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THE  
NEW SANITARY LAWS:

NAMELY,

THE PUBLIC HEALTH ACT, 1848,

THE

PUBLIC HEALTH ACT, 1858,

AND

THE LOCAL GOVERNMENT ACT, 1858,

AN INTRODUCTION, NOTES, AND INDEX:

*And an Appendix,*

CONTAINING THE VARIOUS STATUTES REFERRED TO THEREIN AND  
THOSE WHICH ARE INCORPORATED THEREWITH.

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## INTRODUCTION.

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THE Common Law of England in the early periods of our history provided but very scantily for the rude and scattered population of the country in regard to their social exigencies, and though the expansive powers of modern jurisprudence extend the principles of that law very far to meet the demands of the civilized state of this densely-peopled nation, still those principles must be maintained generally upon the basis of their original foundations. The highway must be kept in repair, so that the line of road must be preserved, but the common law did not provide for its being paved or swept or scavenged. "If the road be miry," said the old judge, "the traveller must pluck up his hose and put on his boots." But no indictment would lie against the parish.

In process of time the Crown was empowered to issue commissions to form great sewers to drain large districts, but no provision was made for the smaller, but not less important, drainage which separate and individual dwelling-houses required for the comfort and the health of the inmates and the neighbourhood. Again, though in the Court of the Leet, many of the minor nuisances which exist where men congregate together in their dwellings were the sub-

jects of investigation and penalty, the process was tedious and the results seldom very efficacious.

As civilization advanced, and population increased, it became necessary that special legislation should be resorted to for the supply of greater powers for extending the means of improving the external condition of towns, or regulating the conduct of persons in their out-of-door life, and repressing the nuisances and petty annoyances by which careless or ill-regulated persons molest, injure, or inconvenience their neighbours or the public. But until very lately no general measure applicable to the whole of the nation was passed by the legislature. Where the inhabitants of any town, or populous parish, found themselves suffering under the grievances above adverted to, or were desirous of improving the general state of their district for their mutual benefit, or of extending its attractions for visitors, they applied to parliament to make a special law for them. In their application they sought for all the special authorities which they considered their own peculiar condition then required. The demand was conceded as necessary or reasonable, though where private rights and interests were interfered with, contests took place with varying success to prevent their destruction, or to secure adequate compensation. For a century and a half will be found in the annals of parliament a long series of the local and private Acts of the character and for the purposes thus described. Of course they have been most numerous during the present century, and, making all allowance for the variations rendered necessary by local circumstances,

they had become very uniform in their nature and provisions.

The Acts were sometimes of a limited and at other times of a very comprehensive character. One town would seek to provide means of improving its streets and its sewers,—another to obtain adequate means of lighting its highways and thoroughfares,—another to establish an efficient police, or to provide a good supply of water, or additional burial grounds, or to set up and regulate markets. All or several of these objects might be combined in one bill.

The legislature were content to receive the applications as they were made, and to grant them, subject to such modifications as each case required, but no general measure was provided for the country until the year 1845. Then under the ministry of Sir Robert Peel were introduced the first of the measures which have since been termed the Model Acts, and apply to these several objects.

The matters which had been the subject of so much private legislation were classed under distinct heads. The great experience of so many years pointed out what were the provisions most usually demanded for the purpose of the several objects, and those provisions were accordingly ranged together until they formed, as it were, a code upon the particular object. As that object appeared to be in itself of sufficient importance to be dealt with separately, it was taken for the subject of a particular Act of Parliament, and the various provisions or clauses, to speak technically, were passed by parliament as measures which the legislature recog-

nized to be fit and proper for adoption on all occasions when applications should be afterwards made from the inhabitants of any locality for special legislation. The effect of the legislation was this, that parliament was so far satisfied with these provisions that it would not be necessary henceforward to introduce them into any bill, but that they should be admitted as part of the future legislation by mere reference and words of incorporation.

The number of these Acts was eleven, and they were passed in 1845 and 1847, but the following only relate to the subject of this work: 8 & 9 Vict. c. 18; 10 & 11 Vict. cc. 14, 15, 16, 17, 27, 34, 65, and 89. These related to the purchase of land, the providing of markets, gas, water, harbours and piers, paving and cleansing of towns, cemeteries, and the police of towns, while one provided for the appointment and duties of commissioners: on this occasion also the newly-introduced practice of abbreviated titles of the Acts were adopted.

Although these models rendered much assistance in the preparation of local Acts, still it was necessary that there should still be such local Acts for the introduction of these improvements or advantages into any town, and the expense and apprehension of local irritation tended to prevent the application for them in many places where they were oftentimes urgently required.

But about the same time the reports of the commissioners appointed to investigate and report upon the sanitary condition of the metropolis and great towns of the country were published, and drew general attention to the necessity of providing some measures for remedying

the evils which were shown to exist in the places so examined. And coteremporaneously with the movement so caused and stimulated, the fatal epidemic of the cholera invaded the country, and rendered it necessary that temporary measures of a remedial nature should be immediately taken, whilst it gave increased effect to the movement for sanitary regulations.

In 1845, indeed, the Duke of Newcastle, then Lord Lincoln, had introduced a bill "For the Improvement of the Sewerage and Drainage of Towns and Populous Districts, and for making Provision for an ample supply of Water, and for otherwise promoting the Health and Convenience of the Inhabitants;" but this bill did not pass into a law, and another bill was produced by Lord Morpeth, in 1847, without success. But in 1848 the Act now termed the Public Health Act, also introduced by that noble lord, was passed. The important provision of that measure was the establishment of the general board of health, which was composed of the first commissioner for the time being of Her Majesty's woods and forests, and two other persons to be appointed by Her Majesty. Of these the first commissioner was to be the president, and one of the others was to receive a salary. This board, supplied with a secretary and clerks, was intrusted with the superintendence of the execution of the Act. It was to originate, and in some respects to control, all the proceedings under it. But the commission was only temporary, its duration being limited to five years.

By another Act of the same session, 11 & 12 Vict.

c. 123, passed to provide against the calamity of the cholera above alluded to, the general board of health, thus constituted, was required, upon the issue of orders from the privy council, to make and issue directions and regulations to prevent or remedy epidemic and contagious diseases. Some additional powers were conferred upon the board by 12 & 13 Vict. c. 111, passed to amend the Act of the previous year for the prevention of diseases, which contained certain provisions relative to the burial of dead, and gave the general board of health power to superintend the providing of new burial grounds in parishes. The clauses applicable to that subject were only temporary, and expired after the lapse a year. This subject, however, received more particular attention on the part of the government, and the complaints which had long been made, and fully corroborated by the interesting report of Mr. Chadwick upon interments, were attempted to be remedied by the legislature. In 1850, the statute, 13 & 14 Vict. c. 52, was passed to provide for the burial of the dead in the metropolis. This subject was thereby placed under the management of the general board of health, which was thereby incorporated. But this Act was repealed by 15 & 16 Vict. c. 85, which contained other regulations for the burial of the dead in the metropolis, and the authority of the general board thereby created over the burial of the dead ceased.

In the Act above referred to for the prevention of diseases, 11 & 12 Vict. c. 123, s. 11, the Crown was empowered to appoint a medical member of the board for the purposes of that Act only, and by 13 & 14

Vict. c. 52, above noticed, power was given to appoint an additional member for the purposes of that Act also; but when it was repealed in 1852, the Queen was empowered to continue, during the continuance of the general board of health, the appointment of the additional member of the board authorized by the former Act.

Thenceforward the board of health consisted of four members,—one official, one honorary, and two paid commissioners,—the last two being Mr. Edwin Chadwick and Dr. Southwood Smith.

The commission was established by 11 & 12 Vict. c. 63, s. 4, for five years only, and its existence therefore would have terminated at the end of the session of parliament next after August 31, 1853. Before that time arrived, from a variety of causes, the board had become unpopular, and much public dissatisfaction was expressed with its proceedings. It is unnecessary here to discuss the justice of the complaints, but no one can deny the great ability which was exhibited in many of the important documents, statements, and reports which emanated from the board upon the epidemic cholera, the practice of quarantine, the burial of the dead, the supply of water, its impurities, the proper modes of drainage, and the removal, deodorizing, and utilizing the sewage of towns, while the greatest zeal, activity, and energy characterized their labours.

It was deemed, however, advisable by the government to alter the constitution of the board, and in 1854, by 17 & 18 Vict. c. 95, the provisions of the

former statutes applicable to this subject were repealed, and a new board was created, analogous to the poor law board, which consisted of a president, to be appointed by Her Majesty, by warrant under her sign manual, the secretaries of state, and the president and vice-president of the board of trade. The president of the board was to receive a salary, and be capable of sitting in the House of Commons. The duties and powers of the general board of health were transferred to the new board, and it was enacted that the president alone, or any two or more of the members, might exercise the powers vested in the board.

The documents purporting to proceed from the board, and to be signed by the president, or any two or more of the members, and sealed or stamped with the seal of the general board of health, were made *prima facie* evidence.

The existence of this board was limited to one year.

By 18 & 19 Vict. c. 115, this board was continued for another year, but it was empowered to appoint a medical council and a medical officer. The power to appoint a medical officer only was exercised, and Mr. Simon was appointed accordingly.

By 19 & 20 Vict. c. 85, this board was continued for another year. The 20 & 21 Vict. c. 38, continued its existence until the 1st September, 1858, a provision being introduced to the effect that if a person holding an office of profit should be appointed president of the board, he should not receive any salary for the latter office.

In the last session of parliament there was no re-

newal of the board, and it therefore determined on the 1st September in this year, after an existence of ten years.

It will be seen by the statutes hereinafter printed that such of the powers as were vested in the board under the statute for the prevention of diseases are temporarily vested in the privy council, and the control which has been given to the board under the Public Health Act has been for the most part transferred to the secretary of state.

The termination of the board of health had not been altogether anticipated; indeed, it had been intended if not to make the board permanent, at least to continue it for a considerable length of time.

Experience showed that the Public Health Act required amendment, and, in 1855, Sir Benjamin Hall, then president of the general board of health, introduced into the House of Commons a comprehensive bill, which contained a complete consolidation of the provisions already existing, and the proposed changes and additions. This bill was referred to a select committee of the House of Commons, together with another bill, which he had also introduced, to amend the Nuisances Removal Act.

The committee sat during March and April in that year, and having examined various witnesses on the subject of those bills, made many alterations. Among other suggestions a series of clauses were submitted to the committee on behalf of certain water companies for the preservation of their rights. The committee adopted these clauses, and they are such as now appear

in the Local Government Bill as sect. 68, Nos. 2 to 5, and sects. 69, 70, 71, and 72. The committee reported to the House in favour of both bills as altered and amended. The bill for the removal of nuisances passed into a law, and became the 18 & 19 Vict. c. 121, but the other bill was dropped for that session.

It was introduced again in 1856 and 1857, and it will be seen that the bill brought in by the Hon. Mr. Cowper, president of the board, in December, 1857, was, like that of Sir B. Hall, a complete consolidation of the first Act, with its amendments and numerous suggested improvements and additions. Upon the change of the ministry in last spring this bill was given up, and a shorter bill was proposed by the government, which was subsequently adopted by the legislature, and constitutes what is now termed the Local Government Act, 1858. The Act of 1848 was left in full force, with the exception of the clauses constituting the general board of health, and some others, which were repealed to make room for the substituted provisions.

It would be tedious to give a detailed account of the provisions of these Acts, but it is convenient to give a short abstract.

By 11 & 12 Vict. c. 63, towns and populous places were enabled to obtain many of those benefits for the improvement of their local condition which have been above referred to as obtainable by private legislation. This was done through the intervention of the general board of health. Borough towns, and places having a defined boundary, could, upon petition,

supported by the report of an inspector duly commissioned by the general board of health, obtain the recommendation of that board to the issue of an order of the Queen in council for the adoption of the provisions of that Act. Upon investigation, it might prove that the place so petitioning was not quite suitable for the composition of the district, and alterations might be deemed by the general board of health to be advisable; these were submitted to the inhabitants for their consideration, and the general board were empowered to hear and decide upon any adverse statements, and report to the Queen such a scheme as appeared to them to be proper. This report was followed by the issue of a provisional order of Her Majesty in council creating the district, with a constitution according to the report of the general board of health. This provisional order required to be sanctioned by the legislature before it took effect, and accordingly a public bill was submitted to parliament by the government for the confirmation of this provisional order, and when the Act was passed, the district was created, and the local board was legally constituted, and became competent to act.

But the legislature had already provided in the general Act for everything in regard to the constitution of the local board which could be laid down generally, and only left to the general board of health and the privy council authority to make arrangements applicable to the particular locality.

It is right to observe that where any private Acts of parliament would have interfered with the working

of the provisions of the Act by the new board, any delegation, repeal, or alteration of the powers created thereby was in all cases the subject of a provisional order in council, and afterwards of a special Act of parliament. But besides these spontaneous movements on the part of the inhabitants of the districts, the general board might themselves, in places where the average annual mortality during seven years exceeded a certain limit, originate a scheme for a district, submit it to the inhabitants, receive their acquiescence or objections, and in their judgment report the same to the Queen in council, when the provisional order might be issued, to be followed by the confirming Act of parliament.

There was a variation in the practice of the House of Commons in dealing with those Acts which deserves notice. Usually one Act embraced several orders. At first the terms of the Act referred generally to the order as applicable to each place, and confirmed it absolutely, but fixed a date for the day of election. An objection being made to this course of proceeding the Acts were framed to confirm the orders "so far as they were authorized by the Public Health Act." Lastly, it was required that the order itself should be set out in a schedule to the confirming Act, so that parliament might know fully and distinctly what was being passed into a law. Some special provisions were enacted to secure knowledge of the orders to members of parliament and parties interested before the bills were read. It appears that no less than seventeen Acts were passed, applying to about one hundred and twenty places,—some borough towns, others only populous

places,—while from the Parliamentary Paper, No. 328, 1857, it is shown that in ninety-four other places the Act was brought into operation by orders in council, and in the Union Officer's Almanack for 1856, the number of local boards is set out to the number of 230.

The powers conferred by the Act related to sewerage, house drainage, improvement of streets, removal of nuisances, and supply of water, with some additional authorities for special and public convenience, and for improving the health and comfort of the inhabitants. Means were supplied for effecting these objects by facilitating the purchase of land and interests therein, and by authorizing the levying of rates, either general or partial, according to the nature and extent of the expenses.

The terms of the Act were not explicit with reference to the repairs of the highways, and some litigation arose in consequence; but looking at the extensive powers conferred, and the novelty of the constituted authority, it is a subject of congratulation that so little legal discussion has occurred in the courts of law upon this statute. Doubtless the existence of the general board of health provided a resource whence legal advice was readily obtainable, and obviated in many cases the cost of expensive litigation.

Now, it cannot fail to be observed that under this measure there was full opportunity of framing the extent of the district, moulding the constitution of the board, and modifying its powers, so as to render the whole properly suitable to the particular district which applied for the benefit of the statute.

The measure which the legislature has passed in the late session has been termed by parliament "The Local Government Act of 1858." It is difficult to see in what respects this title is justified by the Act itself. Corporate boroughs whose government depends upon their charters are enabled to adopt the provisions of the Act. So are Improvement Commissioners who are elected by the ratepayers of any locality, and the inhabitants of parishes and places of hitherto unsettled boundaries are empowered to adopt the Act and elect boards of health, not with any indefinite powers of self-government, but to carry into execution the powers conferred by the Public Health Act and those contained in the new law. Under the former Act it was necessary that the general board of health, the Queen in council, and sometimes the legislature, should concur in sanctioning the adoption of the Act. Now if it be not requisite to interfere with existing statutes or powers otherwise secured by the law, the provisions of the statute may be adopted by the simple act of the ratepayers and owners of property in the locality. The effect of this legislation is that the benefits of the Model Acts referred to in the first part of this Introduction are obtained without the necessity of a private Act.

If the locality be a corporate borough or a district under the management of popularly-elected commissioners, or be a parish or place with defined or known boundaries, the Act may be adopted by the resolution of the council or commissioners in the first and second cases, and the ratepayers and owners of property in the

third. When there is no defined boundary, the secretary of state, on petition, can assign one, and the place so defined will constitute the district of the new board.

The council and the commissioners will, in the first cases respectively, form the board, but in the other cases the number of members must be determined by the electors, and will constitute a board, to be elected in the manner provided in the former statute, with this addition, that it will be competent for the secretary of state to divide the district into wards, analogous to the cases of municipal corporations and boards of guardians for parishes.

Questions as to the proper extent and composition of the district, and as to the legality of the proceedings, may be referred to the secretary of state for decision.

This is the great change in this scheme of legislation on this subject. The statute explains and enlarges the powers conferred upon the local boards by the Public Health Act of 1848, and incorporates in it many of the provisions of the Model Acts which are found so beneficial, and oftentimes so necessary for the well-being of populous places, while it enables the board of health in other instances to avail itself of some provisions not absolutely requisite in all cases, but which will prove of great convenience in some districts.

The statute, however, has not conferred upon the local boards unlimited power to carry out all their demands. Where they conceive that the property of individuals should be taken for the public good without their assent, when they seek to set aside or alter

authorities and arrangements established by previous legislation, to alter or rescind the constitution created under the previous statute, or to obtain any extension of the powers expressly granted to them by the statutes, they must have special resort to the legislature. But they must proceed through the government. They must represent their requisitions to a secretary of state, who, after due inquiry, may make a provisional order, as in the case of the privy council under the former Act, and this order he is required to submit to parliament for confirmation by a public Act.

It will thus be found, that, though in some small details the local boards are released from the control of the general board of health, in all substantial matters, which were not perfectly free from restraint before, they must now submit to the secretary of state, and probably be compelled as before to seek the aid of parliament.

The control of the secretary of state is in accordance with the plan originally proposed in the bill of Lord Lincoln. Accordingly a department has been formed in the office of the secretary of state for the home department for the special management of the business arising out of these Acts, and the able and experienced staff of officers and clerks who have long been trained under the general board of health have been transferred to that department. A minute of information respecting the provisions of the Local Government Act, 1858, and a valuable collection of byelaws, have already issued from this office.\*

\* To be had of the Publishers of this Work.

Although these two Acts are most important and beneficial in their operations with reference to the general administration of local districts in regard to their sanitary condition, there are other laws which the legislature in late years has passed, having for their object the improvement of the public health. These are contained in the statutes which have enforced the practice of the vaccination of young children, which subject common lodging houses to regulation and control, which facilitate the establishment of public baths and wash-houses, which provide summary remedies in all parts of the country for the removal of nuisances, and which have also provided preventive and remedial measures to meet sudden contagious and epidemic diseases of a formidable character.

It has been deemed convenient to frame a collection of these various Acts, which relate to the health of the people of England, into one volume; and as the Local Government Act of itself is imperfect, those parts of the Acts which have been incorporated with it have been included in this collection.

In addition to the matters above referred to, the attention of the legislature has been directed to the burial of the dead, and a series of Acts have been passed relative thereto since 1849, by which churchyards and burial grounds have been closed, burial boards established, and numerous regulations passed upon the subject. It was found impracticable to include those Acts in this volume, but the clauses which particularly refer to local boards of health are appended.

The Editor has given his careful attention to the provisions of the two great statutes which form the basis of the work; he has endeavoured to bring under the notice of the reader the decisions which have taken place upon different clauses of the first Act, and the alterations effected therein by the second; and he has made such commentaries upon both as will, as he trusts, facilitate their interpretation, or otherwise assist those who are engaged in carrying them into execution; but he cannot but regret that the consolidation originally proposed was abandoned, since the reference from the original to the supplemental Act, and from the latter to the former, and from both to the incorporated clauses, will often lead to embarrassment, and prevent the clear elucidation and understanding of enactments so important as the present to the cities and towns of England.

## ABSTRACTS OF THE STATUTES.

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### THE PUBLIC HEALTH ACT, 1848.

11 & 12 VICT. c. 63.

- Sect. 1.* Recites the object of the Act, and prescribes the limits of its operation.
2. Interprets and defines various words and terms used in the Act.
3. Gives the title of the Act.
4. Constitutes the general board of health—limits its duration to five years.
5. Enables the general board of health to appoint officers and servants—to cause a seal to be made where-with their documents are to be sealed, and provides that so sealed they shall be received in evidence.
6. Enables the said board to appoint superintending inspectors—defines their powers and duties.
7. Provides for the payment of salaries to one member of the general board of health, their officers and servants, and specifies the sum to be paid to each superintending inspector.
8. Empowers the general board of health upon petition, or where there has been a specified amount of mortality, to direct an inquiry to be made by a superintending inspector as to the condition of any place and its sanitary state, and other matters, to enable the board to report thereon to the Queen, or to make a provisional order.

*Sect. 9.* Requires the inspector to give certain notice of his inquiry, and to report the result thereof to the general board of health—enables the board to cause another inquiry to be made as to boundaries if proposed to differ from those of the district reported upon, and as to other matters—requires them to publish the report made to them in a particular manner, with notice for statements as to the proposal to be forwarded to them—provides for the publication and deposit of such statements—subjects public officers to penalties who refuse to receive such statements—and enables the board of health to cause a further inquiry to be made.

10. Enables the Act to be put in force in certain places by an order of the Queen in council—in others enables the general board of health to make a provisional order, with, when they deem necessary, provisions affecting local Acts, to be published in the district and to be confirmed by a subsequent Act of parliament—provides against alteration of local Acts relating to waterworks without consent, and the formation of a part of a corporate borough into a district without consent of the town council, and, except for main drainage, against the inclusion of a place without a borough in a district composed of such borough without the consent of the ratepayers.

11. Empowers the lords of the treasury to make an order charging the costs and expenses incurred by the general board of health in these inquiries upon the general district rate, to be repaid by five annual instalments, with interest at five per cent.

12. Enacts that the town council of any borough within 5 & 6 Will. 4, c. 76, shall be the local board of health where the district consists of the whole or a part thereof—provides for selection of members where the district comprises two or more boroughs, and pro-

vides for selection of part of the board from town council, and the election of the remainder by the owners and ratepayers in other compounded districts—appoints the day of the first selection—provides for continuance in office and supply of vacancies—declares the meeting of the council to be one under 5 & 6 Will. 4, c. 76.

*Sect. 13.* Provides for the election of members of local board by owners and ratepayers—their continuance in office—and renewal of elections.

14. Regulates the number of members—renders a vacating member re-eligible—enables the board to act though incomplete—and provides that a member selected and elected shall determine under which title he will act, and shall act accordingly, and the other vacancy to be filled up.

15. Provides for the special case of members elected for a sewerage district which is afterwards formed into a district for other purposes.

16. Prescribes the qualification of elected members.

17. Prescribes a declaration to be made by members elected or selected before acting—renders a false declaration, made wilfully, a misdemeanor.

18. Imposes a penalty on persons neglecting to make declaration, and determines the office on failure to make it or to act for three months.

19. Declares the disqualifications of members—imposes penalties on them for acting—prescribes proof in actions—provides for certain shareholders and the consequences of acts of disqualified persons.

20. Declares the qualification of electors, and the scale of voting—defines owner and ratepayer—provides for corporations—and imposes conditions on owners.

21. Provides for the returning officer.

22. Requires the production of parochial books for the purposes of the election.

Sect. 23. Prescribes notice previous to election—provides for Sunday, Christmas Day, Good Friday, Fasts, and Thanksgivings.

24. Provides for the nomination of candidates, and the delivery of voting papers.

25. Prescribes the mode of voting.

26. Provides for the collection of the voting papers.

27. Regulates the casting up of the votes, and the declaration of the result of the voting.

28. Imposes penalties for neglect of the provisions of the statute relating to the election.

29. Enacts that the defects in the election shall not vitiate the proceedings of the board.

30. Provides for the expenses of the election.

31. Contains a special provision for local boards in Oxford and Cambridge.

32. Provides for the acting of commissioners under local Acts when made a local board of health.

33. Provides for the merging of the local board when the district is incorporated.

34. Prescribes regulations for the meetings of the local board, for their conduct of the business of the board, their voting, and the appointment of their chairman.

35. Requires the local board to provide officers and a seal, and declares their sealed documents to be *prima facie* evidence.

36. Enables them to appoint committees.

37. Requires them to appoint a surveyor, inspector of nuisances, clerk, treasurer, and collectors—to make byelaws for the duties of their officers, and enables them to pay the same—regulates plurality of offices—and prescribes penalty for breach of the regulations.

38. Imposes penalties on officers engaging in contracts or taking fees improperly.

39. Requires officers intrusted with monies to give

security, and to render accounts—provides for the failure of the collector, and prescribes summary proceedings to be taken against him.

Sect. 40. Enables the local board to appoint an officer of health, with duties to be directed by the general board of health, and to pay him a salary, but requires the approval of the said general board to the appointment.

41. Enables the local board to procure maps to exhibit the system of sewerage.

42. Provides for the expenses of surveys and maps.

43. Vests all sewers in the district (with certain exceptions) in the local board.

44. Enables the local board to purchase sewers—provides for the application of the purchase-money, and the preservation of the independent rights of user.

45. Requires the local board to keep the sewers in repair—to make all necessary sewers—enables them to carry their sewers through specified places—to alter or discontinue any sewer—provides against a nuisance—and for the claims of persons to use the sewer discontinued.

46. Provides for the proper construction and cleansing of sewers, and the outfall and collection of the sewage.

47. Imposes penalties on persons improperly interfering with the sewers, and enables the local board to alter or pull down erections which shall so interfere.

48. Enables owners or occupiers out of the district to communicate with the sewer.

49. Prohibits the building of new houses without proper drains, and enables the local board of health to cause a proper drain to be made to every house in the district, and if necessary, on default, to do the works and recover the expenses.

*Sect. 50.* Enables the inhabitants in parishes of a population under 2,000, to provide sewers, to cleanse ponds or ditches, to dig wells or set up pumps, through the churchwardens and overseers, at the charge of the poor rate, after a public meeting and due notice.

51. Prohibits the erection of new houses without sufficient waterclosets, or privies and ashpits—imposes penalties on default—and enables the local board to cause the same to be provided for all houses, and to recover the expenses.

52. Provides for the supply of waterclosets in factories.

53. Requires notice to be given of the building of houses and certain particulars, and imposes penalty for building without the board's approval—enables local board to alter building, and provides against their neglect to approve or disapprove after notice.

54. Requires the local board to provide that drains, waterclosets, and ashpits, do not become nuisances—enables the surveyor to make entry on and examination of premises—to give notice to the owner or occupier to remove the nuisance—subjects the same to a penalty on default—and empowers the local board to do the necessary works and recover expenses.

55. Requires the local board to cleanse streets, and remove dust and filth, and to make byelaws for the removal of the same.

56. Requires them to cause places to be provided for the collection and deposit of dust, soil, and sewage, and to sell the same, and imposes a penalty upon any person collecting or removing the same.

57. Enables them to provide public necessaries.

58. Requires the local board of health to cleanse, drain, and cover up ponds, open ditches, and other places, and provide for the collection of offensive matter—to

give notice to the person causing the nuisance, and in his default to execute the requisite works and recover the expenses.

*Sect. 59.* Imposes penalty on persons causing nuisances—enables the local board of health to abate the same—empowers the inspector of nuisances to give notice to the occupier to remove the nuisance, and if there be default enables the manure to be sold by the local board.

60. Enables, on certificate of the officer of health, or two medical practitioners, the local board to cause any house to be purified for the prevention of diseases.

61. Requires slaughter-houses to be registered, and imposes penalty on default.

62. Enables the local board to provide slaughter-houses, and make byelaws for the management thereof, but saves existing interests.

63. Empowers the inspector of nuisances to enter premises and examine animals, carcasses, and the like, and if unfit for food, enables a justice to order the same to be destroyed, and imposes a penalty upon the person to whom the same belongs, or who has the custody of it.

64. Prevents the establishment of certain offensive trades without the consent of the local board of health—subjects offenders to penalties, and enables the board to make byelaws as to the same.

65. Declares that the Act shall not affect the law regarding nuisances.

66. Requires common lodging houses to be registered with the local board, and enables such board to make byelaws for their regulation—requires the keepers thereof to suffer the same to be inspected and disinfected, and to pay the expenses thereof, and subjects them to penalties on neglect.

*Sect. 67.* Prohibits the letting of cellars as dwellings in future houses, and the letting of any cellars except where there are certain specified dimensions and other conditions—imposes penalty for violation of this enactment—provides for areas—defines what shall be deemed to be an occupation—declares the time when this enactment shall come into operation, and requires churchwardens and overseers to publish notices of these provisions.

68. Vests in the local board all streets, and the management thereof—enables them to alter and repair the same, and imposes penalties upon all persons who disturb the same.

69. Empowers the local board to require private streets to be sewered, levelled, and paved by the owners or occupiers thereof, and in their default to perform the requisite works and recover the expenses.

70. Enables the local board to declare streets not highways to be such, and to repair the same, but requires a certain notice to be given previous to such declaration, and enables the proprietor to object and thereby prevent the declaration of the same.

71. Enables the local board to require gas and water pipes in any street to be altered, and in default to alter them—provides against permanent injury, and for the expenses.

72. Requires notice to be given to the local board previous to the laying out of any new street, and enables them to fix the level—imposes penalties for the neglect—enables the board to alter street not laid out in accordance with their regulations, and provides for the board's neglect to interfere.

73. Enables the local board to purchase premises for improving streets.

74. Enables them to provide places as public walks.

*Sect. 75.* Empowers the board to provide their district with a supply of water—to contract for the purchase, or leasing, or construction of waterworks—enables waterworks company to contract for the supply of water—enables the local board to keep a supply of water under pressure, but requires notice to be given to waterworks company, and prevents them from constructing waterworks if such company will supply upon reasonable terms—and enables any question as to this to be settled by arbitration.

76. Requires the local board to cause houses deficient in water supply to obtain the same, and in default enables them to do the necessary works and lay a water rate, and to recover the expenses.

77. Enables them to supply water for public baths, or trading or manufacturing purposes.

78. Enables them to maintain and to construct public pumps and cisterns.

79. Imposes penalties on persons injuring waterworks belonging to the local board—diverting or wasting water belonging to them—and provides for the rights of owners and occupiers.

80. Imposes penalties upon persons polluting water in the reservoirs of the local board, and on the proprietors of gasworks for the same—empowers the local board to inspect gas pipes, and charge the expenses of the inspection upon the managers of the works, or, if the water has not been fouled, upon the district rates.

81. Enables the local board to provide premises for the reception of the dead, and make byelaws for the regulation thereof.

82. Prohibits burials in burial grounds within the district proved upon inquiry to be dangerous to health.

83. Prohibits interments in churches and new burial

ground without the consent of the general board of health, and imposes penalties for breach of this enactment.

*Sect.* 84. Empowers the local board to purchase, hire, sell, or exchange land—incorporates certain parts of the Lands Clauses Consolidation Act—and enables the lands to be held by them as a corporate body.

85. Enables the local board to enter into contracts—prescribes the form—enables the board to compound on breach of contract—requires an estimate to be made and public notice given before the same be entered into, and security to be taken for the due performance of the works.

86. Enables the board to make special district rates in respect of expenses benefitting part of the district—provides for deduction in respect of the drainage of particular premises.

87. Requires the treasurer to keep a separate account, to be called a district fund account, to be applied by the board, and enables them to levy a general district rate.

88. Describes the property assessable to these rates—gives powers to the board to enable them to make them—imposes penalties on persons refusing inspection of rate books and other documents—provides for districts where there is no poor rate, for a lower rate of assessment in respect of particular property, and for exemptions under local Acts.

89. Enables the rates to be made retrospectively or prospectively—provides for unoccupied premises, and the apportionment of rates between successive owners or occupiers—and enables separate assessments to be made on separate parts of the district.

90. Enables the board to make private improvement rates for a limited period, such rates to be a charge on the premises if unoccupied.

*Sect.* 91. Provides for the deduction by lessees of such rates from the rent.

92. Enables special district or private improvement rates to be redeemed.

93. Enables the board to lay a water rate for the supply of water, and provides for agreements with the Universities.

94. Renders the water rate payable in advance, and empowers the board to stop the supply in cases of default of payment.

95. Provides for the compounding by and recovery of rates from the owners, in respect of tenements under ten pounds per annum.

96. Empowers the board to remit rates on account of poverty.

97. Prevents the Act from interfering with covenants in previous leases.

98. Requires the board to cause an estimate to be made before the making of the rates, showing the sums required for each purpose, the rateable value of the assessable property, and the amount of the rate in the pound.

99. Requires public notice of the intention to make the rate to be given, but dispenses with proof of such notice in proceedings.

100. Requires the rates and estimates to be open to inspection, and imposes a penalty upon persons refusing the same.

101. Provides for the use of the terms "owner" or "occupier" in the rate.

102. Enables the board to amend rates—allows persons aggrieved thereby to appeal—and in cases of an increased rate requires notice to be given before demand of payment.

103. Provides that the rates shall be published as poor rates, and collected as the board shall appoint—

provides for the recovery of rates by summons and distress warrant.

*Sect.* 104. Gives a form of distress warrant for rates, and imposes penalty on constables refusing to levy.

105. Provides for the quota of rates to be paid by the universities of Oxford and Cambridge, and the recovery thereof.

106. Enacts that the production of the rate book shall be evidence thereof.

107. Enables the rates to be mortgaged—provides for the payment of the mortgagees, but declares that there shall be no priority among the mortgagees—declares the purposes for which the mortgages shall be effected, and provides for apportionment among separate parts.

108. Empowers loans to be obtained from the Public Works Loan Board.

109. Enables successive loans to be made to pay off preceding loans at higher interest.

110. Enables loans to be renewed, if at the appointed time the mortgage cannot be discharged.

111. Provides a form of mortgage of rates, and requires a register of mortgages to be kept.

112. Enables mortgages to be transferred, and requires a register of transfers of mortgages to be kept—provides for payment to the transferee.

113. Requires the interest to be paid half-yearly, and a sinking fund to be set apart for the discharge of the mortgage debt.

114. Enables a receiver to be appointed by two justices to collect and receive the rates on behalf of the mortgagees where the payment is in arrear—requires, however, that in such case the mortgage shall be of a certain amount.

115. Prescribes the mode of making byelaws—

specifies the limits of the penalties—enables them to be altered—requires them to be confirmed by a secretary of state—but provides for notice, publication, and copies thereof.

*Sect.* 116. Requires the byelaws to be printed and copies to be deliverable.

117. Makes the board surveyors of the highways—releases the inhabitants from payment of highway rates—provides for the collection of arrears and the appropriation of the monies received.

118. Reserves the liabilities of persons to make or contribute towards sewers, sea walls, or paving.

119. Prohibits the borrowing of money without the consent of the general board of health.

120. Enables persons aggrieved by the decision of the local board to memorialize the general board of health—enables that board to make such order as shall be equitable—and to direct a just compensation for loss.

121. Enables the superintending inspector to summon witnesses and require production of plans, rate books, and the like—imposes penalties on persons wilfully refusing—requires previous tender of expenses to witness—and limits the distance of his summons.

122. Requires the accounts of the board to be audited by the auditors of boroughs once every year—and in non-corporate districts by a poor law auditor—enables auditor to require production of documents and declaration as to the accuracy of the accounts—imposes penalties in default—renders this audit final—and enables the board to pay the auditor—provides that notice of the audit shall be given—and a copy of the accounts deposited for inspection—and for the publication of the report.

123. Provides the mode of settling disputes by arbi-

tration—the appointment of the arbitrators—and their award.

*Sect.* 124. Provides for the appointment of an arbitrator in substitution of one who dies or fails—and for the failure of a single arbitrator.

125. Provides for the appointment of the umpire by the arbitrators, the parties, or the quarter sessions.

126. Requires the award to be made within three months of the appointment of the arbitrator or umpire.

127. Empowers arbitrator to require production of documents and to examine witnesses on oath—to determine as to the costs of the reference—and enables the submission to be made a rule of court.

128. Requires the arbitrators to make a declaration, and declares an arbitrator, wilfully acting contrary thereto, to be guilty of a misdemeanor.

129. Provides for the recovery of damages, costs, or expenses, and penalties, summarily before justices by warrant of distress—and in default of distress, by commitment of the offender to prison.

130. Supplies a form of conviction.

131. Prescribes the process before the justices—the awarding of costs—the levying of distress—and prevents distress from being illegal for want of form.

132. Enables members of the board to act as justices under this Act.

133. Requires the consent of the attorney-general to actions for penalties by common informers—limits the time for recovery of penalties—and provides for the application thereof.

134. Declares that the liability to penalty shall not relieve from other penalties.

135. Gives an appeal to the quarter sessions to persons aggrieved—requires notice of appeal—enables the court to award costs—provides for recognizances—and confines appeal to the grounds in the statement.

*Sect.* 136. Enables the court to amend or quash rate—provides for payment of rate notwithstanding the quashing of the same.

137. Provides that rate or proceedings shall not be quashed for want of form—and takes away the *certiorari*.

138. Prescribes the mode of suing in the case of the local board—that the actions shall be in the name of the clerk—and states the mode of describing property—provides against abatement of the action—and requires the clerk to be reimbursed his expenses.

139. Requires notice of action to be given in suits, and prescribes a limitation of actions—provides for venue, plea, tender of amends, and payment of money into court.

140. Exempts persons acting in execution of the Act from personal responsibility—and provides that their expenses shall be reimbursed out of general district rates.

141. Enables orders in council and provisional orders to be amended, and the districts altered or extended.

142. Provides for the commencement of the orders in council and their publication—and requires the reports of the superintending inspectors to be laid before parliament.

143. Empowers two justices to make an order to authorize superintending inspector, surveyor, or inspector of nuisances to enter and examine lands and premises on refusal of owner or occupier to allow the same, and enables such officer to enter and examine accordingly—and provides that previous notice shall be given.

144. Requires compensation to be given to persons sustaining damage from this Act—the amount to be settled by arbitration.

145. Prevents the interference with sewers of the

commissioners of sewers, private watercourses, or rights of drainage, or improvement of land under local Acts.

*Sect.* 146. Enables the local board to allow time to owners for the repayment of the expenses—retaining the power of recovering payment in cases of default.

147. Renders persons examined on oath under the Act giving false evidence punishable as for perjury.

148. Imposes penalties on persons obstructing officers, or destroying notices—enables owner obstructed by the occupier to obtain an order of justices for execution of works—imposes penalty on occupier for disobeying the same—and provides proceedings against occupier who refuses to state name of owner or misstates the same.

149. Prescribes the mode of the giving consent, sanction, or authority by the general and local board.

150. Provides for the mode of serving notices upon local board, and upon owners and occupiers.

151. Contains exemptions from stamp duty, and, in certain cases, from the duty on houses having eight windows.

152. Gives the usual power to amend or repeal the Act.

#### SCHEDULE

- A. Form of voting paper.
- B. „ of mortgage of rates.
- C. „ of transfer of mortgage.
- D. „ of distress warrant.
- E. „ of conviction.
- F. „ of order to permit execution of works by owners.

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#### THE PUBLIC HEALTH ACT, 1858.

21 & 22 VICT. c. 97.

*Sect.* 1. Transfers the powers of the general board

of health, under “The Diseases Prevention Act, 1855,” to the privy council.

*Sect.* 2. Empowers the privy council to issue regulations respecting public vaccination—and provides for the distribution of the money to the national vaccine establishment under the directions of the council.

3. Enables the privy council to direct inquiries as to the public health.

4. Empowers the council to appoint a medical officer—continues the medical officer of the general board of health—enables the council to employ other persons—and provides for the salary of this officer.

5. Requires their medical officer to report from time to time, and annually.

6. Requires these reports to be laid before parliament.

7. Provides for the making and authentication of orders by the privy council.

8. Enables proceedings for penalties under the Vaccination Acts to be taken by public officers—and provides for the payment of the expenses.

9. Gives the title of the Act—and limits the Act to 1st August, 1859.

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#### THE LOCAL GOVERNMENT ACT.

21 & 22 VICT. c. 98.

*Sect.* 1. Gives the title to the Act.

2. Interprets the word “borough.”

3. Prescribes limits to the operation of the Act.

4. Requires the provisions of the Act to be construed with 11 & 12 Vict. c. 68.

*Sect. 5.* Provides for the commencement of the Act, but reserves qualification, powers, and liabilities of previous local boards.

6. Gives to local boards under this Act all the powers, duties, and liabilities of the Act of 1848.

7. Construes the words *the special Act—the limits for the special Act—limits of the district—the passing of the special Act—the promoters of the undertaking*—and provides for the recovery of penalties.

8. Dispenses with the sanction, consent, direction, or approval of the general board of health.

9. Provides that proceedings, contracts, and other matters began or made under repealed clauses of 11 & 12 Vict. c. 98, may be proceeded with, and that no decree or order of a court obtained previously shall be affected by the Act.

10. Enables a receiver to be appointed by justices notwithstanding the failure to elect a local board.

11. Provides for the revival of the local board when there has been a failure to elect—and restores the former rights and liabilities.

12. Provides for the adoption of the Act in corporate boroughs—in places under a board of improvement commissioners—and in other places having a known boundary—and requires a month's previous notice and a certain majority.

13. Provides for previous requisition at meetings to be summoned, by officers declared—requires the summoning officer to give notice—a chairman to be chosen—prescribes regulations for the passing of the resolution—defines the legal effect of the declaration of the chairman—and imposes penalties for malpractices at the voting.

14. Provides that a less place included within a greater shall not adopt the Act unless the latter refuse.

*Sect. 15.* Enables a corporation or commissioners exercising powers for sanitary regulations to adopt part of this Act.

16. Provides that a place not having a known boundary may have it settled—prescribes the course, and enables any such place then to adopt the Act.

17. Gives an appeal to owners and ratepayers against the adoption by petition to the secretary of state—provides for the proceedings and the order of the secretary thereon.

18. Gives an appeal to the secretary of state where the validity of the vote for adoption is disputed—enables him to make inquiry and order thereon.

19. Requires notice of the adoption to be given to the secretary of state—and by advertisement—and a notice of the adoption to be published in the *London Gazette*.

20. Provides for the time when the Act shall come into operation in the district—excepts certain cases to be dealt with afterwards.

21. Prohibits objections to the adoption of this Act without notice—and limits the time of making objection.

22. Renders publication in the *Gazette* conclusive evidence of the adoption.

23. Provides for the payment of costs incurred by the secretary of state.

24. Prescribes the constitution of the local board in corporate boroughs, in places under boards of commissioners, and in other places—prescribes the qualifications of the members in the last cases—enables the district to be divided into wards, and provides for the voting in such wards, and for the conduct of the election generally—enables an agent to be appointed to accompany the deliverer or collector of voting papers

—provides for the supply of casual vacancies, and for the first meeting of the board.

*Sect. 25.* Removes certain disqualifications imposed on members by 11 & 12 Vict. c. 63.

26. Repeals 11 & 12 Vict. c. 63, s. 33, and transfers powers of local board to the town council when the district is incorporated.

27. Empowers adjoining districts to be united.

28. Enables the local board to execute works in adjoining places, and provides for the recovery of the expenses.

29. Empowers board to deduct from sewer rate where any premises shall previously have been sufficiently drained.

30. Empowers local board to dispose of their sewage by making outfall without their district, by selling the same, or by purchasing or hiring land or buildings for its reception—but provides that these things shall be done without a nuisance.

31. Provides for the cleansing foul watercourses or open ditches forming the boundaries of districts, by order of justices, and for the costs thereof.

32. Repeals 11 & 12 Vict. c. 63, ss. 55, 56, and enables the board to provide for cleansing of streets and private houses, and dispose of refuse—imposes penalties on persons obstructing them in so doing or removing such matters—empowers them to make byelaws on occupiers respecting the same—and for the prevention of nuisances—and to recover the expenses of removing accumulations of offensive matters.

33. Renders it unnecessary for the surveyor to close the ground opened by him before drain or ashpit is amended.

34. Repeals 11 & 12 Vict. c. 63, ss. 53, 72, and enables the board to make byelaws as to new streets,

the structure of new buildings, the procuring ventilation, the drainage of buildings and closing uninhabitable dwellings—points out what provisions they may make—provides against retrospective operation, and defines what shall be considered as the erection of a new building.

*Sect. 35.* Enables the board to prescribe the line of new buildings, and to compensate for loss or damage caused by their order, and incorporates certain provisions of the Lands Clauses Consolidation Act.

36. Enables them to purchase premises for new streets.

37. Provides for the costs of the repairs of the highways in certain cases out of the general district rate—in others out of a highway rate—provides for repairs of the highways partly out of the district—dispenses with certain acts required to be done by the General Highway Act—subjects the accounts to the audit under the Act—provides for the application of the surplus highway rate collected by the surveyor of the highway—and renders 12 & 13 Vict. c. 35, s. 2, applicable to the clerk of the local board.

38. Extends 11 & 12 Vict. c. 63, ss. 69, 70, to lighting and repairing streets, and to footpaths—and exempts incumbents or ministers of churches or chapels from rateability under the Act in respect of such churches or chapels.

39. Enables the board to agree with any persons for the making of new public roads.

40. Enables them to agree for the construction of public bridges, viaducts, or arches, or to adopt existing bridges, viaducts, or arches, and make them parts of public streets.

41. Enables them to agree with the trustees of turnpike roads or surveyors of county bridges for the

repair of such roads and bridges—and provides for the rights and interests of mortgagees of the tolls.

*Sect.* 42. Requires the objection under 11 & 12 Vict. c. 63, s. 70, to be made by the proprietor.

43. Prevents interference with certain roads in the neighbourhood of the metropolis except upon specified conditions.

44. Incorporates certain parts of "The Towns Police Clauses Act."

45. Incorporates certain parts of "The Towns Improvement Clauses Act," subject to certain modifications as to smoke.

46. Supersedes the Lighting and Watching Act, 3 & 4 Will. 4, c. 90, in the district.

47. Enables the vestry to transfer to the local board the management of the baths and wash-houses established under 9 & 10 Vict. c. 74, and provides for the expenses.

48. Repeals 11 & 12 Vict. c. 63, s. 61, and part of s. 62.

49. Enables the local board to be the burial board for the district or part thereof, and provides for the expenses—and also for the case where the district is divided into wards.

50. Empowers the board, with the consent of the ratepayers and owners, to establish markets, and incorporates parts of the Markets and Fairs Clauses Act, 1847—and provides that tolls shall be approved by the secretary of state.

51. Extends the powers of 11 & 12 Vict. c. 63, s. 76, as to the supply of water by the board.

52. Gives to the board the same powers for providing water mains as for sewers.

53. Enables directors of a water company or market company to sell their works to the board.

*Sect.* 54. Repeals 11 & 12 Vict. c. 63, s. 86, and thereby the power of making special district rates—but provides for existing debts and charges—and makes provisions as to publication, costs of levy, retrospective-ness of rate, and notice of demand of rates.

55. Repeals 11 & 12 Vict. c. 63, ss. 88, 95, and declares the mode of assessing general district rates—enables the owners to be rated instead of the occupiers in certain cases—directs a lower rate to be imposed on particular property—and preserves exemptions created by local Acts, unless a provisional order confirmed by parliament otherwise direct.

56. Renders the poor-rate books accessible to the board for the purposes of the general district rate—imposes penalty on refusal—and in default of a trustworthy poor-rate assessment enables a valuation to be made according to 6 & 7 Will. 4, c. 96.

57. Repeals 11 & 12 Vict. c. 63, ss. 113, 119, and enables local boards to borrow money on the security of the rates, and to mortgage the same—but imposes conditions as to the consent of the secretary of state, and as to the limit of the loan—provides for the repayment—and requires the local board to repay money borrowed for private expenses out of private improvement rates.

58. Enables the local board to make rentcharges on property to meet the first cost of private improvements, to be payable for thirty years, with interest—and provides remedies for the grantees.

59. Requires rentcharges to be registered.

60. Repeals 11 & 12 Vict. c. 63, s. 122, and provides for the audit of the accounts of the local board by the borough auditors in respect of corporate districts—and by the poor law auditor in respect of other districts—requires him to allow, disallow, or surcharge

items—enables disallowances to be removed into the Court of Queen's Bench for the decision of the court, or an appeal to the secretary of state, who shall have the same powers as the poor law board—provides for the recovery of sums disallowed or surcharged—empowers the auditor to require production of books and documents, and the attendance of persons accountable—imposes penalties on them for default, or for making false declaration—specifies payment to be made to the auditor—requires notice of audit to be published and books to be open to inspection—provides for proof of audit, and requires auditor to report on the audit, and an abstract of the accounts to be published.

*Sect.* 61. Provides for the preparation and authentication of documents of the board.

62. Makes the expenses chargeable upon the owners of premises a charge on such premises, with interest—and declares the limits for the commencement of proceedings.

63. Declares the time when the apportionment of expenses by owners shall be concluded without notice.

64. Enables justices to settle questions referable to arbitration when the sum is under 20*l.*, and to require the work to be surveyed, and to determine the costs and order payment thereof.

65. Requires memorials under 11 & 12 Vict. c. 63, s. 120, to be addressed to a secretary of state for his determination.

66. Imposes penalty on persons injuring works of local board.

67. Requires penalties incurred in a corporate borough under these Acts to be paid to the district fund account.

68. Repeals 11 & 12 Vict. c. 63, s. 145, and makes various prohibitions upon the local board, to prevent

their interference with certain public, proprietary, and private sewers, waterworks, streams, navigations, and other public works, without consent, but saves the rights of local boards existing at the time of the passing of the Act.

*Sect.* 69. Requires, in cases not within the last clause, where the local board propose to execute works, that they should give notice to the parties interested under any local Act of parliament, and if they do not consent that the matter in difference be referred to arbitration.

70. Provides for the result of this arbitration and the action of the local board thereon.

71. Preserves the rights of persons authorized to navigate rivers or canals, or to take toll in respect thereof.

72. Enables corporations or commissioners, with consent of the local board, to alter sewers or other works.

73. Preserves the water rights of individuals or companies.

74. Enables questions arising under the previous sections to be referred to arbitration, and prescribes the questions to be decided.

75. Repeals part of 11 & 12 Vict. c. 63, s. 84, and provides for the purchase of lands by the board by incorporating the Lands Clauses Consolidation Act, by requiring them to publish notice of their intention in newspapers, serve notice on parties interested, and present a petition to the secretary of state, who may direct local inquiry to be made and issue a provisional order to be confirmed by a special public Act of parliament—and provides for the payment of the costs incurred by the secretary of state out of the general district rates.

76. Requires local board to report annually to the secretary of state, and publish the same in a newspaper.

*Sect. 77.* Repeals 11 & 12 Vict. c. 63, s. 141, and enables a petition to be presented for the incorporation of an adjoining place, or a separation of a part of a district, or the repeal of a local Act dealing with public works, or exempting property from rating, or of any provisional order or any Act confirming the same, or the alteration thereof, to a secretary of state, who may direct inquiry and issue order thereon—requires consent to be obtained in certain cases, and provides for the testification thereof—provides for the meeting and conduct thereat, and requires secretary of state to obtain a confirming Act of parliament—prohibits the validity of the order until confirmed, and enables parties to petition against the bill, and to appear and oppose it as a private bill.

78. Enables the local board to petition the secretary of state that the powers of borrowing already given to them in certain cases, and the term for repayment, may be extended—enables the secretary to make inquiry and issue provisional order, to be confirmed by Act of parliament.

79. Empowers the secretary of state to report to parliament annually on this Act, and to provide for its execution by appointing officers and clerks.

80. Confers upon any person directed to make inquiry the powers contained in 11 & 12 Vict. c. 63, s. 121.

81. Renders the orders of the secretary binding and conclusive, and enables him to make orders for costs.

82. Makes certain exceptions in respect of the city of Oxford and the town of Cambridge.

#### SCHEDULE

- A. Form of voting paper.
- B. „ „ rentcharge.

## THE PUBLIC HEALTH ACT, 1848.

NOTE.—The sections printed between asterisks have become superseded by the Local Government Act, and those sections which are printed between asterisks and are included in brackets have been repealed.

11 & 12 VICT. CAP. 63.

AN ACT FOR PROMOTING THE PUBLIC HEALTH.

[31ST AUGUST, 1848.]

PREAMBLE AND INTERPRETATION OF WORDS.

“WHEREAS further and more effectual provision ought to be made for improving the sanitary condition of towns and populous places in England and Wales, and it is expedient that the supply of water to such towns and places, and the sewerage, drainage, cleansing, and paving thereof, should, as far as practicable, be placed under one and the same local management and control, *subject (a) to such general supervision as is herein-after provided:*” Be it therefore enacted, that this Act may from time to time be applied, in manner herein-after provided, to any part of England and Wales,

Parts to which this Act may be applied.

(a) The supervision which is here deemed advisable has been repudiated by the legislature and another substituted by the Local Government Act of 1858, *post*. See note on sect. 67, as to whether any parts of the Act except sect. 50 have a general operation.

Except the parts next hereinafter mentioned; (that is to say,) the city of London and the liberties thereof (*b*), the parts within the limits of certain commissions of sewers (*c*) bearing date at Westminster the 30th day of November in the year of our Lord 1847, also the parts within the limits of a certain other commission of sewers bearing date at Westminster the 4th day of December in the year last aforesaid (*c*), and the parts subject to the jurisdiction of the commissioners acting in the execution of an Act of the fifth year of the reign of King George the Fourth, for (amongst other things) more effectually paving, lighting, watching, cleansing, and regulating the Regent's Park, and in the execution of the several Acts for extending the jurisdiction of such commissioners (*d*).

Interpretation of terms.

II. And be it enacted (*e*), that in the construction of this Act the following words and expressions shall have the meanings hereby assigned to them, unless such meanings be repugnant to or inconsis-

(*b*) This exemption of the city of London and its liberties still continues.

(*c*) These commissions of sewers have expired.

(*d*) This exemption still continues. But as the above-mentioned commissions of sewers have expired the limitation contained in 21 & 22 Vict. c. 98, s. 2, *post*, excludes the metropolis, as defined by the Metropolitan Local Management Act, 18 & 19 Vict. c. 120.

(*e*) In the case of *Queen v. Justices of Cambridgeshire*, 7 A. & E. 491, Lord Denman, C. J., says, "We apprehend that an interpretation clause is not to be taken as substituting one set of words for another, nor as strictly defining what the meaning of a word must be under all circumstances; we rather think that it declares what persons may be comprehended within that term when the circumstances require that they should." See also the observations of Lord Cottenham, C., in *A. G. v. Worcester Corporation*, 15 L. J. R. (N. S.), Ch. 399.

tent with the context or subject matter in which such words or expressions occur (*f*); (that is to say,)

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number: Number:

Words importing the masculine gender shall include females: Gender:

The word "person" and words applying to any person or individual shall apply to and include corporations, whether aggregate or sole: "Person:"

The word "lands" (*g*) and the word "premises" shall include messuages, buildings, lands, and hereditaments of any tenure: "Lands:"  
"Premises:"

The word "owner" (*h*) shall mean (*i*) the person for the time being receiving the rackrent of the lands or premises in connexion with which the said word is used, whether on his own account or as agent or trustee for any other per- "Owner:"

(*f*) See also the statute 13 & 14 Vict. c. 21, which contains a general interpretation of the words *month*, *county*, *land*, and *oath*.

(*g*) It was held by two judges in *Oldacre v. Hunt*, cit. in note on sect. 145, *post*, that this word included "a right of fishery," though the lords justices did not give any decisive opinion on this point.

(*h*) See also the definition of this word in sect. 20, *post*.

(*i*) This word appears to signify that the following is to be the only interpretation of the word *owner*, so that the owner of the fee simple who has let the lands upon a ground rent is not within the definition. See *Evelyn, app., Wycheord, resp.*, 22 Jur. 808. In *Reg. v. Kershaw*, 6 E. & B. 1007, Erle, J., points out the distinction between the words *include* and *mean* in the same interpretation section, the former having an *extending* and the latter an *excluding* signification. Generally, however, an interpretation clause does not restrain the meaning of the words interpreted. *Doe v. Benham*, 7 Q. B. 979.

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

“ Rackrent : ”

The expression “ rackrent ” shall mean rent which is not less than two-thirds of the full net annual value of the property out of which the rent arises (a) ;

And the “ full net annual value ” shall be taken to be the rent at which the property might reasonably be expected to let from year to year, free from all usual tenant’s rates and taxes, and tithe commutation rentcharge (if any), and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses (if any) necessary to maintain the same in a state to command such rent (b) :

“ Month : ”

The word “ month ” shall mean calendar month :

“ Commissioners of the treasury : ”

The expression “ commissioners of Her Majesty’s treasury ” shall mean the commissioners of Her Majesty’s treasury of the United Kingdom of Great Britain and Ireland for the time being, or any three (c) or more of them, or the lord high treasurer of the United Kingdom of Great Britain and Ireland for the time being :

“ Superior courts : ”

The expression “ superior courts ” shall include (d) Her Majesty’s superior courts of record at Westminster, and the Court of Common Pleas of the county palatine of Lancas-

(a) See 4 & 5 Will. 4, c. 76, s. 109.

(b) This definition is taken from the Parochial Assessment Act, 6 & 7 Will. 4, c. 96, s. 1, and is what is set out in the column of the rate in the schedule headed *Rateable Value*.

(c) But by the statute 12 & 13 Vict. c. 89, two of the lords commissioners of the treasury are empowered to act.

(d) It is to be presumed that this word is intended to be exclusive, as it is difficult to know what other courts than those mentioned can be considered as superior courts.

ter (e) and the Court of Pleas of the county of Durham :

The word “ justice ” shall mean any justice of the peace acting for the place in which the matter or any part of the matter, as the case may be, requiring the cognizance of the “ justice ” arises :

The expression “ two justices ” shall mean two or more justices assembled and acting together in petty sessions, or one stipendiary or police magistrate acting in any police court, for the place in which the matter or any part of the matter, as the case may be, requiring the cognizance of “ two justices ” arises (f) :

The expression “ court of general or quarter sessions ” shall mean the court of general or quarter sessions of the peace having jurisdiction over the whole or any part (g) of the district or place, as the case may be, in which the matter requiring the cognizance of the “ court of general or quarter sessions ” arises :

The word “ arbitrators ” shall include a single arbitrator ; and the words “ arbitrators ” and “ arbitrator ” shall include an umpire (h) :

The word “ oath ” shall mean and include an affirmation in the case of Quakers, and a decla-

(e) *Quere*, whether the court of the chancellor of the duchy is included. The same interpretation is found in other statutes.

(f) See also the provisions contained in 21 & 22 Vict. c. 73, s. 1, which confirm this interpretation.

(g) As where the district runs into two counties two courts of quarter sessions will have jurisdiction over the respective parts, it seems that this definition would give authority to both and consequently to either.

(h) As this cannot be universally applicable, the interpretation will be modified by the context.

ration in the case of persons allowed by law (*i*) to make a declaration in lieu of an oath :

“ Corporate borough :”

The expression “ corporate borough ” (*h*) shall mean any corporate borough mentioned in the schedules annexed to an Act passed in the sixth year of the reign of King William the Fourth, intituled “ An Act for the Regulation of Municipal Corporations in England and Wales,” and any borough incorporated by charter granted or to be granted in pursuance of that or any subsequent Act :

5 & 6 Will. 4, c. 76 :

“ District :”

The word “ district ” shall mean the entire area, places, or parts of places comprised within the limits of any district to which this Act or any part thereof shall be applied by order in council, or provisional order of the general board of health sanctioned by parliament (*l*) :

“ Corporate district :”

The expression “ corporate district ” shall mean a district in which the powers, authorities, and duties of the local board of health of the district are exercised and executed by the council of a corporate borough :

(*i*) See 3 & 4 Will. 4, c. 49, and c. 82.

(*h*) By 12 & 13 Vict. c. 94, s. 10, it was declared and enacted, that the expression “ corporate borough ” whenever used in the Public Health Act, 1848, shall be construed to include any city, borough, port, cinque port, or town corporate named in the schedules annexed to an Act passed in the sixth year of the reign of King William the Fourth, intituled “ An Act to provide for the Regulation of Municipal Corporations in England and Wales,” and to any city, borough, port, cinque port, or town corporate incorporated by charter granted or to be granted in pursuance of that or any subsequent Act ; and the word “ burgesses ” wherever used in the said Public Health Act shall be construed to mean *citizens* in the case of a city.

A similar definition of the word *borough* is given in 21 & 22 Vict. c. 98, s. 2, *post*.

(*l*) See the definition of the term “ limits of the district ” in 21 & 22 Vict. c. 98, s. 7, *post*.

The expression “ non-corporate district ” shall mean a district in which the powers, authorities, and duties of the local board of health of the district are *not* exercised and executed by the council of a corporate borough :

“ Non-corporate district :”

The word “ street ” shall apply to and include any highway (*m*) (not being a turnpike road), and any road, public bridge (not being a county bridge), lane, footway, square, court, alley, passage (*n*), whether a thoroughfare or not, and the parts of any such highway, road, bridge, lane, footway, square, court, alley, or passage *within the limits of any district* (*o*) :

“ Street :”

The word “ house ” shall include schools, factories, and other buildings in which more than twenty persons are employed at one time (*p*) :

“ House :”

The word “ drain ” shall mean and include any drain of and used for the drainage of one building only, or premises within the same curtilage, and made merely for the purpose of communicating therefrom with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed (*q*) :

“ Drain :”

(*m*) The 15 & 16 Vict. c. 42, s. 16, interprets the word “ highway,” but only as it is used in ss. 68, 69, hereafter.

(*n*) See in *Le Neve v. Vestry of Mile End Old Town*, 22 Jur. 660, an illustration of the word *street*.

(*o*) See 21 & 22 Vict. c. 98, s. 7, *post*.

(*p*) See the cases upon the parliamentary and municipal franchises, and upon settlement under the Poor Law for illustrations of the word “ house.” *Prima facie* a *house* means a dwelling house ; *Surman v. Darley*, 14 M. & W. 181 ; or a building calculated for use as such ; 8 *Scott. Rep.* 794, 949 ; but the above interpretation extends the signification. The 21 & 22 Vict. c. 98, s. 34, interprets the term *new buildings*.

(*q*) There may be instances of drains not comprehended

"Sewer:" The word "sewer" shall mean and include sewers and drains of every description (a), except drains to which the word "drain" interpreted as aforesaid applies:

"Slaughter-house:" The term "slaughter-house" shall mean and include the buildings and places commonly called slaughter-houses and knackers yards, and any building or place used for slaughtering cattle, horses, or animals of any description for sale (b):

"Water-works company:" The expression "waterworks company" shall mean any corporation, person, or company of persons supplying or who may hereafter supply water for their own profit:

"Water-works:" The term "waterworks" shall include streams, springs, wells, pumps, reservoirs, cisterns, tanks, aqueducts, cuts, sluices, mains, pipes, culverts, engines, and all machinery, lands, buildings, and things for supplying or used for supplying water, also the stock in trade (c) of any waterworks company:

within this definition, as where there is a direct communication from a house to a river or canal, or the sea itself.

(a) In Sutton v. The Mayor of Norwich, 31 L. T. 389, Kindersley, V. C., observed: "The word sewer comes from the word "to sew," i. e. to drain, and has a much more extended signification (than drain), embracing works on the largest scale, such as draining the fens of Lincolnshire by means of canals, &c. In the common sense of the term it means a large and generally underground passage for fluid and feculent matter from a house or houses to some other locality, but it does not comprise a cesspool for the purpose of retaining the sewage, whether as a simple deposit, or to be converted into manure, or other useful purposes."

(b) See Elias v. Nightingale, 22 Jur. 166.

(c) These words are very extensive, and not easy to be understood, because it would seem unnecessary to apply the word waterworks to anything not mentioned in the previous enumeration.

The expression "the local board of health" shall mean the person authorized (d) to execute in each district all or any of the powers, authorities, and duties vested in or imposed upon the local board of health by this Act: "the local board of health:"

The expressions "the officer of health," "the clerk," "the treasurer," "the surveyor," "the inspector of nuisances," shall mean the persons respectively appointed to be or authorized to execute the offices of the officer of health, clerk, treasurer, surveyor, and inspector of nuisances respectively in each district for the purposes of this Act (e). "the clerk," &c.

III. And be it enacted, that in citing this Act in other Acts of Parliament, and in legal instruments and other proceedings, it shall be sufficient to use the words "The Public Health Act, 1848" (f). Mode of citing this Act.

CONSTITUTION OF THE GENERAL BOARD OF HEALTH.

IV. \*\* And be it enacted, that the first commissioner for the time being of Her Majesty's woods and forests, land revenues, works, and buildings, General board of health to be constituted.

(d) That is, authorized by this Act. The 21 & 22 Vict. c. 98, s. 15, enables corporations not constituted local boards to adopt parts of that Act, which is incorporated with the present.

(e) It is to be noticed that the 15 & 16 Vict. c. 42, enacted in sect. 14, "that the word 'year' shall, for the purpose of the election of local boards of health acting in execution of the Public Health Act, 1848, and of the continuance in office of the members of such boards, be taken to mean the interval between any day of election of any such board and the day of election next ensuing."

See other definitions in 21 & 22 Vict. c. 98, s. 7, post.

(f) See also the title of 21 & 22 Vict. c. 98, in sect. 2.

together with such two other persons as Her Majesty by warrant under the royal sign manual may be pleased to appoint, shall be and constitute a board for superintending the execution of this Act, and shall be called "The General Board of Health," and shall have and execute all the powers and duties vested in or imposed on such board by this Act, and the said first commissioner shall be the president of the said board; and Her Majesty may from time to time, at her pleasure, remove all or any of the persons so appointed by her, and appoint others in their stead; and the powers and duties vested in the said board by this Act may be exercised and executed by any *two* members thereof;

And during any vacancy in the said board the continuing members or member thereof may act as if no vacancy had occurred:

Provided always, that the said general board of health shall be continued only for five years next after the day of the passing of this Act, and thenceforth until the end of the then next session of parliament, and no longer (a). \*\*

V. \*\* And be it enacted, that the said board may from time to time appoint a secretary and such clerks and servants as they, subject to the approval of the commissioners of Her Majesty's treasury, may deem necessary for the purposes of this Act;

(a) This and the following clauses, which relate to the general board of health and its officers, have ceased to be operative. In the introductory essay will be found an account of the proceedings and different constitution of that board.

and every person so appointed shall be removable at the pleasure of the said board;

treasury,  
and to cause  
a seal to be  
made.

And the said board shall cause to be made a seal for their use in the execution of this Act, and documents or copies of documents purporting to proceed from them, and to be signed by any two or more of them, and to be sealed or stamped with such seal, shall be received as *prima facie* evidence in all courts and places whatsoever (b). \*\*

VI. \*\* And be it enacted, that the general board of health may from time to time appoint so many proper persons as they, subject to the approval of the commissioners of Her Majesty's treasury, may deem necessary, to be *superintending inspectors* for the purposes of this Act;

Power to  
appoint su-  
perintending  
inspectors,  
subject to  
approval of  
treasury.

And every person so appointed shall have all the powers (c), duties, and liabilities vested in or imposed upon any superintending inspector by this Act, and shall assist in the superintendence and execution of this Act, when, where, and in such manner as the said board shall direct, and shall be removable at their pleasure. \*\*

VII. \*\* And be it enacted, that there shall be paid to such one of the members of the general board of health, not being the president, as Her Majesty shall direct, and to the said secretary, clerks, and servants, such salaries or wages, and to the said superintending inspectors such allowances,

Power to  
treasurer to  
grant sala-  
ries, &c. to  
general  
board of  
health, su-  
perintending  
inspectors,  
&c.

(b) See the statute 8 & 9 Vict. c. 113, ss. 1, 4, as to the proof of documents sealed with a public board's seal.

(c) See sect. 121, *post*, as to his powers, and sect. 148 as to his protection.

Power to  
general  
board of  
health to ap-  
point officers  
and servants,  
subject to  
approval of

as shall from time to time be appointed by the commissioners of Her Majesty's treasury, out of any monies which may from time to time be provided by parliament for that purpose :

Provided always, that the allowance to a superintending inspector shall not exceed the sum of *three pounds three shillings* for every day he shall be actually employed or travelling in the performance of the duties of his office :

Provided also, that the commissioners of Her Majesty's treasury may allow to any superintending inspector such reasonable travelling and other expenses as may be incurred by him in the performance of the duties of his office under this Act, in addition to his said allowance. \*\*

#### CREATION OF DISTRICT FOR LOCAL BOARD OF HEALTH.

VIII. \*\* And be it enacted (*a*), that from time to time after the passing of this Act, upon the petition of not less than one-tenth of the inhabitants rated to the relief of the poor of any city, town, borough, *parish* (*b*), or place having a known or defined

(*a*) The board of health were empowered to act either upon petition from the ratepayers, or, where the annual mortality bore a certain proportion to the population, on their own motion. By the new Act the proceedings will be entirely optional with the inhabitants. As the general board of health has ceased, this clause, though not expressly repealed, has become inoperative for the future.

(*b*) The parish of *Waltham Holy Cross* comprises the township of *Waltham Abbey* and several other townships. A petition was presented from the inhabitants of the *parish*; a superintending inspector made his inquiry as to the *parish*, but reported to the general board of health as to the *town* of *Waltham Abbey*, and recommended the application of the Act to the *township* of *Waltham Abbey*. The general board of health published his report, and invited statements rela-

boundary (*c*), not being less than thirty in the whole, or where it shall appear or can be ascertained from the last return for the time being made up by the registrar general of births, marriages, and deaths, from the deaths registered in a period of not less than *seven* years, that the number of deaths annually in any city, town, borough, parish, or place during the period in respect whereof such return shall have been made have on an average exceeded the proportion of twenty-three to a thousand of the population of such city, town, borough, parish, or place, the general board of health may, if and when they shall think fit, direct a superintending inspector to visit such city, town, borough, parish, or place, and to make public inquiry, and to examine witnesses, as to the sewerage, drainage, and supply of water, the state of the burial grounds, the number and sanitary condition of the inhabitants, and as to any local Acts of parliament in force within such city, town, borough, parish, or place, for paving, lighting, cleansing, watching, regulating, supplying

tive to it. No further inquiry was made, but the general board of health made their report to the Queen that the Act should be put in force in the *parish*, and an order in council was issued accordingly. The Court of Exchequer held that the local board was duly established for the whole *parish*. *Barber v. Jessop*, 1 H. & N. 578.

(*c*) The fact of a portion of land included within the boundary being extra-parochial, or otherwise exempted from poor rate, did not prevent its forming part of the district of the local board of health otherwise legally created under this Act. *Tait v. Carlisle Local Board of Health*, 2 E. & B. 498. See the provision in 21 & 22 Vict. c. 98, s. 14, as to the inclusion of small places in larger ones formed into districts.

It will be observed that this part of the clause applies to a place having a known or defined boundary, whereas the next part is not in terms so limited. Accordingly in 21 & 22 Vict. c. 98, s. 13, *post*, there is a specific provision for places not having such boundary.

the registrar general's returns to be above a certain proportion, superintending inspector to make local inquiry.

Upon petition of a certain proportion of householders &c., or when the deaths in any city, &c., appear upon

with water, or improving the same, or having relation to the purposes of this Act, also as to the natural drainage areas, and the existing municipal, parochial, or other local boundaries, and the boundaries which may be most advantageously adopted for the purposes of this Act, and as to any other matters in respect whereof the said board may desire to be informed, for the purpose of enabling them to judge of the propriety of reporting to Her Majesty, or making a provisional order, as herein-after mentioned. \*\*

Inspector to give notice of inquiry, and report to general board the result of the same.

IX. \*\* And be it enacted (*a*), that before proceeding upon such inquiry the said inspector shall give fourteen days notice of his intention to make the same, and of a time and place at which he will be prepared to hear all persons desirous of being heard before him upon the subject of such inquiry, by advertisement in some one or more of the public newspapers usually circulated in the parts to which the inquiry will relate, and by causing such notice to be affixed on the doors of the *principal* (*b*) churches, chapels, public buildings, and places (*c*) where public notices are usually affixed within such

(*a*) This clause has in effect ceased to be operative for the future, but in regard to districts formed before the 21 & 22 Vict. c. 98, came into operation, it is necessary that attention should be paid to these provisions with the view of ascertaining in any case of doubt whether they have been duly observed. The 21 & 22 Vict. c. 98, s. 21, *post*, will probably not apply to the districts formed under this Act.

(*b*) Note here that the word used is *principal*, not *all*, as in 1 & 2 Vict. c. 45, so that the failure to affix on some one church would not be fatal, as in *Q. v. Whipp*, 4 Q. B. 141.

(*c*) Though churches and chapels in public statutes when unexplained by the context are to be construed as referring to the established church, [see *Ormerod v. Chadwick*, 16 M. &

parts, and in such other manner as may appear to the said inspector to be necessary;

And so soon as can be after the completion of such inquiry he shall report in writing to the general board of health, in such manner as they may direct, upon the several matters with respect to which he has been directed to inquire as aforesaid, and upon any other matters with respect to which he may deem it expedient to report for the purposes of this Act;

And if upon such report it appear to the said general board that the boundaries which may be most advantageously adopted for the purposes of this Act are not the same as those of the city, town, borough, parish, or place with respect to which inquiry has been made, they shall cause the same or some other superintending inspector to visit the parts within the boundaries proposed to be adopted for the purposes of this Act, and after having given such notice as is hereinbefore prescribed, to hear all persons desirous of being heard before him upon the subject of the said report, and to make such further inquiry and report to the said board as they may direct;

Upon such report general board may, if they think fit, cause inspector to make further inquiries respecting boundaries, and present a further report, which shall be published, &c.

And upon the presentation of such report or further report the said board shall cause copies thereof respectively to be published in the parts to which such report or further report respectively relate, in such manner as they may direct, and shall also cause other copies thereof respectively to be

W. 367, and *Ex parte the Overseers of Warblington*, 18 Jur. 494,] the words *public buildings and places where public notices are usually affixed* would here apply to dissenting chapels and meeting-houses.

deposited with the town clerk of any corporate borough affected thereby, and with the clerk to the commissioners or trustees acting under any local Act of parliament in force within such parts for lighting, paving, cleansing, watching, regulating, supplying with water, or improving such parts or any of them, or in anywise relating to the purposes of this Act, and with the clerk to the justices acting for any petty sessional division in which such parts may be, and with the clerk of the board of guardians of the union or parish the whole or part of which may be affected thereby;

And if such report or further report relate to parts not being within any corporate borough the said board shall cause other copies of the same to be deposited with the churchwardens or overseers of the poor of any parish in which such parts or any of them may be; and the copies so published or deposited shall be accompanied by a notice stating that within a certain time, not being less than one month from the time of such publication and deposit, written statements may be forwarded to the said board with respect to any matter contained in or omitted from the said report or further report, or any amendment proposed to be made therein;

And all such statements shall be deposited with such town clerk, clerk to justices, clerk to the board of guardians, and with such churchwardens or overseers respectively, in like manner as the said copies, and shall, together with such copies, be open to public inspection from the hour of eleven in the forenoon till the hour of three in the afternoon every day during the time specified in the last-mentioned notice, *Sundays, Christmas Days, Good Fridays,*

and days appointed for general *fasts* or *thanksgivings* only excepted;

And any town clerk, clerk to justices, clerk to the board of guardians, churchwardens, or overseers who shall refuse to receive any document or copy of any document directed to be deposited with him or them as aforesaid, or to allow such inspection, shall be liable for every such offence to a penalty not exceeding five pounds;

And after the expiration of such last-mentioned notice the said board may, if they think fit, direct such further inquiry and report as to them may seem necessary and proper. \*\*

X. \*\* And be it enacted (a), that if after such inquiry or further inquiry as aforesaid it appear to the said general board of health to be expedient that this Act or any part thereof should be applied to the city, town, borough, parish, or place with respect to which inquiry has been made, upon the petition of such inhabitants as aforesaid, and within the same boundaries as those of such city, town, borough, parish, or place, and within which there is no local Act of parliament in force for paving, lighting, (otherwise than for the profit of proprietors or shareholders,) cleansing, watching, regulating, supplying with water, or improving such city, town, borough, parish, or place, or any part thereof, or in anywise relating to the purposes of this Act, they shall report to Her Majesty accordingly;

And at any time after presentation of such report it shall be lawful for Her Majesty, by and with the

Cases in which Act shall be put in force by order of Her Majesty in council.

(a) This clause has become inoperative for the future.

advice of her privy council (*b*), to order that this Act or any part thereof shall be applied to and be put in full force and operation within such city, town, borough, parish, or place;

And if after such inquiry or further inquiry as aforesaid it appear to the said general board to be expedient that this Act or any part thereof should be put in force within boundaries not being the same as those of the city, town, borough, parish, or place from which the said petition proceeded, *or* within boundaries where no petition has been presented from such inhabitants as aforesaid, *or* within any city, town, borough, parish, or place in which any such local Act of parliament as aforesaid is in force, *they* (*c*) shall make a *provisional order* under their hands and seal of office accordingly, with such provisions, regulations, conditions, and restrictions with respect to the application and execution of this Act or any part thereof, *and with respect to any such local Act* (*d*), and the *repeal*, alteration, extension, or future execution of the same, and in all respects whatsoever, as they may think necessary under all the circumstances of the case;

(*b*) There will be no orders in council hereafter for the constitution of local boards. See sect. 142, *post*, as to the commencement of the effective operation of the order, and as to its publication.

(*c*) See the provisions introduced into 21 & 22 Vict. c. 98, s. 77, *post*, which enable the secretary of state to make provisional orders to be confirmed by Act of parliament in particular cases.

(*d*) The power of the general board under this clause was not unrestricted. They could make a provisional order for the purpose of applying this Act to the borough or place, and all the general provisions and the special provisions for the alteration of the local Act were to be such as they thought necessary under the circumstances *for this purpose*, but not otherwise. Their power was limited to this definite purpose.

Cases in which Act shall be put in force by provisional order of general board, and sanctioned by parliament.

And such provisional order shall be published in the parts to which the same relates in such manner as the *said general board* may direct, and shall be deposited with the town clerk of any corporate borough affected thereby, and with the clerk to the commissioners or trustees acting under any such local Act, also with the clerk to the justices acting for any petty sessional division in which such parts may be, and with the clerk of the board of guardians of the union or parish the whole or part of which may be affected thereby; and if such provisional order relate to parts not being within any corporate borough, the said board shall cause other copies of the same to be deposited with the churchwardens or overseers of the poor of any parish in which such parts or any of them may be;

And in case it shall be enacted by any Act of parliament hereafter to be passed that the whole or part of any provisional order or orders of the gene-

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This has been explained by the case of *Clayton v. Fenwick*, 6 E. & B. 114. The general board made a provisional order extending this Act to the borough of T., a district within which were parts of the S. turnpike roads made under local turnpike Acts. A local sanitary Act also applied to the district, which was altered by the order, and it was directed that after the confirmation of the order by parliament, sect. 50 of the "Towns Improvement Clauses Act, 1847," which forbids trustees of any turnpike road from levying toll within the limits of the special Act, should be incorporated with the sanitary Act. This provisional order was confirmed by the statute so far as authorized by the above Act. It was held by three justices in the Queen's Bench against the Chief Justice, that this part of the provisional order was not authorized, and consequently was void. They considered that the toll on the turnpike road was not a matter which affected the public health of the town.

It will be noticed that the Acts passed after July, 1850, which confirm the provisional order of the board, contain these words, "so far as the same are authorized by the Public Health Act." See the provisions contained in 21 & 22 Vict. c. 98, s. 41.

ral board of health shall be confirmed and be absolute, the whole or part of such provisional order or orders which shall be so confirmed shall be as binding and of the like force and effect as if the same had been expressly enacted by parliament, and every such Act shall be deemed a public general Act (a);

But no such provisional order shall have any force or effect, nor shall this Act or any part thereof be applied in either of the cases last aforesaid, except for the purposes of such inquiry, further inquiry, report, or provisional order, *without the previous authority of parliament*;

And no such provisional order, or any altered or amended order, shall be made with respect to any local Act of parliament under which any waterworks company is empowered to construct waterworks or supply water for their own profit, without the consent of the waterworks company empowered by such local Act first had and obtained:

Provided always, that, except for the purposes of main sewerage, no corporate borough or any part thereof shall be included in any district not exclusively consisting of the whole or part of one such borough without the previous consent of the council under the common seal of the borough (b);

(a) The 12 & 13 Vict. c. 94, s. 9, required the general board of health to cause printed copies of the provisional orders to be delivered to the members of both houses of parliament before the first reading of the bill for their confirmation. The 13 & 14 Vict. c. 90, s. 4, contained other regulations for the supplying of copies of the provisional order to parties requiring them. By 21 & 22 Vict. c. 98, s. 75, No. 5, and s. 77, No. 6, the Act confirming the secretary of state's provisional order is to be deemed a public Act, against which, however, a petition may be presented, and the petitioner may appear and oppose the bill.

(b) See 21 & 22 Vict. c. 98, ss. 27, 28, *post*.

But nothing herein contained shall be construed to require such consent to the constitution of a district exclusively consisting of the whole or part of one such borough for all or any of the purposes of this Act, nor to hinder or prevent the application of all or any of the provisions of this Act to parts exclusively consisting of the whole or part of one such borough, although the same parts or any of them may have been already included within a district for the purposes of main sewerage:

Provided also, that, except for the purposes of main sewerage, no parts beyond the boundaries of a corporate borough shall be included in any district comprising the whole or part of any such borough, except upon the petition of a majority of the owners of property and ratepayers who would be qualified to vote in the election of members of a local board of health for the parts proposed to be so included (c);

But nothing herein contained shall be construed to require such petition in order to the constitution of a district exclusively consisting of parts not within the boundaries of any such borough, nor to hinder or prevent the application of all or any of the provisions of this Act to a district exclusively consisting of such last-mentioned parts, although the same parts or any of them may have been already included within a district for the purposes of main sewerage (d). \*\*

(c) See 21 Vict. c. 98, ss. 27, 28, *post*.

(d) See in sect. 141, *post*, the provision for the alteration or amendment of orders in council now inoperative. But 21 & 22 Vict. c. 98, s. 78, provides for the repeal, partial or total, or the alteration of any provisional order, or order in council or Act confirming such provisional order.

Exception with respect to certain local Acts for supplying water.

Consent of town council, &c. in certain cases.

Costs of preliminary inquiry, &c., with consent of treasury, to become a charge upon the general district rates.

XI. And be it enacted (*a*), that from and after the making of any such order in council, or the passing of any Act of Parliament confirming any provisional order of the general board of health, the costs, charges, and expenses specially incurred by or under the direction of the *said general board*, or of any superintending inspector, in relation to any inquiry or further inquiry as aforesaid, shall, to such extent and amount as the commissioners of Her Majesty's treasury by order under their hands may think proper to direct, become a charge upon the *general district rates* levied in such district under the authority of this Act (*a*), and be repaid to the said commissioners by annual instalments *not exceeding five* (*b*), together with interest after the yearly rate of five pounds in the hundred, to be computed from the date of any such last-mentioned order, upon so much of the principal sum due in respect of the said costs, charges, and expenses as shall from time to time remain unpaid.

#### CONSTITUTION OF THE LOCAL BOARDS OF HEALTH.

Town council to be the local board in districts consisting of one borough, &c.

XII. And be it enacted, that in every district exclusively consisting of the whole or part of one corporate borough, the mayor, aldermen, and burgesses

(*a*) Henceforth this clause will be inoperative for future expenses, but similar clauses are to be found in 21 & 22 Vict. c. 98, s. 23, applicable to that Act.

(*b*) Whether if the money be not repaid by these instalments, or within the time above specified, it can afterwards be recovered will be a question. See the late case of *R. v. Hurstbourne Tarrant*, 23 Jur. 783; 27 L. J. R., M. C. 214.

The statute 12 & 13 Vict. c. 89, provides for the making of orders by the lords of the treasury. It is presumed that if the order above-mentioned were not obeyed, the Court of Queen's Bench would enforce it by *mandamus*.

of such borough shall be by the council of the borough, within and for such district, the local board of health under this Act, and such council shall exercise and execute the powers, authorities, and duties of such local board, according to the laws for the time being in force with respect to municipal corporations in England and Wales (*c*);

And in every district exclusively consisting of two or more of such boroughs, or of one or more of such boroughs and also of part of any other such borough or boroughs, or exclusively consisting of part of two or more of such borough or boroughs, the mayors for the time being of the boroughs whereof the whole or part is within such last-mentioned district, and such number of other persons as shall be fixed (*d*) by such provisional order as aforesaid, to be selected by each of such councils respectively out of their own number, or from persons qualified to be councillors of the borough in respect of which the selection is to be made, and shall be named and selected by such councils accordingly, shall, within and for such district, be the local board of health under this Act;

And in every district comprising the whole or part of any such borough or boroughs, and also parts not within the boundaries of any such borough,

(*c*) See 21 & 22 Vict. c. 98, ss. 12, 24, *post*, which enables corporate boroughs to become district boards of health. That Act empowers districts, when formed, to be united, but does not enable a district to be originally formed by the union of two boroughs. It appears by the return of the local districts, presented to parliament in August, 1857, that there is no instance of a district formed of *two boroughs*.

(*d*) In future this will be settled otherwise. See 21 & 22 Vict. c. 98, s. 27, *post*. But the orders heretofore made will continue in force in the places to which they have been applied.

Selection, &c., of local boards by town councils.

Selection of part of local board by town councils, and part

by owners  
and rate-  
payers.

the mayor or mayors for the time being of the borough or boroughs whereof the whole or part is within such last-mentioned district, and such number of other persons as shall be fixed by such provisional order to be selected by such council or each of such councils respectively out of their own number, or from the persons qualified to be councillors of the borough in respect whereof the selection is to be made, and shall be named and selected by such council or councils accordingly, shall, together with such number of persons as shall be elected as hereinafter mentioned in respect of such non-corporate parts, be, within and for such district, the local board of health under this Act (e);

And the first selection by any such council in pursuance of this Act shall be made on a day to be appointed by parliament (f);

And each person selected by the council out of their own number shall be a member of the local board with which he is selected to act so long as he continues without re-election to be member of the council from whom he was selected, and no longer;

And each person selected by the council otherwise than out of their own number shall be a member of the local board with which he is selected to act for *one year* from the date of his selection, and no longer;

And in case of any vacancy in the number

(e) Henceforth there can be no such union of election and selection in reference to any new board.

(f) The 14 & 15 Vict. c. 90, s. 5, enabled the general board of health to appoint any days for the *first* election or selection other than those appointed by the order in council or the statute. But such power can no longer be exercised.

selected some other person or persons (as the case may require) shall be selected by the council by whom the person or persons causing the vacancy was or were selected, within one month after the occurrence of the vacancy (g);

And the meeting of any council at which any selection as aforesaid is made in pursuance of this Act shall to all intents and purposes be deemed to be a meeting held in pursuance of an Act passed in the sixth year of the reign of King William the Fourth, intituled "An Act for the Regulation of Municipal Corporations in England and Wales" (h).

5 & 6 Will. 4,  
c. 76.

XIII. And be it enacted (i), that in every district comprising the whole or part of any corporate borough or boroughs as aforesaid, *and* also any part or parts not within the boundaries of any corporate borough or boroughs, *such number of persons* (k), qualified as hereinafter prescribed, as shall be fixed by such provisional order as aforesaid, to be elected for such part or parts or for each of such parts respectively, shall from time to time be elected in such manner and by such owners of property and ratepayers as hereinafter mentioned, to be,

Election of  
members of  
local board  
by owners  
and rate-  
payers.

(g) It is presumed that the provision of this time is only directory, and that the vacancy may be supplied although the month has expired. See *Q. v. Griffiths*, 7 E. & B. 953.

(h) See the provisions in 5 & 6 Will. 4, c. 76, s. 69, as to the meetings of the council in boroughs, which, among other things, require a notice of three clear days before the meeting is held.

(i) The 21 & 22 Vict. c. 98, s. 11, *post*, provides for the case where there shall be a failure to elect or a lapse of a local board.

(k) Under 21 & 22 Vict. c. 98, *post*, this kind of district will not be formed originally. By sect. 27 adjoining districts may unite and determine the terms of union, one of which must be the numbers of members to be returned for each respectively.

together with the persons *selected* as aforesaid in respect of the corporate parts of such district, and shall be, within and for such district, the local board of health under this Act;

And in every district not comprising the whole or part of any corporate borough or boroughs, but being a district to which this Act may be applied by order of Her Majesty in council (*e*), such number of persons, qualified as hereinafter prescribed in this behalf, *as shall be fixed by such order in council*, shall be elected, in such manner and by such owners of property and ratepayers as hereinafter mentioned, to be, and shall be, within and for such district, the local board of health under this Act;

And in every district not comprising the whole or part of any corporate borough or boroughs, and being a district to which this Act cannot be applied without the authority of parliament (*e*), such number of persons, qualified as hereinafter prescribed, *as shall be fixed by such provisional order* as aforesaid, shall be elected, in such manner and by such owners of property and ratepayers as hereinafter mentioned, to be, and shall be, within and for such district, the local board of health under this Act;

And the first election for any district or part of a district shall take place on a day to be appointed by order of Her Majesty in council or by parliament (as the case may require) (*f*);

(*e*) See sect. 10, which describes these several districts. In new districts hereafter formed out of places not corporate boroughs nor governed by improvement commissioners, the number of members will be determined at the meeting which adopts the Act by the persons present thereat.

(*f*) See note (*f*) on sect. 12; and as to the proceedings hereafter, see notes on 21 & 22 Vict. c. 98, s. 24.

And one-third of the number elected for the whole or any part or parts of a district respectively shall go out of office on such day in each year subsequently to that of the first election as shall be appointed by such order in council or provisional order as aforesaid (as the case may require) (*g*);

And the order in which the persons first elected (*h*) shall go out of office shall be regulated by each local board:

Provided always, that if the number of persons to be elected be not divisible by three the proportion to go out of office in each year shall be regulated *by such order in council or provisional order* (*i*) (as the case may require), so that as nearly as may be one-third shall go out of office in each year;

And if the number of persons to be elected for any part of a district be less than three the persons elected shall go out of office on such day in each year, or at such other period, not being less than a

(*g*) These provisions will apply to local boards constituted under the new Act, but *quære* when the day for the determination of the year of office will arrive, as there will be no order in council or provisional order. The intention of the statutes is that the year should determine on the anniversary of the day of election, but this intention is not expressed in either Act.

(*h*) The local board may select members who may in point of fact have ceased to be members, and are not compelled to select members out of the continuing number. *Howitt v. Manfull*, 6 E. & B. 736. There the facts were these:—The board consisted of nine members, one-third to go out of office on March 31, 1855. Three of the members had ceased to be members by reason of non-attendance, and the local board selected them to go out of office. Three new members only were elected, and the court held the new board to be well constituted.

(*i*) In future boards, as there will be no order in council or provisional order, the meeting should fix upon a number divisible by three, or there will arise an inextricable confusion.

year, as such order in council or provisional order (as the case may require) shall direct;

But no person elected shall in any case continuously remain in office for more than three years (a);

And on the days appointed for going out of office (b) a number of persons shall be elected equal to the number of those so going out, and so many others as may be necessary to complete the full number of the local board of health in respect of which the election is to be made.

Regulations as to the number of persons to be selected or elected members of local boards.

XIV. And be it enacted (c), that the number of persons to be selected or elected for the whole or any part of a district shall from time to time be regulated by such order in council or provisional order as aforesaid (as the case may require), due regard being had to the size and circumstances of each district, as may appear to be just and proper (c);

And that any member of the local board of health, after going out of office, resigning (d), or otherwise ceasing to be such member, may, if otherwise qualified, be again selected or elected (as the case may require);

In case of vacancies,

And in the event of any vacancy in the number of persons elected, by death, resignation (d), or

(a) But such member may be re-elected. See next section.

(b) As already noticed, no such days will be appointed in districts formed under the new Act, unless by the resolution adopting the Act.

(c) This part of the clause has ceased to be operative, inasmuch as no general board of health can originate the order, but probably an alteration in the numbers may be effected by the operation of 21 & 22 Vict. c. 98, s. 77, *post*.

(d) Note, that a power of resignation is thus recognized though it is not expressly given by this or the subsequent Act; and as this is an onerous office it seems that by the application of the rule of the common law no such power would have existed.

otherwise (e), between the times appointed for election as aforesaid (f), or if at any time the said local board be without its full number of members, the remaining members shall continue and be as competent to act until the time appointed for election, or until the full number is selected or elected (as the case may require), as if no vacancy had occurred (g);

remaining members may act.

And if any person be both selected and elected to be a member of the local board of health, he shall, within three days after notice thereof from the clerk, choose, or in default of such choice the local board of which he is so selected and elected to be member shall determine, the title in respect of which he shall serve, and immediately upon such choice or determination the person so selected and elected shall be deemed to be member only in respect of the title so chosen or determined, and his office as member in respect of any other title shall thereupon become vacant (h).

Persons both selected and elected, &c. to serve in respect of one title only.

XV. Provided always, and be it enacted, that if any corporate borough or part thereof be included, only for the purposes of sewerage, in any district comprising any part or parts not within the boundaries of any such borough, and the last-mentioned part

Members elected for part of a sewerage district to constitute separate board for

(e) As by becoming disqualified or refusing to act.

(f) The 21 & 22 Vict. c. 98, s. 24, enables the local board itself to fill up an occasional vacancy for the residue of the time of the vacating member.

(g) This is similar to the provision in 5 & 6 Vict. c. 57, s. 12, in regard to boards of guardians of unions, which, indeed, was only corroborative of a decision of the Court of Exchequer Chamber in the case of the Todmorden union. *Q. v. Ov. of Todmorden and Walsden*, 1 Q. B. 185; 3 Q. B. 675.

(h) And the vacancy may hereafter be filled up by the local board. See note (f), above.

other purposes of the Act.

or parts, or any of them, be constituted a district or districts for any other purposes of this Act, the persons elected for such sewerage district shall, within and for the separate district within which they shall have been so elected, be and constitute the local board of health in the same manner and as fully to all intents and purposes as if they had been expressly elected to constitute the same.

Qualification of elected members.

XVI. And be it enacted (*h*), that every person elected as aforesaid shall at the time of his election, and so long as he shall continue in office by virtue of such election, be *resident* (*i*) within the district for which or for part of which he is elected, or *within seven miles thereof* (*k*), and be seised or possessed of *real* (*l*) or personal estate, or both, to such value or amount (*m*) as shall be fixed by such order in council or provisional order as aforesaid (as the case

(*h*) It will be found that many of the provisions relating to the constitution of the board, the qualification of the members, and their acting, have been adopted from the Commissioners Clauses Act, 10 & 11 Vict. c. 16; but little assistance can be derived in the interpretation of this Act from reference thereto.

(*i*) Much difficulty has been felt in applying this word to the cases which arise under different statutes; but here it is evident that a permanent abiding must be contemplated.

(*k*) This must be measured in a straight direct line, "as the crow flies," according to the interpretation now established in settlement and other cases. *Q. v. Saffron Walden*, 9 Q. B. 76, 79. *Stokes v. Grissel*, 14 C. B. 678.

(*l*) No particular locality is required for the real estate, and of course there can be none for the personal estate.

(*m*) In districts to be formed hereafter the qualification must be according to the scale provided by 21 & 22 Vict. c. 98, s. 24, *post*. It will be seen that these regulations, as to the qualification of the members, correspond with those prescribed in the Municipal Corporation Act, 5 & 6 Will. 4, c. 76. Value will apply to estates or goods and chattels; amount will apply to money or pecuniary property.

may require), within the limits next hereinafter provided, or be so resident, and rated to the relief of the poor of some parish, township, or place of which some part is within such district or part of a district, *upon such annual value* (*n*) as shall be fixed by such order in council or provisional order (as the case may require), within the limits next hereinafter provided:

Provided always, that it shall not be lawful to require that any person be seised or possessed as aforesaid to a value or amount exceeding *one thousand pounds*, or to require that any person be rated upon an annual value exceeding *thirty pounds*;

Provided also, that if two or more persons be jointly seised or possessed of real or personal estate, or both, of such value or amount as would, if equally divided between them (*o*), qualify each to be elected, or if two or more persons be jointly rated in respect of any property which if equally divided between them would qualify each to be so elected, each of the persons so jointly seised, possessed, or rated may be elected;

But the same property shall not at the same time qualify both the *owner* (*p*) and the occupier thereof.

(*n*) See the case of *Baker v. Marsh*, 24 L. J. R., Q. B. 1, in which it was held, with reference to the qualification of a town councillor, which depends upon a rating to the poor upon an annual value of not less than 15*l.*, that this term applied to the *rateable value* and not the *gross estimated rental*.

(*o*) It appears to be unnecessary to inquire what are the respective proportions of the interest of the parties in the property.

(*p*) There is some difficulty in applying this proviso. Can a person who is the owner of a house be qualified in respect of his real estate, but the occupier, who is rated for the same,

Declaration to be made by members of local boards before acting.

XVII. And be it enacted, that no person elected as aforesaid, or selected by any council otherwise than out of their number, shall act as member of the local board of health (except in administering the following declaration) until he shall have made and signed before two or more other members for the district for which he is elected a declaration in writing to the effect following; (that is to say),

“ I *A. B.* do solemnly declare, that I am seised  
“ or possessed of real or personal [*or* real and  
“ personal] estate to the value or amount of —  
“ [*or* that I am rated to the relief of the poor  
“ of — upon the annual value of — ].

“ (Signed) *A. B.*

“ Made before us, *C. D.* and *E. F.*, members of  
“ the local board of health for the district  
“ of —, this — day of — .”

False declaration a misdemeanor.

And such declaration shall be made and signed by the person making the same, and shall be filed and kept by the clerk;

And any person who shall falsely or corruptly make and subscribe the said declaration, knowing the same to be untrue in any material particular, shall be deemed guilty of a misdemeanor (*d*).

be disqualified? or does the proviso mean that the owner who has a valuable freehold estate, and the lessee who has also a valuable personal interest therein, shall not both be qualified? Again, if both be candidates, how is it to be determined which is qualified, and who is to determine this question? Perhaps however these two questions may be settled by the order in which the nominations are made.

(*d*) This declaration is taken from 10 & 11 Vict. c. 16, s. 12, and is still required by 21 & 22 Vict. c. 98, s. 24. Nevertheless, any act of the party before he makes the declaration will be valid. See sect. 19, *post*.

XVIII. And be it enacted, that any person elected as aforesaid, or selected by any council otherwise than out of their own number, who neglects to make and subscribe the declaration required by this Act for the space of *three* months next after his selection or election, and any person selected or elected under this Act who during *three successive months* (*e*) is absent from all meetings and committees of the local board of health of which he is elected or selected to be a member (*f*), shall be deemed to have refused to act, and shall cease to be a member of such local board, and his office as such shall thereupon become vacant.

Person neglecting to make declaration or to act for three months to cease to be a member.

XIX. And be it enacted, that no bankrupt, insolvent (*g*), or other person not qualified as aforesaid shall be capable of being elected as aforesaid;

Disqualifications.

And if any person, after being so elected or selected by any council otherwise than out of their own number, shall lose or discontinue to hold his qualification, or shall be declared bankrupt, or shall

(*e*) By 21 & 22 Vict. c. 98, s. 25, this is made *six months*, as in 10 & 11 Vict. c. 16, s. 16.

(*f*) See 10 & 11 Vict. c. 16, s. 8. This will be a vacancy to be supplied by the local board. See sect. 14, note (*f*).

(*g*) By this word is generally understood a person who has taken the benefit of an Insolvent Debtors' Act, and not merely one who is unable to pay his debts. See *The Princess Royal*, 9 Jur. 433. There is an ambiguity in the clause as to the extent of the disqualification. Is a man who has once been declared a bankrupt permanently disqualified? or can he be qualified after he has obtained his certificate? In *R. v. Chitty*, 5 A. & E. 609, the Court of Queen's Bench decided that an uncertificated bankrupt was not disqualified from being elected a town councillor under 5 & 6 Will. 4, c. 76, but there the disqualifying words introduced in the commencement of this section were wanting.

apply (a) to take the benefit of any Act for the relief or protection of insolvent debtors, or shall compound with his creditors, or if any member selected or elected under this Act shall accept or hold any office (b) or place of profit under the local board of health of which he is member, or shall in any manner be concerned in any bargain or contract (c) entered into by such board, or participate in the profit thereof, or of any work done under the authority of this Act in or for the district for which he is member, then and in every such case such person shall, except in the cases next hereinafter provided,

(a) Note, that the application is enough to disqualify whatever may be the result.

(b) Must the office be one of profit? In other words, can a member hold any appointment gratuitously? In 5 & 6 Will. 4, c. 76, s. 28, where the same words occur, there is an exception of the Mayor, whose office is not one of profit. See also 5 & 6 Vict. c. 104, s. 8, as to a Sheriff. As to a Treasurer without salary, see *Delane v. Hillcoat*, 9 B. & C. 310.

(c) See, as to a bargain for the sale of a piece of land to the local board by a member thereof, *Woolley v. Kay*, 1 Hurl. & N. Rep. 307. But in future no interest in a sale or lease of any lands or any loans to the local board will disqualify. See 21 & 22 Vict. c. 98, s. 25, which enacts the same provision as was contained in 5 & 6 Vict. c. 104, ss. 1, 7, as to municipal corporations. The disqualifications in the text are mainly adopted from the Municipal Corporation Act, and the Commissioners Clauses Consolidation Act, 10 & 11 Vict. c. 16, s. 9.

In regard to the interest in the contract which will disqualify a member and subject him to penalties, the case of *Le Feuvre v. Lancaster*, 3 E. & B. 530, should be referred to. The local board of health of Southampton having contracted with a person to supply iron railings, an alderman of the borough sold him some iron to enable him to complete his contract, openly and *bonâ fide*. It was held that the latter was not liable to the penalty assigned by 5 & 6 Will. 4, c. 76, s. 28. A trustee of a turnpike road let his horse and cart at a certain sum to a contractor for works on the road, to be used in the performance of the works, and it was held that he was liable to a penalty on a clause framed as above. *Towsey v. White*, 5 B. & C. 125. See also *West v. Andrews*, 5 B. & Ald. 328, as to the supply of articles by a guardian of the poor to a contractor for the maintenance of the poor in the workhouse

cease to be such member, and his office as such shall thereupon become vacant (d);

And any person who, not being duly qualified to act as member of the said local board, or who has not made and subscribed the declaration required of him by this Act, or who after being disqualified or disabled from acting by any provision of this Act shall so act, shall for every such offence be liable to a penalty of *fifty* pounds, which may be recovered by *any person* (e), with full costs of suit, by action of debt;

And in such action it shall be sufficient for the plaintiff to prove in the first instance that the defendant at the time when the offence is alleged to have been committed acted as such member (f);

And the burden of proving qualification, and the making and subscription of the declaration, or negating disqualification, by reason of non-residence, or not being seised or possessed of the requisite real or personal estate, or both, shall be upon the defendant:

Provided always, that no person, being a proprietor, shareholder (g), or member of any company

(d) And the vacancy can be supplied by the local board. The person will cease to be a member, but the contract in which he may be interested will not be void. *Foster v. Oxford, &c. Railway Company*, 13 C. B. 200.

(e) But see the condition precedent to the action, sect. 133, *post*.

(f) This and the following provision are contrary to the former spirit of the English law, but they have crept into some late statutes. Where, in an action for a penalty, upon a similar provision in a local Act, the issue being upon the want of qualification, the defendant proved his qualification, but not that he had subscribed the oath, it was held that he had proved enough, and was not bound to prove such subscription. *Tupper, app., Newton, resp.*, 14 C. B. 114.

(g) A shareholder in any joint stock company established under the Acts is rendered competent to act by 21 & 22 Vict. c. 98, s. 25, *post*, as in 10 & 11 Vict. c. 16, s. 10.

or concern established for the supply of water, or for the carrying on of any other works of a like public nature, shall be disabled from being, continuing, or acting as member of the said local board by reason of any contract entered into between such company or concern and such board;

But no such person shall vote as a member of the said local board upon any question in which such company or concern is interested (*g*):

Provided also, that all acts and proceedings of any person disqualified, disabled, or not duly qualified as aforesaid, or who has not made and subscribed the said declaration, shall, if done previously to the recovery of the last-mentioned penalty, be valid and effectual to all intents and purposes whatsoever (*h*).

Qualification  
of elector,  
and scale of  
voting.

XX. And be it enacted (*i*), that at every such election as aforesaid the ratepayers in respect of property in the district or part of a district for which the election is held, and the owners of such property, shall be entitled to vote according to the scale following; (that is to say,)

If the property in respect of which the person is entitled to vote be rated (*k*) upon a rateable value of *less than fifty pounds* he shall have *one* vote; if such rateable value amount to fifty pounds

(*g*) See the power of dispensation granted to the secretary of state by 21 & 22 Vict. c. 98, s. 25.

(*h*) See sect. 29, *post*.

(*i*) For a full exposition of the details and steps in the election of members of the board, see "The Local Board of Health Election Manual," by the Editor of this work.

(*k*) That is, to the poor rate: see *post*. The rateable value means the net annual value and not the gross estimated rental. See note on p. 57, *ante*.

and be *less than one hundred pounds* he shall have *two* votes; if it amount to one hundred pounds and be *less than one hundred and fifty pounds* he shall have *three* votes; if it amount to one hundred and fifty pounds and be *less than two hundred pounds* he shall have *four* votes; if it amount to two hundred pounds and be *less than two hundred and fifty pounds* he shall have *five* votes, and if it amount to or exceed *two hundred and fifty pounds* he shall have *six* votes (*l*);

And any person (*m*) who is owner and also *bonâ fide* occupier of the same property shall be entitled to vote both in respect of such ownership and of such occupation;

And the votes shall be given, taken, collected, and returned according to the directions hereinafter contained (*n*); and the majority of the votes actually collected and returned shall be binding on the district or part of a district for which the election is had;

And whosoever shall not vote or shall not comply with such directions shall be omitted in the calculation of votes, and be deemed to have had no vote (*o*):

Provided always, that the word "owner" and "owners," when used in this Act in relation to the right of voting at any election under this Act, shall respectively be construed to mean any person or

Definition of  
the words  
"owner" and  
"owners" as  
applied to  
this Act.

(*l*) This is the scale established by 7 & 8 Vict. c. 101, s. 14, for the voting at the election of guardians.

(*m*) This word includes corporations (see sect. 2), but does not, as it seems, here apply to corporations aggregate, as they are provided for afterwards; and see also sect. 25.

(*n*) See ss. 25, 26, 27. Notwithstanding the terms of this passage the returning officer can scrutinize the returns.

(*o*) This is according to 4 & 5 Will. 4, c. 76, s. 38.

persons for the time being in the actual occupation of any kind of property rateable to the relief of the poor, and not let to him or them at a *rack-rent* (a);

Or any person or persons receiving, either on his or their own account, or as mortgagee or mortgagees, or other incumbrancer or incumbrancers, in possession, the rackrent of any such property (b);

And no person shall be deemed a "ratepayer" (c) or be entitled to vote as such at any such election unless he shall have been *rated* (d) to the relief of the poor in the district or part of a district for which he claims to vote for the space of one whole year immediately preceding the day of tendering his vote, and shall have also paid all rates made upon him for the relief of the poor in such district or part of a district for the period of one whole year, and shall have also paid all such rates, and all rates due from him under this Act, before that day, in such district

(a) The definition of *rackrent* is given in sect. 2, *ante*, p. 30.

(b) This is a more extensive definition of the word *owner* than that given in sect. 2, *ante*. It is much the same as that given in 4 & 5 Will. 4, c. 76, s. 109.

(c) The common law disqualifications of alienage, infancy, coverture, and insanity, will apply to the ratepayer; but a woman not having a husband can vote, and a bankrupt or insolvent, if actually rated, and if the rates for the specified time have been paid, may vote. So in the case of a pauper. But when a person has been excused from the payment of his rates, due within the specified time, by the justices, or under sect. 96, *post*, he cannot be considered as a ratepayer.

Where the owner is rated in the place of the occupier, under 13 & 14 Vict. c. 99, the occupier is not a ratepayer competent to vote. *Richardson v. Gladwin*, 27 L. J. R., M. C. 193.

(d) The rate must be a valid rate. It must have been allowed by the justices, and have contained the statutory declaration, and have been duly published. If there should have been no valid rate in the district for the time specified, the local board cannot be constituted.

or part of a district, except rates which shall have been made or become due within the six months immediately preceding (e):

Provided also, that in case of property belonging to a corporation aggregate, or to a joint stock or other company, or to any body of proprietors or undertakers, such corporation, company, body of proprietors or undertakers respectively, shall be deemed to be *one owner* (f) for the purpose of voting under this Act, and shall vote by proxy appointed in writing under the common seal (in case of a corporation) or (in any other case) under the hands of three directors or any other persons in the direction or management of the company or concern;

And no member of such corporation, nor any proprietor or person interested in such company or concern, shall be entitled to vote individually as *owner* in respect of such property;

And (g) no owner whatsoever shall be entitled to vote as such, unless, *fourteen days at least* (h) pre-

(e) Does this exception extend to the poor rates? That appears to be the natural interpretation, and is in accordance with 4 & 5 Will. 4, c. 76, s. 38, from which the passage was taken. The general board of health have advised, however, that it is confined to the district rates. See Johnson on this Act, p. 49.

(f) This provision is similar to that contained in 4 & 5 Will. 4, c. 76, s. 38. It seems from the above that the corporation aggregate, or company, are not empowered to vote as *occupiers*. The number of votes to be given as owner will of course depend upon the rateable value of the property in the district, but cannot exceed six.

(g) This is similar to the provision in 7 & 8 Vict. c. 101, s. 15. See the letter of the poor law commissioners, dated Jan. 16, 1845, and printed in their 11th annual report, p. 121, wherein they set forth the forms of claims and statements by owners, and the appointments of proxies in accordance with that Act.

(h) Both days must be excluded. *Queen v. Justices of Salop*, 8 A. & E. 173. Note, the voter does not in general tender his vote, but a voting paper is sent to him. The returning

viously to the day of tendering his vote, he shall have delivered to the clerk, or (in case of the first election) to such person within the district in which the qualification to vote is situate as shall be directed *by such order in council or provisional order* (as the case may require), a statement in writing of his name and address, and containing a description of the nature of his interest or estate in the property giving the qualification, and a statement of the amount of all rent-service (if any) which he may receive or pay in respect thereof, and of the persons from whom he may receive or to whom he may pay the same;

And no such corporation aggregate, joint stock or other company, body of proprietors or undertakers, shall be entitled to vote unless such statement contain the *name and address* of the *proxy* appointed, and a true copy of the *appointment* of such proxy (*h*).

Elections, by whom to be conducted.

XXI. And be enacted, that at every election by owners of property and ratepayers under this Act the chairman (*i*) of the local board of health, or, in

officer cannot send to the owner unless he has received the claim. Note, that this officer must decide at the election the right of the claimant to vote.

(*h*) It must be observed that it is only corporations aggregate or companies that can vote by proxy. There does not appear to be any exemption from stamp duty in regard to the appointment of a proxy, and therefore, according to 55 Geo. 3, c. 184, Sched. Part I., it must be stamped. See *R. v. Kelk*, 1 Q. B. 559. It appears, however, from the note of Mr. Johnson, in p. 201 of his 1st edition of the statute, that the general board of health advised the contrary. No word in the 151st section applies to this proxy appointment, and the ground of that advice is not stated.

An important question arises whether the claim is to be renewed. It seems not, but that once given it remains available so long as the party retains the qualification.

(*i*) It is to be presumed that the chairman *de facto* is to conduct the election, and that it is not competent to persons

case of the first election, *such person as shall be appointed (k) by order of Her Majesty in council, or by provisional order of the general board of health*, (as the case may require,) shall have the powers and perform the duties vested in or imposed upon the said chairman by this Act in relation to any such election, and shall perform all other duties which it may be requisite for him to perform in conducting and completing elections under this Act;

And in case the office of chairman shall be vacant at the time when any such power or duty must be executed or performed, or in case the chairman *or person appointed as last aforesaid*, from illness or other sufficient cause, shall be unable to exercise or discharge such powers or duties, or shall be absent, or shall refuse to act, some other person who shall be appointed (*k*) (*in case of the first election*) *by such order in council or provisional order* or (in any other case) by the local board of health, shall exercise or perform such of the said powers and duties as then remain to be exercised or performed;

And the said local board, or (in case of the first election) *the person appointed by such order in council or provisional order*, shall, before or during the election, appoint a competent number of persons to assist and attend upon the chairman *or the person so appointed (as the case may require)* in conducting and completing the same.

XXII. And be it enacted, that the clerk of the board of guardians of any union, and the overseers or other officers of every parish, wholly or in part

Production of parochial books, &c. for purposes of election.

to call in question the legal title of the returning officer, though the law relating to municipal corporations would warrant a different conclusion.

(*k*) See now the provisions of 21 & 22 Vict. c. 98, ss. 16, 19, *post*.

within the parts for which any such election shall be held, and having the custody of any books or papers relating to the election of guardians of the poor (*a*), or the poor rate books relating to any such parish, shall permit the same to be inspected and copies or extracts to be taken therefrom by the said chairman, or (in case of the first election) *by (b) any person appointed by such order in council or provisional order as aforesaid*; and the said chairman may, if he shall see fit, cause to be made an alphabetical list (*c*) of the persons entitled to vote at the election.

List of voters, &c. to be made if necessary.

Publication of notice previously to election.

XXIII. And be it enacted (*d*), that the said chairman shall, before every such election, prepare, sign, and publish a notice, which *shall (e)* contain the particulars following;

That is to say, the number and qualification of the persons to be elected,—the persons by whom and

(*a*) The clerk to the board of guardians has seldom any such books. He is required by the regulations of the Consolidated Order to deliver the nomination and voting papers, when the election is over, to the board of guardians, and everything else must be his own private memoranda.

(*b*) Henceforth by the summoning officer. See 21 & 22 Vict. c. 98, s. 24, No. (5.)

(*c*) This list will not be conclusive, as the owners will still have a right of claiming, so that their title will not be complete until they tender their votes.

(*d*) This and the following directions follow the regulations prescribed by the poor law commissioners in the election of boards of guardians, which see in the General Consolidated Order, Arts. 1—27. They are not dispensed with in the new statute.

(*e*) This word is generally considered to be imperative, but, nevertheless, it is to be presumed that a slight error or omission in this notice will not render the election a nullity. Whether the election could be sustained if the notice were wholly omitted or were framed so erroneously as to mislead the electors, is a more serious question, which must probably be answered in the negative.

the places where the nomination papers hereinafter mentioned are to be received, and the last day on which they are to be sent,—the mode of voting in case of a contest,—and the days on which the voting papers will be delivered and collected,—and the time and place for the examination and casting up of the votes;

And he shall also cause such notice to be affixed *on such places (f)* in the parts for which the election is to be held as are ordinarily made use of for affixing thereon notices of parochial business:

Provided always, that whenever the day appointed for the performance of any act in relation to any such election shall be [on]\* a Sunday(*g*), Christmas\* *Sic in Stat.* Day, or Good Friday, or any day appointed for public Fast or Thanksgiving, *such act (h)* shall be performed on the day next following.

XXIV. And be it enacted, that any person entitled to vote may nominate for the office of member of the local board of health himself (if qualified to be elected), or any other person or persons so qualified (not exceeding the number of persons to be elected);

Nomination and election of candidates.

And every such nomination shall be *in writing*,

(*f*) It will not be held that an omission of the notice in some one public place will constitute a fatal default. It will be well to follow the directions in 58 Geo. 3, c. 69, and 1 Vict. c. 45, and cause the notice to be affixed on all churches and chapels, as well as other prominent public places in the district.

(*g*) As to the delivery of a nomination paper on a Sunday, see *Westbury-on-Secern Union Case*, 4 E. & B. 314.

(*h*) Note, that only this act is to be postponed; the poor law commissioners have provided in similar cases that all the subsequent acts shall be postponed.

and shall state the names, residence (*i*), calling, or quality (*j*) of the person nominated, and shall be signed by the party nominating, and be sent to the chairman;

And if the number of persons nominated shall be the same or less than the number of persons to be elected, such persons (if duly qualified) shall be deemed to be elected, and shall be certified accordingly by the said chairman under his hand;

But if the number so nominated exceed the number to be elected, the said chairman shall cause voting papers, in the form contained in the schedule (A.) to this Act annexed, to be prepared and filled up, and shall insert therein the names of all the persons nominated, in the order in which the nomination papers were received, but it shall not be necessary to insert more than once the name of any person nominated (*k*);

And the said chairman shall, three days before the day of election (*l*), cause one of such voting papers to be delivered by the persons appointed for

(*i*) This word is one most difficult to be interpreted. The courts of law assign different meanings to it according to the subject matter in connexion wherewith the question arises. Here it is best to treat it as the place of abode. See *Q. v. Hammond*, 17 Q. B. 772; *Q. v. Deighton*, 5 Q. B. 896; *Lockett v. Knowles*, 2 C. B. 187; *Allen v. Greensill*, 4 C. B. 100.

(*j*) Such as baronet, knight, esquire, or gentleman, which words signify the quality. Professional titles appear to fall under the word calling.

(*k*) This does not justify the omission of the names of any of the nominators.

(*l*) The day of election was settled by the provisional order or order in council heretofore, but it is left uncertain under the new Act.

that purpose to the address (*m*) in the parts for which the election is to be held of each owner and proxy, and at the residence (*m*) of each ratepayer entitled to vote therein:

Provided always, that if any person put in nomination shall tender to the officer conducting the election his refusal in writing to serve as a member of the local board of health, and if in consequence of such refusal the number of persons nominated shall be the same as or less than the number of persons to be elected, all or so many of the remaining candidates as shall be duly qualified shall be deemed to be elected, and shall be certified as such by the chairman under his hand (*n*).

XXV. And be it enacted, that each voter shall write his initials in the voting paper delivered to him against the name or names of the person or persons (not (*o*) exceeding the number of persons to be elected) for whom he intends to vote, and shall sign such voting paper;

And when any person votes as a proxy, he shall in like manner write his own initials, and sign his

(*m*) This is a different word from that of residence, noticed in p. 70, and which is used afterwards with reference to the ratepayers. It will be observed, that though the residence of the ratepayer is here expressed generally, the address of the owner is to be in the district; nevertheless, according to sect. 26, the delivery must be in the district in both cases.

(*n*) The clause does not go on to provide, as in 5 & 6 Vict. c. 57, s. 9, for the effect of this notice as regards the candidate, but probably it must be taken to have the effect of a resignation, so that the election should then cease as regards him.

(*o*) If a greater number be marked than the number to be elected, the vote will fail for uncertainty.

Mode of voting.

own name, and state also in writing the name of the corporation, company, or body of proprietors or undertakers for which he is proxy:

Provided always, that if any voter cannot write he shall affix his mark at the foot of the voting paper in the presence of a witness, who shall attest and write the name of the voter against the same, as well as the initials of such voter against the name of every candidate for whom the voter intends to vote.

XXVI. And be it enacted, that the said chairman shall cause the voting papers to be collected on the day of election (z) by the persons appointed or employed for the purpose in such manner as he shall direct;

But no voting paper shall be received or admitted unless the same have been delivered at the address or residence as aforesaid of the voter within the parts for which the election is had, nor unless the same be collected by the persons appointed or employed for that purpose, except as next hereinafter provided (a):

Provided always, that if any person qualified to vote shall not have received a voting paper as aforesaid, he shall, on application before that day to the said chairman, be entitled to receive a voting paper from him, and to fill up the same in his presence, and then and there to deliver the same to him:

(z) See note (l) on sect. 24, ante.

(a) See in 21 & 22 Vict. c. 98, s. 24, No. (6), the new provision for the appointment of a companion to the distributor and collector of votes. The provisions hitherto in force were very defective in regard to securing the due collection by the proper parties. See also in sect. 13, No. (5), of the new Act, post, the penalties imposed upon persons forging or otherwise acting improperly with voting papers.

Provided also, that in case any voting paper duly delivered shall not have been collected, through the default of the said chairman, or the persons appointed or employed to receive the same (b), the voter *in person* may deliver the same to the said chairman before twelve o'clock at noon on the day, or the first day, (as the case may be,) appointed for the examination and casting up of the votes.

XXVII. And be it enacted, that the chairman shall on the day immediately following the day of the election, and on as many days immediately succeeding as may be necessary, attend at the office of the local board of health (c), and ascertain the validity of the votes, by an examination of the rate books and such other books and documents as he may think necessary, and by examining (d) such persons as he may see fit;

Regulations as to examination of votes and elections of local boards.

And he shall cast up such of the votes as he shall find to be valid, and to have been duly given, collected, or received, and ascertain the number of such votes for each candidate; and the candidates to the number to be elected who, *being duly qualified*, shall have obtained the greatest number of votes, shall be deemed to be elected, and shall be certified as such by the said chairman (e) under his hand.

(b) Note, that the default of the voter or any other party than the chairman or person appointed to collect will not justify the delivery to the chairman.

(c) This was ruled by Lord Campbell, C. J., in *Reg. v. Cross*, 16 J. P. 215, to be merely directory, and that the casting up at the clerk's office was valid.

(d) The examination must be voluntary, as the chairman has no means of compelling attendance, neither has he power to administer an oath.

(e) See sect. 20, ante, p. 62, as to the majority of votes. The

And to each person so elected the said chairman shall send or deliver notice of such election ;

And the said chairman shall also cause to be made a list containing the names of the candidates, together with (in case of a contest) the number of votes given for each, and the names of the persons elected, and shall sign and certify the same, and shall deliver such list, together with the nomination and voting paper which he shall have received, to the local board of health at their first or next meeting (as the case may be), who shall cause the same to be deposited in their office, and the same shall, during office hours thereat, be kept open to public inspection, together with all other documents relating to the election, for six months after the election shall have taken place, without fee or reward ;

chairman is not to act merely ministerially, and return the party who may have received the greatest number of votes, but is to ascertain who are duly qualified, and return the duly qualified candidate who has the majority. *Reg. v. Inspector of Votes of St. Pancras*, 7 E. & B. 954. The validity of the return may be tested by an information in the nature of a *quo warranto* against any person who is returned and acts. The contrary had been held as regards a guardian, see *Ex parte Aston*, 6 A. & E. 784. But that opinion has been overruled since the case of *Q. v. Darley*, 12 Cl. & F. 510. Accordingly in *Q. v. Robinson*, 19 J. P. 724, such an information was granted in respect of the members of a local board of health, and in *Reg. v. Cross, ubi supra*, another was tried at the assizes. But though the validity of the return may be questioned in this information, the chairman's certificate as to the majority of the votes is conclusive, and no scrutiny in reference to such votes can be granted ; so held by Lord Campbell, C. J., at *nisi prius* in that case. This decision, however, still leaves open questions as to the sufficiency of the qualification of the candidate and of the nominator, the regularity of the proceedings, and probably as to errors in the casting ; so also illegal, partial, or corrupt conduct on the part of the returning officer might be open to investigation in such an information.

Notices to be sent to persons elected.

List of persons elected, &c. to be transmitted to local boards, who shall deposit the same, which shall be open to inspection.

And the said chairman shall cause such list to be printed, and copies thereof to be affixed at the usual places for affixing notices of parochial business within the parts for which the election shall have been made.

XXVIII. And be it enacted, that if the said chairman or other person charged with taking, collecting, or returning the votes at any such election as aforesaid shall neglect (*f*) or refuse to comply with any of the provisions of this Act in that behalf (*g*), he shall be liable for every such offence to a penalty not exceeding *fifty pounds* (*h*) ; and any person employed for the purposes of any such election, by or under the said chairman or other person charged as aforesaid, who shall be guilty of any such neglect (*f*) or refusal, shall be liable for every such offence to a penalty not exceeding *five pounds* (*i*).

Penalty upon persons conducting elections neglecting to comply with provisions of this Act.

XXIX. And be it enacted, that all proceedings of the local board of health, and of any person acting as member or under the authority thereof, shall, notwithstanding any defect in the selection or

Defects in election, &c. not to invalidate proceedings.

(*f*) The penalty is incurred by mere neglect. See *King v. Burrell*, 9 L. J. R., Q. B. 357 ; 12 A. & E. 460.

(*g*) If the chairman knowing a voter to be qualified maliciously refuses to receive his voting paper, he would be liable to an action on the case at the suit of the voter. *Tozer v. Child*, 6 E. & B. 289. But if he, *bonâ fide* believing the voter to be not qualified, rejects the vote, though erroneously, he is not liable. S. C.

(*h*) See sect. 129, *post*, as to the recovery of this penalty.

(*i*) See, as to the recovery of this penalty, sect. 129, *post*, and also the provision in 21 & 22 Vict. c. 98, s. 13, No. (6), to prevent malpractices at these elections.

election of such board or any member thereof, be as valid and effectual as if no such defect had ever existed (*k*).

Expenses of elections to be defrayed out of general district rates.

XXX. And be it enacted, that the necessary expenses attendant upon any such election as aforesaid, and *such reasonable remuneration* (*l*) to returning officers and other persons for services performed or expenses incurred by them in relation thereto as shall from time to time be allowed by the local board of health in that behalf, shall be paid out of the general district rates to be levied under this Act.

Local board of health in Oxford and Cambridge to consist of Oxford and Cambridge improvement commissioners. 52 Geo. 3, c. lxxii. 54 Geo. 3, c. civ.

XXXI. Provided always (*m*), and be it enacted, that nothing hereinbefore contained with respect to the appointment, selection, or election of any local board of health, or member thereof, shall apply to the city of Oxford, or the parts within the jurisdiction of the commissioners for amending certain mileways leading to Oxford, and making improvements in the university and city of Oxford, the suburbs thereof, and the adjoining parish of Saint Clement, (which commissioners are hereinafter called the Oxford commissioners,) or to the borough of Cambridge, or the parts within the jurisdiction of the

(*k*) See a similar provision in 5 & 6 Vict. c. 57, s. 12, with reference to the board of guardians, and see sect. 19, *ante*, p. 62.

(*l*) The statute vests in the local board a discretion as to the amount which they are to allow, and this cannot be reviewed by any court. *Ex parte Metcalf*, 6 E. & B. 288. Hence it is desirable to settle before the election, where practicable, what allowances shall be made.

(*m*) See also 21 & 22 Vict. c. 98, s. 82, *post*.

commissioners acting under an Act of the thirty-fourth year of the reign of King George the Third for amending and enlarging the powers of a former Act of the same reign for the better paving, cleansing, and lighting the town of Cambridge, for removing and preventing obstructions and annoyances, and for widening the streets, lanes, and other passages within that town (which commissioners are hereinafter called the Cambridge commissioners);

And if the city of Oxford, or the parts within the first-mentioned jurisdiction, become a district under this Act, the same shall be called "the Oxford district," and the said Oxford commissioners for the time being shall, within and for such district, be the local board of health under this Act;

And if the borough of Cambridge, or the parts comprised within the jurisdiction secondly above mentioned, become a district under this Act, the same shall be called "the Cambridge district," and the said Cambridge commissioners for the time being shall, within and for such district, be the local board of health under this Act.

XXXII. And be it declared and enacted (*n*), that whenever by any *such provisional order* (*o*) as

With respect to the execution of the

(*n*) It does not appear by the previous clauses that any such commissioners or trustees were to be constituted a local board. But Mr. Lawes, in his edition of this Act, explains that as it was apprehended that the general board of health might have created a local board out of such commissioners or trustees under the general language contained in sect. 10, it was necessary to introduce this section. But the new Act enables improvement commissioners, when elected by the ratepayers, to form local boards.

(*o*) See now 21 & 22 Vict. c. 98, s. 12, *post*, which dispenses with the provisional order.

Act by commissioners under local Acts in other cases.

aforsaid the commissioners or trustees acting under any local Act of parliament *are* constituted the local board of health under this Act, such commissioners or trustees shall, within and for the district to which such provisional order applies, exercise and execute the powers, authorities, and duties vested in or imposed on the local board of health by this Act, and so much of this Act as relates to the appointment, election, or selection of local boards of health shall not apply to such district.

Local board of health, in case of a district afterwards becoming a corporate borough.

XXXIII. And be it enacted, that if, after the application of this Act to any district, the parts constituting the district shall afterwards become or be entirely comprised within the limits of a corporate borough, the mayor, aldermen, and burgesses of such borough shall from and after such day as shall have been specified in the charter of incorporation in this behalf be, by the council of the borough, the local board of health within and for such district ;

And in case any day shall have been so specified, *but not otherwise*, the powers, authorities, duties, property, and liabilities of any other persons, as such local board, shall from and after that day absolutely cease and determine, and be vested in such mayor, aldermen, and burgesses, as fully to all intents and purposes as if they had always been the local board of health from the time when the district was originally constituted (c).

(c) See 20 & 21 Vict. c. 98, s. 26, *post*, which repeals so much of this section as requires a day to be fixed in the charter, and consequently takes away the restriction upon the transfer of the powers contained in the above clause.

PROCEEDINGS OF THE LOCAL BOARD.

XXXIV. And be it enacted, that the local board of health of every non-corporate district shall hold an annual meeting (d), and other meetings for the transaction of business under this Act once at least in each month, and at such other times as may be necessary for properly executing its powers and duties under this Act, and shall from time to time make *byelaws* (e) with respect to the summoning, notice, place, management, and adjournment of such meetings, and generally with respect to the transaction and management of business by such board under this Act :

Meetings of local boards of non-corporate districts, and regulation of business, &c.

Provided always, that no business shall be transacted at any such meeting unless at least one-third of the full number of members be present thereat, except in either of the districts to be called the Oxford or Cambridge districts (f), in which cases business may be transacted if at least *seven* members be present ;

And all questions shall be decided by a majority of votes (g) ;

And the names of the members present, as well

(d) No particular day is pointed out when this meeting is to be held.

(e) See sect. 115, *post*, as to byelaws made by the local board.

(f) See sect. 31, *ante*, p. 76.

(g) Much difficulty has lately arisen in regard to the determination of the majority upon any question submitted to a body consisting of a limited number. It seems now to be established that in such cases the majority must be calculated by reckoning not only the persons who vote upon any question, but those who are present at the meeting. See *Ex parte Eynsham*, 13 Jur. 345 ; 12 Q. B. 398 : *Reg. v. Griffiths*, 17 Q. B. 164 : and *Reg. v. Overseers of Christchurch, Spitalfields*, 26 L. J. R., M. C. 68 ; 7 E. & B. 409.

as of those voting upon each question, shall be recorded (a);

And the said local board shall at their first meeting under this Act, and afterwards from time to time at their annual meeting, appoint one of their number to be *chairman* for one year at all meetings at which he is present; and in case the chairman so appointed be absent from any meeting at the time appointed for holding the same, the members present shall appoint one of their number to act as chairman thereat;

And in case the chairman appointed as first aforesaid die, resign, or become incapable of acting, another member shall be appointed to be chairman for the period during which the person so dying, resigning, or becoming incapable would have been entitled to continue in office, and no longer;

And the chairman at any meeting shall have a second or casting vote in case of an equality of votes;

But nothing herein contained with respect to the appointment of chairman shall apply to any district to be called the "Oxford or Cambridge district," and in such districts the Oxford or Cambridge commissioners respectively shall appoint a chairman as heretofore.

XXXV. And be it enacted, that the local board of health shall from time to time provide and maintain such offices as may be necessary for transacting their business and that of their officers and servants under this Act, and (in case of a non-

(a) This troublesome requisition is clearly directory only, so that the validity of the decision will not be affected by the omission.

Local boards to provide offices for transacting business, and cause a seal to be made.

corporate district) shall cause to be made a seal for the use of such board in the execution of this Act;

And documents or copies of documents purporting to proceed from the said local board, and to be signed by any five or more members thereof, and to be sealed or stamped with such seal, or (in the case of a corporate district) to be sealed with the common seal (b), shall be received as *prima facie* evidence in all courts and places whatsoever.

XXXVI. And be it enacted, that the local board of health may from time to time appoint out of their own number so many persons as they may think fit, for any purposes which in the opinion of the said local board would be better regulated and managed by means of a *committee*:

Committees may be appointed.

Provided always, that *the acts* of every such *committee* shall be submitted to the said local board for their approval (c).

XXXVII. And be it enacted, that the local board of health shall from time to time *appoint* (d) fit and

Powers to local boards to appoint

(b) See further sect. 149, *post*, and 21 & 22 Vict. c. 98, s. 61, *post*. In the case of a corporate district it is presumed that the seal will suffice, though there is some ambiguity in the clause. As to proof of documents under seal, see stat. 8 & 9 Vict. c. 113, ss. 1, 4.

(c) In many cases the approval must take the shape of confirmation or ratification, as the committees will often be called upon to act before the approval of the local board can be obtained. The clause itself refers to the management by the committee, which would be inoperative if the committee could not act *until* the approval of the board had been obtained.

(d) The appointment of the above-mentioned officers appears to be complete by election, and no document in writing is required. See *Smart v. Guardians of West Ham Union*, 10 Exc. 867; 11 Exc. 867: *Q. v. Greene*, 17 Q. B. 793. It will seem, in sect. 49, that, as regards the officer of health, the case is different. The local board will do well to consult the Minute of Instructions published by the late general board of health with reference to the powers and duties of their officers.

surveyor,  
inspector of  
nuisances,  
clerk, trea-  
surer, &c.

proper (c) persons to be surveyor, inspector of nuisances, clerk, and treasurer for the purposes of this Act, and shall appoint or employ such collectors and other officers and servants as may be necessary and proper for the efficient execution of this Act, and shall make *byelaws* (d) for regulating the duties and conduct of the several officers and servants so appointed or employed;

And the said local board may pay (e), out of the general district rates to be levied under this Act, to such officers and servants, such reasonable salaries, wages, or allowances as the said local board may think proper;

And every such officer and servant shall be removable by the said local board at their pleasure,

(c) It will be seen that the statute does not require any particular qualification for these officers, but generally it will be found most appropriate to select an attorney for the clerk, and an engineer or professional surveyor for the surveyor. The legality of the appointment of the superior officers may be tried in a *quo warranto* information. *Q. v. Guardians of St. Martin-in-the-Fields*, 17 Q. B. 149.

(d) See sect. 115, *post*, for the provisions relating to byelaws.

(e) In regard to the recovery of their salaries by officers of the local board, it has been generally considered that the only remedy was a writ of *mandamus* directed to the board, or an action on the case against the treasurer or other officer, alleging that he had the funds to pay the salary, but had neglected or refused to pay the same. It had been held that no action would lie against the board directly for the salary. (see *Bogg v. Pearse*, 10 C. B. 534; *Addison v. The Mayor of Preston*, 12 C. B. 108; *Smart v. West Ham Union*, 24 L. J. R. Exc. 201,) though a contract under seal might have made a difference; but the late case of *Hall v. Taylor*, 22 Jur. 877; 27 L. J. R., Q. B. 311, shows that where a local board is empowered to pay the salary out of the rates leviable by them, an action of debt for the amount may be maintained by the officer against the board. At the same time the judgment can seldom be enforced otherwise than by *mandamus*. See sect. 138, *post*.

[*subject, nevertheless, in the case of the removal of the surveyor, to the approval of the general board of health* (f):]

Provided always, that the same person may be both surveyor and inspector of nuisances;

But neither the person holding the office of treasurer, nor his partner, nor any person in the service or employ of them or either of them, shall hold, be eligible to (g), or shall in any manner assist or officiate in the office of clerk;

And neither the person holding the office of clerk, nor his partner, nor any person in the service or employ of them or either of them, shall hold, be eligible to, or shall in any manner assist or officiate in the office of treasurer;

And whosoever offends in any of the cases enumerated in this proviso shall forfeit and pay the sum of one hundred pounds, which may be recovered by any person, with full costs of suit, by action of debt (h).

XXXVIII. And be it enacted, that no officer or servant appointed or employed by or under the local board of health shall in anywise be concerned

Same person may be surveyor and inspector of nuisances, but not clerk and treasurer.

Penalty upon officers, &c. interested in contracts or taking fees improperly.

(f) No such approval is now required. See 21 & 22 Vict. c. 98, s. 8, *post*.

(g) The object of this prohibition, which is common in local Acts, appears to be to prevent the clerk who represents the board from holding their money, and thus to create a check upon the two officers. The clerk cannot deal with the money of the board because he does not hold it, and the treasurer must hold it until the clerk, under the direction of the board, gives him the authority to pay it away.

(h) See sect. 133, *post*, as to the recovery of these penalties.

or interested in any bargain or contract (i) made with such board for the purposes of this Act;

And if any such officer or servant be so concerned or interested, or shall under colour of his office or employment, exact, take, or accept any fee or reward whatsoever, other than his proper salary, wages, and allowances (j), he shall be incapable of afterwards holding or continuing in any office or employment under this Act, and shall forfeit and pay the sum of fifty pounds, which may be recovered by any person, with full costs of suit, by action of debt (k).

XXXIX. And be it enacted, that before any such officer or servant enters upon any office or employment under this Act by reason whereof he will or may be intrusted with the custody or control of money, the local board of health by whom he is appointed shall require and take from him *sufficient security* (l) for the faithful execution of such office

(i) See sect. 19 as to the meaning of this word. Sect. 25 of 21 & 22 Vict. c. 98, which applies to the disqualifications of members engaged in certain contracts, does not refer to this clause.

(j) It is probable that this provision is intended to apply to other persons than the local board, and to be levelled at the practice of demanding fees from persons seeking aid from the board, or exposed to proceedings by them. But the language is sufficiently general to prevent the officer receiving gratuities for extra services rendered to the board. It is to be observed that the statute applies to demands made under colour of the office, and therefore not to claims where the officer acts and makes a demand for services which he renders independently of his office. Thus the clerk may charge professionally for contracts prepared for contractors if they think proper to employ him. Perhaps also the surveyor may not be prevented from acting professionally for persons within the district, but such conduct will lead to a mischievous result.

(k) See sect. 133, *post*, as to the recovery of penalties.

(l) The local board must determine for themselves what

Officers, &c.  
intrusted  
with money  
to give secu-  
rity, and to  
account.

or employment, and for duly accounting for all monies which may be intrusted to him by reason thereof;

And every such officer or servant employed in the collection of rates under the authority of this Act shall (m), within *seven days* after he shall have received any monies on account of such rates, pay over the same to the treasurer, and shall, as and when the said local board may direct, deliver a list, signed by him, containing the names of all persons who have neglected or refused to pay any such rate, and the sums respectively due from (n) them;

And every officer and servant appointed or employed by or acting under the said local board shall respectively, when and in such manner as shall be required by such board, make out and deliver to them a true and perfect account in writing of all

security they will deem sufficient. Generally the security given by collectors is a bond with two sureties. There are now several guarantee societies who will undertake to guarantee these officers; but there are usually many conditions imposed in their policies, the neglect of which invalidates the security, and the omission is seldom discovered until the security is attempted to be enforced. Moreover, they are generally determinable upon notice by the company; so that the security may fail at the time when the necessity for it becomes most urgent.

Sect. 151, *post*, exempts the bond or security given on behalf of the officer from stamp duty. In regard to the terms of the condition, it should be made to be operative, notwithstanding the change of tenure of the office or alteration of the salary in amount or mode of payment, the change of district, or the imposition of new duties upon the officer by subsequent legislation.

(m) This is a very precise direction, but one not very easy to be carried out universally. The local board should, however, pay great attention to it. More confidence can be felt as to the due collection from a strict observance of this provision than from any amount or kind of security.

(n) The local board should require an account of the collection and deposit of the rates to be laid before them at short intervals.

monies received by him for the purposes of this Act, and stating how, and to whom, and for what purpose such monies have been disposed of, and shall, together with such account, deliver the vouchers or receipts for all payments made by him, and pay over (*d*) to the treasurer all monies owing by him upon the balance of accounts;

Summary proceedings to be taken in case of failing to account, &c.

And if any such officer or servant fail to render such account, or to produce and deliver up such of the said vouchers and receipts as may be in his possession or power, or to pay over any such monies as aforesaid, or if for the space of *five* days after being thereunto required he fail to deliver up to the said local board all papers and writings, property, effects, matters, and things, in his possession or power, relating to the execution of this Act, or belonging to such board, then and in every such case a *justice* shall, on complaint being made to him in that behalf, summon the party charged to appear and answer the complaint before *two justices* (*e*) at a time and place to be specified in the summons (*f*);

And upon the appearance of the party charged, or upon proof that the summons was personally served upon him, or left at his last known place of abode or business (*g*), and if it appear to the last-mentioned justices that he has failed to render any

(*d*) There is some vagueness here as to when the balances are to be paid over. This requisition of course applies when the term of office has expired; but the local board will probably make some additional regulation for other payments.

(*e*) See sect. 2, *ante*, as to the application of these words.

(*f*) See sect. 131, *post*, which, however, does not apply to this clause, and also refer to 21 & 22 Vict. c. 98, s. 60, *post*, as to the proceedings by the auditor.

(*g*) As defaulting officers frequently abscond, this mode of service is very usual. See the cases on the service of summons in *Bastardy*, and upon the County Court Acts, as to the last known place of abode.

such accounts, or to produce and deliver up any such vouchers or receipts, or any such papers, writings, property, effects, matters, or things as aforesaid, and that he still fails or refuses so to do, they may, by warrant under their hands and seals, commit the offender to gaol, there to remain, without bail, *until* (*h*) he shall have rendered such accounts, and produced and delivered up all such vouchers, receipts, books, papers, writings, property, effects, matters, and things in respect of which the charge was made;

And if it appear that the party charged has failed to pay over any such monies as aforesaid, and that he still fails or refuses so to do, the last-mentioned justices may, by a like warrant, cause the same to be levied by distress and sale of his goods and chattels, and in default of any sufficient distress commit him to gaol, there to remain, without bail, for a period of three months, unless such monies be sooner paid:

Provided always, that if the complainant, by deposition on oath, show to the satisfaction of any justice that there is probable cause for believing that the party charged intends to abscond, such justice may, without previous summons, by warrant under his hand and seal, cause him to be forthwith apprehended (*i*);

(*h*) There is no limitation of time for this imprisonment; so that the prisoner, if obdurate, may remain in prison for his life; but if he render an account, and cannot pay the balance, he may be committed to prison for three months only. Whether either provision be imperative upon the justices may be questioned. Upon a similar provision in 17 Geo. 2, c. 38, s. 2, the Court of Queen's Bench held that it was in the discretion of the justices whether they would commit an overseer who neglected to account to gaol. *K. v. Justices of Norfolk*, 4 B. & Ad. 238.

*i*) See also 11 & 12 Vict. c. 43, s. 2.

And in such case the said party shall, within *twenty-four hours* after apprehension, be brought before the same or some other justice (*a*), who may order that he be discharged from custody, if such justice think that there is no sufficient ground for detention, or that he be further detained until he be brought before two justices at a time and place to be named in the order, unless bail to the satisfaction of the justice be given for the appearance of the party before such two justices :

Provided also, that no such proceedings shall be construed to relieve or discharge any surety of the offender from any liability whatsoever (*b*).

Power to appoint an officer of health.

XL. And be it enacted (*c*), that the local board of health may from time to time, if they shall think fit, appoint a fit and proper person, being a *legally qualified medical practitioner* (*d*), or a member of the medical profession, to be and be called the officer of health, who shall be removable by the said local board, and shall perform *such duties as the said general board shall direct* (*e*);

(*a*) This must be construed, however, so as to allow a longer delay if a justice cannot be found in the place within that time. See further in 11 & 12 Vict. c. 43, s. 3, as to the requisites of such warrant, and the mode and time of its execution.

(*b*) But it is a question not yet settled by any authority whether committal to prison in default of adequate distress will operate as a release of the defaulter himself.

(*c*) The Towns Improvement Clauses Act, 1847, 10 & 11 Vict. c. 34, in sect. 12, provides for the appointment of an officer of health, and prescribes his duties.

(*d*) By 21 & 22 Vict. c. 90, s. 34, these words are to signify a person registered under that Act, and by sect. 36, no person after Jan. 1, 1859, is to hold the office of medical officer of health unless so registered.

(*e*) In future the duties must, it is presumed, be directed by the local board. But it will be right to refer to the excellent code of regulations prescribed by the late general board of health, and issued under their hands and seal on the 12th February, 1851.

And the same person may be officer of health for two or more districts;

And the local board or boards of health of the district or districts respectively for which any such officer is appointed may pay to him, out of the general district rates to be levied under this Act, such remuneration by way of annual salary or otherwise as the said local board or boards may by order in writing determine and appoint (*f*), and (in case of a joint appointment for two or more districts) in such proportions as the said general board (*g*) may by order in writing determine and appoint :

[*Provided always, that the appointment and removal of the officer of health shall be subject to the approval* (*h*) *of the said general board.*]

#### POWERS OF THE LOCAL BOARD.

XLI. And be it enacted, that the said local board of health may, if they shall think fit, cause to be prepared (*i*), or to procure, a map exhibiting a system of sewerage for effectually draining their district for the purposes of this Act, upon a scale to be prescribed by the general board of health (*k*);

Map exhibiting system of sewerage.

And every such map shall be kept at the office of the said local board, and shall at all reasonable times be open to the inspection of the ratepayers of the district to which it applies.

(*f*) It must be observed that the appointment of this officer must be in writing,—at least the salary must be.

(*g*) The boards must hereafter arrange the proportion themselves.

(*h*) This approval is dispensed with by 21 & 22 Vict. c. 98, s. 8.

(*i*) The 10 & 11 Vict. c. 34, ss. 13—18, provides for the making of maps of districts. Sect. 143, *post*, gives a power of entry upon private lands for the purpose of survey.

(*k*) The local board must henceforth fix the scale themselves.

Expense of surveys, &amp;c.

XLII. And be it enacted, that the expense of surveys, maps, or plans made, prepared, or procured by the local board of health for the purposes of this Act shall be defrayed out of the general district rates to be levied under this Act.

Sewers, &amp;c. vested in local board.

XLIII. And be it enacted (*h*), that all sewers (*i*), whether existing at the time when this Act is applied or made at any time thereafter,

(Except sewers made by any *person* (*k*) or persons for his or their own profit, or for the profit of proprietors (*l*) or shareholders,

And except sewers made and used for the purpose of draining, preserving, or improving land under any local or private Act of parliament, or for the purpose (*m*) of irrigating land,

And sewers under the authority of any commissioners of sewers appointed by the Crown,) Together with all buildings, works, materials, and things belonging or appertaining thereto, shall vest in, belong to, and be entirely under the management and control of the local board of health.

XLIV. And be it enacted, that the local board of health may, if they shall think fit, purchase (*n*)

Power to purchase, &amp;c. certain sewers.

(*h*) See further, as to sewerage, 21 & 22 Vict. c. 98, s. 29.

(*i*) Note, in sect. 2, *ante*, p. 34, the distinction between sewers and drains.

(*k*) This word includes a corporation aggregate, see s. 2, *ib*.

(*l*) This word seems to apply to the case of works of an extensive character, such as canals, sluices, piers, basins, docks, and the like, where the persons engaged in the concern are frequently termed proprietors. See sect. 145, *post*.

(*m*) This purpose is not limited, as it seems, to cases under local Acts.

(*n*) This clause does not appear to give facilities to persons otherwise disabled to sell. It seems rather to confer power upon the local board of health to purchase. The word *belong*

the rights, privileges, powers, and authorities vested in any person for making sewers, or contract for the use of any sewers within their district, or purchase any such sewers, with or without the buildings, works, materials, and things belonging or appertaining thereto;

And any person to whom any such rights, privileges, powers, authorities, sewers, buildings, works, materials, or things *belong* may sell and dispose of the same to or otherwise contract with the said local board;

And in case of any such sale the purchase money shall be settled and applied to the same uses and trusts to which the property purchased may have been subject at the time of such sale, and the property purchased shall vest in and belong to the local board of health purchasing the same, anything to the contrary notwithstanding:

Provided always, that, notwithstanding any such purchase, any person who previously thereto may have acquired *perpetual right* (*o*) to use any sewer so purchased shall be entitled to use the same, or any other sewer substituted in lieu thereof, in as full and ample a manner as he would or might have done if such purchase had not been made.

XLV. And be it enacted (*p*), that the local board Making alteration,

must signify such an ownership as enables the party to sell the entire interest proposed to be purchased. But sect. 84, *post*, for which 21 & 22 Vict. c. 98, s. 75, is to be substituted, incorporated the Lands Clauses Consolidation Act, 1847, under which powers applicable to persons under disability will be found, and will be available to the local board.

(*o*) Note the extensive right which alone is provided for. Apparently a limited right is not preserved.

(*p*) See in sect. 145, *post*, the restrictions which have been imposed upon the local board in regard to sewers, and the notes upon that section.

and discontinuance of sewers vested in local board.

of health shall from time to time *repair* the sewers vested in them by this Act, and shall cause to be made such sewers as may be necessary for effectually draining their district for the purposes of this Act;

And the said local board *may* carry any such sewers through, across, or under any turnpike road, or any street (*c*) or place laid out as or intended for a street, or under any cellar or vault which may be under the pavement or carriageway of any street, and, after reasonable notice in writing (*d*) in that behalf, (if upon the report of the surveyor it should appear to be necessary,) into, through, or under any lands whatsoever;

And the said local board may from time to time enlarge, lessen, alter, arch over, or otherwise improve all or any of the sewers vested in them by this Act, and discontinue, close up, or destroy such of them as they may deem to have become unnecessary:

Provided always (*e*), that the discontinuance, closing up, or destruction of any sewer shall be so done as not to create a nuisance;

And if by reason thereof any person is deprived of the lawful use of any sewer the said local board

(*c*) See as to the meaning of this word, sect. 2, *ante*, p. 33.

(*d*) It is not stated to whom the notice is to be given, but it is reasonable to suppose that notice should be given to the owner and occupier of the lands interfered with. As to its form and authentication, see 21 & 22 Vict. c. 98, s. 61, and as to the service see sect. 150, *post*.

(*e*) This proviso is limited to the destruction of the sewers, and does not extend to the alteration. It would enable persons interested to apply to the Court of Chancery for an injunction to stop works, and the local board could be indicted for the nuisance.

shall provide some other sewer *as effectual* for his use as the one of which he is so deprived (*f*).

XLVI. And be it enacted, that the local board of health shall cause the sewers vested in them by this Act to be constructed, covered, and kept so as not to be a nuisance or injurious to health, and to be properly cleared, cleansed, and emptied (*g*);

As to cleansing and emptying sewers, &c. by local board.

And for the purpose of clearing, cleansing, and emptying the same (*h*) they may construct and place, either above or under ground, such reservoirs, sluices, engines, and other works as may be necessary, and may cause all or any of such sewers to communicate with and be emptied into such places as may be fit and necessary, or to cause the sewage and refuse therefrom to be collected for sale for any purpose whatsoever (*i*),

But so as not to create a nuisance (*k*).

(*f*) Note, that in this case it is not necessary that the person should have a *perpetual right*. Any dispute as to whether an effectual sewer has been made may be well settled by arbitration, although it is not provided for in terms by sect. 123. Perhaps 21 & 22 Vict. c. 98, s. 74, may be held to be applicable to this case.

(*g*) See also the provisions in sect. 22 of the Nuisances Removal Act, 1855, in the Appendix, and note (*e*), *ante*.

(*h*) This provision did not enable the local board to enter the land of a person against his consent and make a tank and reservoir or depository therein for the reception of the sewage from a sewer proposed to be made after a report from their surveyor, and a notice to the owner of the land. Where such a proceeding was proposed, the Court of Chancery interfered by an injunction. *Sutton v. The Mayor of Norwich*, 31 L. T. 389.

(*i*) See the additional powers conferred upon the local board in this matter by 21 & 22 Vict. c. 98, ss. 30, 31, *post*.

(*k*) This prohibition applies to private as well as public nuisances, and local boards have been restrained from carrying on works of sewerage and drainage highly important with

Penalty for making unauthorized sewers, and building over sewers and under streets.

XLVII. And be it enacted, that it shall not be lawful to cause any sewer or drain to communicate with or to be emptied into any sewer of the local board of health,—nor to cause any building to be newly erected over any such last-mentioned sewer,—nor to cause any vault, arch, or cellar to be newly built or constructed under the carriageway of any street (*a*), without the written consent of the said local board (*b*) first had and obtained (*c*);

And whosoever offends against this enactment shall forfeit to the said local board the sum of *five pounds*, and a further penalty of *forty shillings* for every day during which the offence is continued after notice in writing (*d*) from them in this behalf (*e*);

And if any sewer, drain, building, vault, arch, or cellar be made, erected, or constructed contrary to this enactment, the said local board may cause the same to be altered, pulled down, or otherwise dealt with as they may think fit, and the expenses incurred by them in so doing shall be repaid to them by the offender, and be recoverable from him in the summary manner hereinafter provided (*f*).

reference to their own district and the sanitary state of it, where, however, they created a nuisance, and an injury to the property of individuals. See *A. G. v. Town Council of Birmingham*, 22 J. P. 561, in which case the Court of Chancery granted an injunction to stay the execution of such works.

(*a*) See the definition in sect. 2, *ante*, p. 33. This prohibition is here introduced because such vault might interfere with the course of a sewer hereafter to be made.

(*b*) See in sect. 149, *post*, how this consent is to be given.

(*c*) The 21 & 22 Vict. c. 98, s. 72, *post*, contains a special provision enabling the sewers of the local board to be altered by other parties.

(*d*) See as to this notice 21 & 22 Vict. c. 98, s. 61, and as to the service, sect. 150, *post*.

(*e*) See as to the recovery of this penalty, sect. 129, *post*.

(*f*) See sect. 129, *post*. These words only provide for

XLVIII. And be it enacted, that any owner or occupier of premises adjoining or near to, but beyond the limits of any district (*g*), may cause any sewer or drain of or from such premises to communicate with any sewer of the local board of health, upon such terms and conditions as shall be agreed upon between such owner and occupier and such local board, or, in case of dispute, as shall be settled by arbitration in the manner provided by this Act (*h*).

Use of sewers by persons beyond district.

XLIX. And be it enacted, that it shall not be lawful newly to erect any house, or to rebuild any house which may have been pulled down to or below the floor commonly called the ground floor, or to occupy any house so newly erected or rebuilt, unless and until a covered drain (*i*) or drains be constructed, of such size and materials, and at such level, and with such fall as upon the report of *the surveyor* (*h*) shall appear (*l*) to be necessary

No new house to be built without drains, &c.

the expenses of the alteration or pulling down. It is to be presumed that if the works have rendered damage to the sewers of the local board, they could maintain an action for compensation in respect of such damage; and, moreover, that the local board may obtain an injunction to stay the works of any person before completion, so as to prevent damage which the penalty would be quite inadequate to repair.

(*g*) See also 21 & 22 Vict. c. 98, s. 30, *post*.

(*h*) See sect. 123, *post*.

(*i*) See the interpretation of this word in sect. 2, *ante*, p. 33.

(*k*) See sect. 2.

(*l*) This clause is not framed very distinctly, but apparently the plan and specification as to the intended works must be submitted to the local board, and by them referred to the surveyor, who is to report thereupon to the board. The board must then decide as to the sufficiency of the proposed drainage, and give their directions as to the course to be followed.

and sufficient for the proper and effectual drainage of the same and its appurtenances;

And if the sea, or a sewer of the local board of health, or a sewer which they are entitled to use, be within *one hundred feet* of any part of the site of the house to be built or rebuilt, the drain or drains so to be constructed shall lead from and communicate with such one of those means of drainage as the said local board shall direct, or if no such means of drainage be within that distance, then the last-mentioned drain or drains shall communicate with and be emptied into such covered cesspool or other place, not being under any house, and not being within such distance from any house, as the said local board shall direct (*m*);

And whosoever erects or rebuilds any house or constructs any drain contrary to this enactment shall be liable for every such offence to a penalty not exceeding *fifty pounds*, which may be recovered by *any person* (*n*), with full costs of suit, by action of debt;

And if *at any time*, upon the report of *the surveyor*, it appear to the said local board that any house, whether built before or after the time when this Act is applied to the district in which it is situate, is without any drain, or without such a drain or drains communicating with the sea or a sewer as is or are sufficient for the proper and effectual drainage of the same and its appurtenances, and if the sea, or a sewer of the said local board, or a sewer

(*m*) This enactment will often render it necessary for the person proposing to rebuild to secure the rights of sewerage under the ground adjoining his property.

(*n*) See sect. 133, *post*.

which they are entitled to use, be within *one hundred feet* of any part of such house, they shall cause notice (*o*) in writing to be given to the owner or occupier of such house, requiring him forthwith, or within such reasonable time as shall be specified therein, to construct and lay down in connexion with such house and one of those means of drainage, one or more covered drain or drains, of such *materials* (*p*) and size, at such level, and with such fall as upon the last-mentioned report shall appear to be necessary;

And if such notice be not complied with the said local board may, if they shall think fit, do the works mentioned or referred to therein, and the expenses incurred by them in so doing shall be recoverable by them from the owner (*q*) in a summary manner (*r*), or, by order of the said local board, shall

(*o*) As to service of notice see sect. 150, *post*; and as to its authentication, 21 & 22 Vict. c. 98, s. 61.

(*p*) It will be seen from *Austin v. Vestry of Lambeth*, 22 Jur. 274, that the local board have the exclusive power of deciding whether their directions are complied with in regard to the *materials* to be used. The vestry ordered a drain to be made with pipes of *stone-ware of the best kind and quality*, and the builder laid down *Aylesford pipes*, but the vestry declared that these were not stone-ware, and proceeded to remove them. Vice-Chancellor Stuart held that it was for them to determine the question, and refused to grant an injunction against them on motion. His decision was confirmed by the lords justices on appeal, 27 L. J. R., Ch. 388, 392; and the bill was afterwards dismissed with costs on the hearing, his honour being satisfied that the vestry had not acted capriciously or vexatiously. 22 Jur. 1032.

(*q*) As to the owner referred to in this section, see sect. 2, *ante*, p. 29; as to the payment of such expenses between lessor and lessee, sect. 97, *post*. If there be any difficulty, by reason of the owner not having a right to carry his drain through his neighbour's land, the local board may, perhaps, be able, by means of the authorities conferred upon them by the Acts, to obviate the difficulty.

(*r*) See sect. 129, *post*, as to the recovery of these expenses

be declared to be *private improvement expenses*, and be recoverable as such in manner hereinafter provided (*e*).

L. And be it enacted (*f*), that if it shall appear to a majority of not less than *three-fifths* of the rated inhabitants of any parish (*g*) or place containing less than *two thousand inhabitants* on the *then* last census in which this Act shall not have been applied by order in council or provisional order as aforesaid, assembled at a public meeting to be called as is hereinafter provided, that it would contribute to the health and convenience of the inhabitants that any pond, pool, open ditch, sewer, drain, or place containing or used for the collection of any drainage, filth, water, matter, or thing of an offensive nature, or likely to be prejudicial to health, should be drained, cleansed, covered, or filled up, or that a sewer should be made or improved, a well dug, or a pump provided, for the public use of the inhabitants, the churchwardens and overseers of such parish or place shall procure a plan and an estimate of the cost of executing such works, or any of them, and shall lay the same before another public meeting of such rated inhabitants, to be called as is herein-after provided;

And if the same shall be approved and sanctioned by a majority of the rated inhabitants assembled at

(*e*) See sect. 90, *post*, and 21 & 22 Vict. c. 98, s. 62, which makes them a charge on the premises.

(*f*) This useful clause is sometimes adopted in small parishes, and would be more so if it were more generally known.

(*g*) There is no interpretation of the word *parish* in this Act, therefore in this clause it must have its ordinary signification; but the word *place* is of a very wide extent, and may well apply to townships or chapelries having separate overseers.

such last-mentioned meeting, such churchwardens and overseers shall cause the works in respect of which such estimate shall have been made and sanctioned as aforesaid to be executed, and shall pay the cost thereof out of the poor rates of such parish or place:

Provided always, that notice of every such meeting shall be given by such churchwardens and overseers as is by this Act directed to be given by superintending inspectors, before proceeding upon inquiries previously to the application of this Act (*h*), and every such notice shall also contain a statement of the works proposed or intended to be submitted for consideration and approval.

LI. And be it enacted, that it shall not be lawful newly to erect any house, or to rebuild any *house* (*i*) pulled down to or below the floor commonly called the ground floor, without a *sufficient* (*h*) watercloset or privy and an ashpit, furnished with proper doors and coverings; and *whosoever* (*l*) against this enactment shall be liable to a penalty not exceeding *twenty pounds*;

And if at any time, upon the report of *the surveyor* (*m*), it appear to the local board of health that any house (*i*), whether built before or after the time when this Act is applied to the district in

Penalty on persons erecting houses without water-closets, &c.; local board may, upon report of surveyor, order water-closets, &c. to be erected in houses, whether built before or after this Act is applied, &c.

(*h*) See sect. 9, *ante*, p. 40.

(*i*) See in sect. 2, *ante*, p. 33, the interpretation of this word, and in 21 & 22 Vict. c. 98, s. 24, *post*, what is a *new building*.

(*k*) It will be for the justices to determine whether the watercloset or privy provided be or be not sufficient. See sect. 129, *post*, as to the recovery of this penalty.

(*l*) *Quære*, whether the owner, builder, or surveyor is liable to the penalty, and when the offence is committed?

(*m*) See sect. 2, *ante*.

which it is situate, is without a *sufficient* (*d*) water-closet or privy and an ashpit, furnished with proper doors and coverings, the said local board shall give notice (*e*) in writing to the owner (*e*) or occupier of such house, requiring him forthwith, or within such reasonable time as shall be specified therein, to provide a sufficient water-closet or privy and an ashpit, so furnished as aforesaid, or either of them, as the case may require;

And if such notice be not complied with the said local board may, if they shall think fit, cause to be constructed a sufficient water-closet or privy and an ashpit, or either of them, or do such other works as the case may require;

And the expenses incurred by them in so doing shall be recoverable by them from the owner in a summary manner, or by order of the said local board shall be declared to be *private improvement expenses*, and be recoverable as such in manner hereinafter provided (*e*):

Provided always, that where a water-closet or privy has been and is used in common by the inmates of two or more houses, or if, in the opinion of the said local board, a water-closet or privy may

(*d*) In every case the surveyor must determine the sufficiency of the convenience. It has been decided by the Vice-Chancellor, Stuart, and afterwards by the lords justices upon appeal, that a district board under the Metropolis Local Management Act, where there is a clause identical with the above, could not lay down any general rule proscribing the use of privies, and requiring water-closets to be provided in all cases, and therefore where they had required water-closets to be erected in the place of privies, in compliance with the general rule, and not with reference to the particular circumstances of the case, and were proceeding to erect them in default of the owner, it was held that the proceedings of the local board could not be supported. *Tinkler v. Wandsworth District Board of Works*, 22 Jur. 293.

(*e*) See notes on sect. 49, *ante*.

be so used, *they need* (*f*) *not* require the same to be provided for each house.

LII. And be it enacted (*g*), that if at any time it appear to the local board of health, upon the report of the surveyor, that any house is used or intended to be used as a factory or building in which persons of both sexes, and above *twenty* in number, are employed or intended to be employed at one time in any manufacture, trade, or business, the said local board may, if they shall think fit, by notice (*h*) in writing to the owner or occupier of such house, require them or either of them, within a time to be specified in such notice, to construct a *sufficient* (*i*) number of water-closets or privies for the separate use of each sex;

Certain water-closets to be constructed in factories, &c.

And whosoever neglects or refuses to comply with any such notice shall be liable for each default to a penalty not exceeding *twenty pounds*, and a further penalty not exceeding *forty shillings* for every day during which the default is continued (*k*).

(*f*) It will be observed that the previous part of the section required the local board to require a sufficient water-closet or privy to be made, and therefore though this proviso removes that compulsion in this particular case, it does not prevent them from making the requisition when they think proper to do so.

(*g*) Though the previous section applies to such a house as is herein described, it only required a sufficient water-closet to be supplied. In this section separate privies are required for the different sexes.

(*h*) As to service and authentication of notice, see sect. 150, *post*, and 21 & 22 Vict. c. 98, s. 61.

(*i*) The local board may properly specify the number which they think sufficient, but their decision will not conclude the question, if the owner construct what he considers sufficient, and the magistrate or jury, as the case may be, shall concur.

(*k*) As to the recovery of these penalties, see sect. 129, *post*.

Notice of building and rebuilding with respect to levels of houses, situation of privies, &c.

[LIII. \*\* And be it enacted (*i*), that, fourteen days at the least before beginning to dig or lay out the foundations of or for any new *house* (*h*), or to rebuild any house pulled down to the extent aforesaid (*l*), the person intending so to build or rebuild shall give to the local board of health written notice thereof, together with the level or intended level of the cellars or lowest floor, and the situation and construction of the privies and cesspools to be built, constructed, or used in connexion with such house ;

And it shall not be lawful to begin to build or rebuild any such house, or to build or construct any such privy or cesspool, until the particulars so required to be stated have been approved by the said local board ; and in default of such notice, or if any such house, privy, or cesspool be built, rebuilt, or constructed as aforesaid without such approval, or in any respect contrary to the provisions of this Act, the offender shall be liable to a penalty not exceeding *fifty pounds* ;

And the said local board may, if they shall think fit, cause such house, privy, or cesspool to be altered, pulled down, or otherwise dealt with, as the case

(*i*) Repealed by 21 & 22 Vict. c. 98, s. 34, which enables the local board to make byelaws as to these matters.

(*h*) It has been decided that this word applies to a toll house on a turnpike road. Where plans were given as to a new toll house to be built by trustees of a turnpike road, with privy and cesspool, and sanctioned by a local board of health, but the trustees afterwards built their privy and cesspool in a place not sanctioned by the board, it was held by the Court of Queen's Bench that the trustees were properly convicted of a penalty under this section, their local Act, under which they were enabled to build the toll house, not conflicting in this respect with the Public Health Act. *Tunstall Turnpike Road Trustees v. Lowndes*, 20 J. P. 374.

(*l*) In sect. 51, *ante*.

may require, and the expenses incurred by them in so doing shall be repaid by the offender, and be recoverable from him in the summary manner herein-after provided :

Provided always, that if the said local board fail to signify their approval or disapproval of the said particulars for the space of fourteen days after receiving such notice, it shall be lawful to proceed according to such notice, if the same be otherwise in accordance with the provisions of this Act. \*\*]

LIV. And be it enacted, that the local board of health shall see and provide that all *drains* (*m*) whatsoever, and the waterclosets, privies, cesspools, and ashpits within their district, are constructed and kept so as not to be a nuisance or injurious to health (*n*) ;

Local board to provide that drains, water closets, &c. do not become a nuisance.

And the surveyor may, by written authority of the said local board (*o*), (who are hereby empowered to grant such authority, upon the written application of any person showing that the drain, watercloset, privy, cesspool, or ashpit in respect of which application is made is a nuisance or injurious to health, *but not otherwise*,) and *after twenty-four hours notice* (*p*) in writing, or in case of emergency (*q*) without notice, to the occupier of the premises to which such drain, watercloset, privy, cesspool, or

(*m*) See in sect. 2, *ante*, the meaning of this word, which is confined to private buildings.

(*n*) See the provisions of the Nuisances Removal Act, 1855, in the Appendix.

(*o*) See in sect. 149, *post*, the requisites as to this authority.

(*p*) See sect. 150, *post*, and 21 & 22 Vict. c. 98, s. 61, as to the service and authentication of notices from the local board.

(*q*) It is not clear who is ultimately to decide whether the case be one of emergency, but the local board must do so in the first instance.

ashpit is attached or belongs, enter such premises, with or without assistants, and cause the ground to be opened, and examine and lay open such drain, watercloset, privy, cesspool, or ashpit;

And if the drain, watercloset, privy, cesspool, or ashpit in respect of which such examination is made be found to be in proper order and condition, he shall cause the ground to be closed, and any damage done to be made good as soon as can be, and the expenses of the works shall be defrayed by the said local board;

But if upon such examination such drain, watercloset, privy, cesspool, or ashpit appear to be in bad order and condition, or to require alteration or amendment, he shall cause the ground to be closed (a), and the said local board shall cause notice in writing (b) to be given to the owner or occupier of the premises upon or in respect of which the examination was made, requiring him forthwith, or within such reasonable time as shall be specified in such notice, to do the necessary works;

And if such notice be not complied with the person to whom it is given shall be liable to a penalty not exceeding ten shillings for every day during which he continues to make default (c), and the said local board may, if they shall think fit, execute such works, and the expenses incurred by them in so doing shall be recoverable by them from the owner (d) in a summary manner (e), or by order of the said

(a) See 21 & 22 Vict. c. 98. s. 33, *post*, which dispenses with the necessity of closing the ground before the works are done.

(b) See sect. 150, *post*, and 21 & 22 Vict. c. 98, s. 61, as to the service and authentication of notices.

(c) See sect. 129, *post*, as to the recovery of this penalty.

(d) See sect. 2, *ante*, for the definition of owner.

(e) See sect. 129, *post*, and notes on sect. 49, *ante*.

local board shall be declared to be private improvement expenses, and be recoverable as such in the manner herein-after provided (f).

[LV. \*\* And be it enacted (g), that the local board of health shall from time to time and at all convenient times provide that all streets within their district, including the foot pavements thereof, are properly swept, cleansed, and watered, and that all dust, ashes, rubbish, filth, dung, and soil thereon are collected and removed;

Cleansing streets, removal of dust, &c.

And they may make *byelaws* (h) with respect to the removal by the occupier or (in case of his default) by the said local board of dust, ashes, rubbish, filth, manure, dung, and soil (i) collected, placed, or found in or about any house, stable, cow-house, street, or place whatsoever, and for preventing the deposit thereof in or by the side of any street, so as to be a nuisance to any person, and with respect to the times and manner of cleansing and emptying waterclosets, privies, and cesspools. \*\*]

LVI. And be it enacted (k), that the local board of health may, in their discretion, provide, in proper and convenient situations, boxes or other conveyances

Local board to cause places for deposit of

(f) See sect. 90, *post*.

(g) Repealed by 21 & 22 Vict. c. 98, s. 32.

(h) See sect. 115, *post*, in regard to the byelaws of the board.

(i) These words did not authorize the local board in making a byelaw for the removal of snow. *Q. v. Mary Wood*, 5 E. & B. 49. But see the provision in 21 & 22 Vict. c. 98, s. 32, which enables them to make byelaws for the prevention of nuisances arising from snow and other matters. Reference also should be made to the Nuisances Removal Act, 1855, in the Appendix, for the powers thereby given for the removal of filth and rubbish from private premises.

(k) The last part of this section is repealed by 21 & 22 Vict. c. 98, s. 32, which makes fresh regulations as to these subjects.

soil, dust,  
&c. to be  
provided.

niences for the temporary deposit or collection of dust, ashes, and rubbish,

And also fit buildings and places for the deposit of the sewage, soil, dung, filth, ashes, dust, and rubbish collected by such board (a);

[\*\*And (b) all sewage, soil, dung, filth, ashes, dust, and rubbish so collected by the said local board, or in any convenience provided as aforesaid, shall be vested in and be sold and disposed of by such board, and the proceeds thereof shall be carried to the district fund account hereinafter mentioned;

And (b) whosoever, without the consent of the said local board, collects or removes any sewage, soil, dung, filth, ashes, dust, or rubbish belonging to them, shall for every such offence be liable to a penalty not exceeding forty shillings. \*\*]

Public  
necessaries.

LVII. And be it enacted, that the local board of health may, if they think fit, provide and maintain, in proper and convenient situations, waterclosets, privies, and other similar conveniences for public accommodation, and defray the necessary expenses out of the district rates (c) to be levied under this Act.

Offensive  
ditches,  
drains, &c. to  
be cleansed  
or covered.

LVIII. And be it enacted (d), that the local board of health shall drain, cleanse, cover, or fill up, or cause to be drained, cleansed, covered, or filled up, all ponds, pools, open ditches, sewers, drains,

(a) See further 21 & 22 Vict. c. 98, s. 30, *post*, as to the power of purchasing depositories for sewage.

(b) These two paragraphs are repealed by 21 & 22 Vict. c. 98, s. 32.

(c) Now out of the general district rate only.

(d) The first part of this section appears to apply to public nuisances, and therefore the board is required to remove them. The second part applies to private nuisances, and with regard to them notice is to be given to the person causing the nui-

and places containing or used for the collection of any drainage, filth, water, matter, or thing of an offensive nature, or likely to be prejudicial to health;

And they shall cause written notice (e) to be given to the person causing any such nuisance, or to the owner or occupier of any premises whereon the same exists, requiring him, within a time to be specified in such notice, to drain, cleanse, cover, or fill up any such pond, pool, ditch, sewer, drain, or place, or to construct a proper sewer or drain for the discharge thereof, as the case may require;

And if the person to whom such notice is given fail to comply therewith, the said local board shall execute the works mentioned or referred to therein, and the expenses incurred by them in so doing shall be recoverable by them from him in a summary manner (f), or by order of the said local board shall be declared to be private improvement expenses (g), and be recoverable as such in the manner hereinafter provided:

Provided always, that the said local board may order that the whole or a portion of the expenses incurred in respect of any such last-mentioned works be defrayed out of the special (h) or general

sance, or the owner or occupier of the premises, to remove the nuisance, and in his default, the local board are to execute the works, and recover the expenses from such person. It seems that here they have no discretion. Reference may be well made to the Nuisances Removal Act of 1855, 18 & 19 Vict. c. 121, s. 31, in the Appendix.

(e) See sect. 150, *post*, and 21 & 22 Vict. c. 98, s. 61, *post*, as to the service and authentication of notices.

(f) See sect. 129, *post*.

(g) See sect. 90, *post*.

(h) The special district rates are now abolished by 21 & 22 Vict. c. 98, s. 54, *post*.

district rates to be levied under this Act, and in case of any such order the whole or such portion of the expenses as may be mentioned therein shall be defrayed and levied accordingly.

Penalties for keeping swine, &c. in improper situations, allowing waste water to remain in cellars, &c.

LIX. And be it enacted (*b*), that whosoever keeps any swine or pigstye in any dwelling house, or so as to be a nuisance to any person, or suffers any waste or stagnant water to remain in any cellar or place within any dwelling house for twenty-four hours after written notice (*c*) to him from the local board of health to remove the same, and whosoever allows the contents of any water-closet, privy, or cesspool to overflow or soak therefrom, shall for every such offence be liable to a penalty (*d*) not exceeding *forty shillings*, and to a further penalty of *five shillings* for every day during which the offence is continued;

And the said local board shall (*e*) abate or cause to be abated every such nuisance, and the expenses incurred by them in so doing shall be repaid to them by the occupier of the premises upon which the same exists, and be recoverable from him in the summary manner hereinafter provided (*f*);

Removal of filth, on cer-

And if at any time it appear to the inspector of

(*b*) The provisions contained in the Nuisances Removal Act of 1855, Part II. in the Appendix, will be found to apply to the subjects of this clause.

(*c*) See sect. 150, *post*, and 21 & 22 Vict. c. 98, s. 61, as to the service and authentication of notices.

(*d*) See sect. 129, *post*, as to the recovery of this penalty. The continuance referred to must be after the conviction, otherwise there is no time from which the time is to be calculated.

(*e*) Here the local board are required to abate. They appear to have no discretion.

(*f*) Note, that in this case the occupier, and not the owner, is responsible. See sect. 129, *post*, as to the recovery of the penalty.

nuisances that any accumulation of manure, dung, soil, or filth, or other offensive or noxious matter whatsoever, ought to be removed, *he (g)* shall give notice to the person to whom the same belongs, or to the occupier of the premises whereon it exists, to remove the same;

tificate of Inspector of nuisances.

And if at the expiration of twenty-four hours after such notice the same be not complied with, the manure, dung, soil, or filth, or matter referred to, shall be vested in and be sold or disposed of by the said local board, and the proceeds thereof shall be carried to the district fund account hereinafter mentioned (*h*).

LX. And be it enacted, that if upon the certificate of the officer of health (*i*) (if any), or of any *two medical practitioners (k)*, it appear to the local board of health that any house or part thereof is in such a filthy or unwholesome condition that the health of any person is affected or endangered thereby, or that the whitewashing, cleansing, or purifying of any house or part thereof would tend to prevent or check infectious or contagious disease, the said local board shall give notice in writing (*l*) to the owner or occupier of such house or part

Houses to be purified, on certificate of officer of health, or of two medical practitioners.

(*g*) Note, that the inspector is required to give this notice, whereas the local board are to give the notice in the former part of the clause.

(*h*) A similar provision exists in the Nuisances Removal Act. The expenses of the removal shall be recoverable from the occupier, owner, or person causing the accumulation. 21 & 22 Vict. c. 98, s. 32, No. 5. As to the district fund account see sect. 87, *post*.

(*i*) See sect. 40, *ante*.

(*k*) See note (*d*) on sect. 40.

(*l*) See sect. 150, *post*, and 21 & 22 Vict. c. 98, s. 61, as to the service and authentication of the notice.

thereof to whitewash, cleanse, or purify the same, as the case may require (l);

And if the person to whom notice is so given fail to comply therewith within such time as shall be specified in the said notice, he shall be liable to a penalty not exceeding *ten shillings* for every day during which he continues to make default;

And the said local board may, if they shall think fit, cause such house, building, or part thereof, to be whitewashed, cleansed, or purified, and the expenses incurred by them in so doing shall be repaid by the owner or occupier in default, and be recoverable from either of them in the summary manner hereinafter provided (m).

Slaughter-houses to be registered.

[LXI. \*\* And be it enacted (n), that every building or place used as a slaughter-house (o) shall within three months after this Act is applied to the district in which it is situate, or, in the case of a building or place *newly* used as a slaughter-house after that time, within *three* months after the commencement of such user, be registered by the owner or occupier thereof at the office of the said local board in a book which shall be kept by such board for that purpose;

And whosoever uses or suffers to be used any building or place as a slaughter-house without its being registered as required by this Act, shall be liable for every such offence to a penalty not ex-

(l) Provisions to meet this grievance are contained in the Nuisances Removal Act of 1855, which, however, requires an order of justices to enforce the removal of the nuisance.

(m) See notes on sect. 49, *ante*, and as to the recovery, sect. 129, *post*.

(n) Repealed by 21 & 22 Vict. c. 98, s. 48,—sect. 45, containing provisions applicable to slaughter-houses.

(o) See the interpretation of this word in sect. 2, *ante*.

ceeding *five pounds*, and a further penalty not exceeding *ten shillings* for every day during the continuance of the offence after written notice thereof from the said local board. \*\*]

LXII. And be it enacted (p), that the local board of health may from time to time, if they shall think fit, provide premises for the purpose of being used as slaughter-houses;

Local board may provide slaughter-houses and make by-laws with respect to slaughter-houses in general.

[\*\* (q) *And they shall make byelaws (r) for and with respect to the management and charges for the use of the premises so reported, and with respect to the inspection of all slaughter-houses, and for keeping the same in a cleanly and proper state (q):\*\*]*

Provided always, that nothing herein contained shall prejudice or affect the rights, privileges, powers, or authorities of any persons incorporated by any local Act of parliament passed before the passing of this Act for the purpose of making and maintaining slaughter-houses for the accommodation of any city, town, borough, or place (s).

LXIII. And be it enacted (t), that the inspector of nuisances may and he is hereby empowered, at all reasonable times (u), with or without assistants, to enter into and inspect any shop, building, stall, or place kept or used for the sale of butcher's meat,

Power to inspector of nuisances to enter places used for sale of butcher's meat, &c.

(p) The 21 & 22 Vict. c. 98, s. 45, *post*, incorporates the provisions of the Towns Improvement Clauses Act, 1847, regarding slaughter-houses, as to which see Appendix.

(q) Repealed by 21 & 22 Vict. c. 89, s. 48, for the future.

(r) See sect. 115, *post*, as to the byelaws of the board.

(s) See also the saving contained in 21 & 22 Vict. c. 98, s. 50, *post*, which extends to persons and other companies than those mentioned above.

(t) See also the Nuisances Removal Act, 1855, sect. 26, and the authority given for the inspection of slaughter-houses by 10 & 11 Vict. c. 34, s. 131, both in the Appendix.

(u) No previous notice is required to be given; indeed if

poultry, or fish, or as a slaughter-house, and to examine any animal, carcase, meat, poultry, game, flesh, or fish (*g*) which may be therein ;

And in case any animal, carcase, meat, poultry, game, flesh, or fish appear to him to be intended for the food of man, and to be unfit for such food, the same (*h*) may be seized ;

And if it appear to a justice, upon the evidence of a competent person, that any such animal, carcase, meat, poultry, game, flesh, or fish is unfit for the food of man, he shall order the same to be destroyed, or to be so disposed of as to prevent its being exposed for sale or used for such food ;

And the person to whom such animal, carcase, meat, poultry, game, flesh, or fish belongs (*i*), or in whose custody the same is found, shall be liable to a penalty not exceeding *ten pounds* for every animal or carcase, fish, or piece of meat, flesh, or fish, or any poultry or game, so found, which penalty may be recovered before *two justices* in the man-

it were so, the object of the search would often be defeated, as the corrupted articles might be removed.

(*g*) The 18 & 19 Vict. c. 121, s. 26, extends to fruit, vegetables, corn, bread, or flour, and describes all the articles as exposed for sale or in preparation for sale or use, or landed from any vessel in any port. The language of the text above is quite general. The 10 & 11 Vict. c. 14, s. 15, also provides for the seizure of unwholesome meat and other articles exposed for sale in market places and fairs.

(*h*) The inspector must be careful not to seize any articles which cannot be brought within the above description ; moreover, he cannot deal with any article when seized until he obtains an order of a justice.

(*i*) Some question may arise in regard to the ownership of some of these articles, because they may have been sold though not delivered. Hence proceedings may be taken against the person having the custody. Guilty knowledge on the part of the person proceeded against must be proved, or at least if it be disproved, the penalty cannot, it is presumed, be enforced.

ner hereinafter provided with respect to penalties the recovery whereof is not expressly provided for (*k*).

LXIV. And be it enacted, that the business of a blood-boiler, bone-boiler, fellmonger, slaughterer of cattle, horses, or animals of any description, soap-boiler, tallow-melter, tripe-boiler, or other noxious or offensive business, trade, or manufacture, shall not be *newly* established in any building or place, after this Act is applied to the district in which such building or place is situate, without the consent (*l*) of the local board of health,

Offensive trades newly established to be subject to regulation of local board of health.

[*Unless the said general board (m) shall otherwise direct ;*]

And whosoever offends (*n*) against this enactment shall be liable for each offence to a penalty of *fifty pounds*, and a further penalty of *forty shillings* for each day during which the offence is continued (*o*);

(*k*) See sect. 129, *post*. The 10 & 11 Vict. c. 34, s. 131, imposes a penalty upon the owner of the slaughter-house who obstructs the inspector.

(*l*) See in sect. 149, *post*, how the consent is to be given.

(*m*) Their direction cannot henceforth be given. See 21 & 22 Vict. c. 98, s. 8. See 18 & 19 Vict. c. 121, s. 27, in Appendix, as to noxious trades.

(*n*) The offence would be committed by the establishment of the business, *i. e.*, by the beginning to work, but not by the mere erection of the building or premises. But notice of the objection to the establishment of the business should be given as soon as possible.

It is well to refer to the late cases of *Walker v. Selfe*, 20 L. J. R., Ch. 633 ; and *Hole v. Barlow*, 22 Jur. 1019, in which it is held that the exercise of a lawful trade in a proper and convenient place is justifiable though it be a private nuisance to a neighbour, but if the place be not convenient, and there be a nuisance to the neighbour, the continuance of the trade will be prevented by the Court of Chancery.

(*o*) See in sect. 129, *post*, the provision for the recovery of penalties. The continuance must refer to the conviction.

And the said local board may from time to time make such *byelaws* (a) with respect to any such businesses so newly established as they may think necessary and proper, in order to prevent or diminish the noxious or injurious effects thereof.

Act not to affect present law as to nuisances.

LXV. And be it declared and enacted, that nothing in this Act shall be construed to render lawful any act, matter, or thing whatsoever which but for this Act would be deemed to be a nuisance, nor to exempt any person from any liability, prosecution, or punishment to which he would have been otherwise subject in respect thereof.

Common lodging houses to be registered.

LXVI. And be it enacted, that it shall not be lawful to keep any common lodging house unless the same be registered as next hereinafter mentioned (b); and the local board of health shall cause a register to be kept in which shall be entered the name of every person applying to register any common lodging house kept by him, and the situation of every such house;

And the said local board shall from time to time make *byelaws* (a) for fixing the number of lodgers who may be received into each house so registered, for promoting cleanliness and ventilation therein, and with respect to the inspection thereof, and the conditions and restrictions under which such inspection may be made;

(a) See sect. 115, *post*, as to *byelaws*, and sect. 129, *post*, as to the enforcing thereof.

(b) See the provisions of 14 & 15 Vict. c. 28, and 16 & 17 Vict. c. 41, regarding common lodging houses, in the Appendix. Neither in those statutes nor elsewhere is there any definition of "a common lodging house." See Mr. Fry's note on p. 21 of his edition of the Lodging Houses Acts. But 10 & 11 Vict. c. 34, s. 116, contains a definition of a public lodging house. See Appendix, p. 382.

And the person keeping any such lodging house shall give access to the same when required by any persons who shall produce the written authority (c) of the said local board in this behalf, for the purpose of inspecting the same, or for introducing or using therein any disinfecting process, and the expenses incurred by the said local board in so introducing or using any disinfecting process shall be recoverable by them in a summary manner (d) from the person keeping the lodging house in which the same shall have been used or introduced;

And whosoever shall receive lodgers in any common lodging house without having registered the same as required by this Act, or shall refuse to admit therein, at any time between the hour of eleven in the forenoon and the hour of four in the afternoon (e), any person authorized by the said local board as last aforesaid, shall for every such offence be liable to a penalty (f) not exceeding *forty shillings* (g).

Penalty on neglect.

LXVII. And be it enacted (h), that it shall not be

Cellars, &c. newly built.

(c) Sect. 149, *post*, and 21 & 22 Vict. c. 98, s. 61, provide for the form and authentication of this writing.

(d) See sect. 129, *post*.

(e) This limitation as to the time of entry is omitted from 14 & 15 Vict. c. 28, by sect. 16.

(f) See sect. 129, *post*, as to the recovery of these penalties.

(g) It is right to refer to 14 & 15 Vict. c. 34, which enables local boards of health, if they think proper, to establish lodging houses for the labouring classes within their district. The Act being of considerable length, and its adoption being very improbable, it has not been deemed advisable to print it in this collection.

(h) An important question arises, whether the whole or any part of this clause applies generally, or is limited to places where the local board of health is established. Mr. Lawes, in his edition of this Act, considered that the proviso applies generally, and cites *Richards v. Easto*, 1 Ex. 319. But the language of the 1st section is that the Act may be applied *in manner therein pro-*

not to be let as dwelling rooms. No cellars, &c. to be let except under certain conditions.

lawful to let or occupy or suffer to be occupied separately as a dwelling any vault, cellar, or underground room built or rebuilt after the passing of this Act, or which shall not have been so let or occupied before the passing of this Act;

And it shall not be lawful to let or continue to let, or to occupy or suffer to be occupied, separately as a dwelling, any vault, cellar, or underground room whatsoever, unless the same be in every part thereof at least *seven feet* in height, measured from the floor to the ceiling thereof,—nor unless the same be at least *three feet* of its height above the surface of the street or ground adjoining or nearest to the same,—nor unless there be outside of and adjoining the same vault, cellar, or room, and extending along the entire frontage thereof, and upwards from *six inches* below the level of the floor thereof up to the surface of the said street or ground, an open area of at least *two feet and six inches* wide in every part,—nor unless the same be well and effectually drained by means of a drain the uppermost part of which is *one foot* at least below the level of the floor of such vault, cellar, or room,—nor unless there be appurtenant to such vault, cellar, or room the use of a watercloset or privy and an ashpit, furnished with proper doors and coverings, kept and provided according to the provisions of this Act (*h*),—nor

*vided*, to any part of England and Wales, with certain exceptions. It seems to follow that the Act is not in force except where it has been so applied. Sect. 50 indeed is in force in other places, but that is so by the terms of the clause itself. It seems also that the part of the text which relates to cellars built or occupied before the passing of the Act could not apply except within a district, otherwise the passage is inconsistent, containing two limitations of time for the commencement of its operations.

(*h*) See sect. 54, *ante*, p. 103.

unless the same have a fireplace with a proper chimney or flue,—nor unless the same have an external window of at least *nine superficial feet* in area clear of the sash frame, and made to open in such manner as shall be approved by *the surveyor (i)*, except in the case of an inner or back vault, cellar, or room let or occupied along with a front vault, cellar, or room as part of the same letting or occupation, in which case the external window may be of any dimensions, not being less than *four superficial feet* in area clear of the sash frame;

And whosoever lets, occupies, or continues to let, or knowingly suffers to be occupied for hire or rent, any vault, cellar, or underground room, contrary to this Act, shall be liable for every such offence to a penalty (*k*) not exceeding *twenty shillings (k)* for every day during which the same continues to be so let or occupied after notice in writing (*l*) from the local board of health in this behalf:

Provided always, that in any area adjoining a vault, cellar, or underground room there may be steps necessary for access to such vault, cellar, or room, if the same be so placed as not to be over, across, or opposite to the said external window, and so as to allow between every part of such steps and the external wall of such vault, cellar, or room a clear space of *six inches* at the least, and that over or across any such area there may be steps necessary for access to any building above the vault, cellar, or room to which such area adjoins, if the same be so

(*i*) See sect. 2, *ante*, and sect. 151, *post*, as to the exemption from duty.

(*k*) See sect. 129, as to the recovery thereof.

(*l*) See sect. 150, *post*, and 21 & 22 Vict. c. 98, s. 61, as to the service and authentication of notices.

placed as not to be over, across, or opposite to any such external window :

Provided also, that every vault, cellar, or underground room in which any person passes the night shall be deemed to be occupied as a dwelling within the meaning of this Act :

Act not to come into operation until the expiration of a certain time in case of cellars, &c. already occupied as dwellings.

Provided also, that the provisions of this Act with respect to the letting and occupation of vaults, cellars, and underground rooms shall not, so far as the same relate to vaults, cellars, and underground rooms which shall have been let or occupied as dwellings before the passing of this Act, come into force or operation until the expiration of one year from the passing of this Act, nor within any district until the expiration of *six* months from the time when this Act shall have been applied thereto (c) ;

Church-wardens &c. to give notice of enactment.

And *all* churchwardens and overseers of the poor shall from time to time after the passing of this Act cause public notice (d) of the provisions of this Act with respect to the letting and occupation of vaults, cellars, and underground rooms to be given in such manner as may appear to them to be best calculated to make the same generally known.

Management of streets vested in local board.

LXVIII. And be it enacted, that all present and future *streets* (e), being or which at any time become

(c) See now 21 & 22 Vict. c. 98, s. 20, as to the date of the constitution of the district.

(d) As the legislature have imposed this duty upon these officers, it seems that they may charge the cost of these notices upon the poor rate, as that is the only fund which they possess in common. But since no precise time is appointed for the giving of these notices, the clause has not been much observed. Of course the difficulty above adverted to, as to the extent of the operation of the clause, has tended to diminish its operation.

(e) See the definition of *street* in sect. 2, *ante*. Sect. 117, *post*, made the local board surveyors of the highways, and vested in such board all the powers of the surveyor of the highways.

*highways* (f) within any district, and the pavements, stones, and other materials thereof, and all buildings, implements, and other things provided for the purposes thereof by any surveyor of highways, or by any person serving the office of surveyor of highways, shall vest in and be under the management and control of the said local board of health ;

And the said local board shall from time to time cause all such streets to be *levelled*, paved, flagged, channelled, *altered*, and repaired (g), as and when occasion may require, and they may from time to time cause the soil of any such street to be raised, lowered, or altered as they may think fit, and place and keep in repair fences and posts for the safety of foot passengers ;

And whosoever wilfully displaces, takes up, or injures the pavement, stones, materials, fences, or posts of any such street, without the consent of the

(f) The 15 & 16 Vict. c. 42, enacted in sect. 13, "That the term 'highway,' in the sections of the Public Health Act, 1848, numbered respectively 68 and 69 in the copies of the Act printed by the Queen's printers, shall mean any highway repairable by the inhabitants at large." In *Sunderland, Mayor of, v. Herring*, 17 J. P. 741, the Court of Queen's Bench held that this enactment interpreted the clause in the text retrospectively.

(g) It will be observed, that there is no reference here to the rights of private individuals, nor does the Act contain any clause applicable to streets such as that which is contained in sect. 145, applicable to sewers. The principle established by *Boulton v. Crowther*, 2 B. & C. 703, is, that where public commissioners have conferred upon them, by statute, powers to effect works for the public good, they are not personally responsible for the damage which they cause to private individuals in the due and careful exercise of those powers: hence, where a local Act empowered a town council to alter the level of any street, the Court of Queen's Bench held that they had not exceeded their powers by erecting a bridge, in the line of street, over a canal, (*Beaver v. Corporation of Manchester*, 22 Jur. 23,) and were not liable in damages to a person whose house was thereby injured. And it has been

said local board (*h*), shall be liable for every such offence to a penalty (*i*) not exceeding *five pounds*, and a further sum not exceeding *five shillings* for every square foot of the pavement, stones, or other materials so displaced, taken up, or injured.

LXIX. And be it enacted, that in case any present or future street (*h*), or any part thereof, (not being a *highway*), (*l*) be not sewered, levelled, paved, flagged, and channelled to the satisfaction of the local board of health, *such board* may, by notice

decided by the same court, that an action is not maintainable against the local board for injuring a house by lowering a street, though the access was thereby obstructed. *Bald v. Williams*, 21 J. P. 84. But the proper compensation might have been obtained in this case under sect. 144, *post*.

(*h*) See, as to this consent, sect. 149, *post*, and also as to the alteration of the level of sewers, 21 & 22 Vict. c. 98, s. 38. With reference to the powers of gas companies to break up the pavements in districts under Acts granted previous to this statute, see *Dover Gaslight Company v. Mayor of Dover*, 1 Jur. (N.S.), 812, where the powers were upheld, though the case depended upon the construction of the local Acts. In the *London and Blackwall Railway Company v. Board of Works for Limehouse District*, 25 L. J. R., Ch. 164, this general principle is laid down. Where the legislature has vested special powers in a particular body for certain purposes, a general Act will not override those special powers: thus, a railway company were held to be empowered to build a station which abutted upon a street in the metropolis, without the consent of the district board, their local Act, which preceded the Metropolitan Local Management Act, authorizing them to do so. See also *A. G. v. Northern and Eastern Railway Company*, 10 Mee. & W. 263.

(*i*) See sect. 129, as to the recovery of penalties.

(*k*) It was held that this section did not give power to the local board to make new streets and to compel the adjoining owners to pay for them, but was confined to existing streets not repairable by the parish. *Local Board of Health of Hull v. Jones*, 1 Hurl. & N. 489, 2 Jur. (N.S.), 1193; but this decision is now qualified by the enactment in 21 & 22 Vict. c. 98, s. 38, which, with retrospective as well as prospective operation, extends the power of the local board to public footpaths.

(*l*) See note (*f*), *ante*, p. 119.

in writing to the respective owners or occupiers (*m*) of the premises fronting, adjoining (*n*), or abutting upon such parts thereof as may require to be sewered, levelled, paved, flagged, or channelled, require them to sewer, level, pave, flag, or channel (*o*) the same within a time to be specified in such notice;

And if such notice be not complied with, the said local board may, if they shall think fit, execute the works mentioned or referred to therein (*p*);

And the expenses incurred by them in so doing shall be paid by the owners (*q*) in default, according to the frontage of their respective premises, and in such proportion as shall be settled by the surveyor (*r*), or in case of dispute as shall be settled by arbitration (having regard to all the circumstances of the case) in the manner provided by this Act (*s*);

And such expenses may be recovered from the last-mentioned owners in a summary manner (*t*), or

(*m*) See sect. 150, and 21 & 22 Vict. c. 98, s. 61, as to the service and authentication of this notice.

(*n*) In *Baddeley v. Gingell*, 1 Exc. Rep. 319, houses and buildings in a yard communicating with a high street by a covered gateway, which houses and buildings abutted on houses in the high street, were held to be situated *in a street*, so as to be liable to a paving rate.

(*o*) The 21 & 22 Vict. c. 98, s. 38, extends these requisitions to *lighting, metalling, and making good*.

(*p*) After doing the works, the local board had no authority to keep them in repair. *Cunningham v. Local Board of Wolverhampton*, 7 E. & B. 113. This decision is corrected by 21 & 22 Vict. c. 98, s. 38. In regard to the steps to be taken by the local board, see sect. 85, *post*.

(*q*) Note, that the notice is given to the owner or occupiers, but the owners only are responsible for these expenses.

(*r*) This means the surveyor of the board. See sect. 2, *ante*.

(*s*) It is not clear what is meant by the parenthesis. Such consideration must necessarily arise in the arbitration provided for in sect. 123, *post*. The 21 & 22 Vict. c. 98, s. 63, *post*, concludes the parties, if notice of dispute be not given within *three months*.

(*t*) See notes on sect. 49, *ante*, and sect. 129, *post*.

the same may be declared by order of the said local board to be private improvement expenses, and be recoverable as such in the manner herein-after provided (b).

Certain streets not highways to be deemed such, and be repaired by local board.

LXX. And be it enacted (c), that if any present or future street, not being a *highway* at the time when this Act is applied to the district in which it is situate, be sewerred, levelled, paved, flagged, and channelled to the satisfaction of the local board of health, the said local board may, if they shall think fit, by notice in writing put up in any part of the street declare the same to be a *highway*, and thereupon the same shall become a *highway*, and be from time to time repaired by them out [of] the rates levied *in that behalf* (d) under the authority of this Act;

And every such notice shall be entered amongst the proceedings of the said local board:

Provided always, that no street shall become a *highway* as last aforesaid if within one month after notice in writing shall have been put up as last aforesaid the *proprietor* of such street, or the person representing or entitled to represent such proprietor,

(b) See ss. 90, 103, *post*. Though this clause provides a summary remedy for the recovery of these expenses, yet where a local Act incorporating the provisions of this Act enabled the expenses under that Act to be recovered by action, it was held that the local board were justified in suing. *Mayor of Sunderland v. Herring*, 17 J. P. 741.

(c) It is proper here to notice that 21 & 22 Vict. c. 98, ss. 44, 45, incorporates the clauses in 10 & 11 Vict. c. 34, s. 89, which relate to the management and conduct of persons in the public streets, and they are set out in the Appendix.

(d) A difficult question arose as to what rates are here referred to; however 21 & 22 Vict. c. 98, s. 37, has removed it by making express provision for the repairs of the highways.

shall by notice in writing to the said local board object thereto (e).

LXXI. And be it enacted, that if and when for the purposes of this Act the local board of health deem it necessary to raise, sink, or otherwise alter the situation of any water or gas pipes, mains, plugs, or other waterworks or gasworks laid in or under any street, they may by notice in writing (f) require the person to whom the pipes, mains, plugs, or works belong to raise, sink, or otherwise alter the situation of the same in such manner and within such reasonable time as shall be specified in such notice, and the expenses attendant upon or connected with any such alteration shall be paid by the said local board out of the general district rates levied under this Act;

Power to require gas and water pipes to be moved.

And if such notice be not complied with, the said local board may make the alteration required:

Provided always, that no such alteration shall be required or made which will permanently injure any such pipes, mains, plugs, or works, or prevent the water or gas from flowing as freely and conveniently as usual;

(e) See the explanation of this proviso in 21 & 22 Vict. c. 98, s. 42, particularly with reference to joint proprietors. Unfortunately there is no definition of the word *proprietor*, which is not a legal term having any distinct meaning. See *Lister v. Lobley*, 7 A. & E. 125, where it was held in a clause of a local Act giving compensation for damage to *owners or proprietors* that these words applied not only to the owners in fee simple, but to lessees of the same for terms of years also.

(f) See sect. 150, *post*, and 21 & 22 Vict. c. 98, s. 61, as to the service and authentication of notices. See in sect. 72 of the latter Act the authority now given to the local board to enable companies to divert or alter the level of their sewers or pipes under public streets.

Provided also, that where under any local Act of parliament the expenses attendant upon or connected with the raising, sinking, or otherwise altering the situation of any water or gas pipes, mains, plugs, or other waterworks or gasworks, are or shall be directed to be borne by the person to whom such pipes or works belong, his liability in that respect shall continue in the same manner and under the same conditions in all respects as if this Act had not been passed.

Notice to be given to local board before laying out new streets, who shall fix the levels and widths thereof.

[LXXII. \*\* And be it enacted (a), that one month at the least before any street is newly laid out as aforesaid written notice shall be given to the local board of health, showing the intended level and width thereof;

And the level and width of every such street shall be fixed by the said local board, and it shall not be lawful to lay out, make, or build upon any such street, otherwise than in accordance with the level and width so fixed, *unless upon disapproval by the said local board of the level or width specified in such notice the general board of health shall otherwise direct*; and whosoever shall lay out, make, or build upon any such street, otherwise than in accordance with the level and width fixed by the said local board, [or approved by the said general board,] shall be liable for every such offence to a penalty not exceeding twenty pounds for every day during which he shall permit or suffer such street to continue to be so improperly laid out, made, or built upon;

(a) Repealed by 20 & 21 Vict. c. 98, s. 34, which enables the local board to frame and pass byelaws as to the making of streets.

And the said local board may, if they shall think fit, cause any such street laid out or made at a level or width otherwise than in accordance with the level and width so fixed or approved as aforesaid, or any building built in any such street otherwise than in accordance with such level and width, to be altered in such manner as the case may require, and the expenses incurred by them in so doing shall be repaid to them by the offender, and be recoverable from him in a summary manner (b):

Provided always, that if no such level or width be fixed, and no approval or disapproval of the level or width proposed be signified by the said local board within one month from the last-mentioned notice, the intended street may be laid out and made upon the level and of the width specified in such notice, if the same be otherwise in accordance with the other provisions of this Act. \*\* ]

LXXIII. And be it enacted, that the said local board may, by agreement, purchase any premises for the purpose of widening, opening, enlarging, or otherwise improving any street, and any part of the premises so purchased which shall not be wanted for that purpose shall be resold at the best price that can be gotten for the same, and the proceeds of such resale shall be carried to the district fund account hereinafter mentioned (c).

Local board may purchase premises in order to improve streets.

(b) See sect. 129, *post*.

(c) See further 21 & 22 Vict. c. 98, s. 36.

The 12 & 13 Vict. c. 94, s. 8, reciting that *it is expedient that the local boards of health for the execution of the Public Health Act, 1848, should be invested with certain powers not included in that Act*, enacted, "that the said local boards constituted under the said Public Health Act may contract for any period not exceeding three years at any one time with

Local boards of health may contract for lighting.

## Public Pleasure Grounds.

Local board may provide places of public recreation, &c.

LXXIV. And be it enacted, that the local board of health, [*with the approval of the said general board of health (c),*] may provide, maintain, lay out, plant, and improve premises for the purpose of being used as public walks or pleasure grounds, and support or contribute towards any premises provided for such purposes by any person whomsoever (*d*).

## Supply of Water.

Local board to provide sufficient supplies of water, and may erect waterworks, &c.

LXXV. And be it enacted, that the local board of health may provide their district with such a supply of water as may be proper and sufficient for the purposes of this Act and for private use to the extent required by this Act;

And for those purposes or any of them the said local board may from time to time, [*with the approval of the general board of health (c),*] contract with any person whomsoever, or purchase, take upon lease, hire, construct, lay down, maintain such water-

any company or person for the supply of gas or oil, or other means of *lighting* the streets, roads, and other open places, markets, and public buildings within their respective districts, and may provide such lamps, lamp posts, and other materials and apparatus as such local boards respectively may think necessary for lighting the same; and the expenses incurred by any such local board in so doing shall be defrayed out of the general [*or special*] (1) district rates (*as the nature of the case may require*) levied under the said Public Health Act." This is taken from 10 & 11 Vict. c. 34, s. 119. See also the provision in 21 & 22 Vict. c. 98, s. 46, *post*.

(c) Not now to be obtained. It is dispensed with by 21 & 22 Vict. c. 98.

(d) This clause will be found greatly to aid the measures which are now frequently adopted for the establishment of parks adjoining populous towns. See also 10 & 11 Vict. c. 34, s. 135.

The statutes which provide for the procuring of public libraries and public museums are 8 & 9 Vict. c. 43, and 13 & 14

(1) No special district rate can be levied since 21 & 22 Vict. c. 98, s. 54.

works, and do and execute all such works, matters, and things as shall be necessary and proper;

And any waterworks company may contract with the local board of health to supply water for the purposes of this Act in any manner whatsoever, or may sell and dispose of or lease their waterworks to any local board of health willing to take the same (*e*);

And the said local board may provide and keep in any waterworks constructed or laid down by them under the powers of this Act a supply of pure and wholesome water, and the water so supplied may be constantly laid on at such pressure as will carry the same to the top story of the highest dwelling house within the district supplied:

In case of waterworks constructed by local board, the water may be kept constantly under pressure.

Provided always, that before constructing or laying down any waterworks under the powers of this Act within any limits within, for, or in respect of which any waterworks company shall have been established for supplying water, the said local board shall give notice in writing (*f*) to every waterworks company within whose limits the said local board may be desirous of laying on or supplying water, stating the purposes for and (as far as may be practicable) the extent to which water is required by the said local board;

Local board not to construct waterworks, &c. if any waterworks company within their district be able and willing to supply water upon terms.

And it shall not be lawful for the said local board to construct or lay down any waterworks within such

Vict. c. 65, which, however, have been repealed and superseded by 18 & 19 Vict. c. 70, intitled "An Act for further promoting the Establishment of Public Libraries and Museums in Municipal Towns, and for extending it to Towns governed under Local Improvement Acts, and to Parishes."

(e) Refer to the provisions in 10 & 11 Vict. c. 34, ss. 122, 123, incorporated by 21 & 22 Vict. c. 98, s. 45, and see sect. 53, extending the powers of companies to sell.

(f) See sect. 150, *post*, and 21 & 22 Vict. c. 98, s. 61, as to the service and authentication of notices.

limits, if and so long as any such company shall be able and willing to lay on water proper and sufficient for all reasonable purposes for which it is required by the said local board, [and (e) upon such terms as shall be certified to be reasonable by the general board of health, after inquiry and report by a superintending inspector in this behalf, or (in case such company shall be dissatisfied with such certificate)] upon such terms as shall be settled by arbitration in the manner provided by this Act (f);

And in case any difference shall arise as to whether the water which any such company is able and willing to supply or lay on is proper and sufficient for the purposes for which it is required by the said local board, or whether the purposes for which it is required are reasonable, the same shall be settled by arbitration in the manner provided by this Act (f).

LXXVI. And be it enacted (g), that if upon the report of the surveyor (h) it appear to the local board of health that any house is without a proper supply of water, and that such a supply of water can be furnished thereto at a rate not exceeding *twopence* per week, the said local board shall give notice in writing (i) to the occupier (k), requiring him, within a time to be specified therein, to obtain such supply, and to do all such works as may be necessary for that purpose;

(e) This condition has ceased. The local board and the company must therefore agree upon the terms or refer the question to arbitration.

(f) See sect. 123, *post*.

(g) See the additional powers granted to the local board in regard to water supply in 21 & 22 Vict. c. 98, s. 51, *post*.

(h) See sect. 2, *ante*.

(i) As to notice see sect. 150, *post*, and 21 & 22 Vict. c. 98, s. 61.

(k) Sect. 51 of the new Act imposes the expenses upon the

Local board may require that houses be supplied with water, &c. in certain cases.

And if such notice be not complied with the said local board may, if they shall think fit, do such works and obtain such supply accordingly, and make and levy water rates upon the premises, not exceeding in the whole the rate of *twopence* per week, in manner hereinafter provided (l), as if the owner or occupier of the premises had demanded a supply of water, and were willing to pay water rates for the same;

And the expenses incurred by them in doing such works as last aforesaid shall be private improvement expenses, and be recoverable as such in the manner hereinafter provided (m).

LXXVII. And be it enacted, that the local board of health may, if they shall think fit, supply water from any waterworks purchased (n) or constructed by them under this Act to any public baths or wash-houses (o), or for trading or manufacturing purposes, upon such terms and conditions as may be agreed (p) upon between the said local board and the persons desirous of being so supplied.

Water for public baths or trading or manufacturing purposes.

LXXVIII. And be it enacted, that the local board of health may (q) cause all existing public owner only, and therefore requires him to be served with the notice.

Maintenance and construction of

(l) See sect. 93, *post*.

(m) See note (e) on sect. 49, *ante*, and sect. 103, *post*, and as to appeal against this order, sect. 120.

(n) Under sect. 75. See further 21 & 22 Vict. c. 98, s. 53.

(o) The Acts relating to public baths and wash-houses are 9 & 10 Vict. c. 74, and 10 & 11 Vict. c. 61. See 21 & 22 Vict. c. 98, s. 47, *post*, and the Acts in the Appendix.

(p) Those terms should be clearly set out in writing in the form of a regular contract.

(q) There is a difference in the language used in the two parts of this clause, and this difference leads to a reasonable interpretation that the local board must maintain existing public

public cisterns for gratuitous use.

cisterns, pumps, wells, reservoirs, conduits, aqueducts, and works used for the gratuitous supply of water to the inhabitants to be continued,\* maintained, and plentifully supplied with water, or they may substitute, continue, maintain, and plentifully supply with water other such works equally convenient;

And the said local board may, if they shall think fit, construct any number of new cisterns, pumps, wells, conduits, and works for the gratuitous supply of any public baths or wash-houses established otherwise than for private profit or supported out of any poor (a) or borough rates.

Penalty for injuring waterworks, diverting streams, or wasting water.

LXXIX. And be it enacted, that whosoever shall wilfully or carelessly break, injure, or open any lock, cock, waste pipe, or waterworks belonging to or under the management or control of the local board of health, or constructed, continued, or maintained under this Act (b), in any parish or place in which there shall be no local board of health,

Or shall unlawfully flush, draw off, divert, or take water from any waterworks belonging to or under the management or control of the said local board, or so constructed, continued, or maintained in any such parish or place (b), or from any waters or streams by which such waterworks are supplied,

Or shall wilfully or negligently waste or cause to be wasted any water with which he is supplied by the said local board,

cisterns, and pumps and wells, but they may exercise their own discretion as to constructing such public conveniences in future. In 10 & 11 Vict. c. 34, s. 121, now incorporated herewith, the word used in reference to existing works is *shall*, not *may*.

(a) See note (o) on sect. 77.

(b) This refers to sect. 50. Reference may be made to 21 & 22 Vict. c. 98, s. 66, in regard to injury to the works of the local board.

Shall for every such offence forfeit a sum not exceeding *five* pounds, and a further penalty of *twenty* shillings for each day whilst the offence is continued after *written notice* (c) in that behalf,

Which penalties (d) shall be paid to the said local board, or, in the case of a parish or place in which there shall be no local board of health, to the churchwardens and overseers of the poor, to be by them applied in aid of the rate for the relief of the poor of such parish or place:

Provided always, that nothing herein contained shall prevent the owner or occupier of any premises through or by which any streams may flow from using the same as they would have been entitled to do if this Act had not been passed.

LXXX. And be it enacted, that whosoever shall bathe in any stream, reservoir, conduit, aqueduct, or other waterworks (e) belonging to or under the management or control of the local board of health, or in any reservoir, conduit, aqueduct, or other waterworks constructed, continued, or maintained under this Act (f) in any parish or place in which there shall be no local board of health,

Penalties on persons for causing water in reservoirs to be fouled;

Or shall wash, cleanse, throw, or cause to enter therein any animal, rubbish, filth, stuff, or thing of any kind whatsoever (g),

(c) As to the notice from the local board of health, see sect. 150, *post*, and 21 & 22 Vict. c. 98, s. 61; but in the case of parishes acting under sect. 50, a notice from the overseers would seem to be sufficient.

(d) As to the recovery of penalties, see sect. 123, *post*, and 21 & 22 Vict. c. 98, s. 67, *post*, as to the application of penalties.

(e) See the extensive signification of this word in sect. 2, *ante*.

(f) According to sect. 50.

(g) *Quære*—Does this interfere with the prescriptive rights

Or shall cause or permit or suffer to run or be brought therein the water of any sink, sewer, drain, engine, or boiler, or other filthy, unwholesome, or improper water,

Or shall do anything whatsoever whereby any water belonging to the said local board or under their management or control, or whereby any water of or contained in any such reservoir, conduit, aqueduct, or other waterworks (*g*) so constructed, continued, or maintained in any such parish (*h*) or place as aforesaid shall be fouled,

Shall for every such offence forfeit a sum not exceeding *five pounds* (*i*), and a further sum of *twenty shillings* for each day whilst the offence is continued after written notice (*k*) in that behalf;

Which penalties shall be paid to the said local board, or, in the case of a parish or place in which there shall be no local board of health, to the churchwardens and overseers of the poor, to be by them applied in aid of the rate for the relief of the poor of such parish or place;

And whosoever, being proprietor of any gasworks, or being engaged or employed in the manufacture or supply of gas, causes or suffers to be brought or to flow into any stream, reservoir, conduit, aqueduct, or waterworks belonging to or under the management or control of the said local board, or into any drain or pipe communicating therewith,

which may have been obtained by parties thus to use any stream or aqueduct prior to the acquisition thereof by the local board? It will be seen that the last clause contains an express reservation of the rights of private owners, but the same is not extended to this clause.

(*g*) See the extensive signification of this word in sect. 2, *ante*.

(*h*) According to sect. 50.

(*i*) As to the recovery of this penalty see sect. 129, *post*.

(*k*) See note (*c*) on sect. 79, *ante*, p. 131.

any washing or other substance produced in the manufacture or supply of gas, or shall wilfully do any act connected with the manufacture or supply of gas whereby the water in any such stream, reservoir, aqueduct, or waterworks is fouled, shall forfeit to the said local board for every such offence the sum of *two hundred pounds*, and, after the expiration of twenty-four hours notice in writing from them in this behalf (*k*), a further sum of *twenty pounds* for every day during which the offence is continued, or during the continuance of the act whereby the water is fouled;

And every such penalty shall be recoverable, with full costs of suit, by action of debt (*l*);

And if any water supplied by, belonging to, or under the management or control of the said local board, be fouled *in any manner* (*m*) by the gas of any such proprietor or person as last aforesaid, he shall forfeit to the local board for every such offence a sum not exceeding *twenty pounds* (*n*), and a further sum not exceeding *ten pounds* for every day whilst the offence is continued after the expiration of twenty-four hours notice in writing (*k*) from the said local board in this behalf;

(*k*) As to the service and authentication of notice see sect. 150, *post*, and 21 & 22 Vict. c. 98, s. 61.

(*l*) See sect. 133, *post*, and see the provisions in 18 & 19 Vict. c. 121, ss. 23—25, in the Appendix.

(*m*) Two mischiefs are provided for: one is the wilful causing of washings from the gasworks to flow into the waterworks of the local board of health, for which the heavy penalty of 200*l.* is imposed; the other is the negligent or careless act on the part of the proprietor of the gasworks which fouls the water of the board, and for this a penalty of 20*l.* is imposed. These provisions relating to gasworks are introduced from 3 & 4 Will. 4, c. 90, and 10 & 11 Vict. c. 15, s. 21.

(*n*) *Quære*, whether the smaller penalty is recoverable summarily, or by action of debt, as the larger one?

And for the purpose of ascertaining whether such water is fouled by the gas of any such proprietor or person the said local board may (a) lay open and examine any pipes, conduits, and works from which the gas is supposed to escape ;

Provided that before beginning so to do twenty-four hours notice (b) in writing be given to the person to whom such pipes, conduits, or works belong, or under whose management or control they may be, of the time at which the examination is intended to be made ;

And if upon such examination it appear that the water has been fouled by the gas proceeding from or contained in the pipes, conduits, or works examined, the expenses of the examination shall be paid and borne by the person to whom such pipes, conduits, or works belong, or under whose management or control they may be, and be recoverable from him in the summary manner hereinafter provided (c) ;

But if it appear that the water has not been so fouled, then such expenses, and all damages occasioned by the examination, shall be paid by the said local board out of the general district rates levied under this Act, and be recoverable from them in the summary manner hereinafter provided (d).

(a) See in sect. 143, *post*, the powers given to enforce the admission of the examiners.

(b) See sect. 143, *post*, and 21 & 22 Vict. c. 98, s. 61. It will be observed that as in many cases it will be difficult to ascertain to whom these works belong, the notice may be given to the managers of them.

(c) See sect. 129, *post*, and as to the appeal of the party aggrieved, sect. 120, *post*.

(d) The only clause which appears to be referred to her

*Houses for Reception of the Dead.*

LXXXI. And "for the purpose of preventing the manifold evils occasioned by the retention of the dead in the dwellings of the poor," be it enacted, that the local board of health may, if they shall think fit, provide, fit up, and make *byelaws* (e) with respect to the management and charges for the use of rooms or premises in which corpses may be received and decently and carefully kept previously to interment ;

Power to provide premises for the reception of the dead previously to interment.

And the said local board may, upon proper application, and subject to such regulations and at such rates and charges as shall be prescribed by any such *byelaws*, make all necessary arrangements for the decent and economical interment of any corpse which may have been received into any rooms or premises so provided in pursuance of this enactment.

*Burial Grounds.*

LXXXII. And be it enacted (f), that if upon the representation of the local board of health, and

Burial grounds, &c. dangerous to

is sect. 129, which, however, is not aptly framed to meet the case of proceedings against the local board.

(e) As to the making of byelaws, see sect. 115, *post*. See the provision as to the provision of such receptacles by burial boards in 15 & 16 Vict. c. 85, s. 42, incorporated in 16 & 17 Vict. c. 134.

(f) It will be proper to refer to the provisions contained in the several statutes lately passed which regulate interments: 15 & 16 Vict. c. 85, 16 & 17 Vict. c. 134, 17 & 18 Vict. c. 87, 18 & 19 Vict. c. 128, and 20 & 21 Vict. c. 81, and the commentaries by Mr. Scott and Mr. Glen thereon.

This clause is practically determined for the future. But see the provision contained in 21 & 22 Vict. c. 98, s. 49, *post*, whereby the local board of health may become a burial board.

It will be seen that the clause gives no power to the local board to act in the matter beyond making a representation to the general board of health.

health may  
be pro-  
hibited.

after inquiry and report by a superintending inspector, notified to the lord bishop of the diocese, and made, notified, and published in manner hereinbefore directed with respect to the inquiry and report of superintending inspectors previously to the constitution of a district under this Act, and after inquiry by such other ways and means as the general board of health may think fit to direct, the said general board shall certify (such certificate to be published in the London Gazette, and in some one or more of the public newspapers usually circulated within the district,) that any burial ground situate within any district to which this Act is applied is in such a state as to be dangerous to the health of persons living in the neighbourhood thereof, or that any church or other place of public worship within any such district is dangerous to the health of persons frequenting the same, by reason of the surcharged state of the vaults or graves within the walls of or underneath the same, and that sufficient means of interment exist within a convenient distance from such burial ground, church, or place of public worship, it shall not be lawful, after a time to be named in such certificate, to bury or permit or suffer to be buried any further corpses or coffins in, within, or under the ground, church, or place of worship to which such certificate relates, except in so far as may be allowed by such certificate;

And whosoever, after notice of such certificate, buries, or causes, permits, or suffers to be buried, any corpse or coffin contrary to this enactment, shall for every such offence be liable to a penalty of twenty pounds (a).

(a) See, as to the recovery of this penalty, sect. 129, *post*.

LXXXIII. And be it enacted (b), that no vault or grave shall be constructed or made within the walls of or underneath any church or other place of public worship, built in any district after the passing of this Act, and no burial ground shall be made or formed within any district after the passing of this Act, without the consent of the general board of health first had and obtained (c), unless the same be made or formed upon land purchased or authorized by parliament to be appropriated for the purpose of being used as a burial ground before the passing of this Act;

As to interments within churches or burial grounds newly erected or formed.

And whosoever shall bury, or cause, permit, or suffer to be buried, any corpse or coffin in any vault, grave, or burial ground constructed, made, or formed contrary to this enactment, shall for every such offence be liable to a penalty not exceeding fifty pounds, which may be recovered by any person (d), with full costs of suit, in an action of debt (e).

#### PURCHASE OF LANDS.

LXXXIV. And be it enacted (e), that the local board of health, by agreement, may purchase, or take upon lease, sell, or exchange, any lands or premises for the purposes of this Act [(f) and the Lands Clauses Consolidation Act, 1845, except the parts and enactments of that Act with respect to

Powers to local boards to purchase lands, &c. under 8 & 9 Vict. c. 18.

(b) This clause conferred no power upon the local board, and is now superseded by other enactments.

(c) This consent was confined to the burial ground, and not to the interment in churches, and is of course now unattainable.

(d) See however the restriction contained in sect. 133, *post*.

(e) See in 21 & 22 Vict. c. 98, the additional powers conferred upon the local board.

(f) The following passage in Italics is repealed by 21 & 22 Vict. c. 98, s. 75, which makes other provisions for the incorporation of "The Lands Clauses Consolidation Act, 1845."

the purchase and taking of lands otherwise than by agreement, and with respect to the recovery of forfeitures, penalties, and costs, and with respect to lands acquired by the promoters of the undertaking, but which shall not be wanted for the purposes thereof, shall, in so far as the same is consistent with this Act, be incorporated with this Act; and for the purposes of this Act, the expression "the promoters of the undertaking," wherever used in the said Lands Clauses Consolidation Act, shall mean the local board of health mentioned in this Act;]

And all lands and premises which shall be purchased, hired, or taken on lease by the local board of health of any non-corporate district shall be conveyed, demised, and assured to such local board and their successors, in trust for the purposes of this Act, and shall be accepted, taken, and held by them as a body corporate (*f*).

#### CONTRACTS OF THE LOCAL BOARD.

LXXXV. And be it enacted, that the local board of health may enter into all such contracts as may be necessary for carrying this Act into execution;

And every such contract whereof the value or amount shall exceed *ten pounds* shall (*g*) be in

(*f*) It may here be observed that no clause confers upon the local board of a non-corporate district the entire powers of a corporation. Moreover the above clause does not, as is usual, give any name which is to be used by the local board, and though sect. 35 requires them to cause a seal to be made for their use, it is not declared to be a *common seal*.

(*g*) Note the use of this word. It has been considered by many persons that the provisions of this clause were directory only. But the Court of Common Pleas have lately decided the contrary, so far as relates to the first requisites of the statute, and have held that they are imperative, so that a contract not entered into conformably with the requisites of this clause is invalid. The case before the court was one in which the board of a non-corporate district engaged with a

writing, and (in the case of a non-corporate district) sealed with the seal of the local board, by whom the same is entered into, and signed by five or more members thereof, and (in the case of a corporate district) sealed with the common seal, and shall (*h*) specify the work, materials, matters, or things to be furnished, had, or done, the price to be paid, and the time or times within which the contract is to be performed, and shall fix and specify some pecuniary penalty to be paid in case the terms of the contract are not duly performed;

And every contract so entered into, and duly executed by the other parties thereto, shall be binding on the local board by whom the same is executed, and their successors, and upon all other parties thereto, and their executors, administrators, successors, or assigns, to all intents and purposes:

Provided always, that the said local board may compound with any contractor or other person in

Composition  
for penalties  
in respect of

builder to perform certain works at a sewer, but there was no contract under seal. The works were executed, but the board, when sued, pleaded that there was no contract under seal, and this was held to be a valid defence. The court proceeded upon the ground that the local board must charge the rates with the costs of this contract, and that they could not do so unless they fulfilled the exigency of the statute by entering into the contract in strict conformity with its requisitions. *Frend v. Dennett*, 4 Jur. (N. S.), 897.

This decision is in conformity with *Homersham v. Wolverhampton Waterworks Company*, 6 Exc. 137; *Lamprell v. The Guardians of Billericay Union*, 18 L. J. R., Exc. 282; 3 Exc. R. 283; and *Kirk v. The Bromley Union*, 12 Jur. 85, 2 Phill. 640, but not quite reconcilable with *Saunders v. St. Neots Union*, 10 Jur. 566; 8 Q. B. 810; and *Clark v. Cuckfield Union*, 16 Jur. 686; 21 L. J. R., Q. B. 349, and the later cases on the subject of the execution of contracts by corporate bodies.

(*h*) The principle of the above decision applies to the specification of these several matters. With reference to the question as to the nature of the contract itself, see the note on sect. 98, *post*.

breach of contracts.

respect of any penalty incurred by reason of the non-performance of any contract entered into as aforesaid, whether such penalty be mentioned in any such contract, or in any bond or otherwise, for such sums of money or other recompence as to such local board may seem proper :

Estimates to be made before commencing works.

Provided also, that *before* (a) contracting for the execution of any works under the provisions of this Act the said local board shall obtain from the surveyor an estimate in writing, as well of the probable expense of executing the work in a substantial matter as of the annual expense of *repairing the same* ;

Also a report as to the most advantageous mode of contracting, that is to say, whether by contracting only for the execution of the work, *or* for executing and also maintaining the same in repair during a term of years or otherwise (b) :

As to contracts above

Provided also (c), that before any contract of the

(a) This proviso, however, is only directory, and the obtaining the estimate and report from the surveyor is not a condition precedent to the entering into the contract. Therefore the local board will be liable for a breach of the contract entered into for the performance of works though the estimate and report were not obtained. *Howell v. Mayor, &c. of Worcester*, 9 Exc. 457.

(b) Upon this proviso the Court of Queen's Bench decided, as between the board of health and their constituents, that "If the work may be both executed and repaired under the provisions of the Act there must be an estimate and report on the execution *and* the repair; but if the work may be only executed *or* only repaired according to the provisions of the Act, the estimate and report need not extend to a work not within the provisions of the Act, and not necessary for carrying it into execution. In case of a contract for repairing an existing road, an estimate and report relating to executing the work of making that road originally would be absurd, and equally so would be the estimate and report on repair where none can be done." *Cunningham v. Local Board of Wolverhampton*, 7 E. & B. 114.

(c) This proviso also seems to be directory only. This

value or amount of *one hundred pounds* or upwards is entered into by the said local board ten days public notice at the least shall be given expressing the nature and purpose thereof, and inviting tenders for the execution of the same ;

the value of 100l.

And the said local board shall require and take sufficient security for the due performance of the same.

## RATES.

[LXXXVI. \*\* And be it enacted (d), that when-  
ever any expenses are incurred or to be incurred by the local board of health in making, enlarging, altering, arching over, covering, or enclosing any sewer vested or to be vested in them by this Act, or purchased or acquired by them by virtue thereof, or in or about any other works, matters, and things of a permanent nature, and executed or done for the benefit of any district or part of a district, the said local board shall make and levy, in respect of the premises situate in the district or part of a district for the benefit of which the expenses are incurred or to be incurred, a rate or rates to be called *special district rates*, of such amount as will be sufficient to discharge the amount of such expenses, and interest thereon, within such period, not exceeding

Special district rate.

appears to be the distinction to be drawn from the cases as to the different parts of the clause. Some of the requisites specify the form, manner, and contents of the contract itself. Both parties can and ought to be cognizant thereof, and consequently each must sustain the result of a failure to comply therewith. The other requisites affect only one of the parties, and consequently the neglect or failure thereof will not prejudice the other party in respect of his claim arising out of the engagement entered into under this clause.

(d) Repealed by 21 & 22 Vict. c. 98, s. 54, which abolishes entirely the power of making a special district rate in future. See the note thereon.

thirty years, as the said local board shall in each case determine (e):

Provided always, with respect to the cost of making any such new sewer, that if it appear to the said local board that any premises were sufficiently drained before the new sewer was made they shall deduct from the amount of rates otherwise chargeable in respect of such premises such a sum and for such time as the said local board may, under all the circumstances of the case, deem to be just (f). \*\*]

District fund account to be kept.

LXXXVII. And be it enacted, that the treasurer shall keep a separate account, to be called "The District Fund Account," and the monies carried to such account under the directions of this Act shall be applied by the local board of health in defraying such of the expenses incurred or to be incurred by the said local board in carrying this Act into execution, and not otherwise expressly provided for, as they may think proper;

General district rate.

And the said local board (g) shall from time to time, when and as often as occasion may require,

(e) In *Dorling v. Epsom Board of Health*, 5 E. & B. 471, the Court of Queen's Bench held a special district rate to be valid which was imposed upon the whole district for works of a permanent nature from which a part of the district could derive no direct or immediate benefit.

A question has been raised as to whether the local board could make a rate for the whole sum payable by three annual instalments, or whether they were bound to make one rate for the whole to be paid in one year, or to make successive rates in successive years. The Court of Queen's Bench were so far of opinion that the first course was correct, that they issued a rule to the justices to enforce a rate so made. *Ex parte Grumpsall Local Board*, 20 J. P. 771.

(f) A similar proviso is contained in 21 & 22 Vict. c. 98, s. 29.

(g) Though it is not desirable that a local board should act in levying rates if not duly constituted, it is nevertheless very

make and levy, in addition to any other rate (h), a rate or rates to be called "general district rates," for defraying such expenses as are charged upon that rate by this Act, and such other expenses of executing this Act in any district as are not provided for by any other rate (i), or defrayed out of the said district fund account.

[LXXXVIII. \*\* And be it enacted (h), that the said special and general district rates shall be made and levied upon the occupier (except in the cases herein-after provided) of all such kinds of property

Property assessable to general and district rates.

doubtful whether the legality of the election of the board of management can be tried in resisting a district rate levied by them. *Howitt v. Manfull*, 6 A. & E. 736. In that case the court had required the justices to grant their distress warrant, (see 20 J. P. 772,) upon which distress the action of replevin was brought. This point was not absolutely decided, because the board held that the local board was legally constituted. It was held that the validity of the election of members of a board of guardians could not be questioned upon a *mandamus* to enforce a contribution for the relief of the poor. *Q. v. Guardians of St. Andrew's, Holborn*, 10 A. & E. 736.

(h) The rates which can be now levied by the local board are, the general district rate, the water rate, and the private improvement rate, and perhaps, in certain special cases, a burial rate.

(i) A question arose upon these words in respect of the rate to be levied for the repairs of the highways, and the cases of *Reg. v. Worthing Road Trustees*, 3 E. & B. 989; *Elmer v. Norwich Local Board of Health*, ib. 517; *Hanson v. Epsom Local Board of Health*, 5 E. & B. 599; *Moseley v. Ely Local Board of Health*, 6 E. & B. 518; *Barber v. Jessop*, 1 H. & N. 578; and *Reg. v. Taff Vale Railway Company*, 22 J. P. 21, were decided upon the subject. The decision at first was that where the district was coterminous with the parish, a general highway rate might be laid, though where it comprised a part of a parish only, or several parishes, a district rate, and not a highway rate, was to be levied; but ultimately the courts decided that the local board of health could not levy a highway rate. See, however, the note on sect. 117, *post*.

(k) Repealed by 21 & 22 Vict. c. 98, s. 55, but re-enacted with slight modifications.

as by the laws in force for the time being are or may be assessable to any rate for the relief of the poor, and shall be assessed upon the full net annual value of such property ascertained by the rate (if any) for the relief of the poor made next before the making of the respective assessments under this Act;

And for the purpose of making any such assessment the local board of health, or any person appointed by them so to do, may from time to time, at all reasonable times, inspect, take copies of or make extracts from, any rate for the relief of the poor within their district, or any assessments by which the same are made;

And whosoever, having the custody of such last-mentioned rate or assessment, refuses to permit such inspection, or the taking of any such copy or extract, shall for every such offence be liable to a penalty not exceeding *five pounds*;

Provided always, that if in any district or part of a district there be no rate for the relief of the poor, the said special and general district rates shall be made upon an estimate of the net annual value of the several premises liable thereto in such district or part of a district, by a fit person appointed by the local board of health in that behalf, and such estimate shall be made, as near as circumstances will permit, in the manner prescribed by an Act passed in the seventh year of the reign of King William the Fourth, intituled "An Act to regulate Parochial Assessments," or any other Act for the time being in force for regulating parochial assessments:

Provided also, that the occupier of any land (b) used as arable, meadow, or pasture ground only, or

(b) Land occupied by a booth, used at the time of races.

as woodlands, market gardens, or nursery grounds, and the occupier of any land covered with water, or used only as a canal or towing-path for the same, or as a railway, constructed under the powers of any Act of parliament, for public conveyance, shall be assessed in respect of the same in the proportion of one-fourth part only of such net annual value thereof:

Provided also, that if within any district or part of a district any kind (c) of property shall before the passing of this Act have been exempted from rating by any local Act, in respect of all or any of the purposes for which general or special district rates may be made under this Act, the same kind of property shall, in respect of the same purposes, and to the same extent within the parts to which the exemption applies, but not further or otherwise, be exempt from assessment to any general or special district rates under this Act. \*\* ]

Exemption  
under local  
Acts.

LXXXIX. And be it enacted, that the local board of health may make and levy the said [*special (d)* and] general district rates, or any [*or either of them*], prospectively in order to raise money for the payment of future charges and expenses, or retrospectively in order to raise money for the payment of charges and expenses which may have been incurred at any time within six months before the making of the rate (e);

Rates may  
be prospec-  
tive or retro-  
spective.

but not otherwise, was held to be properly assessed at its full value, and not at the reduced rate. *Reg v. Briscoe*, 20 J. P. 52.

(c) See the decisions upon this proviso, which has led to much discussion, in the note upon 21 & 22 Vict. c. 98, s. 55, *post*.

(d) Abolished by 21 & 22 Vict. c. 98, s. 54.

(e) See, as to retrospective rates, 21 & 22 Vict. c. 98, s. 54,

Assessment to district rates in case of unoccupied premises.

And if at the time of making any general [*or special*] district rate any premises in respect of which the rate may be made are unoccupied, such premises shall be included in the rate, but the rate shall not be charged upon any person in respect of the same whilst they continue to be unoccupied;

And if any such premises are afterwards occupied during any part of the period for which the rate was made, and before the same shall have been fully paid, the name of the incoming tenant shall be inserted in the rate, and thereupon so much of the rate as at the commencement of his tenancy may be in proportion to the remainder of the said period shall be collected, recovered, and paid in the same manner in all respects as if the premises had been occupied at the time when the rate was made;

*post.* If the rate purport to be made for the purposes of the Act, it would seem that it is valid in itself, and that any objection with reference to retrospectiveness would properly arise upon the payment by the board of the debt. The effect of the clause is therefore to legalise retrospective payments out of the rate, provided the charges or expenses have been incurred within six months before the rate. No validity is given to payments in respect of debts incurred beyond that time, except where the charges are expressly authorized by this Act. But since the decision of *Waddington v. The City of London Union*, in Exc. Cham., 22 J. P. 755, it will perhaps be a good ground of appeal that the rate is to be applied to pay debts due beyond the limited time. In determining what is the meaning of the term *charges*, reference must be made to *Reg. v. Rotheram Local Board of Health*, 22 Jur. 261; there it was held that a judgment recovered against a local board of health was a charge, and that the satisfaction thereof having been postponed by mutual agreement for a definite period, the six months did not begin to run until the expiration of that period, so that a rate could be levied within six months therefrom, and as the judgment was not satisfied the court issued a *mandamus* to the local board of health to make a rate to discharge the judgment.

And if any owner or occupier assessed or liable to any such rate cease to be owner or occupier of the premises in respect whereof he is so assessed or liable, before the end of the period for which the rate was made, and before the same is fully paid off, he shall be liable to pay only such part of the rate as shall be in proportion to the time during which he continues to be such owner or occupier (*f*);

Apportionment of rates between outgoing and incoming tenants, &c.

And in every such case, if any person afterwards become owner or occupier of the premises during part of the said period, he shall pay such part of the rate as shall be in proportion to the time during which he continues to be such owner or occupier, and the same shall be recovered from him in the same manner as if he had been originally assessed or liable;

And the said local board *may* (*g*) from time to time divide their district, or any street therein, into one or more parts, for all or any or either of the pur-

Parts of district may be separately assessed.

(*f*) See the provision in 17 Geo. 2, c. 38, s. 12, in reference to the poor rate. Under that statute, however, the person who is assessed is liable to the overseers for the whole of the rate, but is empowered to settle with the incoming tenant as to the proportions which each shall bear between them. By the provisions in the text the outgoing occupier is entitled to pay only a proportionate part to the board of health. Hence it must be to the interest of every ratepayer not to pay his rate as long as he can postpone it, so as to have the benefit of any possible abatement. The framer of this Act has lost the true spirit of that statute, which intended to secure the rate to the parish in full, but to provide equitably between the two occupiers. It is assumed that the rate will be made for a certain period, whereas the rate must be made at the time when there is a demand for money for the payment of charges.

(*g*) This word is not to be read as compulsorily, but according to its proper meaning as discretionary. *Dorling v. Epsom Board of Health*, 5 E. & B. 471. See the case of *Howell v. London Dock Company*, 8 E. & B. 212, for the decision of the Court of Queen's Bench upon a similar provision in 18 & 19 Vict. c. 120, s. 159.

poses of this Act, and make a separate assessment upon any such part for and in respect of all or any of the purposes for which the same is formed;

And every such part, so far as relates to the purposes in respect of which such separate assessment is made, shall be exempt from any other assessment under this Act:

Provided always, that if any expenses are incurred or to be incurred in respect of two or more parts of a district in common the same shall be apportioned between them in a fair and equitable manner (*b*).

Private im-  
provement  
rates.

XC. And be it enacted, that whenever the local board of health have incurred or become liable to any expenses (*c*) which by this Act are or by the said local board shall be declared to be "private improvement expenses," the said local board may, if they shall think fit, make and levy upon the occupier of the premises in respect of which the expenses shall have been incurred, except in the cases herein-after provided (*d*), in addition to all other rates, a rate or rates to be called *private improvement rates*, of such amount as will be sufficient to discharge such expenses, together with interest thereon at a rate not exceeding *five* pounds in the hundred, in such period not exceeding *thirty years* as the said local board shall in each case determine (*e*):

(*b*) See sect. 107, *post*, and 21 & 22 Vict. c. 98, s. 63, *post*.

(*c*) Apparently the local board must either pay those expenses out of the funds raised by their other rates, or borrow the sum required by them for those expenses in the first instance. See the duty imposed upon the local board in regard to such borrowing by 21 & 22 Vict. c. 98, s. 57, and in sect. 58 a mode of securing the repayment to the lender by means of a rentcharge to issue out of the premises.

(*d*) See the proviso following, and the clause empowering compositions by landlords.

(*e*) See the power of appeal against the decision of the local board in sect. 120, *post*, p. 174.

Provided always, that whenever any premises in respect of which any private improvement rate is made become unoccupied before the expiration of the period for which the rate was made, or before the same is fully paid off, such rate shall become a charge upon and be paid by the owner of the premises so long as the same continue to be unoccupied (*f*).

XCI. And be it enacted, that if the occupier by whom any private improvement rate is paid holds the premises in respect of which the rate is made at a rent not less than the *rackrent* (*g*), he shall be entitled (*h*) to deduct *three-fourths* of the amount paid by him on account of such rate from the rent payable by him to his landlord, and if he hold at a rent less than the rackrent he shall be entitled to deduct from the rent so payable by him such proportion of *three-fourths* of the rate as his rent bears to the rackrent;

Proportion  
of private  
improve-  
ment rate  
may be de-  
ducted from  
rent.

And if the landlord from whose rent any deduction is made under the provision last aforesaid is himself liable to the payment of rent for the premises in respect of which the deduction is made, and holds the same for a term of which less than *twenty years* is unexpired, *but not otherwise*, he

(*f*) See 21 & 22 Vict. c. 98, s. 62, *post*.

*Quære*.—Is the owner liable for the arrears due from the previous occupier? The more equitable construction leads to a negative conclusion, though under the next section he might have been bound to allow a large portion of the rate if paid.

(*g*) See the meaning of this word in sect. 2, *ante*.

(*h*) But this will be controlled by the language of the covenants contained in the lease. See sect. 97, *post*; and see in *Smith v. Humble*, 15 C. B. 321, an illustration of the principle of deduction of a tax chargeable on the owner from the rent paid to him.

may deduct from the rent so payable by him such proportion of the sum deducted from the rent payable to him as the rent payable by him bears to the rent payable to him (*h*), and so in succession with respect to every landlord (holding for a term of which less than *twenty* years is unexpired) of the same premises both receiving and liable to pay rent in respect thereof :

Provided always, that nothing herein contained shall be construed to entitle any person to deduct from the rent payable by him more than the whole sum deducted from the rent payable to him (*i*).

XCII. Provided always, and be it enacted, that at any time before the expiration of the period for which any [*special district rate* (*k*)] or private improvement rate is made, the owner or occupier of the premises assessed thereto may redeem the same, by paying to the local board of health the expenses in respect of which the rate was made, or such part thereof as may not have been defrayed by sums already levied in respect of the same (*l*).

XCIII. And be it enacted, that whenever and so

(*h*) Thus, the rent received by the landlord being 100*l.* and the rent paid by him being 20*l.*, if the sum deducted by the tenant be 10*l.*, the landlord may deduct 2*l.* from the rent paid to the owner in fee. This provision appears to lead to this result, that when the landlord's term is reduced below twenty years, he can no longer make the deduction though he will continue liable to allow it.

(*i*) This might possibly occur if a person who held lands at a certain rent were to grant an underlease at a lower rent for a heavy fine or other consideration.

(*k*) No special district rate can be imposed hereafter.

(*l*) This provision is extended, by 21 & 22 Vict. c. 98, s. 58,

long as any premises are supplied with water by the local board of health (*m*), for the purposes of *domestic use* (*n*), cleanliness, or drainage, they shall make and levy, in addition to any other rate, a water rate upon the occupier, except (*o*) as hereinafter provided :

And the rate so made shall be assessed upon the net annual value of the premises, ascertained in the manner herein-before (*p*) prescribed with respect to the said [*special and*] general district rates ;

And when several houses in the separate occupation of several persons are supplied by one common pipe, the respective houses shall be charged with the payment of water rates, in the same manner as if each house had been supplied with water by a separate pipe :

Provided always, that in any district to be called the Oxford or Cambridge district the local board of health, *with the consent of the said general board* (*q*)

Agreement  
with Univer-  
sities.

to the rentcharges granted under it. See also the provision contained in sect. 146, *post*, whereby the local board are empowered to extend the time for the repayment of expenses by the owner, though perhaps that clause does not extend to the above-mentioned rates.

(*m*) See sect. 76, *ante*.

(*n*) The supply of water for the use of a horse and the washing of a carriage in a stable attached to a dwelling house, and used for the sole accommodation of the occupier, was held to be *for domestic use* in *Busby, app., The Chesterfield Waterworks and Gaslight Company, resp.*, 22 Jur. 757; 27 L. J., Q. B. 238.

(*o*) *Quare*, what is here referred to? Perhaps the agreement with the Universities. Mr. Lawes in his edition of the Act refers to the clause which renders the owners liable to be assessed instead of the occupiers.

(*p*) In sect. 88.

With reference to this and the next clause refer to the Waterworks Clauses Act, 1847, 10 & 11 Vict. c. 17, ss. 68, 69, 70.

(*q*) Now dispensed with. See 21 & 22 Vict. c. 98, s. 8, *post*.

Redemption  
of special  
district and  
private im-  
provement  
rates.

Water rate.

may supply water to any hall, college, or premises of the University within such district, upon such terms with respect to the mode of paying for such supply as shall from time to time be agreed upon between such University, or any hall or college thereof, and the said local board (*f*).

Water rate payable in advance.

XCIV. And be it enacted, that the said water rate shall be payable in advance (*g*);

Power to stop water in case of non-payment of rates.

And whenever any person supplied with water under the provisions of this Act neglects to pay the water rate due from him, upon demand, the local board of health may prevent the water from flowing into the premises of the defaulter in such manner as they may think fit, and may recover the arrears due, together with the expenses of stopping the supply, in the manner herein-after provided (*h*) with respect to the recovery of rates made under the authority of this Act:

Provided always, that the stopping or cutting off any supply of water by the said local board under this enactment shall not relieve any person from any penalty (*i*) or liability to which he would have been otherwise subject.

(*f*) See 21 & 22 Vict. c. 98, s. 72, *post*, as to the local boards at Oxford and Cambridge.

(*g*) This enactment can rarely be of any practical avail, except in the case of newly built or newly occupied houses, as the occupation takes place at uncertain and varying times, whereas the water rates must generally be laid at fixed times, and be assessed upon the then occupiers of the premises, and this is so provided in 10 & 11 Vict. c. 17, s. 70. But as the rate is a payment for supply, the enactment meets the objection that the water not having been supplied the party assessed ought not to be called upon to pay. See, as to the time when rates under this Act are payable, sect. 103, *post*.

(*h*) See sect. 103, *post*, and 10 & 11 Vict. c. 17, s. 74.

(*i*) See sect. 54, *ante*.

[XCV. \*\* Provided always, and be it enacted (*h*), that when the net annual value of any premises liable to assessment under this Act does not exceed the sum of *ten pounds*, or whenever any premises liable to such assessment are let to weekly or monthly tenants, or in separate apartments, and the rents become payable or are collected at any shorter period than quarterly, the local board of health may from time to time, if they shall think fit, compound with the owner of such premises for the payment of all or any of the rates to be made under this Act, upon such reduced estimate of the net annual value, not being less than two-thirds or more than four-fifths of the net annual value at which the premises are then assessed, as the said local board shall deem to be reasonable; and any owner who shall refuse to enter into such composition shall be rated to and pay the rates assessed upon such premises in respect of which the composition is offered (*l*); and if at any time the amount of composition, or any rate to which an owner is assessed as last aforesaid, be due and unpaid, the same may be levied by distress and sale of the goods and chattels of the owner in default, wheresoever they may be found, or of the occupier or occupiers of the premises, in the same manner as herein-after provided with respect to the recovery of rates made under this Act:

Composition for and recovery of rates upon tenements under the annual value of ten pounds, &c.

Provided always, that no such owner shall be assessed in respect of any increased rent which may become payable to him by reason of his so com-

(*k*) Repealed by 21 & 22 Vict. c. 98, s. 55, which provides, however, for composition for rates.

(*l*) This was a singular provision. If the owner refused the composition offered he was compelled to pay in full. The new provisions are more reasonable.

pounding for or becoming liable to any rates as aforesaid :

Provided also, that the occupier or occupiers of any such premises as last aforesaid shall be liable to distress and sale of his or their goods and chattels for the nonpayment of such amount of composition or rates as may become due in respect of the premises occupied by him or them during his or their tenancy, but shall never be liable to pay any greater sum than the amount of the rent actually due from him or them for such premises ;

And he or they may deduct any amount paid by him or them from the rent due, or from time to time becoming due, from him or them, unless there be an agreement to the contrary ;

And the receipt for the amount paid by him or them shall to that extent be, as against the owner in default, a sufficient discharge for rent. \*\*]

XCVI. Provided also, and be it enacted, that it shall be lawful for the local board of health to reduce or remit the payment of any rate on account of the poverty of any person liable to the payment thereof (a).

XCVII. Provided also, and be it enacted, that nothing in this Act shall alter, interfere with, or affect any lease, contract, or agreement which shall have been made or entered into between landlord and tenant before this Act is applied to the district in which the premises are situate in respect of which the lease, contract, or agreement was made (b).

(a) Such remission would not deprive the person of a parliamentary franchise on the ground of receiving parochial relief.

(b) See the case of *Sweet, app.*, and *Seager, resp.*, 2 C. B. (N. S.), 119, as to the construction of a covenant in a lease to pay future rates and taxes.

Power to reduce or remit rates on account of poverty.

Act not to affect existing agreements between landlord and tenant.

XCVIII. And be it enacted, that the local board of health before proceeding to make any general [or special (c)] district rate or private improvement rate under this Act, shall cause an estimate (d) to be prepared of the money required for the purposes (e) in respect of which the rate is to be made, showing

Estimate to be prepared before making rates.

(c) See note (d) on sect. 86, ante.

(d) This estimate appears to be a necessary precedent condition; indeed the estimate is stated by the Court of Queen's Bench to be analogous to the title to a poor rate, and if it contain any illegal purposes it is bad. *Reg. v. Worksop Local Board of Health*, 21 J. P. 451. Hence objection can be taken to the validity of the rate by a ratepayer on appeal against the same if the purposes are not set forth in the estimate.

(e) In considering what are legal or illegal purposes, it is to be remarked that the charges of an accountant employed to investigate the accounts of a local board were held by the justices at quarter sessions to be illegal, being under the circumstances of the case in their judgment unnecessary, and the Court of Queen's Bench held that this was a question for the sessions, and declined to reverse their decision. *Reg. v. Worksop Local Board of Health*, 21 J. P. 451.

Again, it was held by the same court that a local board could not make a district rate to pay the costs of defending certain quo warranto informations brought against individual members of the board, which did not impeach the validity of the whole board, nor the expenses of opposing a local bill brought into parliament by a gaslight company in their district for an increase of powers. But the expenses of opposing proceedings in chancery against the board for certain works which they had caused to be executed were held to be a legal charge, although the suit was not ended when payment was proposed to be made. *Reg. v. Marris*, 21 J. P. 581; 28 L. T. 266. It was also decided that as the rate was made for some items which were illegal, it was altogether void.

As to applications to parliament by local boards, or the opposition thereto at the costs of the rates, see *A. G. v. Andrews*, 2 M. & G. 225, 13 Jur. 669; *Bright v. North*, 2 Ph. 216; *A. G. v. Wigan*, 23 L. J. R., Ch. 429; *Reg. v. Commissioners of Norfolk Sewers*, 15 Q. B. 549; *A. G. v. Eastlake*, 17 Jur. 301, in all of which the question has been whether the boards have proceeded beyond the reasonable application of the powers intrusted to them.

In regard to what is a proceeding by a public board *ultra vires*, it will be well to refer to the *East Anglian Railway*

the several sums required for each of such purposes, the rateable value of the property assessable, and the amount of rate which for those purposes it is necessary to make upon each pound of such value;

And the estimate so made shall forthwith, after being approved of by the said local board, be *entered in the rate book (e)*, and be kept at their office, open to public inspection during office hours thereat.

XCIX. And be it enacted, that public notice of intention to make any general [*or special*] district rate, and of the time at which it is intended to make the same, and of the place where a statement of the proposed rate (*f*) is deposited for inspection,

*Company v. The Eastern Counties Railway Company*, 11 C. B. 775, and particularly to the late case of *Bateman v. The Mayor, &c. of Ashton-under-Lyne*, 3 H. & N. 323, where it was held that a waterworks company having certain powers for the supply of water to a district might lawfully apply to parliament for the extension of those powers, and consequently contract with an engineer for the supply of plans and estimates essential to such application, though Bramwell, B., differed from the rest of the court in this judgment. See commentaries upon this decision in *The Law Times* for September and October, 1858.

It seems to be established that where public boards take proceedings in parliament to protect the property under their control and management, the expenses which they incur are chargeable upon the funds under their disposal; but if they originate parliamentary measures for the purpose of increasing their property or extending their powers, they must rely upon obtaining express sanction from the legislature for charging the costs upon any of their funds. In cases where the local board do take any such proceedings, they should previously obtain the consent of the ratepayers. Per Lord Campbell, C. J., in *Reg. v. Marris*, 28 L. T. 266.

(*e*) The proper mode of carrying this regulation into effect appears to be the entering the estimate in a page of the book preceding the rate. The local board must be careful, besides this estimate, to cause the rate to have a good title, otherwise it will be void. *Reg. v. Byrom*, 12 Q. B. 326; *Moulton Overseers v. Eastern Counties Railway*, 5 E. & B. 974.

(*f*) It is by no means clear what is meant by this state-

Notice of  
rate.

shall be given by the local board of health in the week immediately before the day on which the rate is intended to be made, and *at least (g)* seven days previously thereto (*h*);

But in case of proceedings to levy or recover any rate it shall not be necessary to prove that such notice was given (*i*).

C. And be it enacted, that any person interested in or assessed to any rate made under this Act may inspect the same (*k*), and any estimate made previously thereto, and may take copies of or extracts therefrom, without fee or reward;

Rates to be  
open to in-  
spection.

And whosoever, having the custody of such estimate or rate, refuses to allow or does not permit such inspection, or such copies or extracts to be taken, shall for every such offence be liable to a penalty (*l*) not exceeding *five pounds*.

CL. And be it enacted, that whenever the name

Description  
of owner or

ment; probably it is the draft of the proposed rate, which being open to inspection, may be corrected, if erroneous, before the same is signed.

(*g*) These words are construed by the courts to signify that both days are to be exclusive. *R. v. Justices of Shropshire*, 8 A. & E. 173.

(*h*) It is not apparent for what object this notice is to be given, as no ratepayer can interfere to prevent the rate from being made.

(*i*) But if it be shown that the notice was *not* given, the question will arise whether this notice was a necessary condition precedent, or the clause directory only. It will be seen hereafter that the Court of Queen's Bench has determined that the publication of the rate according to sect. 103 is not a condition precedent, and there are no words of avoidance here.

(*k*) That is, the rate; and thus it appears that this is a different inspection from that referred to in the previous section. The estimate is that which is required by sect. 98.

(*l*) As to the recovery of the penalty, see sect. 129, *post*.

occupier in rates, if his name be unknown.

of any owner or occupier liable to be rated under this Act is not known to the local board of health, it shall be sufficient to assess and designate him in the rate as "the owner" or "the occupier" of the premises in respect of which the assessment is made, without further description (a).

Rates may be amended.

CII. And be it enacted, that the local board of health may from time to time amend any rate made in pursuance of this Act, by inserting therein the name of any person claiming and entitled to have his name inserted, or by inserting the name of any person who ought to have been assessed, or by striking out the name of any person who ought not to have been assessed, or by raising or reducing the sum at which any person has been assessed, if it appear to the said local board that he has been underrated or overrated, or by making any other alteration which will make the rate conformable to the provisions of this Act;

And no such amendment shall be held to avoid the rate:

Provided always, that any person who may feel himself aggrieved by any such amendment shall have the same right of appeal (b) therefrom as he would have had if the matter of amendment had appeared

(a) Notwithstanding the facility which is thus given to the local board of health, it is, nevertheless, most desirable that the utmost pains should be taken to ascertain the respective names of the owner or occupier. Much practical difficulty attends all proceedings where the name of the party proceeded against is not stated; moreover, if it can be shown that the name was known to the local board of health, it may perhaps be held that the use of the term *owner or occupier* is not justified. Again, it may be well questioned whether, although these words be used, the assessment will be available against an *owner or occupier* who may succeed to the premises.

(b) See sect. 135, *post*. Doubtless a ratepayer may appeal against the reduction of another person's rate if he find it out.

on the rate originally made, and with respect to him the amended rate shall be considered to have been made at the time when he first received notice of the amendment

And in the case of any person the amount of whose rate is increased by the amendment, or whose name is thereby newly inserted as aforesaid, the rate shall not be payable by him until *seven* days after *such* notice shall have been given (c) to him.

CIII. And be it enacted, that all rates made or collected under the authority of this Act shall be published *in the same manner as* poor rates (d), and shall commence and be payable at such time or times, and shall be made in such manner and form, and be collected by such persons, and either together or separately, or with *any other rate* (e) or tax, as the local board of health shall from time to time appoint;

And if any person assessed to any such rate fail (f) to pay the same when due, and for the space of *fourteen* days after the same shall have

Rates made under this Act to be published as poor rates, and collected as the local board shall appoint.

Justices may summon persons for nonpayment, and in de-

(c) As to the service of notice, see sect. 150, *post*, and 21 & 22 Vict. c. 98, s. 61, as to its authentication; but it seems that the usual demand note would be sufficient notice within this section.

(d) The 21 & 22 Vict. c. 98, s. 54, (2,) dispenses with publication in cases of private improvement rates. But the Court of Queen's Bench have decided that the rates made under the above section are not void if not published in the same manner as the poor rate, there being no words of avoidance in this Act as in 17 Geo. 2, c. 3. *Lefevre v. Miller*, 3 Jur. (N. S.), 1255; 26 L. J., M. C. 175.

(e) This must mean some other rate or tax over which the local board of health has a control. It often proves inconvenient to have several rates and taxes collected together, and therefore the authority which levies a rate ought to have exclusive power of regulating its collection. It cannot be presumed that the legislature intended that such power should be interfered with by the local board.

(f) The language used in the warrant set out in the schedule is *hath refused*.

fault may  
recover by  
distress.

been lawfully demanded (*e*) in writing, any justice may (*f*) and he is hereby empowered to summon the defaulter to appear before him, or any other justice, at a time and place to be mentioned in the summons, to show cause why the rate in arrear should not be paid ;

And in case the defaulter fail to appear according to the exigency of the summons, or no sufficient cause for nonpayment be shown, the justice may (*f*), by warrant under his hand and seal, cause the same (*g*) to be levied by distress of the goods and chattels of the defaulter :

Provided always, that if no distress sufficient to satisfy the amount can be found within the jurisdiction of the justice by whom such warrant is granted, and it so appear upon oath before a justice of any other county or jurisdiction in which any goods or chattels of the defaulter may be, the last-mentioned justice shall endorse his signature upon the said warrant, and thereupon the amount to be levied, or so much thereof as may be unsatisfied, shall be levied off the last-mentioned goods and chattels, in the same manner as if the defaulter had been assessed in the last-mentioned county or jurisdiction (*h*) ;

And if any person quit or be about to quit any premises without payment of any rate then due

(*e*) The 21 & 22 Vict. c. 98, s. 54, (5,) and s. 75, provide for the notice of demand of the rate.

(*f*) It is presumed that this is not a discretionary power conferred upon the justice, but that he must act ministerially, and the Court of Queen's Bench have decided that the justices cannot, when required to enforce payment of this rate, entertain any question as to the legal election of the members of the board who made the rate. *Reg. v. Justices of Derbyshire*, 20 J. P. 772.

(*g*) The 21 & 22 Vict. c. 98, s. 54, extends this to the costs of the levy.

(*h*) This is analogous to the provision in 54 Geo. 3, c. 170, s. 12, relating to the poor rate.

from him in respect of such premises under this Act, and refuse to pay the same after lawful demand thereof in writing (*i*), any justice having jurisdiction where such person resides or his goods are found may and he is hereby empowered to summon him to appear, at a time and place to be mentioned in the summons, to show cause why the rate so due should not be paid ;

And in case the defaulter fail to appear, or no sufficient cause for nonpayment be shown, the justice may, by warrant under his hand and seal, cause the sum to be levied by distress of the goods and chattels of the defaulter (*j*).

CIV. And be it enacted, that warrants of distress for the recovery of any rate payable under the authority of this Act may be in the form contained in the schedule (D.) (*k*) annexed to this Act, or to the like effect ;

And any constable authorized by any such warrant who shall (*l*) neglect or refuse to make distress or sale (*m*), pursuant to the same, after being required

Form of distress warrant.

Penalty upon constables refusing to levy.

(*i*) See note (*e*), *ante*. It is to be noticed that the words apply to *refusal*, which is active, and do not extend to *neglect*, but in many cases the neglect may be considered equivalent to refusal.

(*j*) If the poor rate cannot be obtained by distress warrant, the defaulter may be committed to prison for three months, under the 43 Eliz. c. 2, s. 11, and 13 & 14 Vict. c. 45, but no power of imprisonment is given for default of distress in the case of these rates, so that the only means of recovering them is by process against the personal property of the ratepayer.

(*k*) See 21 & 22 Vict. c. 98, s. 54, *post*.

(*l*) It is not necessary to prove *wilful* neglect. *King v. Burrell*, 12 A. & E. 460 ; 9 L. J., Q. B. 357.

(*m*) The constable does not usually sell goods distrained ; that is done by the collector or person levying the rate, through a sworn broker. However, in the schedule, it will be seen that the warrant is directed to the collector *and* constable.

so to do by a collector of the district in which the rate in arrear was made, shall be liable to a penalty not exceeding *five pounds* (n).

Quota of rates to be paid by the Universities.

CV. Provided always, and be it enacted (o), that nothing in this Act shall be deemed to alter or interfere with the liability of the Universities of Oxford and Cambridge respectively to contribute in the proportion of and manner specified in any local Act under which the Oxford and Cambridge commissioners respectively now act towards the expenses of paving and pitching, repairing, lighting, and cleansing, under the powers of any such local Act, the several streets, lanes, ways, alleys, passages, and places within the jurisdiction of such commissioners respectively;

And in case any difference shall arise between either of the said Universities and the local board of health with respect to the proportions and manner in which the University shall contribute towards any expenses under this Act, and to which the University is not liable under any such local Act, the same shall be settled *by the general board of health* (p):

Provided also, that all rates, contributions, and sums of money which may become payable under this Act by the said Universities respectively, and their respective halls and colleges, may be recovered from such Universities, halls, and colleges, in the same manner as in all respects rates, contributions, and sums of money may now be recovered from them by virtue of any such local Act.

(n) See sect. 129, *post*, as to the recovery of this penalty.

(o) See 21 & 22 Vict. c. 98, s. 82, as to the local boards to be constituted at Oxford and Cambridge, wherein the authorities of the Universities, and of the city and town respectively, are to be combined.

(p) This provision now fails.

CVI. And be it enacted, that the production of the books purporting to contain any rate or assessment made under this Act shall alone, and without any other evidence whatsoever, be received as *prima facie* evidence of the making and validity of the rates mentioned therein (q). Evidence of rates.

### *Mortgage of Rates.*

[CVII. \* \* And be it enacted (r), that the local board of health may, for the purpose of defraying any costs, charges, and expenses incurred or to be incurred by them in the execution of this Act, borrow and take up at interest, on the credit of the rates authorized to be made or collected under this Act, any sums of money necessary for defraying any such costs, charges, and expenses; and for the purpose of securing the repayment of any sums so borrowed, together with such interest as aforesaid, the said local board may mortgage and assign over to the persons by or on behalf of whom such sums are advanced the respective rates upon the credit of which the sums are borrowed; Rates may be mortgaged.

And the respective mortgagees shall be entitled to a proportion of the rates comprised in their respective mortgages mentioned to have been advanced (s);

(q) Sect. 137, *post*, provides that no rate shall be vacated for want of form, but if the rate show on the face of it that it is defective in substance (as if there be no estimate, or if it appear to be made for illegal purposes), it is presumed that objection may nevertheless be taken to it with success. Hence it is incumbent upon local boards to prepare their rates with proper attention and care. The text only makes the production *prima facie* evidence.

(r) Repealed by 21 & 22 Vict. c. 98, s. 57, for the future, though the provision is re-enacted with a few slight alterations. Mortgages made under this Act will, however, continue in force. See ss. 9 and 54 of that Act.

(s) See the form of security in the schedule (B). These

No priority  
amongst  
mortgagees.

And each mortgagee shall be repaid the sums so advanced, with interest, without any preference over the others of them by reason of any priority of advance or the date of his mortgage :

Provided always, that the money borrowed under the authority of this Act shall be borrowed only for works of a permanent nature, and shall not at any time exceed in the whole the assessable value for one year of the premises assessable under this Act within the district or part of the district for or in respect of which such money shall be borrowed, and shall (as far as practicable) be borrowed upon the credit of the respective rates applicable to the works, matters, or things in respect of which the money is required ;

And the money borrowed for the purpose of defraying any costs, charges, or expenses incurred or to be incurred in respect of part of a district only shall be charged (as far as practicable) upon the credit of any separate rates made or to be made for the purposes of such part ;

And in case any such cost, charges, or expenses shall apply to or be incurred in respect of two or more of such parts, the money borrowed in respect of the same shall be equitably apportioned by the local board upon any rates made or to be made for the purposes of such parts respectively (*d*). \*\*]

Commission-  
ers of public  
works may  
make ad-  
vances to  
local boards  
under 5 & 6  
Vict. c. 9.

CVIII. And be it enacted, that the commissioners acting in the execution of an Act passed in the second session of the fifth year of Her Majesty's reign, intituled "An Act to authorize the Advance of

provisions in reference to the repayment have not been re-enacted in the new Act.

(*d*) See sect. 89, *ante*, p. 148.

Money out of the Consolidated Fund to a limited Amount for carrying on Public Works and Fisheries and Employment of the Poor, and to amend the Acts authorizing the Issue of Exchequer Bills for the like Purposes," and in the execution of any of the Acts recited in that Act, or of any Act or Acts for amending or continuing the same Acts or any of them, may, if they shall think fit, make advances to the local board of health of any district, for the purposes of this Act, upon the security of the rates to be levied by such board under this Act, and without requiring any further or other security than a mortgage of such rates.

CIX. And be it enacted, that if the local board of health can at any time borrow at a lower rate of interest than that secured by any mortgage previously made by them, and then outstanding and in force, they may, if they shall think fit, so borrow accordingly, in order, with the consent of the mortgagee, to pay off and discharge any of the securities bearing a higher rate of interest, and may charge the rates which they may be authorized to mortgage under this Act with payment of the sum so borrowed, together with the interest thereon, in such manner and subject to such regulations as are herein contained with respect to other monies borrowed upon mortgage.

Money to be  
borrowed at  
lower rates of  
interest, to  
pay off secu-  
rities bearing  
a higher rate.

CX. And be it enacted, that if at the time appointed by any mortgage deed for payment of the principal money secured thereby the local board of health are unable to pay off the same, they may, if they shall think fit, borrow such sum of money as may be necessary for the purpose of paying off the

Power to  
borrow mo-  
ney to pay  
off former  
mortgages.

whole or any part of the said principal monies, and may secure the repayment of the same, and the interest to be paid thereon, in the same manner in all respects as in the case of monies borrowed for defraying costs, charges, and expenses incurred by the local board of health in the execution of this Act (a).

Form of  
Mortgage.

CXI. And be it enacted, that every mortgage authorized to be made under this Act shall be by deed (b), truly stating the date, consideration, and the time and place of payment (c), and shall (in the case of a non-corporate district) be sealed with the seal of the local board of health by or on the part of whom the same is executed, and be signed by five or more members thereof, or (in the case of a corporate district) be sealed with the common seal, and may be made according to the form contained in the schedule (B.) to this Act annexed, or to the like effect (d);

Register of  
mortgages.

And there shall be kept at the office of the local board of health a register of the mortgages upon each rate, and within fourteen days after the date of any mortgage an entry shall be made in the register of the number and date thereof, and of the names

(a) This clause favours the propensity of all public boards to keep in debt. It will require very great forbearance to enable a public board to pass by this tempting authority.

(b) Which is exempt from stamp duty. See sect. 151, *post*. Though, as appears from the next section the transfer of the mortgage will not be exempt, such transfer being of no benefit to the public.

(c) The repayment is not, as in the case of loans authorized by the Poor Law Act, required to be made by instalments, but power is now given by 21 & 22 Vict. c. 98, s. 57, to make it so. Sect. 113, *post*, provided for the redemption of the debt by the means of a sinking fund, and this is still preserved in the new Act.

(d) The schedule to 21 & 22 Vict. c. 98, contains a form of rentcharge to be granted by the local board.

and description of the parties thereto, as stated in the deed (e);

And every such register shall be open to public inspection during office hours at the said office, without fee or reward;

And any clerk or other person having the custody of the same, refusing to allow such inspection, shall be liable to a penalty not exceeding *five pounds* (f).

CXII. And be it enacted, that any mortgagee or other person entitled to any such mortgage may transfer his estate and interest therein to any other person by deed *duly stamped*, truly stating its date and the consideration for the transfer;

Transfer of  
mortgages.

And such transfers may be according to the form contained in the schedule (C.) to this Act annexed, or to the like effect;

Register of  
transfers.

And there shall be kept at the office of the local board of health a register of the transfers of mortgage charged upon each kind of rate, and within thirty days after the date of such deed of transfer, if executed within the United Kingdom, or within thirty days after its arrival in the United Kingdom, if executed elsewhere, the same shall (g) be produced to the clerk, who shall, upon payment of the sum of five shillings, cause an entry to be made in such register of its date, and of the names and description of the parties thereto, as stated in the transfer;

(e) The total omission to register, or any delay in the registration, will not invalidate the creditor's claim, though until he had registered probably he would not be able to compel payment of principal or interest.

(f) See sect. 129, *post*, as to the recovery of this penalty.

(g) This clause does not prohibit the registration after this period, nor invalidate the transfer if not registered within the time, though previous to the registration the local board are not bound to recognize the transfer.

And upon any transfer being *so* registered the transferee, his executors, administrators, or assigns, shall be entitled to the full benefit of the original mortgage, and the principal and interest secured thereby;

And every such transferee may in like manner transfer his estate and interest in any such mortgage;

And no person, except the person to whom the same shall have been last transferred, his executors, administrators, or assigns, shall be entitled to release or discharge any such mortgage or any money secured thereby.

[CXIII. \*\* And be it enacted (a), that the interest secured by any mortgage authorized to be made under this Act shall, unless otherwise provided, be paid half-yearly;

And in order to pay off any monies borrowed and secured by any such mortgage the local board of health shall in every year, until the same be paid off, appropriate and set apart, as a sinking fund, such sum as, together with the interest from time to time to accrue thereon, will in the period of *thirty years* amount to a sum sufficient to repay the monies borrowed and secured by any such mortgage, and shall from time to time cause such sinking fund, and the interest thereon, to be invested in the purchase of exchequer bills or other government securities, and to be increased by accumulation in the way of compound interest or otherwise;

And whenever the said local board are enabled to pay off one or more of the mortgages charged upon the same property or rate, and are not able to

(a) Repealed by 21 & 22 Vict. c. 98, s. 57, though the portion relating to the sinking fund is re-enacted.

Interest to be paid half yearly.

Mortgage debts to be paid off by means of sinking fund.

pay off the whole of the mortgages so charged, they shall, in default of arrangement between the local board of health and the mortgagees, decide by lot the order in which the same shall be paid off. \*\*]

CXIV. And be it enacted, that if at the expiration of six months from the time when any principal money or interest has become due upon any mortgage of rates made under this Act, and after demand in writing, the same be not paid, the mortgagee or other person entitled thereto may, without prejudice to any other mode of recovery, apply for the appointment of a receiver to *two justices* (b), who are hereby empowered, *after hearing the parties*, to appoint in writing under their hands and seals some person to *collect and receive* the whole or a competent part of the rates liable to the payment of the principal or interest in respect of which the application is made, until such principal or interest, or both, as the case may be, together with the costs of the application and the costs of collection, are fully paid;

Receiver may be appointed in certain cases.

And upon such appointment being made all such rates, or such competent part thereof as aforesaid, shall be paid (c) to the person appointed, and when so paid shall be so much money received by or to the use of the mortgagee or mortgagees of such rates, and shall be rateably apportioned between them:

Provided always, that no such application shall be entertained unless the sum or sums due and owing to the applicant amount to *one thousand pounds*, or unless a joint application shall be made by two or more mortgagees or other persons to

(b) See sect. 2, ante.

(c) The practical effect of this would be the payment by the collectors of the rates which they collect to the receiver.

whom there may be due, after such lapse of time and demand as last aforesaid, monies collectively amounting to that sum (*d*).

## BYELAWS.

CXV. And be it enacted, that all byelaws (*e*) made by the local board of health under and for the purposes of this Act shall be in writing under their seal (*f*), and the signature of any five or more of their number, or (in the case of a corporate district) under the common seal;

And the said local board may by any such byelaws impose upon offenders against the same such reasonable penalties as they shall think fit, not exceeding the sum of *five* pounds for each offence, and in the case of a continuing offence a further penalty not exceeding the sum of *forty* shillings for each day after written notice (*g*) of the offence from the said local board (*h*);

And the said local board may alter or repeal any such byelaws by any subsequent byelaws, sealed and signed or (in case of a corporate district) sealed, as last aforesaid :

(*d*) See the extension of the power of appointing a receiver, in the case where there shall be failure to elect or a lapse of the local board of health, in 21 & 22 Vict. c. 98, s. 10; in such case the receiver may *make* as well as receive and collect the rate.

(*e*) The board not being incorporated have no general power to make byelaws independently of the provisions of the Act. *Q. v. Mary Wood*, 5 E. & B. 49.

(*f*) As to this seal see sect. 35, *ante*, p. 81. It will be found that the making of byelaws are authorized by ss. 34, 37, 55, 62, 64, 66, and 81 of this Act, and by ss. 32, (3.) (4), 34, and 50, (2.) of 21 & 22 Vict. c. 98, and by several sections of the incorporated Acts.

(*g*) See sect. 150, *post*, as to the service, and 21 & 22 Vict. c. 98, s. 61, as to the authentication of notice.

(*h*) The recovery of the penalty for the breach of the byelaw is provided for in sect. 129, *post*.

Provided always, that all such byelaws imposing any penalty shall be so framed as to allow of the recovery of any sum less than the full amount of the penalty :

Provided also, that no such byelaws shall be repugnant to the laws of England or to the provisions of this Act, and the same shall not be of any force or effect unless and until the same be submitted to and confirmed by one of Her Majesty's principal secretaries of state, who is hereby empowered to allow or disallow the same, as he may think proper (*i*) :

Provided also, that no such byelaws shall be confirmed unless notice of intention to apply for confirmation of the same shall have been given in one or more of the public newspapers usually circulated within the district to which such byelaws relate one month at least before the making of such application (*k*);

And for one month at least before any such application a copy of the proposed byelaws shall be kept at the office of the local board of health, and be open during office hours thereat to the inspection of the ratepayers (*l*) of the district to which such byelaws relate, without fee or reward (*m*);

(*i*) The confirmation by the secretary of state, however, gives no validity to a byelaw not warranted by the provisions of the Act. *Q. v. Mary Wood*, 5 E. & B. 49.

(*k*) These provisions will enable any person to apply to the secretary of state with the view of preventing the confirmation of a byelaw.

(*l*) It is presumed that any person who is actually rated to the current rate would be a ratepayer within the meaning of this clause, and that the definition given in sect. 20 is not applicable. But whether persons occupying rateable property not actually rated would be within the clause is doubtful.

(*m*) The omission of this regulation would not as it seems invalidate the byelaws.

And the clerk shall furnish every such ratepayer who shall apply for the same with a copy thereof or of any part thereof, on payment of *sixpence* for every *one hundred* words contained in such copy.

Byelaws to be printed, &c.

CXVI. And be it enacted, that all *byelaws* made by the local board of health in pursuance of this Act shall be printed, and hung up in the office of the said local board ;

And copies thereof shall be delivered to any ratepayer (*m*) of the district to which such byelaws relate, upon his application for the same.

*Powers transferred, &c.*

Local board to be surveyors of highways ;

CXVII. And be it enacted, that the local board of health within the limits of their district shall, exclusively of any other person whatsoever, execute the office of and be *surveyor of highways*, and have all such powers, authorities, duties, and liabilities as any surveyor of highways in England is now or may hereafter be invested with or be liable to by virtue of his office by the laws in force for the time being, except in so far as such powers, duties, or authorities are or may be inconsistent with the provisions of this Act (*n*) ;

And the inhabitants of any district shall not in respect of any property situate therein be liable to

(*m*) See note (*l*) *ante*, p. 171. It will be observed that for copies of the proposed byelaws a payment is to be paid, but not so in regard to the byelaws when made.

(*n*) This section left the power of the local board to make highway rates or to provide for the repairs of the highways out of the general district rate uncertain. Some local boards levied highway rates. But several cases were brought before the Courts as noticed in note (*i*) on sect. 87, *ante*, by which it was ultimately determined that such highway rates were not valid. The 17 & 18 Vict. c. 69 (dated 31st July, 1854) confirmed all highway rates made prior to that Act by

the payment of highway rate or other payment, not being a toll, in respect of making or repairing roads or highways within any parish, township, or place, or part of any parish, township, or place, situate beyond the limits of such district (*o*) :

Provided always, that the several persons who at the time when this Act is applied to any district are surveyors of highways within the same district may recover any highway rate made in respect of the said district, and then remaining unpaid, in the same manner as if this Act had not been passed ;

but existing surveyors to recover rates in arrear.

And the money so recovered shall be applied, in the first place, in reimbursing themselves any expenses incurred by them as such surveyors, and in discharging any debts legally owing by them on account of the highways within their jurisdiction ;

And the surplus (if any) shall be paid by them to the treasurer, and carried (*p*) to the district fund account mentioned in this Act :

Provided also, that neither the allowance by justices, nor the signature by the local board of health, shall be necessary in the case of any rate made by the local board of health under this Act (*q*).

any local board of health, and indemnified the persons acting under the authority of such board in the enforcing of them. But the whole question is set at rest for the future by the provisions now contained in 21 & 22 Vict. c. 98, s. 37, which does not, however, expressly repeal this section, though it makes additional provisions.

(*o*) See however the provision in 21 & 22 Vict. c. 98, s. 37, No. (4), as to this.

(*p*) By 21 & 22 Vict. c. 98, s. 37, No. (6), it is to be carried to another account. It will be seen that sect. 87 above, p. 142, provides for the application of monies carried to the district fund account.

(*q*) The 21 & 22 Vict. c. 98, s. 37, No. (5), contains a similar proviso in regard to the highway rate to be made by the local board hereafter. The local board do not by this section

Existing liabilities to make sewers, &c., not to be discharged.

CXVIII. And be it enacted, that, notwithstanding the application of this Act to any district, the liability (b) of any person (c) whomsoever to defray or contribute towards the expense of making, completing, altering, amending, or maintaining any sewer, or any walls or works for protecting the land against the force or encroachments of the sea, or of paving or flagging or putting in order any street or part thereof within the district, shall, if incurred previously to the time when this Act is so applied, continue, and the same may be enforced, as if this Act had not been passed, and the rates to be levied under this Act shall be made only for purposes to which such liability does not extend.

Mortgage of rates to be made only with approval of general board.

[CXIX. \*\* And be it enacted (d), that it shall not be lawful for the local board of health to borrow or take up at interest any sum or sums of money upon the credit of any rates authorized to be made or collected under this Act, without the previous consent of the general board of health.\*\*]

Parties aggrieved by

CXX. And be it enacted, that if in any case in

obtain any power over turnpike roads. *Swinburn v. Robinson*, 32 L. T. 123.

(b) This liability exists either *ratione tenuræ*, or under the provision of some local Act of parliament. The first class contains the cases where lands are held upon condition that the holder shall keep some public work, such as sea walls or great sewers, in repair. The second class is of great variety, and depends necessarily upon the terms of the particular statute which usually, for a special benefit to the party, has imposed the obligation of repairing and sustaining some public work of the nature above adverted to. Very common instances will be found in awards under inclosure Acts, where the commissioner has imposed the obligation of keeping drains passing by, or through, or under the allotment, in repair upon the allottee.

(c) This word includes corporations. See sect. 2.

(d) Repealed by 21 & 22 Vict. c. 98, s. 57, for the future.

which the local board are empowered to recover any expenses incurred by them in a summary manner, or to declare such expenses to be private improvement expenses, any person shall deem himself to be aggrieved by the decision of the said local board thereupon, he may, within seven days after notice (e) of such decision, address a memorial to the said general board (f), stating the grounds of his complaint;

proceedings of local board as to recovery of certain expenses may appeal to the general board.

And the said general board may make such order in the matter as to them may seem equitable, and the order so made shall be binding and conclusive upon the said local board (e);

And if the said local board shall have proceeded to recover such expenses in a summary manner, the said general board may, if they shall think fit, direct the said local board to pay to the person so proceeded against such sum as they may consider to be a just compensation for the loss, damage, or grievance thereby sustained by him.

#### General Superintendence.

CXXI. And be it enacted, that during any inquiry by a superintending inspector under this Act (g) he may and he is hereby empowered to summon before him any persons whomsoever, and to

Superintending inspectors may summon witnesses, call for plans rates, &c.

(e) It is not provided that it shall be conclusive upon the memorialist, who perhaps may still resort to his remedy of appeal under sect. 135, *post*, if there be sufficient time before the sessions. Indeed, it seems that the object of the clause is to grant relief to a person where he has no legal remedy, as the board are to make such order as may be equitable.

(f) Now to one of the secretaries of state: see 21 & 22 Vict. c. 98, s. 65: who may make the order under this section. As to the obligation of his order, and the enforcing thereof, see sect. 80 of that statute.

(g) These powers are conferred upon the persons employed by the secretary of state under 21 & 22 Vict. c. 98, by s. 80.

examine them upon oath or otherwise touching any matter relating to the purposes of the inquiry, and he may by any such summons require any parochial officer, or any officer of or acting under any corporation, guardians, or directors of the poor, and any commissioner, trustee, officer, or person acting under any local Act of parliament in force within the district or place to which any such inquiry may relate, to produce before him any surveys, plans, sections, rate books, or other like documents which may by reason of their office be in their custody or control touching any matter relating to the purposes of such inquiry, and such inspector may examine, inspect, or take copies of any such books, surveys, plans, sections, and documents, or any of them, or part thereof;

And whosoever wilfully disobeys any such summons, or prevents any such inspector from examining, inspecting, or taking copies as last aforesaid, or refuses to answer any question put to him by such inspector for the purposes of the said inquiry, shall be liable to a penalty not exceeding *five pounds* (a):

Provided always, that no person shall be required to attend in obedience to any such summons unless the reasonable charges of his attendance shall have been paid (b) or tendered to him;

And no person shall be required in any case, in obedience to any such summons, to travel more than *ten miles* from his place of abode.

(a) See sect. 129 as to the recovery of this penalty.

(b) These charges must be paid by the person serving the summons, and that person will receive the amount from his employer. Such employer may be the superintending inspector, or some other person who has applied to the inspector for the summons.

[CXXII. \*\* And be it enacted (c), that the accounts of the receipts and expenditure of the local board of health shall be audited and examined once in every year at the least, at such time or times as shall be appointed by such local board, in case of a corporate district, by the auditors of the corporate borough, whereof the whole or part is within such district,

As to audit  
of accounts.

And in case of a district exclusively consisting of the whole or part of two or more corporate boroughs, or of one or more of such boroughs, and also of part of any such borough or boroughs, by such two of the auditors for the time being of the corporate boroughs respectively whereof the whole or part is within such district as shall from time to time be appointed by the local board of health,

And in case of any other district as soon as can be after the 25th day of March in every year, by the auditor of accounts relating to the relief of the poor for the district for the audit of such accounts, or for the parish or union in which such district under this Act is comprised, or if any district under this Act be partly situate in two or more parishes, unions, or districts for the audit of accounts, by such one of the auditors for the time being of the parishes, unions, or districts for the audit of accounts (whereof the whole or part is within such district under this Act) as shall from time to time be appointed by the local board of health;

And for the purposes of any audit and examination of accounts under this Act every such auditors or auditor may, by summons in writing, require the production before him of all books, deeds, con-

Power to  
auditor to  
require pro-  
duction of  
books, &c.

(c) Repealed by 21 & 22 Vict. c. 98, s. 60, though the substance of this clause is re-enacted.

tracts, accounts, vouchers, and all other documents and papers which they or he may deem necessary, and may require any person holding or accountable for any such books, deeds, contracts, accounts, vouchers, documents, or papers to appear before them or him at any such audit and examination or adjournment thereof, and to make and sign a declaration with respect to the same;

And if any such person neglect or refuse so to do, or to produce any such books, deeds, contracts, accounts, vouchers, documents, or papers, or to make or sign such declaration, he shall be liable for every neglect or refusal to a penalty of *forty shillings*, and if he falsely or corruptly make or sign any such declaration, knowing the same to be untrue in any material particular, he shall be liable to the penalties inflicted upon persons guilty of wilful and corrupt perjury;

And all accounts certified by the auditors or auditor acting under this Act shall be final and conclusive to all intents and purposes (a);

And such auditors or auditor shall in respect of each audit be paid by the local board of health, out of the general district rates levied under this Act, such reasonable remuneration as they shall from time to time by order in writing determine and appoint:

Provided always, that before each audit and examination of accounts under this Act the clerk shall give *ten* (b) days' notice of the time and place at which the same will be made, by advertisement in some one or more of the public newspapers usually

(a) This is not continued in the new Act, but on the contrary, an appeal is given against the auditor's decision.

(b) This is now by the new Act *twenty*.

circulated within the district for which the audit and examination will be made;

And a copy of the accounts to be audited and examined shall be deposited in the office of the local board of health, and be open, during office hours thereat, to the inspection of all persons interested, for seven days before the audit and examination;

Accounts previous to audit to be deposited, and open to inspection, &c.

And all such persons shall be at liberty to take copies of or extracts from the same without fee or reward;

And within *fourteen* days after the audit and examination shall have been completed the auditors or auditor shall report upon the accounts audited and examined, and shall deliver such report to the clerk, who shall cause the same to be deposited in the office of the local board of health, and to be published in some one or more of the public newspapers usually circulated in the district to which it relates. \*\*]

#### ARBITRATION.

CXXIII. And be it enacted (c), that in case of dispute (d) as to the amount of any compensation to be made under the provisions of this Act (except where the mode of determining the same is specially provided for (e), and in case of any matter which

Mode of referring to arbitration.

(c) Those clauses relating to arbitration are taken from the Lands Clauses Consolidation Act 1845, 8 & 9 Vict. c. 18, ss. 25—37, now incorporated herewith by 21 & 22 Vict. c. 98, s. 75, *post*, and printed in the Appendix.

(d) See sect. 144, *post*, which refers certain questions, where the claim is under 20*l.*, to two justices. The 21 & 22 Vict. c. 98, s. 64, enables two justices, where *any* matter in dispute is less than 20*l.*, to settle the same by arbitration.

(e) *Quære* whether this exception refers to any other part of the Act than sect. 144.

by this Act is authorized or directed to be settled by arbitration (*b*), then, unless both parties concur in the appointment of a single arbitrator, each party, on the request of the other, shall appoint an arbitrator, to whom the matter shall be referred;

And every such appointment when made on the behalf of the local board of health shall (in the case of a non-corporate district) be under their seal and the hands of any five or more of their number (*c*), or under the common seal in case of a corporate district, and on the behalf of any other party under his hand, or if such party be a corporation aggregate under the common seal thereof;

And such appointment shall be delivered to the arbitrators (*d*), and shall be deemed a submission to arbitration by the parties making the same;

And after the making of any such appointment the same shall not be revoked without the consent of both parties, nor shall the death of *either* (*e*) party operate as a revocation;

And if for the space of *fourteen* days after any such matter shall have arisen (*f*), and notice in wri-

(*b*) Sects. 69, 75, and 105 of this Act, and ss. 69, 74, of 21 & 22 Vict. c. 98, contain special references to arbitration.

(*c*) The Court of Exchequer have lately held that where a person agreed with a waterworks company that a person nominated by two others should be appointed as arbitrator, and such person being so appointed, and awarded to the claimant a sum exceeding 50*l.*, the latter was entitled to the costs of the arbitration. *Martin v. The Leicester Waterworks Company*, 3 H. & N. 263: 37 L. J., Exc. 432. See also *Collins v. South Staffordshire Railway Company*, 7 Exc. 5.

(*d*) See the interpretation of this word in sect. 2.

(*e*) These words appear at first sight to be inapplicable to the local board, but they obviate any question which might arise from the death of any one of the members who would sign the appointment of the arbitrator.

(*f*) With reference to notice from the local board, see sect. 150, and 21 & 22 Vict. c. 98, s. 61, as to its service and authentication.

ting by one party who has himself duly appointed an arbitrator to the other party, stating the matter to be referred, and accompanied by a copy of such appointment, the party to whom notice is given fail to appoint an arbitrator, the arbitrator appointed by the party giving the notice shall be deemed to be appointed by and shall act on behalf of both parties;

And the award (*g*) of any arbitrator or arbitrators appointed in pursuance of this Act shall be binding, final, and conclusive upon all persons, and to all intents and purposes whatsoever (*h*).

CXXIV. And be it enacted, that if before the determination of any matter so referred any arbitrator die, or refuse or become incapable to act, the party by whom such arbitrator was appointed may appoint in writing another person in his stead;

Death, &c.  
of one of  
several ar-  
bitrators;

And if he fail so to do for the space of seven days after notice in writing (*i*) from the other party in

(*g*) Sect. 151 exempts the award from stamp duty.

(*h*) These words are somewhat more emphatic than those used in the Lands Clauses Consolidation Act, 8 & 9 Vict. c. 18, s. 25, but the effect appears to be the same. In the case of *In re Stroud*, 8 C. B. 502, the Court of Common Pleas inquired into the merits of an award when facts were stated for their opinion by the arbitrator, though it was objected that the award was final. They confirmed the award, but left the question open as to whether they could have set it aside. In the course of the argument Maule, J., observed: "It is conceded that the court may interfere where the arbitrator has exceeded or fallen short of the authority conferred upon him." It will be seen by sect. 137, *post*, that the award is not to be vacated, quashed, or set aside for want of form, nor to be removable by *certiorari* or any other writ or process, but awards made by arbitrators are questioned in the courts of law without a writ of *certiorari*, or other process. The award itself may be produced by the party possessing it, verified by affidavit, and if it be in court it can be there examined.

(*i*) See note (*f*) on the last section.

that behalf, the remaining arbitrator may proceed *ex parte*;

And every arbitrator so appointed shall have the same powers and authorities as were vested in the arbitrator in whose stead the appointment is made;

And in case a single arbitrator die, or become incapable to act, before the making of his award, or fail to make his award within *twenty-one* days after his appointment, or within such extended time, if any, as shall have been duly appointed by him (a) for that purpose, the matters referred to him shall be again referred to arbitration under the provisions of this Act, as if no former reference had been made.

CXXV. And be it enacted, that in case there be more than one arbitrator the arbitrators shall, before they enter upon the reference, appoint by writing under their hands an umpire, and if the person appointed to be umpire die, or become incapable to act, the arbitrator\* shall forthwith appoint another person in his stead;

And in case the arbitrators neglect or refuse to appoint an umpire for seven days after being requested so to do by any party to the arbitration, the court of general or quarter sessions shall, on the application of any such party, appoint an umpire;

And the award of the umpire shall be binding, final, and conclusive upon all persons and to all intents and purposes whatsoever (b);

And in case the arbitrators fail to make their award within *twenty-one* days after the day on which the last of them was appointed, or within

(a) There is no power expressly given to the arbitrator to extend the time for his making the award, but such a power is to be inferred from this section and sect. 126.

(b) See note (h) on sect. 123.

such extended time, if any, as shall have been duly appointed by them for that purpose, the matters referred shall be determined by the umpire;

And the provisions of this Act with respect to the time for making an award, and with respect to extending [to]\* the same in the case of a single arbi-  
trator, shall apply to an umpirage.

CXXVI. Provided always, and be it enacted (c), that the time for making an award under this Act shall not be extended beyond the period of three months from the date of the submission or from the day on which the umpire shall have been appointed (as the case may be).

CXXVII. And be it enacted, that any arbitrator, arbitrators, or umpire, appointed by virtue of this Act, may require the production of such documents in the possession or power of either party as they or he may think necessary for determining the matters referred, and may examine the parties or their witnesses on oath;

And the costs of and consequent upon the reference shall be in the discretion of the arbitrator or arbitrators, or of the umpire (in case the matters referred are determined by an umpire under the power herein-before contained in that behalf);

And any submission to arbitration under the provisions of this Act may be made a rule of any of the superior courts (d) on the application of any party thereto.

CXXVIII. And be it enacted, that before any arbitrator or umpire shall enter upon any such

(c) This clause, by implication, enables the arbitrator to extend the time; there is no power given to him expressly to do so.

(d) See in sect. 2 the interpretation of this word.

\*Sic in stat.

Time within which award must be made.

Power to arbitrator to require production of documents.

As to costs of reference.

Submission may be made a rule of court.

Declaration to be made by arbitrator and umpire.

of single arbitrator.

Appointment of umpire by the parties;

\* Sic in stat.

by quarter sessions.

reference as aforesaid, he shall make and subscribe the following declaration before a justice of the peace; (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 Public Health Act, 1848.

"*A. B.*"

And such declaration shall be annexed to the award when made;

And if any arbitrator or umpire shall wilfully act contrary to such declaration he shall be guilty of a misdemeanor.

#### LEGAL PROCEEDINGS.

CXXIX. And be it enacted (*e*), that in all cases in which the amount of any damages, costs, and expenses is by this Act directed to be ascertained or recovered in a summary manner the same may be ascertained by and recovered *before two justices (f)*, together with such costs of the proceedings as the justices may think proper (*g*);

(*e*) Sect. 39, *ante*, provides for the proceedings to be taken against the collectors of rates by the local board, and sect. 103 provides for the recovery of rates from ratepayers in arrear. It must be observed that though 8 & 9 Vict. c. 18, s. 136, now incorporated herewith, provides for the recovery of forfeitures, penalties, and costs, (see Appendix,) yet the 21 & 22 Vict. c. 98, s. 7, renders the penalties recoverable as under this Act.

(*f*) See note on sect. 2. As regards the ascertaining of expenses it does not appear that any clause refers this to the justices; but sect. 145 enables justices to ascertain the amount of compensation for damage under 20*l*.

(*g*) The proceedings for the recovery of the penalty must be commenced within six months of the commission of the offence. 8 & 9 Vict. c. 18, s. 140, *post*, in Appendix, and 11 & 12 Vict. c. 43, s. 11. But see 21 & 22 Vict. c. 98, s. 62, *post*, as to the commencement of the time in respect of certain summary applications for the recovery of expenses.

And if the sums adjudged be not paid by the party against whom the adjudication is made the same may be levied by distress and sale of his goods and chattels, by warrant under the hands and seals of the justices making the adjudication;

And any penalty imposed by or under the authority of this Act, or any *byelaw* made under this Act, the recovery whereof is not otherwise expressly provided for, may, upon proof on oath of the offence in respect of which the penalty is alleged to have been incurred, be recovered before *two justices (h)*, together with such costs of the proceedings as they may think proper;

And if the sums adjudged be not paid by the party against whom the adjudication is made the same may be levied by distress and sale of his goods and chattels (*i*), by warrant under the hands and seals of the justices making the adjudication;

And such justices or either of them may order that any offender convicted as last aforesaid be detained and kept in safe custody until return can be conveniently made to the last-mentioned warrant, unless he give sufficient security, by way of recognizance or otherwise, for his appearance on the day appointed by the return, such day not being more than eight days from the time of taking the security;

And if before issuing such warrant, or upon the return thereof, it appear to the satisfaction of the last-mentioned justices that no sufficient distress can be had within their jurisdiction, they may, by warrant under their hands and seals, cause the offender to be committed to gaol, there to remain, without

(*h*) See note (*f*), *ante*, p. 184.

(*i*) See sect. 131.

bail, for any term not exceeding three months, unless such penalty and costs be sooner paid (a).

Form of conviction.

CXXX. And be it enacted, that the justices before whom any person is convicted of any offence against the provisions of this Act may cause the conviction to be drawn up according to the form and directions contained in the schedule (E.) annexed to this Act, or to the like effect;

And any conviction so drawn up shall be valid and effectual to all intents and purposes (b).

Mode of proceeding before justices.

CXXXI. And be it enacted, that in proceeding before any justice or justices under the provisions of this Act, in any case in which the mode of proceeding is not specially prescribed (c), any one justice may summon the party charged to appear before the justice or justices by whom the matter is to be determined at a time and place to be named;

And upon the appearance of the party charged, or in his absence upon proof of service of the summons upon him personally, or by leaving a copy thereof at his last known place of abode or business, the last-mentioned justice or justices may hear and determine the matter, and for that purpose examine the parties or any of them, and their witnesses, on oath;

(a) As the statute has provided this summary remedy for the recovery of the sums adjudged and penalties, an action will not be maintainable, (*Vestry of St. Pancras v. Batterbury*, 2 C. B. Rep. (N. S.), 477, and the cases there cited, and *Mayor of Blackburn v. Parkinson*, 32 L. T. 91.) except where such remedy is reserved by the statute itself.

(b) This conviction shall not be quashed or vacated for formal defect, neither can it be removed into the superior courts by *certiorari*. See sect. 137, *post*.

(c) Special provisions are contained in ss. 39, 103.

And the costs of all such proceedings shall be in the discretion of the last-mentioned justice or justices;

And where in this Act any sum of money whatsoever is directed to be levied by distress and sale of the goods and chattels of any party, the overplus arising from such sale shall, after satisfying such sum, and the costs and expenses of the distress and sale, be returned to him, on demand; (d)

And no distress levied under the authority of this Act shall be unlawful, nor shall any party making the same be a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall he be a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction in an action upon the case (d).

CXXXII. And be it enacted, that justices of the peace, being also members of any local board of health, may, *if acting in petty sessions* (e), notwithstanding their being such members, exercise the jurisdiction vested in them as such justices under this Act.

CXXXIII. And be it enacted, that no proceedings for the recovery of any penalty incurred under

(d) See 8 & 9 Vict. c. 18, s. 138, *post*, in the Appendix.

(e) Note the limited extent of this authority. The justice is not empowered to act alone, nor at the quarter sessions. The 5 & 6 Vict. c. 57, s. 15, contains a similar provision with reference to *ex officio* guardians. See also the 16 Geo. 2, c. 18, in regard to the acting of justices who may be ratepayers of the district in the enforcing of the rates.

Distress how to be levied;

not unlawful for want of form.

Justices though members of local board may act under this Act.

Common informers not to sue without

consent of  
attorney-  
general.

the provisions of this Act shall be had or taken by any person other than by a party grieved (*d*), or the local board of health in whose district the offence is committed, or by the churchwardens and overseers of the poor (where any such penalty is directed to be paid to the churchwardens and overseers of the poor), without the consent in writing of Her Majesty's attorney-general first had and obtained (*e*);

Proceedings  
for penalties  
to be taken  
within six  
months.

And that no such penalty shall be recovered unless proceedings for the recovery thereof shall have been commenced within six calendar months after the commission or occurrence of the offence upon which the penalty attaches (*f*);

Application  
of penalties.

And if the application of the penalty be not otherwise provided for, one-half thereof shall go to the informer, and the remainder to the local board of health of the district in which the offence was committed:

Provided always, that if the said local board be the informer they shall be entitled to the whole of the penalty recovered;

And all penalties or sums recovered on account

(*d*) A ratepayer in the district of the local board of health is not a party grieved by a member of the board voting in a matter wherein such member has an interest, so as to enable the former to maintain an action for a penalty without the consent of the attorney-general, *Boyce v. Higgins*, 14 C. B. 1. When a person disqualified is returned as a member of the board and acts, a defeated candidate at the election, or a ratepayer in the district, is not a party grieved within the meaning of this clause. *Hollis v. Marshall*, 2 Hurl. & N. 755.

(*e*) Where the consent of the attorney-general is necessary, the obtaining thereof should be alleged in the declaration. If not stated therein the declaration may be demurred to, or the want of it may be pleaded, or after verdict for the plaintiff the court will arrest the judgment, or will stay the further proceedings in the action upon motion. *Ibid.*

(*f*) See the statute 35 Eliz. c. 5, for the limitation of penal actions.

of any penalty by them shall be paid over to the treasurer, and shall by him be placed to the district fund account mentioned in this Act (*g*).

CXXXIV. And be it declared and enacted, that, notwithstanding the liability of any person to any penalty under the provisions of this Act, he shall not be relieved from any other liability to which he would have been subject if this Act had not been passed (*h*).

Liability to  
penalty not  
to relieve  
from other  
liabilities.

CXXXV. And be it enacted, that any person who shall think himself aggrieved by any rate made under the provisions of this Act, or by any order (*i*), conviction, judgment, or determination of or by any matter or thing done by any justice or justices, in any case in which the penalty imposed or the sum adjudged (*k*) shall exceed the sum of twenty shillings, may appeal to the court of general or quarter sessions holden next (*l*) after the making of the rate objected to, or accrual of the cause of complaint;

Appeal to  
quarter  
sessions.

(*g*) See sect. 87, *ante*, p. 142, and as to the application, see 21 & 22 Vict. c. 98, s. 67.

(*h*) It will be proper to refer to the powers given by the Nuisances Removal Act, 18 & 19 Vict. c. 121, ss. 28, 30, to the local authority to institute proceedings for the abatement or prevention of nuisances.

(*i*) Whether there can be an appeal against an order of justices ordering payment of a rate which itself has not been appealed against, is open to doubt. See *Ricardo v. Maidenhead Local Board of Health*, 2 H. & N. 257. The clauses relating to appeals in 8 & 9 Vict. c. 18, *post*, in Appendix, are now incorporated herewith by 21 & 22 Vict. c. 98, s. 75.

(*k*) These words seem to signify the sum adjudicated upon, and therefore where justices by order reciting the making of three several district rates, amounting to 4*l.* 5*s.* 6*d.* altogether, ordered them to be paid, with costs, and the amount to be levied by distress in default of payment, the Court of Exchequer, in the case cited in the last note, intimated their opinion that such order might be appealed against. See also *Reg. v. Justices of Warwickshire*, 6 E. & B. 837.

(*l*) See the proviso following.

But the appellant shall not be heard in support of the appeal unless within fourteen days after the making and publication (e) of the rate appealed against, or accrual of the cause of complaint, he give to the local board of health or justice or justices by whose act he may think himself aggrieved *notice in writing* stating his intention to bring such appeal, together with a statement in writing of the grounds of appeal ;

And the said court, upon hearing (f) and finally determining the matter of the appeal, shall and may, according to its discretion, award such costs to the party appealing or appealed against as they shall think proper, and its determination in or concerning the premises shall be conclusive and binding on all persons to all intents and purposes whatsoever (g) :

Provided always, that if there be not time to give such notice and enter into such recognizance (h) as *aforsaid* before the sessions holden as last aforesaid,

(e) It is not always easy for parties to be aware of the actual making of the rate, though sect. 99 requires notice of the intention to make the rate to be given. And there may be no publication at all ; see note on sect. 103, and 21 & 22 Vict. c. 98, s. 54. In the late case of *Reg. v. Nuisance Removal Committee of Middleton*, 32 L. J. 124, the Court of Queen's Bench held that a rate was not made within the meaning of similar words until notice of the rate had been served upon the party.

(f) Where the Court of Quarter Sessions heard an appeal against an order of justices, and quashed the same, and awarded costs to the appellant, the Court of Exchequer refused to issue a writ of prohibition to stay the judgment, on the ground that the court should not have heard the appeal. *Ricardo v. Maidenhead Local Board of Health*, 2 H. & N. 257.

Reference should be made to 12 & 13 Vict. c. 45, in regard to the proceedings at the sessions on the trial of the appeal.

(g) See also sect. 137, following.

(h) By an accidental omission the purport of the recognizance has not been stated.

then such appeal may be made to, and such notice, statement, and recognizance be given and entered into for, the next sessions at which the appeal can be heard :

Provided also, that on the hearing of the appeal no grounds of appeal shall be gone into or entertained other than those set forth in such statement as aforesaid (i).

CXXXVI. And be it enacted, that the said court of general or quarter sessions shall upon appeals under this Act against any rate have the same power to amend or quash any rate or assessment, and to award costs between the parties to the appeal, as is or may by law be vested in any court of general or quarter sessions with respect to amending or quashing any rate or assessment, or awarding costs, upon appeals with respect to rates for the relief of the poor (k) ;

Power of sessions upon appeals against rates.

And the costs awarded by the said court under this Act may be recovered in the same manner in all respects as costs awarded upon the last-mentioned appeals (l) :

Provided always, that, notwithstanding the quashing of any rate appealed against, all monies charged

(i) See 12 & 13 Vict. c. 45, s. 1. Additional powers appear to be given to the quarter sessions by 8 & 9 Vict. c. 18, s. 147, herewith incorporated.

(k) The 41 Geo. 3, c. 23, ss. 1, 6, provides for the amending and quashing of poor rates, and the 17 Geo. 2, c. 38, and 41 Geo. 3, c. 23, s. 8, provide for the awarding and recovery of costs in appeals against such rates.

(l) That is, by indictment for disobedience of an order of quarter sessions by warrant of distress, or according to 12 & 13 Vict. c. 45, s. 18, by process out of the Court of Queen's Bench, as upon a rule of that court for enforcing of which a remedy is given by 1 & 2 Vict. c. 110.

by such rate shall, if the court before whom the appeal is heard think fit so to order, be levied as if no appeal had been made, and such monies, when paid, shall be taken as payment on account of the next effective rate for the purposes in respect of which the quashed rate was made (*l*).

No rate or proceeding to be quashed for want of form, &c.

CXXXVII. And be it enacted, that no rate (*m*), nor any proceeding to be had touching the conviction of any offender against this Act, nor any order, award, or other matter or thing whatsoever made, done, or transacted in or relating to the execution of this Act, shall be vacated, quashed, or set aside for want of form (*n*), or be removed or removable by *certiorari* (*o*), or other writ or process whatsoever into any of the superior courts.

Proceedings in case of non-corporate districts.

CXXXVIII. And be it enacted, that the local board of health of any non-corporate district may sue (*p*) and be sued in the name of the clerk for the

(*l*) This provision is the same as that in 41 Geo. 3, c. 23, s. 1, respecting the poor rate.

(*m*) Where the sessions confirmed a rate made under this Act, subject to a case, the Court of Queen's Bench held that this section prevented them from granting a *certiorari* to bring it before them. *Reg. v. Fielding*, 17 J. P. 343.

But this objection did not prevail when the rate was quashed by the sessions, subject to a case. *Reg. v. Worksop Local Board of Health*, 21 J. P. 451. See also the cases cited, *post*, upon 8 & 9 Vict. c. 18, s. 145, in the Appendix, where the proceeding shows a want of jurisdiction.

(*n*) See also 12 & 13 Vict. c. 45, s. 7.

(*o*) This clause did not prevent the Court of Queen's Bench from removing a conviction by a magistrate for a breach of an illegal byelaw made by a local board of health, and confirmed by the secretary of state, the magistrate holding himself concluded by the confirmation. Upon the hearing the court quashed the conviction. *Q. v. Mary Wood*, 5 E. & B. 49. The ground of the decision was, that the byelaw being illegal was not a matter done in the execution of the Act.

(*p*) The Vice-Chancellor, Kindersley, decided that the local

time being for or concerning any contract, matter, or thing whatsoever relating to any property, works, or things vested or to become vested in them by reason of the provisions of this Act, or relating to any matter or thing whatsoever entered into or done, or intended to be entered into and done by them, under the provisions of this Act (*q*);

And in any action of ejectment brought or prosecuted by such local board it shall be sufficient to lay the demise in the name of the said clerk;

Actions, &c., in name of clerk.

And in proceedings by or on the part of such local board against any person for stealing or wilfully injuring or otherwise improperly dealing with any property, works, or things belonging to them

Mode of describing property of local board.

board of health of a non-corporate district could not apply to the Court of Chancery in their name, as a corporate body, for the appropriation of money paid into that court. Their petition should have been in the name of their clerk, and the payment to their treasurer. *Ex parte Llanelly*, 17 Jur. 107.

(*q*) It was held, however, by the Court of Queen's Bench that an action on the case was not maintainable against the clerk to the local board for not paying the salary of an organist, which salary was claimed as payable under certain monies of which the local board had become trustees, it being alleged that the board had sufficient funds for the purpose. The court held that the proper remedy, if any, was by a *mandamus* or a bill in equity. *Edwards v. Lowndes*, 1 E. & B. 81.

Where the action is brought against the clerk, and the plaintiff succeeds, he can sign judgment against the defendant, and apparently he is entitled to enforce the same by the usual process against the defendant's goods and his person. The concluding part of the clause contemplates such proceeding, and provides an indemnity to the clerk for what he may pay. In *Kendall v. King*, 17 C. B. 483, doubts are stated as to how far the judgment against the clerk of a public board would in fact be available to the plaintiff. But those doubts arose out of the peculiar nature of the case. Generally the remedy to enforce such a judgment would, it is conceived, be by *mandamus* to the local board. See *Hall v. Taylor*, cited in sect. 37, *ante*.

*Higgs v. Dixon*, 27 L. J., Q. B., is the case of an action against a local board of health for infringing a patent.

or under their management, it shall be sufficient to state generally that the property or thing in respect of which the proceeding is instituted is the property of the said clerk, and all legal proceedings by, on the part of, or against such local board, under this Act may be preferred, instituted, and carried on in his name;

Actions, &c.  
not to abate.

And no proceedings whatever shall abate or be discontinued by the death, resignation, or removal of the clerk, or by reason of any change or vacancy in such local board by death, resignation, or otherwise (a):

Clerk to be  
reimbursed  
expenses.

Provided always, that the clerk in whose name any such action or suit, complaint, information, or proceeding may be brought, preferred, instituted, or defended as aforesaid, shall be fully reimbursed, out of the general district rates to be levied under this Act, all such costs, charges, damages, and expenses as he shall or may be or become liable to pay, sustain, or be put unto by reason of his name being so used.

Notice of  
action.

CXXXIX. And be it enacted, that no writ or process shall be sued out against or served upon any superintending inspector, or any officer or person acting in his aid, or under the direction of the general board of health, nor against the local board of health, or any member thereof, or the officer of health, clerk, surveyor, inspector of nuisances, or other officer or person whomsoever acting under the direction of the said local board (b), for

(a) Probably, however, the entry of a suggestion on the roll will be requisite in the case of actions at common law, and perhaps a bill of revivor may be necessary in suits in equity.

(b) A person contracted with a local board to dig wells for

anything done or intended to be done under the provisions of this Act, until the expiration of one month next after notice in writing shall have been delivered to him, or left at their or his office or usual place of abode, clearly and explicitly stating the cause of action, and the name and place of abode of the intended plaintiff, and of his attorney or agent in the cause (c);

And upon the trial of any such action the plaintiff shall not be permitted to go into evidence of any cause of action which is not stated in the last-mentioned notice;

And unless such notice be proved the jury shall find for the defendant;

And every such action shall be brought or commenced within *six months next* after the accrual of the cause of action, and not afterwards, and shall

Limitation  
of actions.

them according to a specification prepared by the surveyor, the works to be done to his satisfaction, and the digging to be entirely under his direction, and he having power to reject materials and dismiss the workmen with whom he was *dismissed*. The contractor left a hole which had been made for the purposes of the work without a light by night, and a passenger fell into the hole and was injured. It was held by the Court of Queen's Bench, in an action against the contractor, that a notice of action was required by the above section. *Newton v. Ellis*, 5 E. & B. 115; 24 L. J. R., Q. B. 337. Where an action is brought against a local board of health by a contractor for a breach of contract, notice of action is not required under this section. *Davies v. Corporation of Swansea*, 8 Exc. Rep. 808.

Where a local board enter into a contract *ultra vires*, and cannot pay the contractor out of the rates, individual members of the board are not personally liable to the contractor. *Bailey v. Cuckson*, 32 L. T. 124.

(c) The party need not, when he is doing the act, be cognizant of this provision, nor is he prevented from claiming the benefit of it by departing slightly from it. *Read v. Coker*, 13 C. B. 850.

Venue. be laid and tried in the county or place where the cause of action occurred, *and not elsewhere (a)*;

General issue. And the defendant shall be at liberty to plead the general issue (*b*), and give this Act and all special matter in evidence thereunder;

Tender of amends, &c. And any person to whom any such notice of action is given as aforesaid may tender amends to the plaintiff, his attorney or agent, at any time within one month after service of such notice, and in case the same be not accepted may plead such tender in bar, and (by leave of the court) with the general issue or other plea or pleas (*c*);

And if upon issue joined upon any plea pleaded to the whole action the jury find generally for the defendant, or if the plaintiff be nonsuited or discontinued, or if judgment be given for the defendant, then the defendant shall be entitled to full costs of suit, and have judgment accordingly;

And in case amends have not been tendered as aforesaid, or in case the amends tendered be insufficient, the defendant may, by leave of the court, at

(a) This does not deprive the court of their common law power to change the venue where in their judgment the ends of justice require that they should do so. *The Itchin Bridge Company v. The Southampton Local Board of Health*, 27 L. R., Q. B. 128.

When an action is brought and judgment is recovered against a local board of health, that board are not prevented from satisfying the judgment though six months have elapsed from the accrual of the debt on which the judgment shall be founded, notwithstanding sect. 89. Nor are the board prevented from obtaining a postponement of the satisfaction of the judgment for a period exceeding six months. *Reg. v. Rotherham Local Board of Health*, 22 Jur. 261. See, however, *Waddington v. City of London Union*, in Exch. Ch., 22 J. P. 755.

(b) See *Beaver v. The Corporation of Manchester*, 8 E. & B. 44, when a special plea justifying under a local Act similar to this statute was held good.

(c) See 8 & 9 Vict. c. 18, s. 135, in Appendix.

any time before trial, pay into court, under plea, such sum of money as he may think proper, and (by the like leave) may plead the general issue or other plea or pleas, any rule of court or practice to the contrary notwithstanding.

CXL. And be it enacted, that no matter or thing *done (e)* or contract entered into by the local board of health, nor any matter or thing done by any

Persons acting in execution of Act not to be personally liable.

(e) But the local board, notwithstanding the language of this clause, are liable to be sued in respect of damages arising out of their negligence in omitting to cause proper precautions to be taken in the execution of works which they order to be done. In such a case the action is properly brought against the clerk of the board, as the damages will be payable out of the rates. *Ruck v. Williams*, 27 L. J. R., Exc. 357; 3 H. & N. 308.

It may be well to state, that in this case the local board had ordered a new sewer to be constructed in their district under a contract and plans which did not provide for a "penstock or flap," which was requisite to prevent the plaintiff's premises from being flooded by the influx of a river into them through the sewer, and in consequence of such omission they were flooded and greatly damaged. This was held to be negligence on the part of the local board, for which they were liable.

Where negligence is proved on the part of those employed or contracted with by any public body to execute works, and that negligence is shown in the manner of executing those works, the body is not liable for injury which results from it. *Steel v. The South-Eastern Railway Company*, 16 C. B. 550. But if the damage arises out of the works themselves, or if the body are really the parties executing the works, they are liable. *Scott v. Corporation of Manchester*, 1 H. & N. 59. Of course a public board is not answerable for damage which results from the negligence of the party injured, or of some other person independent of the public body, or acting contrary to or beyond their directions. See *Holden v. The Liverpool New Gas and Coke Company*, 3 C. B. 1. Neither is such a board responsible for accidents arising out of extraordinary causes, where all reasonable care has been taken to prevent such as would arise from ordinary causes. Thus a waterworks company were held not liable for damage arising out of a frost of unusual severity. *Blyth v. Birmingham Waterworks Company*, 2 Jur. (N.S.), 333; 11 Exc. 781. Where a public board let a navigation and omitted to give notice to the lessee to repair, and in consequence of

superintending inspector, or any member of the said local board, or by the officer of health, *clerk (f)*, surveyor, inspector of nuisances, or *other officer or person (g)* whomsoever acting under the direction of the said local board, shall, if the matter or thing were done or the contract were entered into *bonâ fide* for the purpose of executing this Act, subject them or any of them personally to any action, liability, claim, or demand whatsoever (*h*);

the want of repair a barge-owner sustained loss, the commissioners were held not to be liable to him on the ground of their omission, the loss not necessarily resulting therefrom. *Walker v. Goe*, 3 H. & N. 395; 27 L. J., Exc. 427.

(*f*) The clerk is necessarily liable to an action according to sect. 138, but the clause extends to prevent his actual and personal responsibility.

(*g*) These words will exempt from personal liability every one who has *bonâ fide* contracted with the local board to do some act under their directions, though he may thereby cause a damage to another person which the act itself does not justify or excuse. *Ward v. Lee & another*, 7 E. & B. 426; 26 L. J. R., Q. B. 142. The remedy in such a case, according to the judgment of the court, would be against the local board, who would be reimbursed out of the district rate.

Notwithstanding these general words of reimbursement, it will be a question to be determined hereafter whether the individual members of a local board who may knowingly by their acts involve such board in expenses in consequence of their illegal proceedings, cannot be held personally responsible. See the new audit clause in 21 & 22 Vict. c. 98, s. 60.

(*h*) But the local board of health will be liable to the contractor in an action on the contract if broken, and he will not be compelled to proceed in equity, or by *mandamus*, in the first place, or in an action on the case for the recovery of his damages. *Nowell v. The Mayor, &c. of Worcester*, 9 Exc. Rep. 457; *Payne v. Mayor of Brecon*, 3 H. & N. 572; 27 L. J., Exc. 495. The judgment, if given against a municipal corporation, will not, however, operate as a charge upon the real estate belonging to it, unless the lords of the treasury, upon a special memorial, enable this to be done. *Arnold v. Mayor, &c. of Gravesend*, 25 L. J. R., Ch. 777. Nor, as it seems, upon the other property of the corporation. *Pallister v. Mayor of Gravesend*, 9 C. B. 774; *Arnold v. Ridge*, 13 C. B. 745. As already noticed it may, however, be enforced by a *mandamus*. But upon that application it will be open to the board to show

And any expense incurred by any such local board, member, officer of health, clerk, surveyor, inspector of nuisances, or other officer or person acting as last aforesaid, shall be borne and repaid out of the general district rates levied under the authority of this Act.

#### Miscellaneous.

[CXLI. \*\* And be it enacted (*i*), that Her Majesty may from time to time alter or amend any order in council made under or in pursuance of the provisions of this Act, by any subsequent order in council, in such manner as Her Majesty, by and with the advice of Her privy council, may think proper;

Orders in council and provisional orders may be amended, and districts extended.

And if at any time it appear to the general board of health that any provisional order made by them under this Act should be altered or amended, or that the boundaries of any district should be altered or extended, they shall make a provisional order under their hands and seal of office accordingly:

Provided always, that no order in council or provisional order as last aforesaid shall be made until such proceedings have been taken in and with respect to the district and parts to be affected thereby as are herein-before required to be taken previously to the original constitution of a district under this Act;

And no such provisional order shall be of any force or effect without the previous authority of parliament, as herein-before prescribed with respect to provisional orders made under this Act. \*\*]

CXLII. And be it enacted, that all orders in

Publication of orders in council, &c.

that the contract entered into was void by reason of some provision in this Act, or because it was *ultra vires*.

(*i*) Repealed by 21 & 22 Vict. c. 98, s. 77, which contains special provisions to carry out the object of this section.

council under this Act shall take effect and be in full force and operation within the district to which they apply from and after a day which shall be specified in such orders for that purpose (b);

And a copy of every such order shall be published in the *London Gazette*, and shall be laid before parliament in the month of January in every year, if parliament be then sitting, or if parliament be not then sitting, then within one week after the next meeting thereof;

[And whenever any provisional order of the general board of health is submitted to parliament for confirmation, the said general board shall present to both houses of parliament a copy of all reports of any superintending inspector with respect to the parts to which the provisional order relates, and of all memorials forwarded to the said general board with respect to such reports] (c).

CXLIII. And be it enacted, that in case it shall become necessary to enter, examine, or lay open any lands or premises for the purpose (d) of making plans, surveying, measuring, taking levels, examining works, ascertaining the course of sewers or drains, or ascertaining or fixing boundaries (e), and the owner or occupier of such lands or premises shall refuse to permit the same to be entered upon, examined, or laid open for the purposes aforesaid or any of them, the local board of health may, upon notice (f)

(b) See in 21 & 22 Vict. c. 98, s. 20, when this Act is henceforth to come into operation in any new district.

(c) This provision is now at an end.

(d) Several clauses in this Act contain special provisions for the entry upon premises for other purposes than those contained above.

(e) See sect. 41, *ante*.

(f) As to this notice, see sect. 150, *post*, and 21 & 22 Vict. c. 98, s. 61.

to such owner or occupier, apply to *two justices* (g) for an order authorizing the members of such local board, and the superintending inspector, surveyor, and inspector of nuisances, or any of them, to enter, examine, and lay open the said lands and premises for the purposes aforesaid or any of them, and if no sufficient cause shall be shown against the same the said justices may make an order (h) authorizing the same accordingly, and thereupon any superintending inspector, the local board of health, or any member thereof, *the surveyor*, and inspector of nuisances, and any person authorized by any such superintending inspector, local board, surveyor, or inspector of nuisances, may, at all reasonable times between the hours of *ten* in the forenoon and *four* in the afternoon, enter, examine, or lay open the lands or premises mentioned in such order, for such of the said purposes as shall be specified in the said order, without being subject to any action or molestation for so doing :

Provided always, that, except in case of emergency (i), no entry shall be made, or works commenced under the powers of this enactment, unless *twenty-four hours* at the least previously thereto

(g) See sect. 2. The Nuisances Removal Act, 1855, sect. 11, contains a provision by which a justice may issue an order to persons who have the custody of premises, to admit the local authorities or their officers to inspect such premises where nuisances are said to exist, to examine the course of drains, and to execute or inspect works ordered by justices to be done under that Act. The Lands Clauses Consolidation Act, 8 & 9 Vict. c. 18, s. 84, incorporated herewith, contains an authority to enter without consent for particular purposes.

(h) Which order cannot be removed into the Court of Queen's Bench. See sect. 137.

(i) The person who enters must determine at his peril whether the case be one of emergency. Therefore it will be the safest course to give this notice, unless the emergency be very clear.

Reports of superintending inspectors, &c. to be laid before parliament.

Entry upon lands for the purposes of this Act.

notice of the intended entry, and of the object thereof, be given to the occupier of the premises intended to be entered.

CXLIV. And be it enacted, that full compensation shall be made, out of the general [*or special*] district rates to be levied under this Act, to all persons sustaining any damage (*i*) by reason of the exercise of any of the powers of this Act (*j*);

And in case of dispute as to amount (*h*) the same shall be settled by arbitration in the manner provided by this Act (*l*), or if the compensation claimed

(*i*) This means *only* damage which the Act will excuse or justify. See note on sect. 68, *ante*, p. 120, and 21 Jur. 221; 22 Jur. 1298.

(*j*) Where there has been damage, but the local board deny their liability, the Court of Queen's Bench will grant a writ of *mandamus* to the board to make compensation on the application of the person aggrieved, in which proceeding both the liability and the amount of damage can be tried. *Q. v. Burslem Board of Health*, 22 J. P. 400.

(*k*) If the local board do not dispute their liability for damage, if any, but deny that there is any damage, the case is one for arbitration under this clause. *Bradby v. The Southampton Local Board of Health*, 4 E. & B. 1014. The distinction is thus expressed by Erle, J.: "Where there is a dispute whether the act complained of was done by the local board, or as to something which would, if found for the local board, show that there was no liability to make compensation, then the dispute is not within the jurisdiction of the arbitrators, but when the dispute is as to whether the damage was more or less, or *nominal*, the case is within their jurisdiction."

In this case the local board made a sewer through the land of B., who claimed compensation. The board maintained that he was not damaged, and consequently not entitled thereto. B. called upon them to proceed to arbitration, which they refused to do. He took steps under sect. 123, and the arbitrator made an award, *ex parte*, which the Court of Queen's Bench upheld.

A similar decision was expressed by Wood, V. C., in *The Bradford Local Board of Health v. Hopwood*, July, 1858. See 23 J. P. 561.

(*l*) See sect. 123, *ante*, p. 179, and see the new provisions in 21 & 22 Vict. c. 98, s. 64, *post*.

do not exceed the sum of twenty pounds, the same may be ascertained by and recovered before justices in a summary manner (*m*).

[CXLV. \*\* And be it declared and enacted (*n*), that nothing in this Act shall be construed to

Sewers, &c.  
of commis-  
sioners of

(*m*) The recovery will be under sect. 129, *ante*, p. 184.

(*n*) Repealed by 21 & 22 Vict. c. 98, s. 68, which, however, re-enacts similar provisions with amplifications. It will be remembered that though sect. 43 vests all sewers in the local board, there is an exception of sewers such as those described above. That and the subsequent sections relating to sewers, in conjunction with the above section, have led to much discussion, and have produced considerable litigation. Local boards of health anxious for the public good, by their endeavours to extend their sewers and provide for their sewerage, have, in some cases, infringed the private rights of individuals, who have applied to the courts of law for redress or interference. Thus, in *Oldaker v. Hunt*, 1 Jur. (N. S.), 785, 6 De G. M. & G. 376, 19 Beav. 485, a local board of health proposed to carry a sewer through certain fields into the river Avon at a certain spot. The owners of those fields which adjoined the river had watering places therein, they had also a several fishery in the river, though they were not otherwise interested in the bed of it; and had not given their consent to the works. The Master of the Rolls granted an injunction to prevent the board of health from proceeding with the sewer, and this injunction was confirmed by the Lords Justices on appeal, assisted by Cresswell and Williams, JJ. The opinion of the court was, that the parties complaining were interested in the river by reason of their watering places, independently of their right to the fishery, which also appeared to the judges to be fairly included under the term *land*.

In the later case of *Attorney-General v. The Luton Local Board of Health*, 2 Jur. (N. S.), 180, it appeared that the local board carried the whole drainage of the town of Luton into the river Lee, which flowed through the lands of the relator, who had a mill on its banks, though it was not a public navigable river; there had been a drainage into it from a few houses previous to 1848, but the works of the local board greatly increased the sewerage, and polluted the water to such an extent that sheep could no longer be washed in it. It was held by Vice-Chancellor Wood that the local board could not justify their proceedings, and that as the relator was interested in the river, and had not given his consent, he was entitled to an injunction to restrain them from proceeding

sewers, private water-courses, &c. not to be used without consent.

authorize the local board of health to use, injure, or interfere with any sluices, floodgates, sewers, groynes, sea defences, or other works already or hereafter made under the authority of any commissioners of sewers appointed by the crown, or any sewers or other works already or hereafter made and used for the purpose of draining, preserving, or improving land under any local or

further with their works. He also held that the public nuisance was a sufficient ground for the injunction. Reference must also be made to the case of the *Attorney-General v. The Town Council of Birmingham*, 22 J. P. 561, where a local board were restrained by the vice-chancellor from conveying their sewage into a river, and thereby polluting a stream in which private individuals had peculiar and special rights.

Again, in the case of *The Manchester, Sheffield, and Lincolnshire Railway Company v. The Worksop Board of Health*, 26 L. J. R., Ch. 345, it was held that a local board of health could not justify the making a sewer which would have the effect of polluting an existing canal belonging to the complainants, and therefore the board were restrained from allowing the house drainage to communicate with a main sewer which ran into the canal.

These were cases in which complaints were made against the local board for polluting streams, and thus interfering with the rights of persons; but in others the questions have arisen as to the power of the local board to intercept the supply of water, and they have been such as have been the subject of discussion in all times, namely, the rights of individuals in running streams, pools, or ponds. The full discussion of the law applicable to those rights cannot be entered into here. The local board of health have been in the position of a private individual disputing as to his right to enjoy or to divert the flowing stream, to intercept it for irrigation or other purposes, as or against a riparian owner, to pollute or to prevent the pollution of the water, or, lastly, to drain, or restrain the drainage of underground or percolating streams. In one important case which lately came before the Court of Exchequer, and was the subject of appeal to the Exchequer Chamber, the right of a local board of health by means of their wells to drain the underground streams from the soil of a neighbouring landholder was established. *Chasemore v. Richards*, 2 H. & N. 168. In the elaborate judgments pronounced by Cresswell, J. and Coleridge J., who dissented from the judgment of the rest of

private Act of parliament, or for the purpose of irrigating lands, or to use, injure, or interfere with any watercourse, stream, river, dock, basin, wharf, quay, or towing path in which the owner or occupier of any lands, mills, mines, or machinery, or the proprietors or undertakers of any canal or navigation, shall or may be interested, without consent in writing first had and obtained (a); and that nothing herein contained shall prejudice or affect the rights, privileges, powers, or authorities given or reserved to any person under any local or private Act of parliament for the drainage, preservation, or improvement of land, or for or in respect of any mills, mines, machinery, canal, or navigation as last aforesaid (b). \*\*]

the court, will be found an elegant exposition of much of the legal doctrine applicable to this important subject of property. In another case where a canal company was empowered by their local Act to supply their canal with water from all streams, brooks, and water courses within one thousand yards of the canal, it was held that they had no ground of complaint against a local board of health, who having run a sewer under a road within that distance, made open gratings through which the rain and other surface water fell into the sewer. *The Manchester, Sheffield, and Lincolnshire Railway Company v. The Worksop Board of Health*, 25 L. J. R., Ch. 25, and 26 Ib. 344.

(a) Although this consent is thus required to be given in writing, it has been sought to stay summary applications to the Court of Chancery for injunction against the works of the local board by averments of laches, such being argued as an equivalent for consent. But the defence was not successful in *Attorney-General v. Luton Board of Health*, 2 Jur. (N.S.), 180, where there had been much negotiation and correspondence before the commencement of the suit.

(b) It must be observed that this clause prohibits the doing of the works adverted to without consent in writing first obtained; thus it prevents the operation of the law laid down in *Stainton v. Woolrych*, 26 L. J. R., 300, that works planned by public boards under statutes may be executed, though they tend to the injury of neighbouring landowners, and consequently even without notice to them, though they may be entitled to compensation for the damage done.

Local board may allow owners time for repayment of expenses.

CXLVI. And be it enacted, that in any case in which the local board of health may have incurred expenses for the repayment whereof the owner of the premises for or in respect of which the same are incurred is made liable by this Act, the said local board may, if they think fit, allow such owner time for repayment, and receive the same by such annual instalments, not being less than *one-thirtieth part* of the entire sum, together with interest at the rate of five pounds in the hundred upon the sum from time to time remaining unpaid, as they, under the circumstances of each case, may consider to be just (a);

But although time for repayment be allowed as last aforesaid, the sum due, or so much thereof as may be unpaid, shall from time to time, in case of default in payment at the times respectively appointed for payment, be recoverable in like manner in all respects as the entire sum might have been recovered if time for repayment had not been allowed.

False evidence punishable as perjury.

CXLVII. And be it enacted, that every person who upon any examination on *oath* (b) under the provisions of this Act shall wilfully and corruptly give false evidence shall be liable to the penalties inflicted upon persons guilty of wilful and corrupt perjury.

(a) By several provisions the local board are empowered to do certain works for the benefit of private property, and recover the expenses either summarily or by a rate, and in the latter case they may extend the rate over thirty years. This clause, which is thus introduced among miscellaneous enactments, enables the local board to extend the time for the repayment of the expenses, where they do not resort to a rate, to thirty years by annual instalments. This appears to differ in little from the improvement rate. In 21 & 22 Vict. c. 98, s. 58, will be found the new measure for creating rent-charges.

(b) See the interpretation of this word in sect. 2.

CXLVIII. And be it enacted, that whosoever wilfully obstructs any superintending inspector, or any member of the local board of health, or any officer or person duly employed in the execution of this Act, or destroys, pulls down, injures, or defaces any board (c) upon which any byelaw, notice, or other matter is inscribed, shall, if the same were put up by authority of the local or [general board of health], be liable for every such offence to a penalty not exceeding *five pounds* (d);

Penalty for obstructing officers, defacing boards, &c.;

And if the occupier of any premises prevent the owner thereof from obeying or carrying into effect the provisions of this Act, any justice to whom application is made in this behalf shall, by order in writing (which may be according to the form contained in the schedule (F.) to this Act annexed, or to the like effect), require such occupier to permit the execution of the works required to be executed, provided that the same appear to such justice to be such as are necessary for the purpose of obeying or carrying into effect the provisions of this Act (e);

upon occupiers preventing execution of works.

And if within a reasonable time after the making (f) of such order the occupier against whom it is made refuse to comply therewith, he shall be liable to a penalty not exceeding *five*

(c) The 21 & 22 Vict. c. 98, s. 66, provides a penalty upon any person injuring the works or materials of the local board.

Refer to *Frost v. Lloyd*, 11 Jur. 59, as to the pleadings in the case of an obstruction.

(d) See sect. 129, as to the recovery of this penalty.

(e) See also the provision in the Nuisances Removal Act, 1855, 18 & 19 Vict. c. 121, s. 37. It appears by the form of the order given in the schedule, that the occupier must be summoned before the justices previous to the issuing of this order.

(f) In the Nuisances Removal Act the word used is *service*, but as the time referred to in the text is a *reasonable* one, that will be properly construed by considering when the notice was served.

pounds (a) for every day afterwards (b) during the continuance of such refusal;

Occupiers to disclose owner's name.

And if the occupier of any premises, when requested by or on behalf of the local board of health to state the name of the owner of the premises occupied by him, shall refuse or wilfully omit to disclose or wilfully mis-state the same, any justice may, on oath made before him of such request, and refusal, omission, or mis-statement, summon the party to appear before him or some other justice at a time and place to be appointed in such summons, and if after being so summoned he neglect or refuse to attend at the time and place so appointed, or if he do not show good cause for such refusal, or if such wilful omission or mis-statement be proved, the justice before whom the party is so summoned may impose upon the offender a penalty not exceeding five pounds (c).

Consents of board of health and local board to be in writing.

CXLIX. \*\* And be it enacted, that (d) whenever the consent, sanction, or approval or authority of the general board of health is required by the provisions of this Act, the same shall be in writing under their seal and the hands of two or more members thereof; \*\*

And whenever the consent, sanction, approval, or authority of the local board of health is so required the same shall (in the case of a non-corporate district) be *in writing* (e) under their seal and the

(a) See sect. 129, as to the recovery of this penalty.

(b) "Afterwards" must mean after the refusal.

(c) See sect. 129 as to the recovery of this penalty.

(d) Though these matters will not occur hereafter, yet it may be necessary to prove them in regard to past transactions.

(e) See further 21 & 22 Vict. c. 98, s. 61, which enables the clerk of the board to authenticate certain documents by his

hands of five or more of them, or (in case of a corporate district) under their common seal.

CL. And be it enacted, that any summons, notice, writ, or proceeding of any kind whatsoever to be served upon the local board of health may be so served by being left at or sent through any post-office, directed to the local board of health, at their office, or by being delivered there to the clerk personally (f);

And in all cases in which any notice is by this Act required to be given to the owner or occupier of any premises it shall be sufficient to address the notice to [them \*] by the description of the "owner" or "occupier" (as the case may require) of the premises (naming them) in respect of which the notice is given, without further name or description;

And the notice shall be served upon [them] or one of them, as the case may require, either personally or by delivering the same to some inmate of his or their place of abode, or in the case of the occupier (and also in case of the owner, if his place of abode be unknown,) upon any inmate of the last-mentioned premises, or if such premises be unoccupied, then, in case the notice is required to be served upon the occupier, (and in case of the owner also, if his residence be unknown,) it shall be sufficient to fix the notice upon some conspicuous part of the premises:

Provided always, in the case of notices to the owner, that, although his place of abode be known

signature. It is observed by Kindersley, V. C., in *Ex parte Llanelly*, 17 Jur. 108, that a local board of health, if other than a corporate borough, is not made a corporation by this Act.

(f) See the provision in the Lands Clauses Consolidation Act, 8 & 9 Vict. c. 18, s. 134, now incorporated herewith.

Service of notice upon local board;

upon owners and occupiers.

\*Sic in stat.

to the local board of health, yet if it be not within the limits of their district it shall be sufficient for them to transmit any notice, directed to him by name, through the post.

Exemptions from stamp duty.

CLI. And be it enacted, that no advertisement inserted or caused to be inserted by *the general* or local board of health in the *London Gazette* or any paper or publication under this Act, or for the purpose of carrying the same into effect, nor any deed, award, submission, instrument, contract, agreement, or writing, made or executed by (a) [*the said general*] or local board, their officers or servants, under or for the purposes of this Act, nor any appointment by [*the general*] or local board of any officer or person under this Act, shall be chargeable with any stamp duty whatever ;

Exemption from window duty in certain cases.

And in case any vault, cellar, or underground room of any house containing, at the time of the passing of this Act, *seven windows* or lights only, shall have been let or occupied separately as a dwelling before the passing of this Act, without any external window, or such an external window as is required by the provisions of this Act with respect to the letting and occupation of vaults, cellars, and underground rooms, and it shall become necessary, by reason of such provisions, to make such an external window as is required thereby (b), in order that such vault, cellar, or underground room may lawfully be let or occupied separately as a dwelling, the making only of such external window shall *not* render any person liable in respect of such house to

(a) It is by no means clear that by these words a conveyance to the local board will be exempt from stamp duty, though a lease executed by them would be.

(b) In sect. 67, *ante*, p. 115.

*the duties payable for a house having eight windows or lights (c)*, anything in any Act of parliament to the contrary notwithstanding.

CLII. And be it enacted, that this Act may be amended or repealed by any Act to be passed during this present session of parliament. Amendment of Act, &c.

## SCHEDULES

TO WHICH THE FOREGOING ACT REFERS.

### SCHEDULE (A.)

#### *Form of Voting Paper.*

District of

No. of Voting Paper.	Name and Address of Voter.	Number of Votes.	
		As Owner.	As Ratepayer

#### *Directions to the Voter (d).*

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

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

(c) By the statute 14 & 15 Vict. c. 36, the duties upon houses according to the number of windows therein were abolished.

(d) Unfortunately this form does not specify the number of persons to be elected. When the district is divided into wards, under 21 & 22 Vict. c. 98, s. 24, *post*, this paper must be altered accordingly.

(e) Sect. 25, *ante*, p. 71, requires the witness to write the name of the voter also.

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

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

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

(Signed) \_\_\_\_\_

or the mark of (c) \_\_\_\_\_

(d) \_\_\_\_\_ Witness to the mark.

or \_\_\_\_\_ Proxy for \_\_\_\_\_

#### SCHEDULE (B.) (e)

##### Form of Mortgage of Rates.

By virtue of the Public Health Act, 1848, the local board of health for the district of —, in consideration of the sum of — paid to the treasurer of the said district by *A. B.* of —, for the purposes of the said Act, do grant and assign unto the said *A. B.*, his executors, administrators, and

(c) Here must be the mark and the name of the voter.

(d) Here must be the name of the witness.

(e) See ss. 107, 111; see in 21 & 22 Vict. s. 89, schedule, the form of the rentcharge to be granted hereafter.

assigns, such proportion of the rates arising or accruing by virtue of the said Act from [the rates mortgaged] as the said sum of — doth or shall bear to the whole sum which is or shall be borrowed upon the credit of the said rates (*f*), to hold to the said *A. B.*, his executors, administrators, and assigns, from the day of the date hereof until the said sum of —, with interest at the rate of — per centum per annum for the same, shall be fully paid and satisfied; and it is hereby declared, that the said principal sum shall be repaid on the — day of — at [place of payment]. Dated this — day of — One thousand eight hundred and —

[In case of a non-corporate district, to be signed by five members at least of the local board of health, and sealed with their seal (*g*); in case of a corporate district, to be sealed with the common seal.]

#### SCHEDULE (C.) (h)

##### Form of Transfer of Mortgage.

I *A. B.* of —, in consideration of the sum of — paid to me by *C. D.* of —, do hereby transfer to the said *C. D.*, his executors, administrators, and assigns, a certain mortgage bearing date the — day of —, and made by the local board of health for the district of —, for securing the sum of —, and interest thereon at — per

(*f*) See sect. 107.

(*g*) That is, the seal of the local board.

(*h*) See sect. 112. This deed must be stamped.

centum per annum [or if such transfer be by endorsement on the mortgage, insert, instead of the words immediately following the word "assigns," the within security], and all my right, estate, and interest in and to the money thereby secured, and in and to the rates thereby assigned. In witness whereof I have hereunto set my hand and seal, this — day of — One thousand eight hundred and —

A. B. (L.S.)

SCHEDULE (D.) (a)

Form of Distress Warrant.

To A. B., Collector of Rates, and to all Constables and Peace Officers.

County of — } WHEREAS complaint hath been  
[or Borough, &c.] } duly made by A. B., one of the  
to wit. } collectors for the district of  
—, under and by virtue of the Public Health Act, 1848, that C. D. of, &c., hath not paid and hath refused (b) to pay the sum of — duly assessed upon him in and by a certain rate bearing date on or about the — day of — in the year of our Lord One thousand eight hundred and —, although the same hath been duly demanded of

(a) See sect. 104.

(b) The language of the clause is *fail to pay*, which may not be accompanied with any actual *refusal*; where there has been no refusal the warrant should be framed according to the facts.

him: And whereas it appears to me, E. F., Esquire, one of Her Majesty's justices of the peace in and for the said county [or borough, &c.], as well upon the oath of the said A. B. as otherwise, that the said sum of — hath been duly demanded in writing by him from the said C. D., and that the said — hath refused to pay the same for the space of fourteen days after such demand made, and doth refuse to pay the same: And whereas the said C. D. hath been duly summoned to appear before me to show cause why the said sum should not be paid by him, and not having shown to me any sufficient cause why the same should not be paid: These are therefore, in Her Majesty's name, to command you to levy the said sum of —, and also the sum of —, the cost of proceeding to obtain this warrant, by distress and sale of the goods and chattels of the said C. D., and your reasonable charges of taking, keeping, and selling the said distress, rendering to him the overplus (if any), on demand; and if sufficient distress cannot be found of the goods and chattels of the said C. D., that then you certify the same to me, together with this warrant, to the end that such further proceedings may be had therein as to the law doth appertain.

Given under my hand and seal, the — day of — in the year of our Lord —

(Signed) E. F. (L.S.)

## SCHEDULE (E.) (a)

*Form of Conviction.*

County of ——— } BE it remembered, that on the  
 [or Borough, &c.] } ——— day of ——— in the year  
 to wit. } of our Lord ———, A. B. is  
 convicted before me [or us] ——— one [or two] of  
 Her Majesty's justices of the peace in and for the  
 county [or borough, &c.] of ——— [here describe the  
*offence generally, and the time and place when and  
 where committed, in the words of this Act, or as  
 near thereunto as may be,*] contrary to the Public  
 Health Act, 1848; and I [or we] do adjudge that  
 the said A. B. hath forfeited for his said offence  
 the sum of [amount of penalty adjudged], and  
 that he do pay to C. D. the further sum of ———  
 as and for his costs in this behalf.

Given under my hand and seal [or our hands and  
 seals], the day and year first above written.

(Signed) (L.S.)  
 (L.S.)

## SCHEDULE (F.)

*Form of Order to permit Execution of Works  
 by Owners (b).*

County of ——— } WHEREAS complaint hath been  
 [or Borough, &c.] } made to me, E. F., Esquire,  
 to wit. } one of Her Majesty's justices

(a) See sect. 130.

(b) See sect. 148, and the form given in the Nuisances Re-  
 moval Act, 1855, Sched. G.

of the peace in and for the county [or borough, &c.]  
 of ——— by A. B., owner within the meaning of  
 the Public Health Act, 1848, of certain premises,  
 to wit, a house [as the case may be] situate in ———  
 Street [as the case may be] in the parish of ———  
 in the said county [or borough, &c.], that C. D.,  
 the occupier of the said premises, doth prevent  
 the said A. B. from obeying and carrying into  
 effect the provisions of the said Act in this, to  
 wit, that he the said C. D. doth prevent the said  
 A. B. from [here describe the works generally, ac-  
 cording to circumstances, for instance, thus: con-  
 structing and laying down, in connexion with the  
 said house, a covered drain, so as to communicate  
 with a [sewer or drain] of the local board of health  
 of the district of ———, or a sewer, &c. which the  
 local board of health of the district of ——— are  
 entitled to use, as the case may require, such sewer  
 being within one hundred feet of the said house]:  
 and whereas the said C. D., having been duly sum-  
 moned to answer the said complaint, and not having  
 shown sufficient cause against the same, and it ap-  
 pearing to me that the said works are necessary for  
 the purpose of enabling the said A. B. to obey and  
 carry into effect the provisions of the said Act, I  
 do hereby order that the said C. D. do permit the  
 said A. B. to execute the same in the manner re-  
 quired by the said Act.

Given under my hand and seal, this ——— day  
 of ——— in the year of our Lord One thousand eight  
 hundred and ———

E. F. (L.S.)