

**PUBLIC HEALTH ACTS AMENDMENT ACT,
1907.**

[7 Edw. 7. Ch. 53.]

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PART II.

STREETS AND BUILDINGS.

Deposit of plan to be of no effect after certain intervals.

15. The deposit of any plans or sections of any street or building, in pursuance of any bye-law in force in the district, may by notice in writing to the person by whom the plans or sections have been deposited be declared by the local authority to be of no effect if the work to which the plans or sections relate is not commenced— s. 15.

As to plans and sections deposited before the commencement of this section, within three years from that date;

As to plans and sections deposited on or after the commencement of this section, within three years of the deposit of the plans and sections.

When the deposit of any plans and sections has been declared to be of no effect, a fresh deposit shall be necessary before the work to which they relate is commenced.

The local authority shall give notice of the provisions of this section to every person intending to lay out a new street or erect a new building in relation to which plans and sections have been deposited before the commencement of this section, but the laying out of which street or erection of which building shall not have been commenced, and shall attach a similar notice to the approval of every such intended work in relation

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to which plans and sections have been deposited subsequent to the commencement of this section.

Public Health Act, s. 41, provides that "Every sanitary authority may make bye-laws with respect to the following matters (that is to say):—

- (1). With respect to the level, width and construction of new streets, and the provisions for the sewerage thereof, and the preventing of the opening thereof for public use until such bye-laws have been complied with:
- (2). With respect to the structure and description and quality of the substances used in the construction of new buildings for securing stability and the prevention of fires, and for purposes of health:
- (3). With respect to the sites of houses, buildings and other erections.
- (4). With respect to the sufficiency of the space about buildings to secure a free circulation of air, and with respect to the ventilation of buildings:
- (5). With respect to the drainage of buildings, to water-closets, earth-closets, privies, ashpits, and cesspools in connection with buildings and they may further provide for the observance of such bye-laws by enacting therein such provisions as they think necessary AS TO THE DEPOSIT OF PLANS AND SECTIONS by persons intending to lay out streets or to construct buildings. Provided that no bye-law made under this section shall affect any building erected before the passing of this Act" (*i.e.*, the 8th August, 1878). (See *Vanston*, pp. 74-5). But as to the last provision, see s. 23 of the Public Health Acts Amendment Act, 1890. For full text of s. 41, see p. 244 *post*.

The section, it will be seen, applies both to urban and rural authorities. The power to make bye-laws is further extended as regards urban authorities [and now may be extended as regards rural authorities; see Public Health Act, 1896, s. 1, and Local Government Act, 1898, s. 33] by s. 23 of the Public Health Acts Amendment Act, 1890, to include "The paving of yards and open spaces in connection with dwelling-houses; and the provision in connection with the laying out of new streets of secondary means of access, where necessary, for the purpose of the removal of house refuse and other matters." s. 15 note.

ANY BYE-LAW IN FORCE.—No. 6 of the Dublin Corporation Bye-laws, 1901, made under the Public Health Act, and the Public Health Acts Amendment Act, 1890, with respect to new streets and the sewerage thereof, provides that "Every person who intends to lay out a new street, shall give to the Corporation notice in writing of such intention, which notice shall be delivered to the Town Clerk at his office, City Hall, and shall, at the same time, deliver, or cause to be delivered to the Town Clerk at his office, a plan and section of such intended street, drawn to a scale of not less than one inch to every forty-four feet.

Such person shall show on every such plan the names of the owners of the lands through or over which such street is intended to pass; the intended level and width of the carriage and foot-ways, respectively; the intended direction shown by the points of the compass; the intended mode of construction; plan of sewers, and the position where the outfall is intended to discharge; the intended name of such street, and its intended position in relation to the streets nearest thereto; the size and number of the intended building lots; the intended sites, height, class and nature of the buildings to be erected thereon; the intended height of the division and fence walls thereon; and, the name and address of the person intending to lay out such street.

s. 15 note.

Such person shall sign such plan, or cause the same to be signed by his duly authorized agent.

Such person shall show on every such section the levels of the present surface of the ground above the ordnance datum; the intended level and rate or rates of inclination of the intended street, the level and inclinations of the streets with which it is intended that such street shall be connected; and the intended level of the lowest floors of the intended buildings.

And No. 7 of the same provides that "the Borough Surveyor, shall, within *one month* after the lodgment of the plans and notices as hereinbefore specified, issue a printed notice approving or disapproving of the plans submitted, and in the event of disapproval setting forth his reasons for such disapproval. No works to which these bye-laws relate shall be commenced after such notice of disapproval, or before the expiration of such month without such approval, by the person laying out a street or constructing any work of any description to which these bye-laws relate."

As to buildings, No. 94 of the Dublin Corporation Bye-laws, under the same Acts, and of the same date, with respect to new buildings, provides that "every person who intends to erect a building, shall give to the Corporation notice in writing of such intention, which shall be delivered to the Town Clerk at his office, City Hall, and shall at the same time deliver, or cause to be delivered to the Town Clerk, at his office, plans and sections of every floor of such intended building, which shall be drawn to a scale of not less than *one inch to every eight feet*, and shall show the position of the several parts of such building, and the position of every water-closet, earth-closet, ashpit, well, and all other appurtenances:

"Such person shall at the same time deliver, or cause to be delivered to the Town Clerk to the Corporation, at his office, City Hall, a description in writing of the materials of which it is intended that such building

shall be constructed, and of the intended mode of s. 15 note.
drainage and means of water supply.

“Such person shall at the same time deliver or cause to be delivered to the Town Clerk, at his office, a block plan of such building, which shall be drawn to a scale of not less than *one inch to every forty-four feet*, and showing the position of the buildings and appurtenances of the properties immediately adjoining, with the line of frontage of the houses or buildings (if any) on both sides, the width and level of the street in front, and of the street, if any, at the rear of such building, the level of the lowest floor of such building, and of any yard or ground belonging thereto:

“And, such person shall likewise show on such plan the intended lines of drainage of such building; the intended size, depth, and inclination of each drain; and the details of the arrangement proposed to be adopted for the ventilation of the drains.

“All such plans, sections and block-plans shall be legibly drawn in ink, and shall be coloured in such manner as shall be necessary either for the purpose of distinguishing the several materials to be employed or of distinguishing existing work from the proposed new work.

“All such plans shall bear on them the name and address of the building owner, and shall also be signed by the architect, engineer, or other person responsible for their preparation.”

And No. 95 contains a provision almost identical with No. 7 above as to the *City Architect* issuing a printed notice of approval or disapproval.

PLANS AND SECTIONS.—A person who sends in a plan of a new street may abandon his intention and deal with his property as if he had never done so.

Mayor of Sunderland v. Skinner, 53 J.P., p. 660.
COMMENCEMENT OF THIS SECTION. See s. 13 *ante*.

s. 15 note,
16, 17.

NEW STREET.—See *Vanston*, pp. 4, 76. and *Vanston*, Public Health Suppl., p. 30, and see especially s. 23 *ante*.

NEW BUILDINGS.—See *Vanston*, pp. 14, 79, 86 and s. 23 *post* and note thereto.

FRESH DEPOSIT.—This also becomes necessary if any substantial change is made in the plans, even if the change is a proper one. *James v. Masters* [1893], 1 Q.B. 355. And see cases cited in App. 7, p. 225 *post*.

As to Plans deposited with Local Authority.

16. The local authority may retain any drawings, plans, elevations, sections, specifications, and written particulars, descriptions or details, deposited with and approved by them in pursuance of any enactment for the time being in force in the district or of any bye-law thereunder.

A bye-law enabling an urban authority to retain such plans, even though they were disapproved of, was held good under the former law.

Gooding v. Ealing Local Board, 1 T.L.R. 62.

Power to vary position or direction and to fix beginning and end of new streets.

17.—(1) The local authority may, on the deposit of a plan and sections of a new street in pursuance of a bye-law in force in the district, by order vary the intended position, direction or termination, or level of the new street so far as is necessary for the purpose of securing more direct, easier, or more convenient means of communication with any other street or intended

street or for the purpose of securing an adequate opening at either end of the new street, or of securing compliance with any enactment or bye-law in force in the district for the regulation of streets and buildings. s. 17.

The local authority may also by their order fix the points at which the new street shall be deemed to begin or end, and the limits of the new street as determined by the points so fixed shall have effect for the purposes of the Public Health (*Ireland*) Acts, 1878 to 1907, and of any bye-laws made under those Acts and in force within the district.

(2) The powers of the local authority under this section shall not be exercisable in any case in which it is shown, to their satisfaction, that compliance with their order will entail the purchase of additional lands by the owner of the lands on which the new street is intended to be laid out, or the execution of works elsewhere than on those lands.

(3) Where the local authority make an order under this section a person shall not lay out or construct the new street otherwise than in compliance with the order. If any person acts in contravention of this provision, he shall be liable to a penalty not exceeding five pounds, and to a daily penalty not exceeding forty shillings.

(4) The local authority shall pay compensation to any person injuriously affected by the exercise by the local authority of their powers under this section.

See note to s. 15 *ante*.

s. 17 note.

As to Dublin, cf. s. 36 of the Dublin Corporation Act, 1890 (*Vanston*, p. 792), of which some of the provisions are identical with this section.

BYE-LAW IN FORCE.—See note to s. 15 *ante*.

NEW STREET.—See note to s. 15 *ante*.

If a highway, which is, of course, a street in a technical sense within the meaning of the Public Health Act, s. 2, become a street in a popular sense, by the erection of buildings along it, this is a "new street." *Vestry of St. Giles, Camberwell, v. Crystal Palace Co.* [1892], 2 Q.B. 33; and see cases cited in App. 6. p. 223. *post*.

PURPOSES OF THE PUBLIC HEALTH (*Ireland*) ACTS, &c.—See Public Health Act, s. 41, Public Health Acts Amendment Act, 1890, s. 23; *Vanston*, pp. 74, 341.

OWNER.—For definition, see s. 13 *ante* and Public Health Act, s. 2; *Vanston*, pp. 4, 8; and see cases cited in App. 5, p. 222 *post*.

LANDS.—For definition, see s. 13 *ante* and Public Health Act, s. 2; *Vanston*, pp. 4, 8.

PENALTY.—See s. 6 *ante* and Public Health Act, ss. 249-252; *Vanston*, p. 255 *et seq.*, and as to appeal, see s. 7 *ante*.

DAILY PENALTY.—See s. 13 *ante*.

COMPENSATION.—See s. 10 *ante* and Public Health Act, ss. 216-218; *Vanston*, pp. 223-229; cf. also Public Health Act, s. 274 and note thereto in *Vanston*, p. 289. It was held under the English section corresponding to that section that the right to compensation could be tried out by *mandamus* before the amount of compensation has been assessed.—*Pearsall v. Brierly Hill Local Board*, 11 Q.B.D. 735, and *vice versa*. "If the damage complained of has been occasioned apparently by reason of the exercise of the powers of the Act, the arbitrator proceeds to assess the amount of compensation limited to such damage and leaving it open to the defendants, if they think fit, to contest their

liability to the amount awarded on any grounds that may be open to them." — *Per* Lord FitzGerald, *Brierly Hill Local Board v. Pearsall*, 9 App. Cas. 595; *Vaunston*, p. 291. s. 17, note, 18.

Note that, unlike Public Health Act, s. 274, the present section contains no provision as to the party to be compensated not being in default.

Crossing for cattle, &c., over footways.

18. The provision and use of new means of access for any cattle, any beast of draught or burden, any waggon, cart, or other wheeled carriage exceeding four feet in width or two hundred-weight in weight, to or from any premises fronting, adjoining, or abutting on any street which has become a highway repairable by the inhabitants at large, may, where that provision involves passage across or interference with any such part of the street as comprises a kerbed or paved footway, be allowed by the local authority subject to the following conditions (that is to say):—

(a) Every person who intends to provide the new means of access shall give notice in writing of his intention to the local authority, and shall at the same time submit, for the approval of the local authority, a plan showing the position, gradient, and mode of construction of the intended means of access;

(b) When the plan, with or without amendment, has been approved by the local authority, the person may, upon receiving notice of their

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approval, proceed to execute the necessary works, but those works shall be executed under the supervision and to the reasonable satisfaction of the local authority, and in accordance with the plan as approved by the local authority;

- (c) After the completion of the works the new means of access may be used, subject to the conditions which, in pursuance of any provisions of the law relating to highways, attach to the use for the like purpose of any carriage way forming part of a highway repairable by the inhabitants at large.

FRONTING, ADJOINING OR ABUTTING.—These words occur in Public Health Act, s. 28; *Vanston*, p. 45. See *Wakefield Local Board v. Lee*, 1 Ex. D. 336, and other nice decisions upon them cited at *Vanston*, p. 53; and see cases cited in App. 6, p. 223 *post*.

HIGHWAY REPAIRABLE BY THE INHABITANTS AT LARGE.—Where these words occur in Public Health Acts Amendment Act, 1890, s. 27, *Vanston* says (at p. 345)—“The expression is one applicable in England, where it has a definite legal meaning. That is not the case in this country; accordingly in s. 28 of the Irish Public Health Act of 1878 (which is almost identical with s. 150 of the English Act of 1875, from which it was taken, and in which the same expression occurs), we find substituted for it the words ‘*in charge of the sanitary authority or of any grand jury or other public body.*’ In the application of this section to Ireland, it would seem that the expression should be construed as being equivalent to the words substituted

for it in the section mentioned." Always bearing in mind the change in the control of roads since brought about by the Local Government Act, 1898, a similar canon of construction should presumably apply to the expression where it occurs in this and succeeding sections. s. 19.

As to urgent repairs to private streets.

19.—(1) Where repairs are required in the case of any street, not being a highway repairable by the inhabitants at large, to obviate or remove danger to any passenger or vehicle in the street, the local authority may give notice in writing to the owners of the lands and premises fronting, adjoining, or abutting on the street, and may require the owners to execute, within a time to be specified in the notice, such repairs as are described in the notice.

(2) If, within the time specified in the notice, the repairs described in the notice are not executed, the local authority may execute the repairs, and may recover summarily, as a civil debt, the cost of the repairs so executed from the owners in default, and the amount recoverable from each owner shall be in the proportion which the extent of his lands and premises fronting, adjoining, or abutting on the street, bears to the total extent of all lands and premises so fronting, adjoining, or abutting.

(3) Where the name or place of abode of an owner cannot be found by the local authority, a copy of the

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notice shall be sent by post to or left with the occupier of the lands and premises to which the notice relates, or, if there be no such occupier, shall be affixed upon some conspicuous part of the lands and premises.

(4) In every case in which, within the time specified in the notice, the majority in number or rateable value of owners of lands and premises in the street, by a notice in writing, require the local authority to proceed, in relation to the street, under section *twenty-eight* of the Public Health (*Ireland*) Act, 1878 [or, if the Private Street Works Act, 1892, is in force in the district, under that Act], the local authority shall so proceed; and where the local authority so proceed they shall, on the completion of the necessary works, forthwith declare the street to be a highway repairable by the inhabitants at large, and on and after the date of the declaration the street shall become a highway so repairable.

Cf. provisions of Public Health Act, c. 28; *Vanston*, p. 45.

HIGHWAY REPAIRABLE, &c.—See note to last sect.

FRONTING, ADJOINING, OR ABUTTING.—See note to last sect.

STREET.—By s. 13 *ante*, the definition in Public Health Act, s. 2, quoted in the note to s. 13, *ante*, is incorporated in the present Act. See *Vanston*, pp. 4, 11 and 49; and see cases cited in App. 6, p. 223, *post*.

MAY RECOVER.—See s. 6 *ante*, and Public Health Act; ss. 249, 250, 260; *Vanston*, pp. 255, 256, 267, and see the very full note at *Vanston*. p. 55, but note that

no such discretion as to apportionment is given to the surveyor of the local authority under the present sect. as is given by Public Health Act, s. 28. s. 19 note,
20.

COSTS.—See s. 10 *ante*, and Public Health Act, s. 216, *et seq.*; *Vanston*, p. 223, *et seq.*

OWNER.—The definition in Public Health Act, s. 2, quoted in the note to s. 13, *ante*, is incorporated by s. 13, *ante*. See *Vanston*, pp. 4, 8.

PRIVATE STREET WORKS ACT does not apply to this country.

Recovery of damages caused to footways by excavations.

20. If the footway of any street repairable by the inhabitants at large be injured by or in consequence of any excavations or other works on lands adjoining thereto, the local authority may repair or replace the footway so injured, and all damages and expenses of or arising from such injury and repair or replacement shall be paid to the local authority by the owner of the lands on which such excavations or other works have been made, or by the person causing or responsible for the injury.

STREET REPAIRABLE, &c.—See note to s. 18.

DAMAGES, EXPENSES.—See ss. 6, 10 *ante*, and notes to s. 19 *ante*.

Power to alter names of streets.**ss. 21, 22.**

21. The local authority may, with the consent of two-thirds in number and value of the ratepayers in any street, alter the name of such street or any part of such street. The local authority may cause the name of any street or of any part of any street to be painted or otherwise marked on a conspicuous part of any building or other erection.

Any person who shall wilfully and without the consent of the local authority, obliterate, deface, obscure, remove, or alter any such name, shall be liable to a penalty not exceeding forty shillings.

For cases under s. 64 of the Towns Improvement Clauses Act, 1847, see *Collins v. Hornsey U.C.* [1901], 2 K.B. 180; *Anderson v. Dublin Corporation*, 15 L.R.L. 410; and see 11 & 12 Vic., c. 163, s. 145; 57 & 58 Vic., c. 213, ss. 32-35.

PENALTY.—See s. 6 *ante*, and Public Health Act, s. 249, *et seq.*; *Vanston*, p. 255, *et seq.*

As to Dublin, cf. Dublin Corporation Act, 1890, s. 42; *Vanston*, p. 794, under which a *simple* majority of ratepapers is sufficient.

Buildings at corner of streets.

22. The local authority may require the corner of any building intended to be erected at the corner of two streets to be rounded off or splayed off to the height of the first storey or to the full height of the building, and to such extent otherwise as they may determine and for any loss which may be sustained through the exercise

of the powers by this section conferred upon the local authority they shall pay compensation. s. 23.

COMPENSATION.—See s. 10 *ante*, and Public Health Act, s. 216, *et seq.*; *Fanston*, p. 223, *et seq.*, and the last note to s. 19, *ante*.

What to be deemed new buildings.

23. For the purposes of this Act and the Public Health (*Ireland*) Acts, 1878 to 1900, and any bye-laws made thereunder, each of the following operations, namely:—

- (a) The re-erection, wholly or partially, of any building of which an outer wall is pulled down or burnt down to or within ten feet of the surface of the ground adjoining the lowest storey of the building, and of any frame building so far pulled down or burnt down as to leave only the framework of the lowest storey;
- (b) The conversion into a dwelling-house of any building not originally constructed for human habitation, or the conversion into more than one dwelling-house of a building originally constructed as one dwelling-house only;
- (c) The re-conversion into a dwelling-house of any building which has been discontinued as or appropriated for any purpose other than that of a dwelling-house;
- (d) The making of any addition to an existing building by raising any part of the roof, by

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altering a wall, or making any projection from the building, but so far as regards the addition only; and

(c) The roofing or covering over of an open space between walls or buildings;

shall be deemed to be the erection of a new building.

This section is, so far as it applies to the Public Health Acts, an extension of the Public Health Act, s. 43 (*Vanston*, p. 86). But neither this section nor that section gives an exhaustive definition of "new building." What is a new building must always be a question of fact and of degree, except as to the operations mentioned in these two sections. *James v. Wyll*, 51, L.T. (N.S.) 237; see *Vanston*, p. 86. It is important to note that the clause at the end of Public Health Act, s. 43, as to the rebuilding of a building taken down to half its cubic extent, being the erection of a new building (which is identical with the first part of s. 32 of the Dublin Corporation Act, 1830), is not contained in the corresponding English section, of which the present section is, in effect, an amendment. The result is that in this country the erection of a new building might apparently have a wider meaning for the purposes of the earlier Public Health Acts, than for the purposes of the present Act, since the last clause of Public Health Act, s. 43, above mentioned, applies to the earlier Public Health Acts, but not to the present Act. But see, as regards Dublin, s. 32 of the Dublin Corporation Act, above referred to. Sub-section (b) of the present section is identical with a portion of the Public Health Act, s. 43. As to Dublin, cf. with sub-s. (d) above, s. 31 of the Dublin Corporation Act, 1890; *Vanston*, p. 790.

PUBLIC HEALTH (IRELAND) ACTS, 1878 TO 1900.—See note to s. 14 (8) *ante*, and to s. 2 *ante*.

BUILDING.—See note to Public Health Act, s. 2, *Vanston*, p. 14, and see *Dublin Corporation v. Irish Church Missions* [1901], 2 I.R. 387, *Stevens v. Gourley*, 7 C.B.N.S. 99, *Fielding v. Rhyt Improvement Commissioners*, 3 C.P.D. 272. “The question for our decision is this:—Is a structure of a temporary character designed and used as such obnoxious to the provisions of the Public Health Act, 1878 . . . ? My answer to this question is, No—by reason of the temporary character of the construction. The Public Health Act deals with buildings of a permanent and not a temporary character, and sect. 41 especially strongly supports this view.”—*Per Lord O’Brien, C.J.*, in the *Church Missions* case [1901], 2 I.R., p. 410. s. 23 note,
24.

Bye-laws as to height of chimneys, &c.

24. Section *forty-one* of the Public Health (*Ireland*) Act, 1878, shall be extended so as to empower the local authority to make bye-laws—

with respect to the height of chimneys of buildings, and with respect to the height of buildings; and

with respect to the structure of chimney shafts for the furnaces of steam engines, breweries, distilleries, or manufactories.

Section *forty-two* of the Public Health (*Ireland*) Act, 1878, shall also be in force in every district in which this section is in force.

The effect of this section is, it is submitted, merely to add the objects mentioned in it to the lists enumerated in Public Health Act, s. 41, and, therefore, to make the bye-laws relating to the objects mentioned in the present section subject to the last paragraph of Public Health Act, s. 41, which is as follows:—“And they may further provide for the observance

s. 24 note. of such bye-laws by enacting therein such provisions as they think necessary as to the giving of notices, as to the deposit of plans and sections by persons intending to lay out streets, or to construct buildings, as to inspection by the sanitary authority, and as to the power of such authority (subject to the provisions of this Act) to remove, alter, or pull down any work begun or done in contravention of such bye-law PROVIDED THAT NO BYE-LAW MADE UNDER THIS SECTION SHALL AFFECT ANY BUILDING ERECTED BEFORE THE PASSING OF THIS ACT" (*i.e.*, 8th August, 1878), see *Vanston*, p. 75. As the words "new buildings" are not employed in the present section as in Public Health Act, s. 41 (2), there is apparently nothing on the face of the section to prevent bye-laws being made to affect chimneys, buildings, &c., erected between the years 1878 and 1908, cf. Public Health Acts Amendment Act, c. 23 (2), but it is submitted that it can never have been the intention of the legislature to permit permanent structures erected *before the present Act* to be interfered with. Regard must be had to the general scope of Public Health Act, s. 41.

BYE-LAWS.—See s. 9 *ante*, and Public Health Act, 219-223; *Vanston*, pp. 230-234, s. 23 (4) of the Public Health Acts Amendment Act, 1890, *Vanston*, p. 342, provides that "Every local authority may make bye-laws to prevent buildings which have been erected in accordance with bye-laws made under the Public Health Acts from being altered in such a way that if at first so constructed they would have contravened the bye-laws," and bye-laws made under the present section will, it is submitted, be governed by that provision in districts where that part of the Act of 1890 has been adopted.

HEIGHT OF BUILDINGS.—As to Dublin, see as to this the provisions of s. 38 of the Dublin Corporation Act, 1890; *Vanston*, p. 792.

S. 42 OF THE PUBLIC HEALTH ACT.—This (the Irish section) is already in force in all districts.

Yards to be paved, &c.

25. If any yard in connection with, and exclusively s. 25. belonging to, a dwelling-house shall not be so formed, flagged, asphalted, or paved, or shall not be provided with such works on, above, or below the surface of the yard, as to allow of the effectual drainage of the subsoil or surface of the yard by safe and suitable means to a proper outfall, the local authority may, by notice in writing, require the owner of the dwelling-house, within twenty-one days after the service of the notice, to execute all such works as are necessary for the effectual drainage of the subsoil or surface of the yard to a proper outfall.

If, within the said period of twenty-one days, the owner has failed to complete the execution of the works specified in the notice, the local authority may execute the works, and may recover from the owner in a summary manner as a civil debt the expenses incurred by the local authority in the execution of the works.

Cf. The power given to urban authorities to make bye-laws for "the paving of yards and open spaces in connection with dwelling-houses" in Public Health Acts Amendment Act, 1890, s. 23 (1). *Vanston*, p. 342.

DWELLING-HOUSE, unlike "house," is not defined in this Act or in the Public Health Act. The definition that it "means any inhabited building, and includes any yard, garden, outhouses, and appurtenances belonging thereto, or usually enjoyed therewith, and includes the site of the dwelling-house as so defined," as given in s. 29 of the Housing of the Working Classes Act, 1890, (*Vanston*, p. 728) is, of course, not incorporated in the present Act.

s. 25 note,
26.

OWNER.—See Public Health Act, s. 2, a definition incorporated in the present Act by s. 13 *ante*, *Vanston*, pp. 4-8. The definition is quoted in the note to that section.

MAY EXECUTE as to whether this imposes a duty, cf. *Vanston*, p. 55, and *Acton Local Board v. Lewsey*, 11 App. Cas. 93.

RECOVER IN A SUMMARY MANNER.—See s. 6 *ante*, and Public Health Act, ss. 249, 250, 260, *Vanston*, pp. 255, 256, 267.

EXPENSES.—See s. 10 *ante*, and Public Health Act, s. 216 *et seq.*, *Vanston*, p. 223 *et seq.*

Entrances to courts, &c., not to be closed.

26. After the commencement of this section the entrances to any court shall not, except with the consent of the local authority, be closed or narrowed or otherwise altered or affected by any permanent structure so as to impede the free circulation of air, and the height of any such entrance shall not, except with that consent, be lowered. The consent of the local authority under this section may be given subject to compliance with such conditions as the local authority by their consent prescribe with respect to the formation or provision of any other sufficient opening or means of access, or with respect to the provision of other sufficient means of securing free circulation of air throughout the court.

Nothing in this section shall have effect in relation to any court which by reason of its situation, use, architectural features, or other characteristics is, either wholly or in part, necessary for or ancillary to the ornament or amenity of any lands or premises.

Any person offending against this section shall be s. 27.
liable to a penalty not exceeding five pounds and to a
daily penalty not exceeding twenty shillings.

The word "court" occurs in Public Health Acts
Amendment Act, 1890, s. 27 (1); *Vanston*, p. 345.

PENALTY.—See s. 6 *ante*, and Public Health Act, ss.
249-252, *Vanston*, p. 255 *et seq.*; as to appeal see s. 7
(1) *ante*.

DAILY PENALTY.—See s. 13 *ante*.

As to temporary buildings.

27.—(1) Before any person erects or sets up a tem-
porary building he shall apply to the local authority
for permission so to do.

The application shall be accompanied by a plan and
sections of the proposed building drawn to a scale of
not less than one inch to every eight feet, and a block
plan, drawn to a convenient scale, showing the intended
situations and surroundings of the proposed building,
together with a specification describing the materials
proposed to be used in the construction of the building,
and the purpose for which the building is intended.

(2) The local authority shall, within one month after
the delivery of the plans and sections and specification,
signify in writing their approval or disapproval of the
building to the person proposing to erect or set up the
building.

(3) The local authority may attach to their approval
any condition which they deem proper with regard to
the sanitary arrangements of the building, the ingress

e. 27.

thereto and the egress therefrom, protection against fire, and the period during which the building shall be allowed to stand.

(4) If any such building is begun, erected, or set up without such application accompanied by such plan, sections, and specification as this section requires, or after the disapproval of the local authority or before the expiration of one month without their approval, or is in any respect not in conformity with any condition attached by the local authority to their approval, the person who began, erected, or set up the building, or, if any such building is not removed within the period allowed by the local authority, the owner of the building shall for every such offence be liable to a penalty not exceeding forty shillings, and to a daily penalty not exceeding the like amount; and the local authority may cause the building to be pulled down or removed, and any expense incurred by them in and about the pulling down or removal of the building may, at their discretion, be recovered summarily as a civil debt from the owner of the building or from the person erecting or setting up the building.

(5) Where any such building is pulled down or removed by the local authority under the powers of this section the local authority may sell the materials or any part of the materials and shall apply the proceeds of the sale in or towards payment of the costs and expenses incurred by them in relation to the pulling down or removal of the building, and shall pay the balance to the owner of the building.

(6) The following buildings shall be exempt from the s. 27.
operation of this section:—

- (a) Any building expressly exempt from the operation of the Public Health (*Ireland*) Acts, 1878 to 1900, or the bye-laws made under those Acts and in force for the time being within the district;
- (b) Any building erected or set up for the purpose of protecting or of preventing the acquisition of rights to light;
- (c) Any temporary building set up as part of the plant to be used in or about or in connection with the construction, alteration, or repair of any building or other work; but so far as regards only so much of this section as relates to plans, sections, and specifications.

This, in effect, extends the powers of the local authority under Public Health Act, s. 41 (*Vanston*, p. 75), which applied only to buildings having some element of permanence. See *Vanston*, pp. 14, 79, and *Stevens v. Gourley*, 7, C.B. (N.S.) 99. For the purpose of the present section, however, it is not necessary to make bye-laws. Cf. note to s. 15 *ante*, and cases cited in the note to s. 23 *ante*.

TEMPORARY BUILDING.—For a number of decisions as to what is “a wooden structure or erection of a movable character” within 45 and 46 Vic., c. 14, s. 13, see *Vanston*, *P.H. Suppl.*, p. 15, and *Hall v. Smallpiece*, 54 J.P. 710, *L.C.C. v. Pearce* [1892], 2 Q.B. 109. and *L.C.C. v. Humphreys* [1894], 2 Q.B. 755.

SIGNIFY . . . THEIR APPROVAL.—Sub-sec. 2 is almost identical with the first part of Public Health Act, s. 42,

s. 27 note. *Vanston*, p. 84. Under that section it was held that unless the local authority disapproved within the month they could not afterwards object, *Masters v. Pontypool L.G.B.*, 9 Ch. D. 677. Their disapproval must apparently have some reference to the nature of the plans, &c. See cases cited at *Vanston*, p. 85, but in applying them note the difference between sub-sec. 1 of the present section, and Public Health Act, s. 41.

PERSON WHO BEGAN, ERECTED OR SET UP.—See *Brown v. Edmonton Local Board*, 45, J.P. 553; cited *Vanston*, p. 85.

PENALTY.—See s. 6 *ante*, and Public Health Act, ss. 249-252; *Vanston*, p. 255 *et seq.*; and as to appeal, see s. 7 (1) *ante*.

DAILY PENALTY.—See s. 13 *ante*.

CAUSE . . . TO BE PULLED DOWN.—Before exercising the similar power in Public Health Act, s. 42, it was held that the local authority must give the owner an opportunity of showing cause against it. See *Hopkins v. Smethwick*, L.B. 24, Q.B.D. 712, and other cases cited at *Vanston*, p. 85.

OWNER.—S. 13 *ante* incorporates the definition in Public Health Act, s. 2, cited in the note to s. 13 *ante*. See *Vanston*, pp. 4, 8.

EXPENSES.—See ss. 6, 10 *ante* and Public Health Act, ss. 249, 250, 260; *Vanston*, pp. 255, 256, 267.

BUILDING EXPRESSLY EXEMPT.—The last clause of s. 41 of the Public Health Act provides that the provisions of Public Health Act, ss. 39, 40 & 41, “shall not apply to buildings belonging to any railway company and used for the purpose of such railway under any Act of Parliament.” It seems questionable whether a temporary dwelling-house erected by a railway company falls within the section. S. 33, *post*, contains an express exemption from the provisions of this part of the Act of railway buildings other than dwelling-houses.

And by Public Health (Ireland) Act, 1896, s. 32; *Vanston Public Health Suppl.*, p. 94, "all buildings, offices and premises vested in or in the occupation of *Her Majesty the Queen*, either beneficially or as part of the hereditary revenues of the Crown, or in trust for the public service, or for public purposes, or in the occupation of any department of *Her Majesty's Government*, or used or employed for public purposes" are "exempted from . . . the provisions of the Public Health (Ireland) Acts, 1878 to 1890," and see s. 12 *ante*; and see cases cited in App. 4, p. 221 *post*.

s. 27 note,
28.

Removal of materials in streets.

28. The local authority may remove, appropriate, use, and dispose of all old materials existing in any street at the time of the execution by the local authority of any works in such street unless the owners of buildings and lands in such street within forty-eight hours after notice so to do served on them by the surveyor remove such materials or their respective proportions thereof, and the local authority shall allow such sum as may be the reasonable value thereof to such owners for any materials which have been used or removed by the local authority, and in case of dispute the amount to be allowed shall be settled in the manner provided by the Public Health (*Ireland*) Act, 1878, with respect to compensation for damage sustained by reason of the exercise of any powers of that Act.

See Public Health Act, s. 28, *Vanston*, p. 48.

STREET.—By s. 13 *ante*, the definition in Public Health Act, s. 2, which is cited in the note to s. 13 *ante*, is incorporated in the present Act. See *Vanston*, pp. 4, 11 and 49.

s. 28 note
29.

OWNER.—By s. 13 *ante*, the definition in Public Health Act, s. 2, which is cited in the note to s. 13, is incorporated. See *Vanston*, pp. 4, 8.

MANNER PROVIDED BY PUBLIC HEALTH ACT.—Public Health Act, s. 274, provides that “where any person sustains any damage by reason of the exercise of any of the powers of this Act, in relation to any matter as to which he is not himself in default, full compensation shall be made to such person by the sanitary authority exercising such powers; and any dispute as to the fact of damage or amount of compensation shall be settled by arbitration in manner provided by this Act, or if the compensation claimed does not exceed the sum of twenty pounds, the same may, at the option of either party, be ascertained by and recovered before a court of summary jurisdiction.” And Public Health Act, s. 216, provides that “In case of dispute as to the amount of any compensation to be made under the provisions of this Act, except where the mode of determining the same is specially provided for, and in case of any matter which, by this Act, is authorised or directed to be settled by arbitration, then unless both parties concur in the appointment of a single arbitrator, each party shall appoint an arbitrator to whom the matter shall be referred.”

And see also Public Health Act, ss. 217, 218, *Vanston*, p. 223 *et. seq.*

Deposit of building materials or excavations not to be made without consent.

29. It shall not be lawful for any person without the consent of the local authority in writing first obtained to lay any building materials, rubbish, or other thing, or make any excavation on or in any street repairable

by the inhabitants at large, and when with such consent any person lays any building materials, rubbish, or other thing, or makes any excavation on or in any street, he shall, at his own expense, cause the same to be sufficiently fenced and a sufficient light to be fixed in a proper place on or near the same and to be continued every night from sunset to sunrise, and shall remove such materials, rubbish, or thing or fill up such excavation (as the case may be) when required by the local authority: and, if any person fails to comply in any respect with the requirements of this enactment, he shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding forty shillings, and the local authority may remove any such materials, rubbish, or thing, or fill up such excavation (as the case may be), and recover the expenses from the offender summarily as a civil debt.

REPAIRABLE BY THE INHABITANTS AT LARGE.—See note to s. 18 *ante*.

STREET.—By s. 13 *ante*, the definition in Public Health Act, s. 2, cited in the note to s. 13, is incorporated in the present Act. See *Vanston*, pp. 4, 11, 49.

PENALTY.—See s. 6 *ante*, and Public Health Act, s. 249 *et seq.*, *Vanston*, p. 255 *et seq.**

DAILY PENALTY.—See s. 13 *ante*.

EXPENSES.—See ss. 6, 10 *ante*, and Public Health Act, s. 216 *et seq.*; *Vanston*, p. 223 *et seq.*

MAY RECOVER.—See s. 6 *ante*, and Public Health Act, ss. 249, 250, 260; *Vanston*, pp. 255, 256, 267.

Dangerous places to be repaired or enclosed.

s. 30.

30. With respect to the repairing or enclosing of dangerous places the following provisions shall have effect (namely):—

- (1) If in any situation fronting, adjoining, or abutting on any street or public footpath, any building, wall, fence, steps, structure or other thing, or any well, excavation, reservoir, pond, stream, dam or bank is, for want of sufficient repair, protection, or enclosure dangerous to the persons lawfully using the street or footpath, the local authority may by notice in writing served upon the owner, require him, within the period specified in the notice and hereinafter in this section referred to as the "prescribed period," to repair, remove, protect, or enclose the same so as to prevent any danger therefrom;
- (2) If, after service of the notice on the owner, he shall neglect to comply with the requirements thereof within the prescribed period, the local authority may cause such works as they think proper to be done for effecting such repair, removal, protection, or enclosure, and the expenses thereof shall be payable by the owner, and may be recovered summarily as a civil debt.

Under the former law it was held that the owner of the land is under no legal obligation to fence an excavation in it, unless it is made so near to a highway as to

be a public nuisance.—*Hounsell v. Smyth*, 7 C.B.N.S. s. 31. 731. But in *Hadley v. Taylor*, L.R. 1 C.P. 53, the occupier of an unfurnished warehouse adjoining a highway was held liable for not fencing a “hoisthole” within 14 in. of the highway, used to raise goods from the cellar to the upper floor of the warehouse.

FRONTING, ADJOINING, OR ABUTTING.—See note to s. 18 *ante*, and *Fanston*, p. 53.

STREET.—See note to s. 29 *ante*.

BUILDING.—See note to s. 23 *ante*.

OWNER.—See note to s. 28 *ante*.

EXPENSES.—See note to s. 29 *ante*.

BE RECOVERED.—See note to s. 29 *ante* under “*may recover.*”

FOOTPATH.—The definition of “street” in Public Health Act, s. 2, incorporated in this Act by s. 13 *ante* includes “footway.”

Fencing lands adjoining streets.

31. If any land (other than land forming part of any common) adjoining any street is allowed to remain unfenced or if the fences of any such land are allowed to be or remain out of repair, and such land is, owing to the absence or inadequate repair of any such fence, a source of danger to passengers, or is used for any immoral or indecent purposes, or for any purpose causing inconvenience or annoyance to the public, the Local Government Board *for Ireland* on the application of the local authority may by Order empower the local authority to proceed under this section, and, in that case, at any time after the expiration of fourteen days from the service upon the owner or occupier of

ss. 31, 32.

notice in writing by the local authority requiring the land to be fenced or any fence of the land to be repaired, the local authority may cause the land to be fenced or may cause the fences to be repaired in such manner as they think fit, and the reasonable expenses thereby incurred shall be recoverable from such owner or occupier summarily as a civil debt.

It is a common law duty of the owner of a vacant piece of land to prevent its being used as a public nuisance, *e.g.*, by the deposit of offal or ordure, and the local authority can obtain an injunction to restrain the continuance of the nuisance.

A. G. v. Tod-Hatley [1897], 1 Ch. 560. See *Vanston*, Public Health Suppl., p. XXIII.

ADJOINING.—See note to s. 18 *ante*.

STREET.—See note to s. 29 *ante*.

EXPENSES.—See note to s. 29 *ante*.

RECOVERABLE, &c.—See note to s. 29 *ante* under “*may recover*.”

OWNER.—See note to s. 28 *ante*.

Hoards to be securely erected.

32.—(1) A person shall not use any hoarding or similar structure which is in, or abuts on, or adjoins any street, for any purpose, unless it is securely fixed to the satisfaction of the local authority.

(2) If any person acts in contravention of this section he shall be liable, in respect of each offence, to a penalty not exceeding five pounds and to a daily penalty not exceeding twenty shillings.

ABUTS OR ADJOINS.—See note to s. 18 *ante* under s. 33.
“*fronting, adjoining, or abutting.*”

STREET.—See note to s. 29 *ante* and see case?

PENALTY: DAILY PENALTY.—See note to s. 29 *ante*.
As to hoardings in Dublin, see s. 47 of the Dublin Corporation Act, 1890, *Vanston*, p. 795.

Exemption of buildings of railway companies and others.

33. Nothing in this Part or in any bye-laws to be made under any enactment extended by this Part shall apply to a building (other than a dwelling-house) belonging to a railway company, or to any company or other public body authorised to construct, maintain, or improve a harbour, pier or dock, or to the owners of any canal or inland navigation, and used by the company, public body, or owners as a part of or in connection with their railway, harbour, pier, dock, canal or inland navigation.

DWELLING-HOUSE.—See note to s. 25 *ante*.

OTHER THAN A DWELLING-HOUSE.—This adopts the principle of the decision in *Manchester, &c., Ry. Co., v. Guardians of the Barnsley Union*, 56 J.P. 679. See also note to s. 27 (6) *ante*.

CANAL.—See *Coole v. Loregrave* [1893], 2 Q.B. 44, and *Vanston*, P. II. Suppl., p. 34.

PART III.**SANITARY PROVISIONS.****Extension of s. 51 of 41 & 42 Vic., c. 52.****s. 31.**

34. Section fifty-one of the Public Health (*Ireland*) Act, 1878, shall have effect as if for the words “(but not otherwise)” there were substituted the words “or where on the report in writing of their surveyor or inspector of nuisances the local authority have reason to suspect that any such drain, water-closet, earth-closet, privy, ashpit, or cesspool is a nuisance or injurious to health.”

As regards drains *in Dublin*, compare the very similar provisions of the Dublin Corporation Act, 1890, s. 61, *Vanston*, p. 802, permitting entry where there is reason to believe there is an escape of sewer gas, and see also s. 94 of that Act.

The First part of s. 51 (see *Vanston*, p. 94, and p. 246 *post*), will now read:—

“On the written application of any person to a sanitary authority, stating that any drain, water-closet, earth-closet, privy, ashpit or cesspool on or belonging to any premises within their district is a nuisance or injurious to health, OR WHERE ON THE REPORT IN WRITING OF THEIR SURVEYOR OR INSPECTOR OF NUISANCES THE LOCAL AUTHORITY HAVE REASON TO SUSPECT THAT ANY SUCH DRAIN, WATER-CLOSET, EARTH-CLOSET, PRIVY, ASHPIT OR CESSPOOL IS A NUISANCE OR INJURIOUS TO HEALTH, it shall be lawful for any sanitary officer duly authorised in writing in that behalf by such sanitary authority after twenty-four hours’ written notice to the occupier of such premises or in case of emergency without notice