayor of Birmingham*, 25 Ch. D. 78, to have the same effect as a notice to treat. The above advertisement may, perhaps, have the like effect; but the point is probably now immaterial, as s. 21, *ante*, p. 28, fixes the date at which the property is to be valued, and by s. 12 (1), *ante*, p. 18, the local authority must proceed to take the necessary steps to acquire the land.

(7.) In every case in which compensation is payable under Part I. of this Act, by the local authority to any claimant, and which compensation has not been made the subject of agreement (in this Act referred to as "a disputed case"), the arbitrator shall ascertain in such manner as he thinks most convenient the amount of compensation demanded by the claimant, and the amount which the local authority may be willing to pay; and after hearing all such parties interested in each disputed case as may appear before him at a time and place of which notice has been given as in Part I. of this Act mentioned, he shall proceed to decide on the amount of compensation to which he may consider the claimant to be entitled in each case.

Compensation is payable under s. 21, *ante*, p. 38, when the land or any interest is proposed to be taken, and under s. 22, *ante*, p. 33, when any person can prove he has sustained loss by reason of that section.

Sched. 2 (7). NOTE.

The notice here referred to evidently means the notice required by the next Article. As to publication of notices, see also Art. 32, *post*.

As to notice requiring particulars of claim from local authority, see note to last Article and Art. 29, *post*.

It is of importance to notice that the arbitrator is only required to settle the amount of compensation ; he has, therefore, no jurisdiction to determine the right of a claimant to recover, such claim must be settled afterwards by a proceeding upon the award in court. (See *Wilkins* v. *Mayor of Birmingham*, 25 Ch. D. 78, and Art. 25, *post*, p. 145.) The same principle as regards arbitrators in compensation cases has been laid down in proceedings both under the Lands Clauses Acts and the Public Health Acts. (See, for example, *Brierley Hill Local Board* v. *Pearsall*, 9 App. Cas. 525 ; *In re East London Rail. Co.* (*Oliver's Claim*), 24 Q. B. D. 507.)

(8.) The arbitrator shall give notice to the claimants in disputed cases by causing such notice to be published or otherwise in such manner as he thinks advisable, of a time and place at which the difference between the claimants and the local authority in disputed cases as to the amount of compensation to be paid will be decided by the arbitrator.

The form of these notices may be prescribed by the confirming authority under s. 27, *ante*, p. 38, but no forms have been so prescribed. As to how they should be published, see Art. 32, *post*.

(9.) After the arbitrator has arrived at a decision on all the disputed cases brought before him he shall make an award under his hand and seal, and such award shall be final, and be binding and conclusive (subject to the provisions concerning an appeal herein-after contained) upon all persons whomsoever, and no such award shall be set aside for irregularity in matter of form, but the arbitrator may and, if the local authority request him so to do, shall from time to time make an award respecting a portion only of the disputed cases brought before him.

The declaration mentioned in Art. 5 must be annexed to the award.

As to appeal, see Art. 26, *post*.

Under s. 7 (e) of the Arbitration Act, 1889, the arbitrator has power to correct in an award any clerical mistake or error arising from any accidental slip or omission.

Although the award is stated to be binding and conclusive, it will, no doubt, be set aside if it can be shown that the arbitrator has exceeded his authority. (See *Hodgkinson* v. *Fernie*, 3 C. B. (N.S.) 189 ; *Dinn* v. *Blake*, L. R. 10 C. P. 388 ; *In re Dare Valley Rail. Co.*,

Sched. 2 (9). L. R. 6 Eq. 429.) It might also be remitted to the arbitrator under s. 10 of the Arbitration Act, 1889.

NOTE. The arbitrator may also under s. 7 (b) of the Arbitration Act, 1889, state the award in the form of a special case, and under s. 10 it might be remitted to the arbitrator to state the award in such form. The provision that an award may be made respecting a portion of the cases, will enable the parties to have any legal point settled, by having the award stated as a special case, as to the particular premises.

Where a claimant's interest has been omitted from the award by mistake, this section will enable a separate award to be afterwards made as regards his particular case, or the original award altered. Under the Artizans and Labourers Dwellings Improvement Act, 1875, the arbitrator was required to frame a provisional award. In a case under that Act a claim was omitted by mistake from this award, and the award was afterwards altered so as to include it, and this was confirmed by the final award. It was held that the final award was good (*Carr* v. *Metropolitan Board of Works*, 14 Ch. D. 807). It was also held in that case that if there had been an irregularity it would have been formal only. As to omitted interests discovered after entry, see Art. 13, *post*, p. 138.

An arbitrator may be examined as a witness to discover whether he has exceeded his jurisdiction or erred as to a legal principle, but not further (*Duke of Buccleuch* v. *Metropolitan Board of Works*, L. R. 5 H. L. 418).

The question of costs is apparently not settled in the award, but a certificate is given by the arbitrator pursuant to Art. 29, *post*.

(10.) Such award as aforesaid shall be deposited at the office of the confirming authority, and a copy thereof shall be deposited at the office of the local authority, and the local authority shall thereupon publish once in each of three successive weeks notice of the deposit having been made at the office of the local authority of a copy of the award, and a further notice requiring all persons claiming to have any right to or interest in the lands (the compensation to be paid in respect of which is ascertained by such award) to deliver to the local authority on or before a day to be named in such notice (such day not being earlier than twenty-one days from the date of the last publication of the notice), a short statement in writing of the nature of such claim, and a short abstract of the title on which the same is founded; and such statement and abstract shall be paid for by the local authority. Such abstract of title, in the case of a person claiming a fee simple interest in the land, shall commence twenty years previous to the date of the claim, except there has been an absolute conveyance on sale

within twenty years, and more than ten years previous to the claim when the abstract shall commence with such conveyance. Sched. 2 (10).

By Art. 22, *post*, p. 143, the local authority are empowered to verify the abstract of title, and to obtain, if necessary, a further abstract.

As to publication of notices, see Art. 32, *post*.

The form of notice in this Article has not been prescribed.

Special Powers of Arbitration.

(11.) The arbitrator shall have the same power of apportioning any rent service, rentcharge, chief or other rent, payment, or incumbrance, or any rent payable in respect of lands comprised in a lease, as two justices have under the Lands Clauses Consolidation Act, 1845. Power of arbitrator as to apportionment. 42 & 43 Vict. c. 63, Sch. (2).

When land is subject to a rentcharge, lease, or like incumbrance, and part only of such land is taken, then under the Lands Clauses Consolidation Act, 1845, the apportionment is to be settled by two justices if the parties do not agree. Of that Act, see s. 98 as to apportioning copyhold rents ; s. 116 as to apportioning rent service, rent-charges, or chief or other rent ; and s. 119 as to apportioning rent in respect of land held under lease. In the case of land subject to mortgage, the rights of the parties are to be adjusted as in other cases of disputed compensation (s. 112), so that the arbitrator under this Act will have power also to adjust these rights.

The costs incurred in respect of such apportionment are, probably, in the discretion of the arbitrator. (See Art. 29, *post*.) If the money is paid into court, they will probably be payable by the local authority. (See *Ex parte Flower*, L. R. 1 Ch. 599.)

(12.) Notwithstanding anything in section ninety-two of the Lands Clauses Consolidation Act, 1845, the arbitrator may determine that such part of any house, building, or manufactory as is proposed to be taken by the local authority can be taken without material damage to such house, building, or manufactory, and if he so determine may award compensation in respect of the severance of the part so proposed to be taken, in addition to the value of that part, and thereupon the party interested shall be required to sell and convey to the local authority such part, without the local authority being obliged to purchase the greater part or the whole of such house, building, or manufactory. Amendment respecting severance of properties. 8 & 9 Vict. c. 18. 42 & 43 Vict. c. 63, Sch. (3).

Sched. 2 (12). The local authority, or any person interested, if dissatisfied with a determination under this enactment, may, in manner provided with respect to appeals to a jury in respect of compensation for land by this schedule, submit the question of whether the said part can be taken without material damage, as well as the question of the proper amount of compensation, to a jury; and the notice of intention to appeal shall be given within the same time as notice of intention to appeal against the amount of compensation awarded is required to be given.

Section 92 provides, "that no party shall at any time be required to sell or convey to the promoters of the undertaking a part only of any house or other building or manufactory, if such party be willing and able to sell and convey the whole thereof." A similar proviso to that in the text is now not unfrequently inserted in local Acts of Parliament. In determining whether material damage will be caused by the severance, the arbitrator must take all the circumstances of the case into account; thus, if the part of the premises to be taken is the part which forms the access to the premises, the arbitrator must take into account whether another sufficient access is to be substituted, and if it is, it is open to him to find that the severance can be made without material damage (*In re Gonty and Manchester, Sheffield, and Lincolnshire Rail. Co.*, [1896] 2 Q. B. 439). It is, however, a question of fact in each case, and, subject to the appeal mentioned in the text, the finding of the arbitrator will be binding (*Caledonian Rail. Co.* v. *Turcan*, [1898] A. C., H. L. (Sc.) 256).

The costs are apparently to some extent in the discretion of the arbitrator. (Art. 29, *post*.)

The appeal referred to above is that mentioned in Arts. 26 and 27, *post*, and appears to be independent of the limitation as to the amount therein mentioned. In the event of any question of law arising it would be advisable to request the arbitrator to deliver his award in the form of a special case, so that the question could be determined thereon, otherwise the parties will require to satisfy the court that a failure of justice will take place before leave will be given to submit the question to a jury, and it may not be possible in proceedings under this section to show that the arbitrator has in fact made a mistake in law. (See note to Art. 26.)

Omitted nterests 42 & 43 Vict. c. 63, Sch. (4).

(13.) The amount of purchase money or compensation to be paid in pursuance of section one hundred and twenty-four of the Lands Clauses Consolidation Act, 1845, in respect of any estate, right, or interest in or charge affecting any of the scheduled lands which the local authority have through mistake or inadvertence failed or omitted duly to purchase or make compensation for, shall be awarded by the arbitrator and be paid, in like manner, as near as may be, as

the same would have been awarded and paid if the claim of such estate, right, interest, or charge had been delivered to the arbitrator before the day fixed for the delivery of statements of claims. Sched. 2 (13).

If the arbitrator is satisfied that the failure or omission to purchase the said estate, right, interest, or charge, arose from any default on the part either of the claimant or of the local authority, he may direct the costs to be paid by the party so in default.

Section 124 deals with interests which the promoters have failed to acquire before entering upon the lands. By that section the promoters may remain in possession provided that compensation is paid within six months after notice of the omission, or in case of the claim being disputed within six months of the right being established. The claimant is also entitled to mesne profits. The disputed right may be determined in an action of ejectment, of which execution will be stayed for six months (*Marquis of Salisbury* v. *Great Northern Rail. Co.*, 7 W. R. 75); or by an action for trespass (*Thomas* v. *Barry Dock and Rail. Co.*, 5 T. L. R. 360). As to the costs of such action, see s. 126 of the Lands Clauses Consolidation Act, 1845. By s. 125 of that Act the land is to be valued as at the date such lands were entered upon.

Payment of Purchase Money.

(14.) Within thirty days from the delivery of such statement and abstract as aforesaid to the local authority, the local authority shall, where it appears to them that any person so claiming is absolutely entitled to the lands, estate, or interest claimed by him, deliver to such person, on demand, a certificate stating the amount of the compensation to which he is entitled under the said award. Arts. 14—24. See 38 & 39 Vict. c. 36, Sch.

The statement and abstract referred to are those mentioned in Art. 10, *ante*, p. 136.

"Absolutely entitled" appears to mean, "entitled to his or her own use." (See *per* JESSEL, M. R., in *Kelland* v. *Fulford*, 6 Ch. D. 491, p. 495.) It would appear that trustees under settlements, whether with power of sale or not, are not persons absolutely entitled (*In re Smith*, 40 Ch. D. 386). As to possessory titles, see s. 79 of the Lands Clauses Consolidation Act, 1845.

This certificate relates only to the amount of compensation. Costs are dealt with by another certificate which the arbitrator may give under Art. 29, *post*.

(15.) Every such certificate shall be prepared by and at the cost of the local authority; and where any agreement

Sched. 2 (15). has been entered into as to the compensation payable in respect of the interest of any person in any lands, the local authority may, where it appears to them that such person is absolutely entitled, deliver to such person a like certificate.

(16.) The local authority shall, thirty days after demand, pay to the party to whom any such certificate is given, or otherwise as herein provided in the cases herein-after mentioned, the amount of moneys specified to be payable by such certificate to the party to whom or in whose favour such certificate is given, his or her executors, administrators, or assigns.

"The cases hereinafter mentioned" evidently are the cases when the money is payable into the Bank of England under Arts. 20 and 21, and the meaning of this somewhat confused section would appear to be that thirty days after demand the local authority shall pay to the party or into the bank the amount found by the award to be the value of the interest in respect of which the demand is made.

(17.) If the local authority wilfully make default in such payment as aforesaid, then the party named in such certificate shall be entitled to enter up judgment against the local authority in the High Court, for the amount of the sums specified in such certificate, in the same manner in all respects as if he had been, by warrant of attorney from the local authority, authorised to enter up judgment for the amount mentioned in the certificate, with costs, as is usual in like cases; and all moneys payable under such certificates, or to be recovered by such judgments as aforesaid, shall at law and in equity be taken as personal estate as from the time of the local authority entering on any such lands as aforesaid.

Money paid into court under s. 69 of the Lands Clauses Consolidation Act, 1845, is re-converted into realty until some person becomes absolutely entitled, when he can stop the re-conversion (*Kelland* v. *Fulford*, 6 Ch. D. 491).

(18.) When and so soon as the local authority have paid to the party to whom any such certificate as aforesaid is given, or otherwise, as herein provided, in the cases herein-after mentioned, the amount specified to be payable by such certificate to the party to whom or in whose favour the

certificate is given, his executors, administrators, or assigns, it shall be lawful for the local authority, upon obtaining such receipt as herein-after mentioned, from time to time to enter upon any lands in respect of which such certificate is given, and thenceforth to hold the same for the estate or interest in respect of which the amount specified in such certificate was payable. Sched. 2 (18).

In cases where the money is payable into the bank under Arts. 20 and 21, this section would appear to be sufficient to give the local authority a right to take possession as soon as the money is so paid in. This was, in effect, so held by CHITTY, J., in *In re Shaw and the Corporation of Birmingham*, 27 Ch. D. 614, at p. 619, a case under the almost identical provisions in the schedule to the Artizans and Labourers Dwellings Acts, 1875 (38 & 39 Vict. c. 36). If the local authority desire to enter before the time mentioned in this section they must proceed as provided in Arts. 24 and 25, *post*, p. 144 ; and see as to entry before payment or deposit the note to Art. 24.

(19.) In every case in which any moneys are paid by any local authority under this Act for such compensation as aforesaid, the party receiving such moneys shall give to the local authority a receipt for the same, and such receipt shall have the effect of a grant, release, and conveyance of all the estate and interest of such party, and of all parties claiming under or through him, in the lands in respect of which such moneys are paid, provided such receipt has an ad valorem stamp of the same amount impressed thereon in respect of the purchase moneys mentioned in such certificate as would have been necessary if such receipt had been an actual conveyance of such estate or interest, every such receipt to be prepared by and at the cost of the local authority.

As this receipt is in the nature of a conveyance, it should show clearly the land and the nature of the interest in respect of which it is paid. The receipt should be given, although the costs of the arbitration have not been paid, as a separate proceeding for their recovery is provided by Art. 29, *post*.

When money is paid into the bank the cashier should give a receipt, and the local authority should see that it is properly stamped. Such receipt would then vest in the promoters the interest in the land in respect of which it is paid, and then it would appear to be unnecessary for the local authority either to require a conveyance from any person having a limited interest, or to execute a deed poll as required by ss. 75—77 of the Lands Clauses Consolidation Act, 1845.

Sched. 2 (20).

(20.) If it appear to the local authority, from any such statement and abstract as aforesaid, or otherwise, that the person making any such claim as aforesaid is not absolutely entitled to the lands, estate, or interest in respect of which his claim is made, or is under any disability, or if the title to such lands, estate, or interest be not satisfactorily deduced to the local authority, then and in every such case the amount to be paid by the local authority in respect of such lands, estate, or interest as aforesaid shall be paid and applied as provided by the clauses of the Lands Clauses Consolidation Act, 1845, as amended by the Court of Chancery Funds Act, 1872, "with respect to the purchase money or compensation coming to parties having limited interests, or prevented from treating, or not making title."

The sections of the Lands Clauses Consolidation Act, 1845, here referred to, are ss. 69—80. It should be noted that they are to apply so far as they provide for the payment and application of the money. For the other provisions as to conveyance and vesting of the lands in the local authority, the provisions in Arts. 16, 18, and 19, *supra*, would appear to be substituted. Section 80, which relates to costs, would, however, be applicable (*Ex parte Jones*, 14 Ch. D. 624).

The Chancery Funds Act, 1872, has been amended by the Supreme Court of Judicature (Funds) Act, 1883, and the procedure in the Paymaster-General's Office is regulated by the Supreme Court Fund Rules.

The above sections of the Lands Clauses Consolidation Act, with the procedure, and the numerous cases decided upon these sections, will be found set out in Browne and Allan's Law of Compensation, pp. 143—216.

(21.) Where any person claiming any right or interest in any lands refuses to produce his title to the same, or where the local authority have under the provisions of Part I. of this Act taken possession of any lands in respect of the compensation whereof, or of any estate or interest wherein, no claim has been made within one year from the time of the local authority taking possession, or if any party to whom any such certificate has been given or tendered refuses to receive such certificate, or to accept the amount therein specified as payable to him, then and in any such case the amount payable by the local authority in respect of such lands, estate, or interest, or the amount specified in

such certificate, shall be paid into the Bank of England, in manner provided by the last-mentioned clauses of the Lands Clauses Consolidation Act, 1845, as amended by the Court of Chancery Funds Act, 1872, and the amount so paid into the said Bank shall be accordingly dealt with as by the said Act provided. Sched. 2 (21).

The provisions of Part I. of this Act evidently mean Arts. 24 and 25 of this schedule, *post*. (See also the note to Art. 20.)

(22.) Nothing herein contained shall prevent the local authority from requiring any further abstract or evidence of title respecting any lands included in any such award as aforesaid, in addition to the abstract or statement hereinbefore mentioned, if they think fit, so as the same be obtained at the cost of the local authority.

For the abstract and statement hereinbefore mentioned, see Art. 10, *ante*, p. 136. This will enable the local authority to verify the abstract.

(23.) If from any reason whatever the local authority does not deliver the certificate aforesaid to any party claiming to be entitled to any interest in any lands the possession whereof has been taken by the local authority as aforesaid, then the right to have a certificate according to the provisions of this Act may, at the cost and charge of the local authority, be enforced by any party or parties, by application to the High Court, in a summary way by petition, and all other rights and interests of any party or parties arising under the provisions of this Act may be in like manner enforced against the local authority by such application as aforesaid.

Under the Lands Clauses Acts the procedure to compel the promoters to do any act is generally to move for a writ of *mandamus*. This Article substitutes a procedure by petition. The Article further states that all other rights of any party arising "under the provisions of this Act" are to be enforced in like manner. This is rather a surprising provision to find in a schedule relating solely to the acquisition of land under Part I. of this Act, and it must be considered very doubtful if it applies to the whole of the Act. It may possibly be an oversight of the draftsman, who omitted to alter the expression when he took the above Article from the schedule to the Artizans Dwellings Improvement Act, 1875 (see Art. 23

Sched. 2 (23). thereof); but in the absence of any authoritative decision, this provision should not be overlooked.

NOTE. As to procedure on petition in a summary way, see the Judicature Act, 1884, s. 13, and 18 & 19 Vict. c. 134, s. 16; R. S. C., O. 52, rr. 12—23, and O. 55, r. 2. The matters may be disposed of in chambers.

Entry on Lands on making Deposit.

(24.) Where the local authority are desirous, for the purposes of their works, of entering upon any lands before they would be entitled to enter thereon under the provisions herein-before contained, it shall be lawful for the local authority, at any time after the arbitrator has framed his award, upon depositing in the Bank of England such sum as the arbitrator may certify to be in his opinion the proper amount to be so deposited in respect of any lands authorised to be purchased or taken by the local authority, and mentioned in such award, to enter upon and use such lands for the purposes of the improvement scheme of the local authority: and the arbitrator shall, upon the request of the local authority at any time after he has framed such award, certify under his hand the sum which, in his opinion, should be so deposited by the local authority in respect of any lands mentioned in such award before they enter upon and use the same as aforesaid, and the sum to be so certified shall be the sum or the amount of the several sums set forth in such award as the sum or sums to be paid by the local authority in respect of such lands, or such greater amount as to the arbitrator, under the circumstances of the case, may seem proper; and, notwithstanding such entry as aforesaid, all proceedings for and in relation to the completion of the award, the delivery of certificates, and other proceedings under Part I. of this Act, shall be had, and payments made, as if such entry and deposit had not been made;

Provided that the local authority shall, where they enter upon any lands by virtue of this present provision, pay interest at the rate of five pounds per centum per annum upon the compensation money payable by them in respect of any lands so entered upon, from the time of their entry

Sched. 2(24).

until the time of the payment of such money and interest to the party entitled thereto, or where, under the provisions of Part I. of this Act, such compensation is required to be paid into the Bank of England, then until the same, with such interest, is paid into such Bank accordingly; and where under this provision interest is payable on any compensation money the certificate to be delivered by the local authority in respect thereof shall specify that interest is so payable, and the same shall be recoverable in like manner as the principal money mentioned in such certificate.

This article is a modification of s. 85 of the Lands Clauses Consolidation Act, 1845, and it should be noted that the money is paid in as a deposit or security and not as payment. When the local authority have paid the compensation to the parties entitled, or into the bank, under the preceding articles, then the authority can apply to the court to have this money paid out to them under the next article; if the authority do not so pay the compensation, the parties can apply to the court to have the deposited money applied for their benefit.

The local authority, except for the purpose of surveying or of setting out works, may not enter, except with the consent of the owners and occupiers, upon the lands until they have either paid the compensation as provided in this schedule or made the deposit as in this article. Section 84 of the Lands Clauses Consolidation Act, 1845, to that effect is incorporated, although modified as to entry for making and surveying by s. 77 of this Act, *ante*, p. 108. If they enter before such payments or deposit, or without such consent, they will be liable in an action for trespass or ejectment, even at the instance of a person who has merely an equitable right to possession (see *Birmingham and District Land Co.* v. *London and North Western Rail. Co.*, 40 Ch. D. 268; *Stretton* v. *Great Western and Brentford Rail. Co.*, 5 Ch. App. 751), and to a penalty under s. 89 of that Act. The local authority may also enter in a proper case to take down dangerous buildings on the order of a magistrate, and such proceedings are not affected by this Act. See *Barnet* v. *Metropolitan Board of Works*, 46 L. T. 384.

If the owner refuse to deliver up possession after the provisions of the schedule have been complied with, the local authority may proceed to obtain possession under s. 91 of the Lands Clauses Consolidation Act, 1845; and as to obstructing any officer of the authority, see s. 89 of this Act, *ante* p. 114.

(25.) The money so deposited as last aforesaid shall be paid into the Bank of England to such account as may from time to time be directed by any regulation or Act for the time being in force in relation to moneys deposited in the bank in similar cases, or to such account as may be directed

Sched. 2 (25). by any order of the High Court, and remain in the bank by way of security to the parties interested in the lands which have been so entered upon for the payment of the money to become payable by the local authority in respect thereof under the award of the arbitrator; and the money so deposited may, on the application by petition of the local authority, be ordered to be invested in Bank Annuities or Government securities, and accumulated: and upon such payment as aforesaid by the local authority it shall be lawful for the High Court, upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the local authority, or, in default of such payment as aforesaid by the local authority, it shall be lawful for the said court to order the same to be applied in such manner as it thinks fit for the benefit of the parties for whose security the same shall so have been deposited.

This section is a modification of ss. 86 and 87 of the Lands Clauses Consolidation Act, 1845.

Payment in and investment are regulated by the Supreme Court Fund Rules, 1894, made pursuant to the Court of Chancery Funds Act, 1872, and the Judicature Acts. The same practice as to costs on applications for payment out, which apply to proceedings under the Lands Clauses Acts will apply to the like proceedings under this Act (*Ex parte Jones*, 43 L. T. 84; 14 Ch. D. 624).

Appeal.

(26.) In the following cases, namely,—

See 45 & 46 Vict. c. 54, Sch. (G).

(a.) Where the party named in any certificate issued under the provisions herein-before contained (*c*) of the amount of the compensation ascertained by any award under Part I. of this Act (or any party claiming under the party so named) is dissatisfied with the amount in such certificate certified to be payable, and such amount exceeds one thousand pounds, and

(*c*) See Art. 14, *ante*, p. 139.

Sched. 2 (26).

(b.) Where any party claiming any interest in any moneys so paid into court as aforesaid is dissatisfied with the amount of the price or compensation in respect of which such moneys are paid into court (*d*), and such amount exceeds one thousands pounds; also

(c.) Where the local authority is dissatisfied with the amount of compensation which the arbitrator appointed under the provisions of Part I. of this Act has awarded to be paid by the local authority to any person in respect of any estate or interest in lands, and such amount exceed the sum of one thousand pounds:

the party dissatisfied may, upon obtaining the leave of the High Court, which leave may be granted by such court or any judge thereof at chambers in a summary manner, and upon being satisfied that a failure of justice will take place if the leave is not granted, submit the question of the proper amount of compensation to a jury, provided that such party give notice in writing to the other party of their intention to appeal within ten days after the cause of appeal has arisen.

The cause of appeal shall be deemed to have arisen,—

(1.) Where a certificate has been issued as aforesaid, at the date of the issue of the certificate (*e*);

(2.) Where moneys have been paid into court, at the date of the payment into court (*d*);

(3.) Where the local authority appeals, at the date of the making of the award (*e*).

The appeal is only allowed when the sum found due is over 1,000*l.*, and not when the amount claimed is over that sum. An appeal is also allowed under Art. 12, *ante*, p. 137, in the same manner as here provided. In cases where there has been a mistake of law or excess of jurisdiction on the part of the arbitrator, claimants awarded less than 1,000*l.* can have the matter remedied by having the award set aside or remitted to the arbitrator to reconsider, or to state the award in the form of a special case (see the Arbitration Act, 1889, ss. 7 and 10, and note to Art. 9, *ante*, p. 135), and probably when the amount is over 1,000*l.*, this will be found to be the more effectual remedy in many cases. In an Irish case an opinion was

(*d*) See Arts. 20 and 21, *ante*, p. 142. (*e*) See Art. 9, *ante*, p. 135.

Sched. 2 (26).

NOTE.

expressed that a claimant to whom several sums are awarded, each less than 1000*l.*, but amounting in the aggregate to more than 1,000*l.*, in respect of an estate held under the same title, may be given leave to appeal (*Ex parte Birch*, [1894] 2 Ir. R. Q. B. D. 181).

Leave of the Court.—Before the party dissatisfied can submit the matter to a jury, he must obtain the leave of the High Court. This may be applied for either by motion after notice or by summons in chambers before a judge. Whichever tribunal is selected, the decision is final and there is no appeal to a higher court, nor can another application be made to another court, as is the case under certain Statutes (*Ex parte Stevenson*, [1892] 1 Q. B. 394). In Ireland the more usual procedure is by motion upon notice (*Ex parte Birch*, *supra*).

The party desiring to appeal must also satisfy the court that a failure of justice will take place. It is not enough that the court does not agree with the figures of the arbitrator, nor is the section limited to some mistake of law. In cases where the award would be set aside, the appeal would, doubtless, be allowed; but even in other cases, if the court was satisfied that the amount was evidently improper, they would give leave to appeal (*Ex parte Larmouth and Lees*, 10 T. L. R. 225). The Divisional Court in Ireland expressed a similar opinion in *Ex parte Birch*, [1894] 2 Ir. R. Q. B. D. 181.

(27.) Where a notice has been given under Part I. of this Act of an appeal to a jury in respect of compensation for land, or any interest in land, a question of disputed compensation required to be determined by the verdict of a jury shall be deemed to have arisen within the meaning of the Lands Clauses Consolidation Act, 1845, and all the provisions of that Act contained in sections thirty-eight to fifty-seven, both inclusive, shall be deemed to apply, except sections forty-seven and fifty-one: Provided also, that—

8 & 9 Vict. c. 18.

(1.) Where the local authority appeals that authority shall be deemed to be the plaintiff and the party entitled to compensation to be the defendant; and

(2.) Where the party claiming compensation appeals, then, in case the verdict of the jury is for a sum exceeding the award of the arbitrator, the local authority shall pay to such party the costs of the trial, such costs to be taxed and ascertained in the same manner as costs are by law ascertained on the trial of issues tried in the High Court; but in case the verdict of the jury is for a sum

not exceeding the award of the arbitrator, the party appealing shall pay to the local authority the costs of the trial to be taxed and ascertained in manner aforesaid.

(3.) Where the local authority is the appellant,—

(a.) Notwithstanding the verdict of the jury may be for a sum less than that awarded by the arbitrator, the local authority shall pay to the other party such sum not exceeding twenty pounds for the costs of the trial as the sheriff or other officer before whom the same is tried shall direct; and

(b.) In case the verdict of the jury is for a sum equal to or exceeding the award of the arbitrator, the local authority shall pay to the other party the costs of the trial, such costs to be taxed and ascertained in manner aforesaid.

(c.) The amount of compensation awarded by the arbitrator shall not be communicated to the jury but they shall be required to make an independent assessment of the amount of compensation to which the party claiming compensation is entitled.

Section 47 of the Lands Clauses Consolidation Act, which is excepted, makes provision in case of non-appearance of the party, and s. 51 deals with costs, in place of which the provisions in sub-ss. (2) and (3) of the above article apply.

The value of the lands is to be estimated on the fair market value at the time of the valuation being made (see s. 21 (1), *ante*, p. 28) which may be different from that at the time when the arbitrator made his award.

Where a sum of money had been paid into court under Art. 20 by a local authority upon the award of the arbitrator, and on appeal the jury assessed the compensation at a larger amount, the difference also having been paid into court, it was held that interest at the rate of 4 per cent. was payable on the difference from the date of the first payment in to the date of the second (*In re Shaw and the Corporation of Birmingham*, 27 Ch. D. 614).

Costs of Arbitration.

(28.) The salary or remuneration, travelling, and other expenses of the arbitrator, and all costs, charges, and expenses (if any) which may be incurred by the confirming

See 45 & 46 Vict. c. 54, Sch. (H).

Sched. 2 (28). authority in carrying the provisions of Part I. of this Act into execution, shall, after the amount thereof shall have been certified under this article, be paid by the local authority; and the amount of such costs, charges, and expenses shall from time to time be certified by the confirming authority after first hearing any objections that may be made to the reasonableness of any such costs, charges, and expenses by or on behalf of the local authority; and every certificate of the said confirming authority certifying the amount of such costs, charges, and expenses shall be taken as proof in all proceedings at law or in equity of the amount of such respective costs, charges, and expenses, and the amount so certified shall be a debt due from the local authority to the Crown, and shall be recoverable accordingly.

Further, any such certificate may be made a rule of a superior court on the application of any party named therein, and may be enforced accordingly.

This section is intended to cover any costs incurred by the confirming authority which have not already been provided for under the first part of the Act, as to which see s. 8 (8), *ante*, p. 12, s. 16 (2), *ante*, p. 24, and s. 85, *ante*, p. 112.

As to making the certificate a rule of court, see the note to s. 8 (9), *ante*, p. 12.

(29.)—(1.) It shall be lawful for the arbitrator, where he thinks fit, upon the request of any party by whom any claim has been made before him, to certify the amount of the costs properly incurred by such party in relation to the arbitration, and the amount of the costs so certified shall be paid by the local authority;

Provided that—

See 45 & 46 Vict. c. 54, Sch. (I).

(a.) The arbitrator shall not be required to certify the amount of costs in any case where he considers such costs are not properly payable by the local authority;

(b.) The arbitrator shall not be required to certify the amount of costs incurred by any party in relation to the arbitration, in any case where he considers that such party neglected, after due

notice from the local authority, to deliver to that authority a statement in writing within such time, and containing such particulars respecting the compensation claimed, as would have enabled the local authority to make a proper offer of compensation to such party before the appointment of the arbitrator.

(c.) No certificate shall be given where the arbitrator has awarded the same or a less sum than has been offered by the local authority in respect of the claim before the appointment of the arbitrator.

(2.) If within seven days after demand the amount certified be not paid to the party entitled to receive the same, such amount shall be recoverable as a debt from the local authority with interest at the rate of five per cent. per annum for any time during which the same remains unpaid after such seven days as aforesaid.

A certain amount of discretion is given to the arbitrator by this section, and probably this article as it relates to any claims, may govern proceedings under Articles 11—13, *ante*, p. 137, which confer special powers on the arbitrator. There appears to be no power to tax the costs or to review the arbitrator's certificate unless he exceeds his jurisdiction. It follows from this section that the claimant is in no case to pay the costs of the local authority, and he may recover his own if he is awarded more than the local authority have offered before the appointment of the arbitrator. Under the Lands Clauses Acts the usual practice is not to inform the arbitrator of the amount offered; under this schedule it would be the arbitrator's duty to enquire what the authority is willing to pay (see Art. 7, *ante*, p. 134). This, however, may not be the same as the amount offered before the arbitrator is appointed.

Miscellaneous.

(30.) The arbitrator may call for the production of any documents in the possession or power of the local authority, or of any party making any claim under the provisions of Part I. of this Act, which such arbitrator may think necessary for determining any question or matter to be determined by him under Part I. of this Act, and may examine any such party and his witnesses, and the

Sched. 2 (30). witnesses for the local authority, on oath, and administer the oaths necessary for that purpose.

A party may affirm instead of taking an oath if he objects to being sworn, and states as the ground of his objection either that he has no religious belief, or that the taking of an oath is contrary to his religious belief (Oaths Act, 1888, s. 1).

The arbitrator has also the powers under the Arbitration Act, 1889, and parties may require the attendance of witnesses and the production of documents under the provisions of that Act.

(31.) If any arbitrator appointed in pursuance of Part I. of this Act die, or refuse, decline, or become incapable to act, the confirming authority may appoint an arbitrator in his place, who shall have the same powers and authorities as the arbitrator first appointed; and upon the appointment of any arbitrator in the place of an arbitrator dying, or refusing, declining, or becoming incapable to act, all the documents relating to the matter of the arbitration which were in the possession of such arbitrator shall be delivered to the arbitrator appointed in his place, and the local authority shall publish notice of such appointment in the London Gazette.

As to the appointment of an arbitrator, see Art. 4 *ante*, p. 132.

(32.) All notices required by this schedule to be published shall be published in some one and the same newspaper circulating within the jurisdiction of the local authority, and where no other form of service is prescribed all notices required to be served or given by the local authority under this schedule or otherwise upon any persons interested in or entitled to sell lands, shall be served in manner in which notices of lands proposed to be taken compulsorily for the purpose of an improvement scheme are directed by Part I. of this Act to be served upon owners or reputed owners, lessees or reputed lessees, and occupiers.

The manner of service directed by Part I. will be found in s. 7, *ante*, p. 8.

Application of Schedule to Scotland.

Application of Schedule to Scotland.

The provisions of this schedule shall apply to Scotland, with the following modifications:—

Sched. 2 (33).

(33.)—(a.) In any reference in this schedule to "an abstract of title" there shall be substituted "a legal progress of the title deeds":

(b.) In articles sixteen and eighteen of this schedule the words heirs, executors, or assignees shall be substituted for the words "executors, administrators, or assigns":

(c.) In articles twenty and twenty-one the words "as amended by the Court of Chancery Funds Act, 1872," shall be omitted:

(d.) Any reference to payment of money into the Bank of England shall be construed to be payment into any one of the incorporated or chartered banks of Scotland:

(e.) Any reference to the High Court shall be construed as a reference to the court of session:

(f.) Any money ordered to be invested under article twenty-five of this schedule shall be invested only in Government securities:

(g.) Any reference to payment of money into court shall be construed as payment into bank:

(h.) A reference to plaintiff and defendant shall be construed as a reference to pursuer and defender:

(i.) The Edinburgh Gazette shall be substituted for the London Gazette.

(34.) In lieu of articles 11, 17, and 19 of this schedule the following provisions shall be substituted:—

(i.) The arbitrator shall have the same power of apportioning any feu duty, ground annual, casualty or superiority, or any rent or other annual or recurring payment or incumbrance, or any rent payable in respect of lands comprised in a lease, as the sheriff has under the Lands Clauses Consolidation (Scotland) Act, 1845.

(ii.) If the local authority wilfully make default in such payment as aforesaid, then the party named in such certificate shall be entitled to record the same in the books of council and session, or other judge's books competent, and to have a decree interponed thereto, and to be extracted with a view to

Sched. 2 (3

execution, in the like manner as if a formal clause of registration had been contained therein; and all diligence and execution shall be competent thereon in the like manner and to all effects as upon any bond containing such formal clause of registration; and all moneys payable under such certificates, or to be recovered by such execution and diligence as aforesaid, shall be taken as personal estate as from the time of the local authority entering on any such lands as aforesaid.

(iii.) In every case in which any moneys are paid by any local authority under this Act for such compensation as aforesaid, the party receiving such moneys shall give to the local authority a conveyance of the lands in respect of which such moneys are paid, or of all the estate and interest of such party, and of all the parties claiming under or through him, in such lands, and every such conveyance shall be prepared by and at the costs of the local authority.

Application of Schedule to Ireland.

(35.) The provisions of this schedule shall apply to Ireland, with the following modifications:—

13 & 14 Vict. c. 51.

(a.) In articles twenty and twenty-one the words and figures "the Act of the session of the thirteenth and fourteenth years of the reign of Her present Majesty, chapter fifty-one, intituled 'An Act for the transfer of the equitable jurisdiction of the Court of Exchequer to the Court of Chancery in Ireland, and any subsequent enactment'" shall be substituted for the words and figures "the Court of Chancery Funds Act, 1872."

(b.) The Bank of Ireland shall be substituted for the Bank of England;

(c.) The Dublin Gazette shall be substituted for the London Gazette.

Schedule 3.

THIRD SCHEDULE.

ENACTMENTS APPLIED for the purpose of PROCEEDINGS for CLOSING PREMISES in ENGLAND, SCOTLAND, and IRELAND respectively. Sections 29, 32, *ante*, pp. 40 and 44.

See the note as to these enactments on p. 46, *ante*.

ENGLAND.

Administrative County of London.

SANITARY ACT, 1866 (Section 21). 29 & 30 Vict. c. 90.

NUISANCES REMOVAL ACT, 1855 (Sections 8, 12, and 13). 18 & 19 Vict. c. 121.

SANITARY ACT, 1866 (Section 21).

21. The nuisance authority . . . . shall, previous to taking proceedings before a justice under the twelfth section of the Nuisances Removal Act, 1855, serve a notice . . . . on the owner or occupier of the premises on which the nuisance arises, to abate the same, and for that purpose to execute such works, and to do all such things as may be necessary within a time to be specified in the notice: Provided, As to proceedings of nuisance authority under s. 12 of 18 & 19 Vict. c. 121.

First, that where the nuisance arises from the want or defective construction of any structural convenience, or where there is no occupier of the premises, notice under this section shall be served on the owner:

* * * * *

NUISANCES REMOVAL ACT, 1855 (Sections 8, 12, and 13).

8. The word nuisances under this Act shall include—

Any premises in such a state as to be a nuisance or injurious to health

* * * * *

12. In any case where a nuisance is so ascertained by the local authority to exist, or where the nuisance in their opinion did exist at the time when the notice was given, and, although the same may have been since removed or Proceedings by local authority before justices in case of

Schedule 3.

nuisances likely to recur, etc.

discontinued, is, in their opinion, likely to recur or to be repeated on the same premises or any part thereof, they shall cause complaint thereof to be made before a justice of the peace, and such justice shall thereupon issue a summons requiring . . . . the owner or occupier of the premises on which the nuisance arises, to appear before any two justices, in petty sessions assembled, at their usual place of meeting, who shall proceed to inquire into the said complaint; . . . .

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

The Sanitary Act, 1866, and the Nuisances Removal Act, 1855, have been repealed, and consolidated and amended by the Public Health (London) Act, 1891, and it would appear that the proceedings should be taken under the corresponding sections of that Act. (See note to s. 32, *ante*, p. 46.) The corresponding sections are ss. 2, 4, 5, and 6. (See these set out and annotated in Macmorran's Public Health (London) Act, 1891, p. 10, *et seq.*)

These sections are modified by the Housing of the Working Classes Act, 1890, ss. 30—32, so far that for premises must be read "dwelling-house so dangerous or injurious to health as to be unfit for human habitation" (as to which see note to s. 30, *ante*, p. 42), and for "owner" must be given the interpretation stated in Art. 29, *ante*, p. 40, as to which see note.

Elsewhere than London.

PUBLIC HEALTH ACT, 1875 (Sections 91, 94, 95, and 97).

91. For the purposes of this Act—

38 & 39 Vict. c. 55.

(1.) Any premises in such a state as to be a nuisance or injurious to health . . . . shall be deemed to be nuisances liable to be dealt with summarily in manner provided by this Act.

Local authority to serve notice requiring abate-

94. . . . . the local authority shall . . . . serve a notice . . . . on the owner or occupier of the premises on which the nuisance arises, requiring him to abate the

Schedule 3.

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—

ment of nuisance.

First. That where the nuisance arises from the want or defective construction of any structural convenience, or where there is no occupier of the premises, notice under this section shall be served on the owner:

* * * * *

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.

On non-compliance with notice complaint to be made to justice.

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.

Order of prohibition in case of house unfit for human habitation.

For "premises, etc.," read "dwelling-house so dangerous or injurious to health as to be unfit for human habitation" (ss. 30—32, *ante*, p. 42; and "owner" must be given the meaning in s. 29, *ante*, p. 40.

As to the cases on these sections, see Lumley's Public Health Acts, 5th ed., pp. 108, 115, 119, and 121.

SCOTLAND.

PUBLIC HEALTH (SCOTLAND) ACT, 1867 (Sections 16, 18, and 19).

30 & 31 Vict. c. 101.

16. The word "nuisance" under this Act shall include—

(a.) Any insufficiency of size, defect of structure, defect of ventilation, want of repair or proper

Schedule 3.

drainage, or suitable watercloset, or privy accommodation or cesspool, and any other matter or circumstance rendering any inhabited house, building, premises, or part thereof, injurious to the health of the inmates or unfit for human habitation or use—

* * * * *

Proceedings by local authority when nuisances are ascertained to exist.

18. In any case where the existence of a nuisance is ascertained to their satisfaction by the local authority, ... and, although the same may have been since removed or discontinued, is in their opinion likely to recur or to be repeated, they may apply to the sheriff or to any magistrate or justice, by summary petition in manner herein-after directed, and if it appear to his satisfaction that the nuisance exists, or, if removed or discontinued since the demand of admission was made or the certificate was given, that it is likely to recur or to be repeated, he shall decern for the removal or remedy or discontinuance or interdict of the nuisance. . . . .

19. . . . . and if the nuisance proved to exist be such as to render a house or building unfit for human habitation, he† may prohibit the using thereof for that purpose until it is rendered fit for that purpose, or do otherwise as the case may in his judgment require.

† *i.e.*, the sheriff, magistrate, or justice.

The Public Health (Scotland) Act, 1867, has been repealed by a consolidatory and amending Act, The Public Health (Scotland) Act, 1897, s. 193 of which provides that "Where in any public, general, or local Act, the Public Health Acts, or any sections thereof are referred to, such reference shall be deemed to mean and include a reference to this Act or the corresponding sections of this Act or any amendments thereof." The corresponding sections of the 1897 Act are ss. 16, 20—23. See note, *ante*, p. 46, as to these enactments.

IRELAND.

41 & 42 Vict. c. 52.

PUBLIC HEALTH (IRELAND) ACT, 1878 (Sections 107, 110, 111, and 113).

107. For the purposes of this Act—

(1.) Any premises in such a state as to be a nuisance or injurious to health . . . . shall be deemed to be nuisances liable to be dealt with summarily in manner provided by this Act.

Schedule 3.

110. . . . . the sanitary authority shall . . . . serve a notice . . . . 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—

Sanitary authority to serve notice requiring abatement of nuisance.

First. That where the nuisance arises from the want or defective construction of any structural convenience, or where there is no occupier of the premises, notice under this section shall be served on the owner:

* * * * *

111. 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 sanitary authority, likely to recur on the same premises, the sanitary 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.

On non-compliance with notice, complaint to be made to justice.

113. 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.

Order of prohibition in case of house unfit for human habitation.

[Schedule 4.
Form A.

FOURTH SCHEDULE.

Section 32, *ante*, p. 44.

FORMS.

FORM A.

Form of Notice requiring Premises to be made fit for Habitation.

To [*person causing the premises to be unfit for habitation, or owner or occupier of the premises, as the case may be*] .

Take notice that under the provisions of the Public Health Act, 1875, and the Housing of the Working Classes Act, 1890, the [*describe the local authority*], being satisfied that the following premises, that is to say [*describe premises or place where the nuisance exists*], are in a state so dangerous or injurious to health as to be unfit for human habitation, do hereby require you within from the service of this notice to make the said premises fit for human habitation.

If you make default in complying with the requisitions of this notice proceedings will be taken before a court of summary jurisdiction for prohibiting the use of the premises for human habitation.

Dated this day of , 18 .

Signature of officer of local authority.

This form does not specify what works are to be executed, and it has been held in *Reg.* v. *Wheatley*, 16 Q. B. D. 34, that the notice and order under the Public Health Act, 1875, ought to state what things the owner should execute and do to abate the nuisance, and that an order which did not do so was bad, and see also *Ex parte Saunders*, 11 Q. B. D. 191; *Reg.* v. *Llewellyn*, 13 Q. B. D. 681, and *Reg.* v. *Kent JJ.*, 49 J. P. 404. By s. 32 (2), *ante*, p. 44, it is provided that the forms for the purpose may be those in this schedule, and further, that proceedings may be taken for the express purpose of causing the dwelling-house to be closed. It would appear, therefore, that such notice is sufficient and that the works required to be done need not be stated. It is always open to the justices to adjourn the case if they consider any injustice will be caused by reason of the want of information as to what works should be executed.

It may be noted that in the consolidating Acts both for London and Scotland, there is a proviso that the notice may specify the works if the sanitary authority think it desirable, but not otherwise.

The notice should be signed by the clerk to the authority or by his lawful deputy, s. 86, *ante*, p. 113.

FORM B.

Form of Summons for Closing Order.

To the owner or occupier of [*describe premises*] situate at [*insert such a description as may be sufficient to identify the premises*].

County of [*or* borough of , *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

Schedule 4. Form B.

day of next, at the hour of in the noon, to answer the complaint this day made to me by that the premises above mentioned are used as a dwelling-house and are in a state so dangerous or injurious to health as to be unfit for human habitation.

Given under my hand and seal this day of 18 .

FORM C.

Form of Closing Order.

To the owner [*or* occupier] of [*describe the premises*] situated [*give such description as may be sufficient to identify the premises*].

County of [*or* borough, *etc.* 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 certain premises situated at in the district under the Public Health Act, 1875, of [*describe the local authority*], were in a state so dangerous or injurious to health as to be unfit for human habitation :

And whereas the owner [*or* occupier] within the meaning of the said Public Health Act, 1875, 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 and the Housing of the Working Classes Act, 1890 :

Now on proof here had before us [*or* me] that the said premises are in a state so dangerous or injurious to health as to be unfit for human habitation, we [*or* I], in pursuance of the said Acts, do prohibit the using of the premises for the purpose of human habitation until in our [*or* my] judgment they are rendered fit for that purpose.

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.)

Schedule 5. Form A.

FIFTH SCHEDULE.

Section 36, *ante*, p. 52.

FORM MARKED A.

The Housing of the Working Classes Act, 1890.

County of , parish of . No. .

Charging Order.

Insert description of local authority.

The being the local authority under the above-mentioned Act, do, by this Order under their hands and seal, charge the inheritance or fee of the premises mentioned in the schedule hereto with the payment to of the sum of pounds payable yearly on the day of for the term of years, and being in consideration of an expenditure of pounds incurred by him in respect of the said premises.

Section 37, *ante*, p. 54.

FORM MARKED B.

Form of Assignment of Charge. To be endorsed on Charging Order.

Dated the day of .

Insert description of premises charged.

I, the within-named in pursuance of the Housing of the Working Classes Act, 1890, and in consideration of pounds this day paid to me, hereby assign to the within-mentioned charge.

(Signed) .

Section 62, *ante*, p. 94.

SIXTH SCHEDULE.

BYELAWS TO BE MADE IN ALL CASES (EXCEPT WHERE A LODGING HOUSE IS USED AS A SEPARATE DWELLING).

For securing that the lodging-houses shall be under the management and control of the officers, servants, or others appointed or employed in that behalf by the local authority.

For securing the due separation at night of men and boys above eight years old from women and girls.

For preventing damage, disturbance, interruption, and indecent and offensive language and behaviour and nuisances.

For determining the duties of the officers, servants, and others appointed by the local authority.

As to what is a separate dwelling, see note, *ante*, p. 94. The Local Government Board have not issued model byelaws under this schedule, nor has the Home Secretary.

Schedule 7.

SEVENTH SCHEDULE.

Section 102.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
14 & 15 Vict. c. 34 -	The Labouring Classes Lodging Houses Act, 1851.	The whole Act.
18 & 19 Vict. c. 88 -	The Dwelling Houses (Scotland) Act, 1855.	The whole Act.
29 & 30 Vict. c. 28 -	The Labouring Classes Dwelling Houses Act, 1866.	The whole Act.
29 & 30 Vict. c. 44 -	The Labouring Classes Lodging Houses and Dwellings Act (Ireland), 1866.	The whole Act.
30 & 31 Vict. c. 28 -	The Labouring Classes Dwelling Houses Act, 1867.	The whole Act.
31 & 32 Vict. c. 130	The Artizans and Labourers Dwellings Act, 1868.	The whole Act.
38 & 39 Vict. c. 36 -	The Artizans and Labourers Dwellings Improvement Act, 1875.	The whole Act.
38 & 39 Vict. c. 49 -	The Artizans and Labourers Dwellings Improvement (Scotland) Act, 1875.	The whole Act.
42 & 43 Vict. c. 63 -	The Artizans and Labourers Dwellings Improvement Act, 1879.	The whole Act.
42 & 43 Vict. c. 64 -	The Artizans and Labourers Dwellings Act (1868) Amendment Act, 1879.	The whole Act.
42 & 43 Vict. c. 77 -	The Public Works Loans Act, 1879.	Section six.
43 Vict. c. 2 - -	The Artizans and Labourers Dwellings Improvement (Scotland) Act, 1880.	The whole Act.
43 Vict. c. 8 - -	An Act to explain and amend the twenty-second section of the Artizans and Labourers Dwellings Act (1868) Amendment Act, 1879.	The whole Act.
45 & 46 Vict. c. 54 -	The Artizans Dwellings Act, 1882.	The whole Act.
48 & 49 Vict. c. 72 -	The Housing of the Working Classes Act, 1885.	The whole Act except sections three and seven to nine, and except section ten so far as it relates to byelaws authorised by those sections.

HOUSING OF THE WORKING CLASSES ACT, 1893.

(56 & 57 Vict. Cap. 33.)

An Act to remove certain doubts as to the application of Part III. of the Housing of the Working Classes Act, 1890, to certain authorities in Ireland.

[24th August 1893.]

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:

Application of 41 & 42 Vict. c. 52, ss. 237 to 246, and 53 & 54 Vict. c. 70, s. 83 to borrowing for the purpose of 53 & 54 Vict. c. 70, Part III.

1.—(1.) It is hereby declared that sections two hundred and thirty-seven to two hundred and forty-three, and section two hundred and forty-six of the Public Health (Ireland) Act, 1878, and section eighty-three of the principal Act, apply and have always applied to the borrowing by any local authority in Ireland for the purpose of the execution of Part III. of the principal Act, in like manner as if that purpose were specified in those sections, and the local rate were the fund or rate there specified, and the local authority were a sanitary authority, and that the Commissioners of Public Works in Ireland have, and have always had, power to lend accordingly.

(2.) All expenses incurred by town commissioners in the execution of Part III. of the principal Act shall be defrayed out of the local rate, and the town of any town commissioners shall be a district within the meaning of Parts III. and VI. of the principal Act, and section eighty-four of the principal Act shall apply as if the town commissioners were a sanitary authority.

2. This Act shall be construed as one with the Housing of the Working Classes Act, 1890 (in this Act referred to as the principal Act), and that Act and this Act may be cited together as the Housing of the Working Classes Acts, 1890 and 1893, and this Act may be cited separately as the Housing of the Working Classes Act, 1893.

HOUSING OF THE WORKING CLASSES ACT, 1894.

(57 & 58 Vict. Cap. 55.)

An Act to explain the provisions of Part II. of the Housing of the Working Classes Act, 1890, *with respect to powers of borrowing.* [25th August 1894.]

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:

Borrowing powers under a scheme for reconstruction.

53 & 54 Vict. c. 70.

1. For any purpose for which a local authority are, by a scheme for reconstruction duly sanctioned under Part II. of the Housing of the Working Classes Act, 1890, or by the order sanctioning the scheme, authorised to borrow, the authority shall have power and shall be deemed always to have had power to borrow in like manner and subject to the like conditions as they may borrow under section forty-three of that Act for the purpose of raising the sums required for the purchase-money or compensation therein mentioned, and sections forty-three and forty-six of that Act shall apply accordingly.

Under Part II. of the Housing of the Working Classes Act, 1890, a local authority had only power to borrow the money required for purchase-money or compensation (see ss. 43 and 46 (2) and (8) *ante*, pp. 74 and 77), but no power was given to borrow for the purpose of carrying out a scheme of reconstruction under s. 39. If the scheme itself or the order sanctioning it authorise the local authority to borrow for any purpose, then they may borrow in the manner provided by these sections.

Short title.

2. This Act may be cited as the Housing of the Working Classes Act, 1894.

This Act extends to the United Kingdom.

THE HOUSING OF THE WORKING CLASSES (IRELAND) ACT, 1896.

(59 & 60 Vict. Cap. 11.)

An Act to remove certain Doubts with respect to the Housing of the Working Classes Act, 1890, *so far as it applies to Ireland.* [2nd July 1896.]

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:

Declaration as to meaning of 53 & 54 Vict. c. 70, s. 99.

1.—(1.) It is hereby declared that where the town commissioners of any town in Ireland, not being an urban sanitary district, have adopted Part Three of the Housing of the Working Classes Act, 1890, they shall have the same powers under Part Three of that Act of acquiring land and otherwise as any other local authority, and the said Part Three and the sections of the Public Health (Ireland) Act, 1878, applied for the purpose of that Part, shall apply accordingly as if such town commissioners were a sanitary authority; and if such town commissioners are not already a body corporate, they shall, for the purpose of holding such land, and of suing and being sued in respect thereof, be nevertheless deemed a body corporate with perpetual succession.

41 & 42 Vict. c. 52.

(2.) Any instrument relating to such land shall be duly executed by such town commissioners if executed in manner provided by section fifty-nine of the Commissioners Clauses Act, 1847, with respect to conveyances by commissioners who are not a body corporate.

10 & 11 Vict c. 16.

Forms.

2. It is hereby declared that the forms in the Fourth Schedule to the Housing of the Working Classes Act, 1890, may be altered in Ireland so as to be in conformity

with the forms ordinarily used in Ireland under the Petty Sessions (Ireland) Act, 1851, and need not be used under seal.

14 & 15 Vict c. 93.

3. This Act may be cited as the Housing of the Working Classes (Ireland) Act, 1896, and shall be construed as one with the Housing of the Working Classes Acts, 1890, 1893, and 1894, and those Acts and this Act may be cited collectively as the Housing of the Working Classes (Ireland) Acts, 1890 to 1896.

Short title and construction.

53 & 54 Vict. c. 70.
56 & 57 Vict. c. 33.
57 & 58 Vict. c. 55.

HOUSING OF THE WORKING CLASSES ACT, 1890, AMENDMENT (SCOTLAND) ACT, 1896.

(59 & 60 Vict. Cap. 31.)

An Act to amend the Housing of the Working Classes Act, 1890. [7th August 1896.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as the Housing of the Working Classes Act, 1890, Amendment (Scotland) Act, 1896.

Re-vesting of lands.

2. Any land acquired by a local authority for the purposes of the Artizans and Labourers Dwellings Improvement (Scotland) Acts, 1875 to 1880, and still held by and vested in them shall be deemed to be held by and vested in them for the purposes of Part I. and relative provisions of the Housing of the Working Classes Act, 1890, without the necessity of expeding or recording any notarial or other instrument.

53 & 54 Vict. c. 70.

Defining 53 & 54 Vict. c. 70, s. 96 (2).

3. Section ninety-six, sub-section two, of the Housing of the Working Classes Act, 1890, shall be read and construed as if the words "and any Acts amending the same" had been inserted after "1871" and as if the words "in the case of a rural sanitary authority" had been inserted after the words "provided that" occurring in that sub-section.

Repeal of 55 & 56 Vict. c. 22.

4. The Housing of the Working Classes Act, 1890, Amendment (Scotland) Act, 1892, is hereby repealed.

MUNICIPAL CORPORATIONS ACT, 1882.

(45 & 46 Vict. Cap. 50.)

* * * * *

[18th August 1882.]

* * * * *

Sites for working men's dwellings.

111.—(1.) If a municipal corporation determines to convert any corporate land into sites for working men's dwellings, and obtains the approval of the *Treasury* (*a*) for so doing, the corporation may, for that purpose, make grants or leases for terms of nine hundred and ninety-nine years, or any shorter term, of any parts of the corporate land.

(2.) The corporation may make on the land any roads, drains, walls, fences, or other works requisite for converting the same into building land, at an expense not exceeding such sum as the *Treasury* (*a*) approve.

(3.) The corporation may insert in any grant or lease of any part of the land (in this section referred to as the site) provisions binding the grantee or lessee to build thereon as in the grant or lease prescribed, and to maintain and repair the building, and prohibiting the division of the site or building, and any addition to or alteration of the character of the building, without the consent of the corporation, and for the re-vesting of the site in the corporation, or its re-entry thereon, on breach of any provision in the grant or lease.

(4.) Every such provision shall be valid in law to all intents, and binding on the parties.

(5.) All costs and expenses incurred or authorised by a corporation in carrying into execution or otherwise in pursuance of this section, shall be paid out of the borough fund (*b*) and borough rate (*c*), or by money borrowed by the corporation under this Part (*d*).

(6.) In this section the term "working men's dwellings" means buildings suitable for the habitation of persons

Sect. 111 (6). employed in manual labour and their families; but the use of part of a building for purposes of retail trade or other purposes, approved by the council, shall not prevent the building from being deemed a dwelling.

* * * * *

(*a*) Now "Local Government Board" (Local Government Act, 1888, s. 72).

(*b*) Ss. 139—143 of Municipal Corporations Act, 1882.

(*c*) Ss. 144—149 of Municipal Corporations Act, 1882.

(*d*) S. 106, with consent of the Local Government Board.

WORKING CLASSES DWELLINGS ACT, 1890.

(53 & 54 Vict. Cap. 16.)

An Act to facilitate Gifts of Land for Dwellings for the Working Classes in Populous Places. [25th July 1890.]

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:

Exemption from 51 & 52 Vict. c. 42. Parts I., II., and 7 & 8 Vict. c. 97, s. 16, of gifts for working classes dwellings.

1. Parts I. and II. of the Mortmain and Charitable Uses Act, 1888, and section sixteen of the Act of the session held in the seventh and eighth years of Her present Majesty, chapter ninety-seven, intituled "An Act for the more effectual application of charitable donations and bequests in Ireland," shall not apply to any assurance, by deed or will, of land, or of personal estate to be laid out in land, for the purpose of providing dwellings for the working classes in any populous place.

Provided as follows:—

(i.) The quantity of land which may be assured by will under this section shall not exceed five acres; and

(ii.) The deed or will containing the assurance must, within six months, in the case of a deed after the execution thereof, or in the case of a will after the probate thereof, be enrolled in the books of the Charity Commissioners, if the land is situate in England or Wales, and the deed containing the assurance must, within six months after the execution thereof, be registered in the office for registering deeds in the city of Dublin, if the land is situate in Ireland.

For the purposes of this Act, the expression "populous place" means the administrative county of London, any

Sect. 1.

municipal borough, any urban sanitary district, and any other place having a dense population of an urban character.

Application of Act.

2. This Act shall extend to any assurance by deed made within twelve months before the passing of this Act by a person alive at that passing as if it had been made after the passing, except that the assurance shall be enrolled or registered as aforesaid within six months after the passing of this Act.

Short title and construction.

3.—(1.) This Act may be cited as the Working Classes Dwellings Act, 1890.

(2.) Expressions used in this Act shall have the same meaning as in the Mortmain and Charitable Uses Act, 1888.

51 & 52 Vict. c. 42.

APPENDIX.

ORDER of the Home Secretary, prescribing Forms of Notices and Advertisements under s. 27, *ante*, p. 39, for use in London. —November 5th, 1890.

To the London County Council and to the Commissioners of Sewers of the City of London, being the Local Authority for the County of London and for the City of London, respectively, for the purposes of the Housing of the Working Classes Act, 1890, Part I.

WHEREAS by section 8 of the Housing of the Working Classes Act, 1890, One of Her Majesty's Principal Secretaries of State is constituted the Confirming Authority for every Improvement Scheme relating to any part of the County or City of London made in pursuance of Part I. of that Act;

And whereas by section 27 of the same Act it is enacted that the Confirming Authority may by Order prescribe the Forms of Advertisements and Notices under Part I. of that Act; and that it shall not be obligatory on any persons to adopt such Forms, but the same, when adopted, shall be deemed sufficient for all the purposes of that Part of the said Act:

NOW THEREFORE, I, the Right Honourable Henry Matthews, One of Her Majesty's Principal Secretaries of State, do, by this my Order, prescribe the Forms of Advertisements and Notices hereinafter set out, and Declare that they may be adopted by the London County Council or by the Commissioners of Sewers of the City of London for the purposes of Part I. of the said Act.

I.

Form of Advertisement.

County of London *or* City of London.

Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70).

Advertisement of an Improvement Scheme.

Notice is hereby given that the London County Council [*or* the Commissioners of Sewers], being the Local Authority for the County of London (City of London), have, in pursuance of the Housing of the Working Classes Act, 1890, made a Scheme for the improvement of the area or areas, the limits of which are stated in the Schedule hereunder, and which contains or contain by estimation—

A copy of the said Scheme, accompanied by maps distinguishing the lands proposed to be taken compulsorily, and by particulars and estimates, has been deposited at and may be seen at all reasonable hours.

The place of deposit must be within the area or in the vicinity thereof. *See* sect. 7 (*a*) of the Act.

SCHEDULE.

The area to which the Scheme relates is bounded as follows:

On the north by ; on the south by ; on the east by ; on the west by ; [*or* the area to which the Scheme

One of these forms should be adopted, and

Appendix. Form I.

relates is bounded by a line commencing [*set out the entire linear boundary*]: *or* the area to which the Scheme relates consists of the following streets and other places or parts thereof :

where the Scheme includes more than one area, the particulars indicated should be furnished as regards each area.

(Signed)
Clerk to the London County Council, *or* Town Clerk
[*as the case may be*].

Dated day of .

II.

Form of Notice to Owners and Lessees.

County of London *or* City of London.

Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70).

Notice to owner or reputed owner, lessee or reputed lessee, of intention to take lands compulsorily under an Improvement Scheme.

To .

TAKE NOTICE that a petition is about to be presented by the London County Council [*or* the Commissioners of Sewers], being the Local Authority for the County of London (City of London), to the Secretary of State in pursuance of the Housing of the Working Classes Act, 1890, praying that an Order may be made confirming an Improvement Scheme, whereby it is proposed to take compulsorily the lands described in the Schedule hereunder, in which lands you are believed to be interested, as owner or reputed owner, or lessee or reputed lessee.

You are therefore hereby required to return to me on or before the day of next an answer in writing whether you dissent or not in respect of the taking of the lands described in the said Schedule.

A copy of the said Scheme, accompanied by maps distinguishing the lands proposed to be taken compulsorily, and by particulars and estimates, has been deposited at and may be seen at all reasonable hours.

The place of deposit must be within the area or in the vicinity thereof. *See* sect. 7 (*a*) of the Act.

SCHEDULE referred to in the foregoing Notice.

Name of Street, Court, Alley, or other Place.	Description of Lands* proposed to be taken.	Owner or reputed Owner.	Lessee or reputed Lessee.	Occupier.

* Lands includes messuages, tenements, hereditaments, houses, and buildings of any tenure, and any right over land.

(Signed)
Clerk to the London County Council, *or* Town Clerk
[*as the case may be*].

Dated day of .

Appendix. Form III.

III.

Form of Notice to Occupiers.

County of London *or* City of London.

Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70).

Notice to occupier or occupiers (not being owners or reputed owners, or lessees or reputed lessees) of an intention to take lands compulsorily under an Improvement Scheme.

To *A. B.*, the occupier of the [*or* to the occupier or occupiers of the house] which in the Schedule hereunder is described as the lands proposed to be taken.

The alternative address within these brackets is available only where the property to be taken is a house.

TAKE NOTICE that a petition is about to be presented by the London County Council [*or* the Commissioners of Sewers], being the Local Authority for the County of London (City of London), to the Secretary of State in pursuance of the Housing of the Working Classes Act, 1890, praying that an Order may be made confirming an Improvement Scheme, whereby it is proposed to take compulsorily the lands described in the Schedule hereunder.

A copy of the said Scheme, accompanied by maps distinguishing the lands proposed to be taken compulsorily, and by particulars and estimates, has been deposited at and may be seen at all reasonable hours.

The place of deposit must be within the area or in the vicinity thereof. *See* sect. 7 (*a*) of the Act.

SCHEDULE referred to in the foregoing Notice.

Name of Street, Court, Alley, or other Place.	Description of Lands* proposed to be taken.

* Lands includes messuages, tenements, hereditaments, houses, and buildings of any tenure, and any right over land.

(Signed)
Clerk to the London County Council, *or* Town Clerk
[*as the case may be*].

Dated day of .

Given under my hand at Whitehall this fifth day of November, One thousand eight hundred and ninety.

HENRY MATTHEWS.

Appendix.

GENERAL ORDER of the Local Government Board, prescribing Form under s. 27, *ante*, p. 39, dated 2nd October, 1890.

To the several Urban Sanitary Authorities for the time being in England and Wales :—

And to all others whom it may concern.

WHEREAS by section 8 of the Housing of the Working Classes Act, 1890, We, the Local Government Board, are constituted the Confirming Authority for every Improvement Scheme made by an Urban Sanitary Authority in pursuance of Part I. of that Act ;

And whereas by section 27 of the same Act it is enacted that the Confirming Authority may by Order prescribe the Forms of Advertisements and Notices under Part I. of that Act ; and that it shall not be obligatory on any persons to adopt such Forms, but the same, when adopted, shall be deemed sufficient for all the purposes of that Part of the said Act :

NOW THEREFORE, We, the Local Government Board, do, by this Our Order, prescribe the Forms of Advertisements and Notices herein-after set out, and Declare that they may be adopted by any Urban Sanitary Authority for the purposes of Part I. of the said Act.

I.

Form of Advertisement.

The Urban Sanitary District of .

Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70).

Advertisement of an Improvement Scheme.

Notice is hereby given that , being the Sanitary Authority for the Urban Sanitary District of , have in pursuance of the Housing of the Working Classes Act, 1890, made a Scheme for the improvement of the area or areas the limits of which are stated in the Schedule hereunder, and which contains or contain by estimation—

A copy of the said Scheme, accompanied by maps distinguishing the lands proposed to be taken compulsorily, and by particulars and estimates, has been deposited at and may be seen at all reasonable hours.

The place of deposit must be within the area or in the vicinity thereof. *See* sect. 7 (*a*) of the Act.

SCHEDULE.

The area to which the Scheme relates is bounded as follows :

On the north by ; on the south by ; on the east by ; on the west by ; [*or* the area to which the Scheme relates is bounded by a line commencing [*set out the entire linear boundary*] : *or* the area to which the Scheme relates consists of the following streets and other places or parts thereof] :

One of these forms should be adopted, and where the Scheme includes more than one area, the particulars indicated should be furnished as regards each area.

(Signed)

Town Clerk, *or* Clerk to the [*as the case may be*].

Dated day of .

Appendix. Form II.

II.

Form of Notice to Owners and Lessees.

The Urban Sanitary District of .

Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70).

Notice to owner or reputed owner, lessee or reputed lessee, of intention to take lands compulsorily under an Improvement Scheme.

To .

TAKE NOTICE that a petition is about to be presented by the , being the Sanitary Authority for the Urban Sanitary District of , to the Local Government Board in pursuance of the Housing of the Working Classes Act, 1890, praying that an Order may be made confirming an Improvement Scheme, whereby it is proposed to take compulsorily the lands described in the Schedule hereunder, in which lands you are believed to be interested, as owner or reputed owner, or lessee or reputed lessee.

You are therefore hereby required to return to me on or before the day of next an answer in writing whether you dissent or not in respect of the taking of the lands described in the said Schedule.

A copy of the said Scheme, accompanied by maps distinguishing the lands proposed to be taken compulsorily, and by particulars and estimates, has been deposited at and may be seen at all reasonable hours.

The place of deposit must be within the area or in the vicinity thereof. *See* sect. 7 (*a*) of the Act.

SCHEDULE referred to in the foregoing Notice.

Name of Street, Court, Alley, or other Place.	Description of Lands* proposed to be taken.	Owner or reputed Owner.	Lessee or reputed Lessee.	Occupier.

* Lands includes messuages, tenements, hereditaments, houses, and buildings of any tenure, and any right over land.

(Signed)

Town Clerk, *or* Clerk to the

(*as the case may be*).

Dated day of .

Appendix. Form III.

III.

Form of Notice to Occupiers.

The Urban Sanitary District of .

Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70).

Notice to occupier or occupiers (not being owners or reputed owners, or lessees or reputed lessees) of an intention to take lands compulsorily under an Improvement Scheme.

The alternative address within these brackets is available only where the property to be taken is a house.

To *A.B.*, the occupier of the [*or*, to the occupier or occupiers of the house] which in the Schedule hereunder is described as the lands proposed to be taken ,

TAKE NOTICE that a petition is about to be presented by the , being the Sanitary Authority for the Urban Sanitary District of to the Local Government Board in pursuance of the Housing of the Working Classes Act, 1890, praying that an Order may be made confirming an Improvement Scheme, whereby it is proposed to take compulsorily the lands described in the Schedule hereunder.

A copy of the said Scheme, accompanied by maps distinguishing the lands proposed to be taken compulsorily, and by particulars and estimates, has been deposited at and may be seen at all reasonable hours.

The place of deposit must be within the area or in the vicinity thereof. *See* sect. 7 (*a*) of the Act.

SCHEDULE referred to in the foregoing Notice.

Name of Street, Court, Alley, or other Place.	Description of Lands* proposed to be taken.

* Lands includes messuages, tenements, hereditaments, houses, and buildings of any tenure, and any right over land.

(Signed)
Town Clerk, *or* Clerk to the
(*as the case may be*).

Dated day of .

Given under the Seal of Office of the Local Government Board, this Second day of October, in the year One thousand eight hundred and ninety.

(L.S.)

CHAS. T. RITCHIE.
President.

HUGH OWEN,
Secretary.

Date of publication in the London Gazette, October 3rd, 1890.

CIRCULAR TO URBAN DISTRICT COUNCILS.

PROVISIONAL ORDERS under the Public Health Act, 1875 ; the Housing of the Working Classes Act, 1890 ; and the Gas and Water Works Facilities Acts.

LOCAL GOVERNMENT BOARD,
WHITEHALL, S.W.
August 28th, 1897.

SIR,

I am directed by the Local Government Board to state that they deem it desirable to follow the practice of previous years, and to fix a day before which all applications for Provisional Orders under the Public Health Act, 1875, must be made, if it is wished that the order should be confirmed during the session of 1898, and they also consider that the same date should apply to petitions for Provisional Orders under Part I. of the Housing of the Working Classes Act, 1890. The necessity for this course is the more apparent as, having regard to the experience of recent years, it will probably be impossible for bills to confirm Provisional Orders, which are not introduced into the House of Commons before the Whitsuntide recess, to reach the House of Lords by the date necessary to ensure compliance with the Lords Sessional Order relating to the second reading of such bills.

The Board have accordingly determined that all such applications must be received by them not later than the following dates, viz. : (1) where the application is for a Provisional Order to put in force the compulsory powers of the Lands Clauses Acts, or to confirm an improvement scheme under Part I. of the Housing of the Working Classes Act, 1890, and the advertisements were published in September, the application must be received not later than October 31st next : if the advertisements were published in October, the application must be received not later than November 30th next, and if the advertisements were published in November, the application must be received not later than December 21st next ; (2) any application for a Provisional Order for the constitution of a joint board under section 279 of the Public Health Act, 1875, should be submitted to the Board not later than the last-mentioned date ; and (3) where the application is for a Provisional Order under section 303 of the Public Health Act, 1875, the application must be received not later than November 30th next.

The dates above-mentioned are fixed as the latest at which applications for Provisional Orders can be received, but it is obviously desirable that, wherever practicable, the application should be made earlier ; and the Board therefore trust that every urban district council, who may propose to apply for a Provisional Order, will make their application as soon as they are in a position to furnish the requisite particulars.

It is particularly important that applications for Provisional Orders to alter local Acts should be made at the earliest possible date. These applications often require much consideration, and the Board

Appendix.

are able to give more attention to them in the autumn than is possible during the earlier part of the following year. All applications for Provisional Orders of this kind should therefore be sent in before October 15th, 1897.

The Board have carefully revised the instructions which they have been accustomed to issue for the guidance of local authorities desirous of making applications for Provisional Orders under the Public Health Act, 1875, and copies of the revised instructions are enclosed, for the information of the urban district council.

The instructions of the Board with regard to applications for Provisional Orders under Part I. of the Housing of the Working Classes Acts, 1890, have also been revised, and a copy is inclosed.

I am further to state that, where an urban district council propose to apply for a Provisional Order for gas purposes under the Gas and Water Works Facilities Acts, the special regulations which have been issued by the Board under those Acts must be complied with. Copies of these regulations can be obtained on application to the Board.

I am to add that in connection with applications for the sanction by the Board of the costs incurred by an urban district council in promoting or opposing a Provisional Order, under section 298 of the Public Health Act, 1875, it is the practice of the Board to require that such costs shall be taxed by the Taxing Officer of one of the Houses of Parliament. It will not, therefore, be necessary to submit such costs for taxation by the clerk of the peace.

I am, Sir,
Your Obedient Servant,
HUGH OWEN,
Secretary.

The Clerk to the Urban District Council.

INSTRUCTIONS as to applications to the Local Government Board by the Councils of Urban Uistricts for Provisional Orders to confirm Improvement Schemes under Part I. of the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70).—Session 1898.

1. The application must be made by a petition of the local authority, containing the particulars required by section 8 of the Housing of the Working Classes Act, 1890. The petition should be under the seal of the local authority.

2. The petition must be presented not later than October 31st, if the advertisements of the scheme were published in September; not later than November 30th if they were published in October; and not later than December 21st, if they were published in November.

3. (a.) Attention is drawn to the provision in section 7 of the Act empowering local authorities to issue in the months of September and October, or of October and November, the advertisements and notices which are required before they can apply for a Provisional Order to enable them to obtain lands by compulsory purchase. It is very desirable that the local authority should avail themselves of this power, so that the petition may be presented at an earlier date, and so as to prevent the possible loss of a parliamentary session in the event of errors being discovered too late to be remedied.

(b.) The Board have found that in some instances a misapprehension has prevailed as to the period within which the advertisements and notices prescribed by section 7 of the Housing of the Working Classes Act must be issued. The section provides that the advertisements shall be published during three consecutive weeks in the the months of September, October, or November, and it is necessary that the three weeks in which the publication takes place should all be included in the same month, whichever is selected for the purpose. Moreover, the notices to the owners, lessees, and occupiers of the lands proposed to be purchased must in all cases be served in the month immediately following that in which the advertisements are published.

4. The petition should be accompanied by the following documents:—

(a.) A copy of the official representation.
(b.) Two copies of the improvement scheme.
(c.) Two copies of the estimate of the cost of carrying the scheme into effect.
(d.) Particulars of the scheme, giving the acreage of the area affected by it, the number of persons of the working class who will be displaced, and the number for whom, and the place or places at which, dwelling accommodation is to be provided. Where this accommodation is not intended to be provided within the limits of the area included in the scheme, the reasons for this course must be stated, and the

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distance by the nearest public thoroughfare from that area must be given. The particulars should also show, as far as practicable, in what way the area included in the scheme, and the place or places at which dwelling accommodation for the working class is to be provided, may be dealt with so as to carry out the purposes of the Act and the proposed scheme.

(e.) Particulars should also be given showing by reference to the numbers of the properties on the maps (1) the area included in the official representation ; (2) any lands (*a*) excluded from such area by the local authority ; or (*b*) included in it by the local authority, under s. 6 (1) (a) of the Act, and the reasons for such exclusion or inclusion ; (3) any lands included for widening existing approaches to the unhealthy area or otherwise for opening out the same for purposes of ventilation or health, under s. 6 (1) (b) ; and (4) the lands proposed to be taken compulsorily.

(f.) Maps showing (1) the area included in the official representation, and (2) the area included in the improvement scheme ; (3) any site where dwelling accommodation is to be provided which is not within the area included in the scheme ; and (4) the position of each site in relation to the area included in the scheme. The several properties should be numbered consecutively on the maps showing the area included in and accompanying the improvement scheme (which maps are hereinafter referred to as the "deposited maps") so as to correspond with a book of reference which should be forwarded in duplicate. Each parcel of land, notwithstanding that several may belong to one owner, should be separately numbered, the outside boundary being defined by a hard line, and the buildings (if any) on each parcel being linked into it, so that it may be seen to what properties each number applies. The book of reference should be prepared on the ground at the same time as and in conjunction with the deposited maps, each parcel of land being numbered to correspond with the deposited maps, and being described so as to show clearly what properties are covered by each number.

(g.) A statutory declaration, specifying in which of the modes mentioned in section 7 of the Act the notices have been served. This declaration should be made by the person who served the notices.

(h.) A statutory declaration made by the clerk of the local authority, showing that all the other requirements of section 7 of the Act have been complied with, and that the petition states the names of the owners or reputed owners and lessees or reputed lessees, who have dissented in respect of the taking of their lands. Copies of the newspapers containing the advertisements, and also of the form of notice served on the owners, lessees and occupiers, should be annexed to the declaration as exhibits.

5. Standing Orders 38 and 39 of both Houses of Parliament, extracts from which are appended, must be complied with, and in

carrying out the provisions of the former Standing Order each house to be taken should be indicated (*a*) in the statement, and (*b*) in the copy of the deposited maps, by reference to the number on the deposited maps. The houses to be taken should be shown by a distinctive colour on the copy of the maps, and the number of persons of the labouring class resident in each of the houses should also appear in the statement.

6. The Board should immediately after the last of the deposits required by the Standing Orders has been made, be furnished with an affidavit for production to the examiners of Standing Orders in proof that the requirements of the Standing Orders referred to have been complied with.

7. Every statutory declaration and affidavit must be made or sworn before a justice of the peace or a commissioner for oaths, and must be stamped with a half-crown impressed stamp.

Extracts from Standing Orders.

STANDING ORDER 38 (HOUSE OF COMMONS).

"In the case of any Bill which contains power to take compulsorily or by agreement, in any parish in the metropolis, twenty or more houses, or as regards England and Wales, exclusive of the metropolis, in any city, borough or other urban district, or in any parish or part of a parish not being within an urban district, . . . ten or more houses, occupied either wholly or partially by persons belonging to the labouring class as defined by Order 183A* as tenants or lodgers, or which revives or extends any such power, the promoters shall deposit in the Private Bill Office§ and at the office of the central authority, as defined in Order 183A* on or before the 31st day of December, a statement of the number, description and situation of such houses, the number (so far as can be ascertained) of persons residing therein, and a copy of so much of the plan (if any) as relates thereto . . . ."

* In Standing Order 38 (House of Lords) the reference is to Order 111.

§ In Standing Order 38 (House of Lords) the "Office of the Clerk of the Parliaments" is substituted.

STANDING ORDER 39 (HOUSE OF COMMONS).

"Whenever plans, sections, books of reference or maps are deposited in the case of an application to any public department or county council for a Provisional Order . . . . duplicates of the said documents shall also be deposited in the Private Bill Office*; provided that with regard to such deposits as are so made at any public department, or with any county council after the Prorogation of Parliament, and before the 30th day of November in any year, such duplicates shall be so deposited on or before the 30th day of November."

* In Standing Order 39 (House of Lords) the "Office of the Clerk of the Parliaments" is substituted.

Appendix.

Standing Order 183A (House of Commons).

Standing Order 183A* (House of Commons) defines the expression "labouring class" as meaning "mechanics, artizans, labourers, and others working for wages, hawkers, costermongers, persons not working for wages but working at some trade or handicraft without employing others except members of their own family, and persons, other than domestic servants, whose income does not exceed an average of thirty shillings a week, and the families of any of such persons who may be residing with them."

"The expression 'central authority' means . . . . as regards England and Wales, exclusive of the metropolis, the Local Government Board . . . ."

"The word 'bill' means a bill confirming a provisional order."

* The corresponding Standing Order (House of Lords) is No. 111.

N.B.—It is particularly requested that the petition, declaration, affidavit, notices, and other documents may be on foolscap paper of the usual size, and that whenever it will not involve additional expense, such documents may be printed or lithographed so as to falicitate examination.

Hugh Owen,
Secretary.

Local Government Board,
Whitehall,
28*th August*, 1897.

ANNUAL ACCOUNT under Housing of the Working Classes Act, 1890.

PART II.

Name of Local Authority .

Account presented to the Local Government Board, in pursuance of section 44 of the Housing of the Working Classes Act, 1890, in respect of the year ended March 25th, 1898.

BUILDINGS UNFIT FOR HUMAN HABITATION.

1. Number of representations made during the year to the local authority by their medical officer of health under section 30 of the Act - - - - - -

2. Number of complaints made by householders under section 31 (1) during the year - - - - -

3. Number of complaints received by the medical officer of health, either during the year or previously, as to which he made a representation to the local authority during the year that the dwelling-house was unfit for human habitation - - - - - - - -

4. Total number of cases in which the local authority were engaged in proceedings during the year for closing dwelling-houses—

(a.) Number of such cases in which a closing order was made - - - - - - - -

(b.) Amounts, if any, of penalties imposed in these cases - - - - - - - - -

(c.) Number of such cases in which steps were taken to make the dwelling-house fit for human habitation - - - - - - - -

(d.) Number of such cases in which the local authority ordered the demolition of the building - -

5. Number of appeals during the year against orders of the local authority under section 35 (1) - - -

6. Results of such appeals, or of any appeals made before the commencement of the year, which were decided during the year.

7. Number of charging orders made during the year under section 36 - - - - - - - - -

OBSTRUCTIVE BUILDINGS.

8. Number of representations made to the local authority during the year by their medical officer of health under section 38 of the Act as to pulling down obstructive dwellings - - - - - - - -

9. Number of similar representations made by inhabitant householders during the year - - - - -

10. Proceedings of the local authority during the year in respect of representations under section 38, made during the year or previously—

(a.) Number of cases in which the objection of the owner were allowed - - - - - -

Appendix.

(b.) Number of cases in which the local authority made an order directing that the obstructive building should be pulled down - - -

(c.) Number of cases in which the local authority purchased the land on which the obstructive building was erected - - - - - -

(d.) Number of cases in which the owner retained the site and received compensation for the pulling down of the building - - - - -

(e.) Number of cases in which the owners of adjoining properties were required to contribute to the compensation for demolition of obstructive buildings - - - - - - - -

11. Number of appeals during the year against orders of the local authority under section 38 (3) of the Act -

12. Results of such appeals, or of any appeals made before the commencement of the year, which were decided during the year - - - - - - -

13. Number of cases in which schemes have been prepared during the year by the local authority under section 39 of the Act - - - - - - - -

14. Sums other than from loans received during the year by the local authority under Part II. of the Act—

Rents - - - - - - - - - -
Sales of property - - - - - - - -
Fines and penalties - - - - - - - -
Other receipts, viz. :—

15. Sums expended other than out of loans during the year by the local authority under Part II. of the Act—

In respect of houses unfit for human habitation—
Legal expenses - - - - - - - -
Demolition of buildings - - - - - - -
Other expenses, viz. :—
In respect of obstructive buildings—
Legal expenses - - - - - - - -
Purchase of site - - - - - - - -
Compensation where owner retains site - - -
Other expenses, viz. :—
In respect of schemes for reconstruction—
Legal expenses - - - - - - - -
Parliamentary expenses, if any - - - -
Purchase of lands - - - - - - - -
Execution of works - - - - - - -
Other expenses, viz. :—

16. Amount raised by loans during the year under Part II. of the Act - - - - - - - -

17. Amount expended out of loans during the year under Part II. of the Act - - - - - -

18. Total balance outstanding at the end of the year of the loans raised under Part II. of the Act - - -

Clerk to the Local Authority.

Date day of 189 .

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1890.

(53 & 54 Vict. c. 70.)

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No.

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2. Sect. 5.—Complaint of justices or ratepayers to Medical Officer.
3. Official representation on complaint made to Medical Officer.
4. Sect. 7.—Advertisement of an improvement scheme.
5. Notice to Owner or Lessee as to lands compulsorily taken (Provincial).
6. Notice to Occupier as to lands compulsorily taken (Provincial).
7. Notice to Owner or Lessee do. (London).
8. Notice to Occupier do. do.
9. Sect. 8.—Petition to Confirming Authority for confirmation of scheme.
10. Sect. 14.—Notice of Intention of local authority to take houses.
11. Certificate of Justice.
12. Sect. 15.—Appeal of Ratepayers to confirming authority.

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PART II. OF ACT.

No.

13. Sect. 30.—Representation of Medical Officer of Health to local authority—house unfit for human habitation.
14. Sect. 31.—Householder's Complaint to Medical Officer of Health.
15. Medical Officer's Report thereon to local authority.
16. Petition of Householders to Local Government Board.
17. Sect. 32.—Notice to Owner or Occupier requiring premises to be made fit for habitation.
18. Complaint before a Justice.
19. Summons.
20. Closing Order.
21. Order determining closing order.
22. Notice to Occupier as to closing order.
23. Sect. 33.—Notice to Owner as to proposal to order demolition of building.
24. Order of Local Authority for demolition of building or for execution of works.
25. Sect. 35.—Notice of Appeal to Quarter Sessions.
26. Sect. 36.—Application to Local Authority for charging order.
27. Surveyor's Certificate of works being completed.
28. Charging Order.
29 Sect. 38.—Representation by Medical Officer or by householders of obstructive house.
30. Notice to Owner, with copies of representation and report.
31. Order of Local Authority thereon.
32. Sect. 39.—Petition of Local Authority to Local Government Board.

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