

LAND DRAINAGE
&
SEWERS

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THE LAW
OF
LAND DRAINAGE & SEWERS.

A
TREATISE

UPON THE LAW RELATING TO COMMISSIONS
OF SEWERS,

DRAINAGE BOARDS, AND OTHER DRAINAGE
AUTHORITIES,

WITH
NOTES, FORMS,

AND
AN APPENDIX OF STATUTES.

BY
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TO
THE RIGHT HONOURABLE
LORD COLERIDGE,
LORD CHIEF JUSTICE OF ENGLAND,
THIS BOOK IS,
BY
HIS LORDSHIP'S PERMISSION,
MOST RESPECTFULLY DEDICATED
BY
THE AUTHORS.

PREFACE.

It had been the intention of the authors to postpone the publication of this Treatise until the passing of the Rivers Conservancy Bill, but as during the present Session of Parliament the Government have taken no steps to forward that measure, it has been deemed expedient to offer the book to the profession without further delay.

That the subject is well worthy of consideration is warranted by a perusal of the evidence taken before the Select Committee of the House of Lords in the year 1877, which reported upon the formation of Conservancy Boards, and which disclosed a considerable variety of opinion upon the working and the interpretation of the statutes relating to the law of arterial drainage.

The authors, in acquiring the copyright of the work by Mr. Serjeant Woolrych, upon the "Law of Sewers," contemplated the preparation of a new edition of it, but were led to reject that idea on the ground that the excision of much extraneous and obsolete matter would be involved, and that the method of treatment adopted by that learned writer seemed capable of improvement.

They would state that they have taken considerable pains to ascertain the practice prevailing in several drainage areas, but it has been extremely difficult to found upon these inquiries any complete code of procedure in consequence of the cumulative provisions of the various Acts of Parliament. These statutes are printed *in extenso* in the Appendix, and it is hoped that by thus publishing them, together with a selection of Forms, the practical value of the book is assured.

The authors would further mention that much assistance has been gained from the opportunities given to them of inspecting original documents in the possession of the Land Commission and the Crown Office of the House of Lords, and from the information which has been communicated by the officers of drainage authorities throughout the country.

Care has been taken to preserve as far as possible the archaic character which belongs to the subject, and with this object the learning of Callis and Herne, and the reports of the old decisions, have been largely resorted to.

Wherever possible, the system has been adopted of giving double references to the cases cited.

G. G. K.

J. S. S.

2, Dr. Johnson's Buildings,
Temple.

July, 1884.

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|------------------|--|---|---------------|
| A. & E. | Adolphus & Ellis' Reports | Queen's Bench..... | 1831—1841 |
| Allen | History of Lincolnshire | | 1833 |
| Alleyn | Alleyn's Reports | King's Bench | 1616—1640 |
| Ap. Ca. | Appeal Cases (Law Reports) | { House of Lords and } { Privy Council } | From 1875 |
| B. & A. | Barnewall & Adolphus' Reports | King's Bench | 1830—1831 |
| B. & Ald. | Barnewall & Alderson's Reports | King's Bench | 1818—1822 |
| B. & C. | Barnewall & Crosswell's Reports | Queen's Bench..... | 1823—1830 |
| Bac. Ab. | Bacon's Abridgement | | 7th ed., 1832 |
| Barnard | Barnardiston's Reports | King's Bench | 1724—1731 |
| Beames | Orders in Chancery | | 1815 |
| Beav. | Beavan's Reports | Rolls Court | 1840—1857 |
| Bing. | Bingham's Reports | Common Pleas..... | 1822—1831 |
| Bing. N. C. | Bingham's (New Cases) Reports | Common Pleas..... | 1831—1840 |
| Bl., W. | Blackstone's, William, Reports..... | King's Bench | 1716—1779 |
| Bl., H. | Blackstone's, Henry, Reports | Common Pleas..... | 1788—1796 |
| Bligh | Bligh's Reports | House of Lords | 1819—1821 |
| Bracton..... | De legibus et consuetudinibus Angliæ | | 1560 |
| Bull, N. P. | Buller's Nisi Prius, by Bridgman | | 1817 |
| Bulst..... | Bulstrode's Reports | King's Bench | 1610—1626 |
| Bunb. | Bunbury's Reports | Exchequer | 1714—1760 |
| Burn | Burn's Ecclesiastical Law | | 9th ed., 1842 |
| Burr. | Burrow's Reports | King's Bench | 1756—1772 |
| Burton | Burton's Law of Real Property. | | 3rd ed., 1834 |
| C. B. | Common Bench Reports | Common Pleas..... | 1845—1856 |
| C. B. N. S. | Common Bench (New Series) Reports | Common Pleas..... | 1856—1865 |
| C. & P. | Carrington & Payne's Reports | Nisi Prius | 1823—1841 |
| Cary | Reports Collected by Sir G. Cary..... | Chancery | 1558—1603 |
| Callis..... | Callis' Reading on Sewers | | 1622 |
| Chitt. St. | Chitty's Statutes, 4th ed. | | |
| Cl. & F. | Clark & Fmelly's Reports | House of Lords | 1831—1846 |
| Co. Rep. | Coke's Reports..... | { Queen's Bench and } { King's Bench. } | 1568—1611 |
| Comber..... | Comber on Tithes | | 1682 |
| Com. Dig..... | Chief Baron Comyn's Digest. | | |

| ABBREVIATIONS. | NAME OF REPORT OR SUBJECT OF AUTHORITY. | COURT. | DATE. |
|-------------------|---|---|---------------|
| Cook .. | Cook on Tithes ..... | ..... | 1846 |
| Coop. Ch. Ca. | Cooper's Chancery Cases (temp. Eldon) | Chancery | 1815 |
| Corn. Cr. Pr. | Corner's Crown Practice ..... | ..... | 1844 |
| Cowp. | Cowper's Reports | King's Bench | 1774—1778 |
| Crab. Dig. | Crabb's Digest and Index to all the Statutes ..... | ..... | 1841—1847 |
| Craig. Jus. Feud. | Jus. Feudale, by Thos. Craig ..... | ..... | 1732 |
| Cripps | Cripps on Compensation ..... | ..... | ..... |
| Cro. Eliz. | Croke's Reports, vol. i. | Queen's Bench | temp. Eliz. |
| Cro. Jac. | Croke's Reports, vol. ii. | King's Bench | temp. James |
| Cr. C. C. | Crown's Circuit Companion ..... | ..... | 1820 |
| Dalt. | Dalton's Justice of the Peace ..... | ..... | 1712 |
| Dav. & M. | Davison & Merivale's Reports | Queen's Bench | 1813—1814 |
| De G. M. & G. | (De Gex, Maenaghton & Gordon's Bank- (ruptcy Reports | (Lord Chancellor and) (Lords Justices | 1851—1855 |
| De G. & Sm. | De Gex & Smale's Reports | (V.-C. Bruce and) (V.-C. Parker | 1846—1852 |
| Degge | Degge on the Law of Tithes ..... | ..... | 1820 |
| Dick. | Dickens' Reports | Chancery | 1559—1792 |
| D. & R. | Dowling & Ryland's Reports | Queen's Bench | 1822—1828 |
| Dowl. P. C. | Dowling's Practice Cases | (King's Bench and) (Queen's Bench | 1830—1841 |
| Drew. | Drewry's Chancery Reports | V.-C. Kindersley | 1852—1857 |
| Dr. & Sm. | Drewry & Smale's Reports | V.-C. Kindersley | 1859—1863 |
| Dugdale | On Embanking and Draining ..... | ..... | 1662 |
| Dwarris | Sir Fortunatus Dwarris on Statutes ..... | ..... | 1848 |
| Dyer | Dyer's Reports | King's Bench | 1513—1593 |
| E. & B. | Ellis & Blackburn's Reports | Queen's Bench | 1852—1858 |
| E. B. & E. | Ellis, Blackburn & Ellis' Reports | Queen's Bench | 1858 |
| Eagle | Eagle on Tithes ..... | ..... | 1830 |
| E. & E. | Ellis & Ellis Reports | Queen's Bench | 1858—1861 |
| East | East's Reports | King's Bench | 1801—1814 |
| Elstobh | Historical Account of the Bedford Level ..... | ..... | 1793 |
| Ex. | Exchequer Reports | Exchequer | 1847—1857 |
| Ex. Div. | Law Reports, Exchequer Division ..... | ..... | 1875—1880 |
| Fenland | Fenland, by Miller & Skertchley ..... | ..... | ..... |
| Fitz. Nat. Brev. | Fitzherbert's Natura Brevium ..... | ..... | 1794 |
| Fleta | Commentarius Juris Anglicani ..... | ..... | 1617 |
| Fortesc. | Fortescue's Reports | King's Bench | 1711—1731 |
| Fost. | Foster's Reports ..... | ..... | 1762 |
| G. & D. | Gale & Davison's Reports | Queen's Bench | 1841—1843 |
| | Gale on Easements ..... | ..... | 4th ed., 1868 |
| | Gilbert on the Law of Distress ..... | ..... | 1823 |
| Glanville | Glanville's Reports | Parliamentary Elections | 1776 |
| | Grant on Corporations ..... | ..... | 1850 |
| | Grantham, the Land Drainage Act, 1861 ..... | ..... | ..... |

| ABBREVIATIONS. | NAME OF REPORT OR SUBJECT OF AUTHORITY. | COURT. | DATE. |
|-----------------------|---|--|---------------|
| H. L. Ca. | House of Lords Cases (Clark) | House of Lords | 1847—1866 |
| H. & M. | Heming & Miller's Reports | V.-C. Wood | 1862—1865 |
| H. & N. | Hurlstone & Norman's Reports .. | Exchequer.... | 1856—1862 |
| | Hale, Hale de Jure Maris (a tract by Lord Chief Justice Hale) in 2nd ed. } of Hall on the Seashore | | |
| | Hall, Essay on the Seashore | | 2nd ed., 1875 |
| Halliwell ... | Dictionary of Archaic and Provincial Words | | 1850 |
| Hard. | Hardres' Reports | Exchequer | 1655—1660 |
| Hare | Hare's Reports | { V.-C. Wigram, Bruce, Turner and Wood | 1841—1853 |
| | Harris' History of Kent | | 1719 |
| | Hasted's History of Kent | | 1790 |
| Hawk. P. C. | Hawkins' Pleas of the Crown | | 1716 |
| Herne | A Reading on Sewers | | 1638 |
| Hodg. | Hodges' Reports | Common Pleas..... | 1835—1837 |
| Holt, N. P. | Holt's Reports..... | Nisi Prius | 1815—1817 |
| Hutt. | Hutton's Reports | Common Pleas..... | 1616—1628 |
| Inst. | Coke's Institutes on the Laws of England. | | 1809 |
| Ir. C. L. | Irish Common Law Reports | Irish Common Law .. | 1867 |
| J. & H. | Johnson & Hemming's Reports | V. C. Wood .. | 1859—1862 |
| | Jerwood, Dissertation on the rights of } the sea shore and the soil and bed of } tidal harbours and navigable rivers ...) | | 1850 |
| Jur. | Jurist Reports..... | All the Courts | 1837—1854 |
| Jur. N. S. | Jurist (New Series) Reports | All the Courts | 1855—1866 |
| Keb. | Kemble's Reports | King's Bench | 1661—1671 |
| L. J. | Law Journal Reports | All the Courts | From 1831 |
| L. R. | Law Reports..... | All the Courts | From 1865 |
| L. R. Ch. | „ „ Chancery Appeals | Chancery | |
| L. R. Eq. | „ „ Equity | Chancery | |
| L. R. C. P. | „ „ Common Pleas | Common Pleas | } 1865—1875 |
| L. R. E. & I. Ap. ... | „ „ English and Irish Appeals | House of Lords | |
| L. R. EX. | „ „ Exchequer | Exchequer.... | |
| L. T. | Law Times Reports | All the Courts | From 1847 |
| L. T. J. | „ „ Journal | | From 1847 |
| Lamb. Eir. | Lambard's Eirenarcha | | 1619 |
| Lamb. Per. | „ Perambulation of Kent..... | | 1656 |
| Lamb. Ety. | „ Etymology | | 1730 |
| Leeming & Cross ... | Leeming & Cross on Quarter Sessions | | 2nd ed., 1876 |
| Lev. | Levinz's Reports..... | King's Bench | 1660—1696 |
| Lib. Ass. | Liber Assisarum | King's Bench | 1327—1377 |
| Lloyd..... | Lloyd on Compensation. | | |
| Lofft | Lofft's Reports | King's Bench | 1771—1774 |

| ABBREVIATIONS. | NAME OF REPORT OR SUBJECT OF AUTHORITY. | COURT. | DATE. |
|-------------------|---|--|-----------------|
| Lumley..... | Lumley, Parochial Assessment Act | | Ed. 1872 |
| | Lumley, Public Health Act, 1875. | | |
| Lutw..... | Lutwyche's Reports | Common Pleas..... | 1682—1704 |
| M. & G. | Macnaghten & Gordon | Chancery | 1849 |
| M. & S. | Maule & Selwyn's Reports | King's Bench | 1813—1817 |
| M. & W. | Meeson & Welsby's Reports | Exchequer..... | 1836—1847 |
| Mail, Firm. Burg. | Madox's Firma Burgi | | 1726 |
| March | March's Reports | King's Bench | 1639—1643 |
| Maxwell | Sir Peter Maxwell on Statutes | | 1875 |
| Mirehouse | Mirehouse's Treatise on Tithes | | 1822 |
| Mod. | Modern Reports (Leach) | { King's Bench and } { Queen's Bench ... } | 1669—1700 |
| Mood. & M. | Moody & Malkin's Reports | Nisi Prius | 1826—1830 |
| Moore | Moore's Reports | Common Pleas..... | 1815—1827 |
| Moore | Serjeant Moore's Reports | | 1675 |
| My. & C. | Mylne & Craig's Reports | { Chancery, temp. Cot- } { tenham & Lyndhurst } | 1837—1848 |
| My. & K. | Mylne & Keen's Reports | { Chancery, temp. } { Lyndhurst | 1831—1835 |
| Nev. & P. | Neville & Perry's Reports | { King's Bench, and } { Queen's Bench ... } | 1836—1838 |
| New Rep..... | New Reports | Common Pleas | 1801—1807 |
| Noy | Noy's Reports | King's Bench | 1595 |
| | Padley, Fens and Floods of Mid-Lincoln- shire. | | |
| P. & D. | Perry & Davison's Reports | Queen's Bench..... | 1838—1841 |
| Phill. Eec. | Phillimore's Ecclesiastical Law | | 1873 |
| Phill. Ev. | Phillipps on Evidence | | |
| Price | Price's Reports | Exchequer..... | 1813—1825 |
| Prideaux | Prideaux on Tithes | | 1736 |
| Q. B. | Queen's Bench Reports (Adolphus & Ellis) | Queen's Bench..... | 1834—1840 |
| Q. B. D. | Queen's Bench Division (Law Reports)..... | Queen's Bench Div..... | From 1875 |
| Rail. Ca. | Railway Cases | Chancery | 1835—1854 |
| Rayn. Ld. | Lord Raymond's Reports | { King's Bench and } { Queen's Bench ... } | 1694—1730 |
| | Select Committee, July, 1823..... | | July, 1823. |
| | " " on Thames River (Pre- vention of Floods Bill)..... } | | 21st June, 1877 |
| Reports..... | " " on Thames Floods Pre- vention | | 27th July, 1877 |
| | " " House of Lords on Com- servancy Boards | | 25th July, 1877 |
| oll. | Rolle's Abridgement..... | | |
| | Romney Marsh Charter—published by } John Wolfe | | 1834—1840 |
| | Russell on Awards. | | 1635 |
| Salk. | Salkeld's Reports | { King's Bench and } { Queen's Bench . } | 1705 |

| ABBREVIATIONS. | NAME OF REPORTOR SUBJECT OF AUTHORITY. | COURT. | DATE. |
|---------------------|--|----------------|---------------|
| Sc. Sess. Ca. | Scotch Session Cases. | | |
| Scott | Scott's Reports | Common Pleas | 1597 |
| Seld. Mar. Cl. | Selden's Mare Clausum | | |
| Seld. L. T. | „ Law of Tithes | | 1695—1704 |
| Sewers | Laws of Sewers | | 1732 |
| Shelford | Shelford on Tithes. | | 3rd ed., 1912 |
| Shep. Abr. | Shepherd's Grand Abridgement of the Common and Statute Law of England | | 1675 |
| Sid. | Siderfin's Reports | King's Bench | 1659—1671 |
| Sim. | Simon's Reports | Chancery | 1826—1848 |
| Spelm. Gloss. | Spelman's Glossarium Archæologicum | | 1687 |
| Stephen Cr. Proc. | Criminal Procedure, by Sir Jas. Stephen | | 1883 |
| Str. | Strange's Reports | Queen's Bench | 1716—1717 |
| T. R. | Term Reports (Durnford & East) | King's Bench | 1785—1800 |
| | Tapping on Mandamus | | |
| Taunt. | Tannton's Reports | Common Pleas | 1807—1819 |
| | Termes de la Ley | | 1708 |
| Thring | Thring, Land Drainage Act, 1861. | | |
| Tom. Law Dict. | Tomlin's Law Dictionary | | 1820 |
| Vent. | Ventris' Reports | Queen's Bench | 1668—1692 |
| Ves. j. | Vesey Junior's, Reports | Chancery | 1789—1817 |
| Vin. Ab. | Viner's Abridgement. | | |
| W. Bl. | Sir William Blackstone's Reports | King's Bench | 1746—1779 |
| W. R. | Weekly Reporter | All the Courts | from 1852 |
| Will., Woll. & Dav. | Willmore, Wollaston & Davison's Reports | King's Bench | 1837 |
| | Well's History of the Drainage of the Bedford Level | | 1830 |
| Wils. | Wilson's Reports | Common Pleas | 1734—1758 |
| Wood Inst. | Wood's Institutes | | 1730 |
| | Woolley on Warping. | | |
| Wool. Met. Man. | Woolrych's Metropolis Management Acts | | 2nd ed., 1880 |
| Woolrych | Woolrych on Sewers. | | 3rd ed., 1864 |
| | Wright's Provincial Dictionary | | 1857 |
| Y. & J. | Young & Jervis' Reports.. | Exchequer | 1826—1830 |
| Year Books | Year Books | King's Bench | 1307—1547 |

CHAPTER I.

GENERAL VIEW.

THE improvement of arterial drainage throughout the country has for some years past occupied the attention of the Legislature. In the year 1877 a Select Committee of the House of Lords was appointed to inquire into the operation of existing statutes in regard to the formation of and proceedings by Commissioners of Sewers and Conservancy Drainage and Navigation Boards, and to consider generally by what means their procedure might be improved and their powers enlarged, so as to provide more efficiently for the prevention of floods, the storage of water, and the discharge of other functions appertaining to such Boards. Following upon the report of this Committee, the Government, in 1879, introduced into a Bill dealing with County Boards certain provisions for the better management of rivers, founded upon the recommendations of the House of Lords Committee, but this measure was not passed. In the Session of 1881, a Bill intituled "The Rivers Conservancy and Floods Prevention Bill" was brought into the House of Lords, and, having passed that House, reached the House of Commons, but was ultimately abandoned. The Bill was the next Session laid upon the table of the House of Commons, and again failed to pass the Committee Stage, and a similar fate befel the measure of last Session.

House of Lords
Committee,
1877.

Rivers Con-
servancy Bill.

So far this year the Government have not even intimated an intention of proceeding with the measure, and appear somewhat disheartened by the failure which has attended their

efforts of the three previous years. Before, however, examining the proposals of the Government contained in the Rivers Conservancy Bill, and with a view to determine the value and extent of the changes to be by it wrought in the law, it is necessary to—(1) review briefly the existing Statutes dealing with Land Drainage; (2) to inquire into their failure to cope with the necessities of the present time; (3) to show in outline the causes of floods; (4) and lastly, to point out the way in which it is proposed to treat the question in the Rivers Conservancy Bill.

Statutes relating to land drainage and Commissions of Sewers.

The great measure which superseded the casual issuing of Commissions of Sewers by the King, and which was the result of the incorporation of the Statute 6 Hen. VI. c. 5, was the 23 Hen. VIII. c. 5, [The Bill of Sewers] and upon this Statute has been founded all subsequent legislation affecting the powers and duties of Commissions of Sewers.

23 Hen. VIII. c. 5.

This Act provided for the appointment by the Crown, upon the recommendation of certain officers of State, of Commissions of Sewers. The Commissioners were clothed with authority to maintain and repair all existing walls and sewers, to remove nuisances, and to levy and make rates for the payment of such expenses as were thus incurred.

3 & 4 Edw. VI. c. 8; 13 Eliz. c. 9.

The Act was followed by the 3 & 4 Edw. VI. c. 8, prolonging Commissions for five years and by 13 Elizabeth c. 9, which further extended the time to ten years. The powers of Commissioners of Sewers were thus very extensive, but the check upon them imposed by the Legislature in conformity with the spirit of that period was the necessity of holding an inquisition and obtaining the presentment of a jury.

It has been well observed that if full effect had been given by the Courts of Law to the very wide powers conferred by the Act of Henry VIII. there would have been but little need for any of the considerable amendments in the law which have since been made, or for the large number of private

Drainage Acts, which testify to the limitation of authority set to the Statute.

In the year 1833 an Act was passed (3 & 4 Will. IV. c. 22) ^{3 & 4 Will. IV. c. 22.} which was intituled, "An Act to amend the Law of Sewers." Besides dealing with certain points of administration, as to the qualification of Commissioners of Sewers, their meetings, regulations as to making presentments and the apportionment of rates, powers were given expressly for the first time to the Commissioners to erect *new* works, and to purchase land for the maintenance and improvement of existing works. But this increase of jurisdiction was considerably curtailed by confining new works to maritime works, or works connected with navigable rivers, or streams flowing into navigable rivers, while their construction had to be preceded by the consent of the owners and occupiers of three-fourth parts in value of the lands to be charged.

The 4 & 5 Vic. c. 45 enabled the Commissioners to levy a ^{4 & 5 Vic. c. 45.} General Sewers Tax as distinguished from a General Sewers Rate.

The 12 & 13 Vic. c. 50 provided for the creation of sub- ^{12 & 13 Vic. c. 50.} districts, and gave power to the Commissioners to make separate rates and to appoint officers known as Dyke-reeves with certain duties.

The law, therefore, of arterial drainage was up to the year 1861 contained in the four Statutes which have been quoted, but an important point in the history of this subject is reached at this date. The Land Drainage Act of 1861 (24 & 25 Vic. ^{24 & 25 Vic. c. 133. [Land Drainage Act, 1861].} c. 133), in large measure due to the efforts of Sir George Cornwall Lewis and Sir Henry Thring, established a new machinery. The Act is divided into three parts. Part I. amends the law relating to Commissions of Sewers; Part II. provides for the establishment of Drainage Boards, introducing for the first time the elective principle into drainage administration; Part III. enables private owners to procure outfalls.

The effect of the Act is to confer cumulative powers on Commissioners of Sewers, and to provide for the continuance of every existing Commission until superseded by the Crown. Power, under Part I. of the Act, is given for the issue of new Commissions. Before a Commission is issued there must be a petition of the proprietors of one-tenth part of the land to the Inclosure Commissioners, (a) who, if they think fit, send down an inspector to the locality to hold a Court in accordance with a notice duly advertised. The inspector visits the locality and reports to the Inclosure Commissioners as to the desirability of issuing a Commission. Upon consideration of the report the Commissioners may or may not assent to the petition and recommend a Commission as the case may be; but their consent cannot be given if the proprietors of one-third part of the land express in writing to the Commissioners their dissent from the proposal of the petitioners. So much, therefore, for the means provided by this statute for increasing the number of Commissions throughout the country.

Inclosure
Commissioners.

Classification of
works.

This extension of Commissions, however, was accompanied by an enlargement of powers with a view, it is presumed, to bring the Act more into harmony with the general purposes of the Act of Henry VIII. Accordingly, a reference to the 16th section of the Act will show that the Commissioners' powers are classified under the heads of

- I.—Maintenance of existing works.
- II.—Improvement of existing works.
- III.—The construction of new works.

and defining terms are given to works of each class. No restrictions are placed upon Commissioners in carrying out works of the first class, except that they must make compensation for the injury they may cause to any person. With regard to works of the second and third class which may involve

(a) The Inclosure Commission is now styled the Land Commission.

an expenditure exceeding £1,000, the dissent of the proprietors of more than one-half of the area will prevent their execution by the Commissioners, and with regard to the purchase of land for new works, unless the owner of the land required consents, the Commissioners have to receive the sanction of Parliament by obtaining a provisional order. Another feature in this part of the Act is the provision made for dispensing with the presentment of a jury, but at the same time giving in place of it an appeal to Quarter Sessions. Commissioners are also enabled to commute certain liabilities to repair *ratione tenuræ*, which will be commented upon hereafter.

Under Part II. of the Act provision is made for the constitu-
 tion of elective drainage districts, which are created under the Elective drainage districts.
 system of provisional order obtained on petition of the proprietors of one-tenth part of any bog, moor or other area to the Inclosure Commissioners, who act upon the report of their inspector if they are satisfied that the proprietors of two-thirds of the acreage of the area assent to the scheme. The members of the Drainage Board exercise all the powers of Commissioners of Sewers, and any persons aggrieved by their acts have the right of appeal to Quarter Sessions. They are elected by the proprietors of the district, who vote according to the scale which is given in the Commissioners Clauses Act, 1847. Thus the superintendence of the drainage in a particular district becomes vested in the Drainage Board, which is a body corporate having perpetual succession and a common seal.

With Part III. of the Act the subject of this treatise is not Private outfalls.
 directly concerned, inasmuch as its effect is to enable an owner of property at his own expense, to procure an outfall through his neighbour's land on the condition that any injury thereby caused is capable of being fully compensated for by money, and disputes thus arising are referred to arbitration.

This account of the Land Drainage Act, 1861, concludes a *resumé* of the various statutes which regulate the law of arterial

Causes of failure of Drainage Acts.

land drainage, and leads now to an inquiry of the causes of their failure to meet the necessities of modern times. Commencing with the Act of Henry VIII., it may be observed that wide and sweeping as are the powers contained in it, yet they are expressed in so loose and vague a manner, that when litigation arose upon the interpretation of the Statute there was ample room for the Courts of Law to place upon its language certain restrictions. Accordingly the effect of the Act is cut down by limiting the jurisdiction of Commissioners of Sewers to navigable rivers and sewers communicating therewith, or with the sea above the place where the tide ebbs and flows. The Commissioners power also in relation to the construction of works of defence was narrowed down to the maintenance and improvement of existing works, and until 1833 it was impossible for them to erect any new work. Again, when new works were expressly authorised by the Statute of 3 & 4 Will. IV. c. 22, the Legislature failed to confer any power to purchase land for the purpose, and it is only by the Act of 1861 that such power is given. It is true that the Act of Will. IV. did vest a much wider jurisdiction in the Commissioners, but the large number of consents which were required from the owners and occupiers of land at the different stages operated to check any extensive exercise of it, while the necessity until 1861 for the cumbersome jury procedure has undoubtedly had a tendency to retard administrative activity.

Limit of jurisdiction.

New works.

Number of consents.

Jury.

Rating.

The inquiry by the House of Lords Committee elicited further instructive information as to the working generally of the Drainage Acts. In the front of the discussion occurs the question of rating. It would involve too much space at this place to enter upon an examination of the criticisms to which the principle of rating was exposed. That principle, which has been handed down from the time of Henry VIII., and which is repeated in the Land Drainage Act of 1861, is to rate in proportion to the benefit received. The House of Lords Com-

mittee reported that that principle appeared to work unfairly in some cases, and to be very difficult of application in others, but it is a noteworthy fact that twenty of the twenty-seven witnesses who were examined by the Committee were against extending the area of taxation beyond the area of benefit.

Again, it was reported to the Committee that generally the Towns. Act of 1861 failed in useful operation, and upon several grounds. First, it may be noted that the Act gave no extension of power to bring towns within the reach of the authority of the Commissioners, the Act being intitled to amend the law relating to the drainage of land for *agricultural* purposes, so that its scope is strictly confined to works of agricultural drainage. It may here be useful to append an answer of Mr. A. W. Peel, Evidence of Mr. A. W. Peel, M.P. M.P., the present Speaker of the House of Commons, in the House of Lords Committee, as graphically illustrating the position of these two questions of rating and town drainage:—

“The Act does not apply to towns, and there is another very great difficulty which I wish to allude to. When I state the twofold difficulty, I believe the first difficulty to be that the sewers rate can only be levied after the rate of every person’s tenure, and in proportion to the benefit that he receives; and secondly, that a distinction is drawn between agricultural land and land occupied by towns. The Onse, I think, illustrates the second difficulty, the exemption of towns from rating. There are many towns on the Onse which suffer very much from The Onse. repeated floods. I have mentioned Bedford, St. Ives and Huntingdon, and the villages on the banks of the tributaries and the main stream suffer very much. There is no provision whatever for taxing the houses, and though it might be a very delicate thing to do to impose a fresh tax, yet I believe many towns would be only too glad to contribute if there could be a fair apportionment of the rate. You may carry your works up to the borders of a town, you may prevent a hundred streets of a town from being flooded by water, and yet you are not able to

ask that town for any contribution; and the consequence is that you lose a great source of revenue and a great means for carrying out a complete system.”

Ratione tenuræ.

An attempt was made in the Land Drainage Act, 1861, to get rid of individual obligations to repair sea-walls or embankments, a form of liability which is known as *ratione tenuræ*. The mode of doing this is to give the Commissioners an opportunity of commuting the liability of every person who may be prescriptively bound for a fixed sum, which is settled by the Inclosure Commissioners. This permissive provision of the Act has, however, failed in its objects. It is not easy to calculate the enormous responsibility that rests on a few individuals to do certain works of repair in order to keep up some ancient work of coast or river defence, nor the probabilities of their being able in many instances to make good the damage which their neglect or pecuniary incapacity may entail, and it is of course of the highest importance that the country should be secure from the inroad of water. But the circumstances which determine the liability are so various, and the obligation in many cases has been spread over so large a number of individuals, that any general commutation has never taken place, and the Inclosure Commissioners report, that unless commutation does take place *quoad* all the liabilities of this kind in a particular district, it is very little use commuting one or two at a time, and they unhesitatingly advise that the drainage authorities should be compelled to effect commutation.

Commutation of liabilities.

Local Acts.

A successful application of the Land Drainage Act, 1861, and in fact of all public statutes of drainage must be, generally speaking, impossible so long as the country continues honey-combed with the vast number of drainage, navigation and other Boards, which exercise jurisdiction in virtue of private Acts. The public Acts have from time to time given exemptions and relieving clauses, saving the rights of these various local bodies, which, as long as they exist, prove very difficult to overcome in the operations conducted by Commissioners of Sewers or

Drainage Boards. Again, those bodies which more especially are concerned with canals and navigations, have no power to forego their statutory rights and duties, such for example as maintaining the water level at a certain height, and which, when Commissioners of Sewers or Drainage Boards wish to improve the bed of a river, meet them with the objection that the water level must not be interfered with. The Committee of the House of Lords were informed in 1877, that there were upwards of 3,000 private Acts of Parliament of the character referred to, and that while the active performance of duties enjoyed by some of them were an impediment to the action of Commissioners of Sewers, in other cases these bodies were equally obstructive when bankrupt or incapable of action. One instance out of many that might be cited will show the number of intricate jurisdictions to which a river is subject, and which depend on a variety of Acts of Parliament. Mr. Abernethy thus reports of the River Nene:—"Commencing at Peterborough for a length of $16\frac{1}{2}$ miles, the river is under the Nene Navigation Commissioners so far as the channel of the river is concerned from Peterborough to Beavis Hall above Wisbeach. Then from Beavis Hall to the county boundary, immediately below Wisbeach, a distance of four miles, the Wisbeach Corporation have charge of the channel of the river. From the county boundary to Crab Hole, $10\frac{1}{2}$ miles, that is the embouchure of the river, the Commissioners of the Nene Outfall have the charge of the river. Then again from Peterborough to the junction of Marrow Bank with River Bank at Guyhirne, $13\frac{1}{2}$ miles, the North Level Commissioners have the protection of the banks on the north side of the river, and from Guyhirne to Wisbeach Bridge (North Brink Bank), $5\frac{1}{2}$ miles, the Wisbeach Court of Sewers have the protection of the banks on the north side of the river. Through Wisbeach town and the frontage of the river throughout the town, making one mile, private owners have the protection of the banks on the north side of the river. From Wisbeach town to the county boundary, at what is termed the

Navigation
authorities.

Mr. Abernethy's
evidence.
The Nene.

Horse-shoe Bank, half-a-mile, the Wisbeach Court of Sewers have the protection of the banks on the north side of the river, and from the county boundary to Crab Hole, $10\frac{1}{2}$ miles, the Commissioners of the Nene Outfall have the protection of the banks. So that there are numerous bodies, some having charge of the channel, others of the banks of the river, and there is no general conservative body for the efficient carrying out of any works required for the general improvement of the drainage."

Sir John Coode. Upon the same river Sir John Coode reported to the Duke of Bedford that, taking the distance in round numbers from Peterborough to the sea to be 30 miles, he found it was under the jurisdiction of fourteen different sets of Commissioners, namely, three over the channel, five over the north banks and six over the south banks.

Causes of floods. So much, therefore, for the difficulties which are found to exist in the way of the successful and complete operation of the existing Drainage Acts; but before passing on to a consideration of the proposals in the Rivers Conservancy Bill, a few observations may here be made upon the causes of floods and the increased volume of water which works of drainage have now to deal with. The House of Lords Committee obtained a general consensus of scientific opinion in support of the theory that the increase of subsoil drainage throughout the country has in a large measure contributed to increase floods and the suddenness of their discharge. The result of this extension of subsoil drainage in upland districts and the alterations and cleansing done to field ditches and drains have made the main channels of drainage below less capable of carrying off the flood waters in consequence of the quantity of water poured into them, and the rapidity with which it comes. Such is the opinion of Sir John Hawkshaw in his report on the Drainage of the River Witham, and his opinion is in general agreement with the other members of his profession, with the exception, perhaps, of Mr. Rawlinson. There are cases undoubtedly where the increase of flood water has been very great,

Subsoil
drainage.

Sir John
Hawkshaw.

Mr. Rawlinson.

and where this theory might be negatived; and such valleys as the Soar Valley and the Trent Valley and the upland country of Derbyshire and Staffordshire furnish an apt illustration. But a fair deduction from the evidence of experienced engineers, nevertheless, supports the general proposition that the drained uplands do throw off from the surface a larger proportion of the rainfall than would come from lands in an undrained condition, where the process of evaporation would have a longer time to take place.

Another cause of floods, which has been much insisted upon, is the existence of mills, weirs and navigation works. Here, again, a divergence of scientific opinion is found to exist. Thus Mr. Rawlinson, in his evidence before the House of Lords Committee, said that mills and weirs are permanently injurious; that they waterlog the land, and do mischief far beyond their present worth. There indeed can be but little doubt but that the effect of weirs in many cases is to raise the level of a river, and by silting up the bed to contract the capacity of the river, thus diminishing the scour necessary for keeping the channel deep and free from mud. At the same time an observation of this kind must not be taken too strictly. Any sweeping measure for the removal of weirs and mill-dams upon a river would, in several watersheds, have but little effect in diminishing floods. The construction of locks and weirs varies very much in different parts of the country, according to the jurisdiction to which the river is subject. Many of them are controlled by active authorities, and are constructed in such a way as to be compatible with the least possible injury to the adjoining land, and where this is the case eminent engineers are of opinion that the water they throw upon the land is immaterial compared with the total amount of flood water, and that much can be done where they do contribute to the flood of a district by regulating their heights or changing their situation, thus enabling them to continue to supply mills which are often a great interest on a river. But the owners of mills should be brought

under some control when none exists, and these weirs and by-passes should be made of such sufficient capacity as to avoid interfering with the efficient discharge of water during floods.

Weeds and neglect of channel.

The growth of weeds and the general neglect of a bed and channel of a river form another serious hindrance to the escape of floods. On several rivers shoals have been created, and weeds have accumulated to such an extent that a deflection has taken place in the course of the river, while the amount of silt which has been deposited has brought the surface water, even in ordinary times, within a near distance of the level of the banks. A further consequence of this neglect to keep the channel clear is that bridges underneath which the water should pass easily and in large quantities have become totally inadequate to allow the passage of the water. It was reported on the River Ouse that the bridges over the Hundredfoot River have only half the area of the waterway of those at St. Ives, twelve or thirteen miles higher up. The cause of this neglected condition of rivers is not hard to find. Before the construction of railways in the country the navigation of rivers was a matter of great public interest, and every navigable river was under the control of a navigation trust, which, by means of the tolls which it levied, expended money and labour upon the water-way, dredging the river and maintaining the banks. But now that these trusts have lost almost all their revenue, the funds at their disposal, instead of being applied to preserving the channel and generally to improving the river, are expended upon the payment of interest on debt, and upon keeping up the locks and weirs for the millowners. In short, railway enterprise has in many instances nearly destroyed the navigation tolls, and, as a consequence, has rendered the owners of the navigation perfectly indifferent so far as laying out money and improving the bed of the river is concerned. If the sluices and weirs are maintained, that is generally the maximum of superintendence exercised by them, and so lax is the control in some districts that in repairing a weir the height is occasionally considerably

Bridges.

The Ouse.

Cause of neglect.

Railways.

increased in order to raise the water, and so to obtain a greater fall for the mills.

At an interesting discussion at the Surveyors' Institution, in the year 1882, attention was called to the fact that great railway works crossing rivers and valleys seriously conduced to the increase of floods. It was said that in the construction of bridges and embankments the railway companies frequently provide only a limited extent of water-way, and that the consequence in many valleys has been a marked increase in the floods. Railway embankments.

In leaving this branch of the subject, it may be noted that drainage of towns and discharge of sewage matter into the rivers, have operated to choke and confine the river channel, and to cause serious obstruction to the rapid passage of water. Town sewage.

The foregoing considerations as to the causes which have led to the prevalence of floods in recent years may now be followed by a short account of the Rivers Conservancy Bill.

The Rivers Conservancy Bill of 1883 (*a*) was intituled an Act to make provision for the conservancy of rivers, prevention of floods, and other matters relating thereto, and was divided into three parts:—Part I. The Constitution of a Conservancy District; Part II. The Powers of a Conservancy Board; Part III. Supplemental Provisions as to Inquiries and Orders. Rivers Conservancy Bill, 1883.

It has been thought useful at this point to set out some of the more important clauses contained in the Bill, so that an opportunity may be given of scrutinizing the exact language of a measure which in the judgment of the Government and a Select Committee is adequate to provide for an improved system of arterial drainage in the country.

The Bill commences with elaborating a scheme by which a Conservancy District may be formed.

(*a*) The clauses of the Bill which follow have been printed *verbatim* from the Bill of last year, inasmuch as extensive additions and amendments have been made since its first introduction by the Government.

"PART I.

"CONSTITUTION OF CONSERVANCY DISTRICT AND ESTABLISHMENT OF BOARD.

Application for
provisional
order.

"3. Any twenty or more owners, or any twenty or more owners and occupiers, of whom one-half, at least, shall be owners of land of a rateable value in the aggregate of not less than *two thousand* pounds, and situate in any river basin, or contiguous river basins, also any sanitary or conservancy authority (*a*) having jurisdiction within any part of a river basin or contiguous river basins, may apply to the Local Government Board, by petition, praying that such basin or basins, or any part or parts thereof, may be constituted a conservancy district, and that a Conservancy Board may be established therein, having power to execute all such works as may be required for the prevention of floods in such district, and for carrying into effect the purposes of this Act; and shall in such petition describe, by reference to a map, the district for which it is proposed that the Conservancy Board should be established, and shall indicate generally the purposes and nature of the principal works which, in the opinion of the petitioners, it is desirable that the Conservancy Board should undertake.

Duty of Local
Government
Board.

"4. On the receipt of the petition, the Local Government Board may, if they think a sufficient *prima facie* case has been made out, and after requiring security to be given for any costs which may be incurred by the Local Government Board in relation to any local inquiry directed under this section, direct a local inquiry to be made by an inspector as to the expediency of constituting the proposed district, and as to the limits to be

(*a*) A conservancy authority is defined in the Bill to mean any Commissioners of Sewers appointed by the Crown, also any Conservators, Commissioners, trustees, or other persons having authority by virtue of any Act of Parliament other than this Act to protect or control the navigation or use of any watercourse; also any Commissioners for Drainage or Drainage Board appointed by Act of Parliament.

assigned to such district, and as to such further incidental matters as the Board may think fit; and in particular the inspector shall inquire what lands ought to be described as lowlands, midlands, and uplands, for the purposes of this Act, and what works, if any, have been executed for the protection of any such lowlands or midlands from floods, and in what proportion such lowlands and midlands ought respectively to contribute to the expenses of the Conservancy Board, and what uplands, if any, ought to be included in the district, and in what proportion they ought to contribute to any expense of the Conservancy Board.

“5. Before any local inquiry is made under this Act, the Local Government Board shall give public notice, by advertisement and otherwise, in such manner as they may think best adapted to give information to persons locally interested, of the time and place, or times and places, at which the inquiry will be held; and the inspector shall hear any persons locally interested appearing before him, and desirous of being heard in relation to the constitution of the district and the establishment of the Conservancy Board.

*Inquiry by
inspector.*

“6. (1.) If the Local Government Board, after receiving the report of their inspector, together with any evidence taken by him, determine to constitute a Conservancy District, as prayed by the petition, with or without addition of any lands to or exclusion of any lands from the lands proposed to be included in the district, they shall frame a draft Provisional Order constituting the Conservancy District, and establishing a Conservancy Board, in such manner as they think expedient, having regard to the circumstances of the case, but subject to the following regulations:—

*Constitution of
district.*

“ (i.) Each of the descriptions of lands included in the district shall contribute in such different proportion to the expenses, or part of the expenses, of the Conservancy Board as may appear to be equitable, and as may be provided by the Order;

“(ii.) The highest rate in the pound payable by any uplands included in the district shall not exceed one-tenth part of the rate in the pound payable in respect of the lands in the district which pay the highest general rate, and in fixing the amount of such rate regard shall be had to the extent to which any artificial drainage works for such uplands contribute to cause or aggravate floods within the district.

“(iii.) In constituting the Board, care shall be taken to secure thereon due representation of owners and occupiers, having regard to the incidents of taxation under this Act; and provision shall be made, whenever circumstances require, for the representation of sanitary authorities, conservancy authorities, or other similar bodies.

“(2) Provision may be made by the draft Provisional Order for constituting, or for enabling the Conservancy Board to constitute sub-districts, and for placing every sub-district so constituted under charge of a committee to be appointed as directed by the Order, and for investing any such committee with any of the powers and duties of a Conservancy Board under this Act, and for the differential rating, or partial or total exemption from rating (if it appears just), of all or any of the lands in any such sub-district or sub-districts.

“(3) Provision may also be made by the draft Provisional Order, whether the district is or is not divided into sub-districts, for defraying the expenses of executing, or of executing and maintaining, any particular work or works wholly or partially out of a special rate, to be assessed on such of the lands within the district as will derive special benefit from such work or works, and for making, assessing and levying any such special rate; also, if it appears to be required by the special circumstances of the case, for enabling the Conservancy Board to execute or assist in executing outfall works beyond the limits of

their district. Provision may also be made by the draft Provisional Order for the partial or total exemption from rating of any lands in the district by reason of efficient works for the protection of such lands from floods having been already executed, or of money having been beneficially expended on an outfall for the common benefit.

“(4) Subject to any alterations which may appear expedient to the Local Government Board, all or any of the provisions contained in the first schedule to this Act may be adopted in the draft Provisional Order.

“(5) The Local Government Board shall cause printed copies of the draft Provisional Order to be deposited with the clerk of the peace of every county in which any part of the conservancy district constituted by the draft Provisional Order is situate, and with the overseers of parishes, and with the several sanitary authorities; also, where such authorities exist with the conservancy authorities, or other similar bodies exercising jurisdiction in any part of such district. Any copies so deposited shall be open to inspection, without fee, by all owners and occupiers of land within the district. Arrangements shall be made, under the authority of the Local Government Board, whereby copies of any draft Provisional Order may be procured within the district by any person requiring the same on payment of a sum not exceeding two shillings.

“(6) The Local Government Board shall cause notice to be published of the deposits of copies made in pursuance of this section, and of the time and place or times and places at which one of their inspectors will attend to hear any objections to the draft Provisional Order.

“(7) After receiving the report of their inspector with respect to the draft Provisional Order, the Local Government Board may, subject to the provisions of this Act, make the Provisional Order, with such additions and modifications as to them seem expedient. But the Order so made shall not be of any validity until it is confirmed by Act of Parliament.

Principle of division of lands in constituting district.

“7. In constituting a Conservancy District under this Act, the general principle of divisions of lands shall be to describe lands subject to ordinary floods and to damage therefrom as ‘lowlands,’ and lands occasionally subject to floods or to the entire or partial obstruction by flood of drains or outfalls passing under or through them and to damage therefrom as ‘midlands.’ The remaining lands, if any, included in the district shall be described as ‘uplands.’”

Number of consents.

The first observation to be made upon this part of the Bill is the small number of owners and occupiers which is sufficient in one watershed to set in motion the machinery of the Local Government Board, and which it may be presumed has been proposed in consequence of the evidence taken before the House of Lords Committee, that the large number of consents required at the various stages had caused the Land Drainage Act of 1861 to meet with a comparatively narrow operation. With a view to secure uniformity and completeness of action in dealing with each river, an opportunity is afforded under the third clause of placing a whole catchment area under the jurisdiction of a single body of conservators, who may be responsible for maintaining it throughout in an efficient state.

Catchment area.

Classification of district.

Much criticism has been devoted to the clause which provides for the division of lands in the area into uplands, midlands, and lowlands, and there can be no doubt but that around the principle of this division the chief struggle will be waged.

Principle of rating.

The distinction of land into these three classes, and the liability of contributing to payment of rates in certain proportions marks an entirely new departure in the history of the Law of Land Drainage. The only ground upon which taxation has been based hitherto has been that the lands have been benefited by the works undertaken by the drainage authority, while here the only principle upon which payment by the uplands can be defended is that those lands which contribute to the causes of flood shall pay towards the expense of the efficient drainage of the flooded district.

The gravest apprehensions as to the effect of this proposal have been expressed, but the President of the Local Government Board has invariably pointed out that while the principle of contribution to flood must be maintained, protection is amply given by the exempting provisions of the Bill.

The Conservancy Board thus established is made a body Incorporation of Conservancy Board. corporate, and invested with the following powers, which are given in the second part of this Bill:—

“PART II.

“POWERS OF CONSERVANCY BOARD.

“9. The purposes of this Act are the Conservancy of Rivers, Purposes of Act. and the protection of land from injury by floods.

“10. In order to carry into effect the purposes of this Act, a Conservancy Board may, within their district:—

“(i.) Cleanse, repair, or otherwise maintain, in a due Powers as to works. state of efficiency, any watercourse or outfall for water, or any wall, bank, dam, or other defence against water, or do any other act for the purpose of maintaining in a due state of efficiency any work required to be so maintained for any of the purposes of this Act (and all works and acts made or done in pursuance of this sub-section are in this Act referred to as ‘maintenance of works’); and

“(ii.) deepen, widen, straighten, embank, extend, alter, or otherwise improve, any watercourse or outfall for water, or remove any mill-dam, or other dam, weir, or other obstruction to any watercourse or outfall for water, or raise, widen, or otherwise alter any wall, bank, mill-dam, or other dam or other defence against water, or do any other act for the purpose of improving any work required to be improved for any of the purposes of this Act (and all works and

acts made or done in pursuance of this sub-section are in this Act referred to as 'improvement of works'); and

“(iii.) make any new watercourse or new outfall for water, or erect any new bank, dam or defence against water, or fill up or re-open any disused watercourse, or erect any machinery, or construct any other new work required for carrying into effect the purposes of this Act (and all works and acts made or done in pursuance of this sub-section are in this Act referred to as 'construction of new works');

“ Provided that—

“(1.) Compensation shall be made for all loss or injury sustained by any person by reason of the exercise by the Conservancy Board of any of the above powers, and the amount of such compensation shall in case of dispute be settled in manner provided by this Act; and

“(2.) No work shall be deemed to be a new work that is in substitution for an old one, where such old work is so much out of repair or so inefficient as to make it expedient to construct a new work in place thereof

Powers as to acquisition of lands.

“ 11. For the purposes and subject to the provisions of this Act, a Conservancy Board may from time to time purchase or take on lease, or otherwise acquire, and may exchange, any lands whether situate within or without their district.

Powers as to inspection of district.

“ 12. Every Conservancy Board shall from time to time ascertain whether the purposes for which the Board was constituted are being carried into effect throughout their district, and in particular whether there are any obstructions to the flow of water therein, and whether the banks, dams, and other defences against floods are in a proper state of repair.

Powers as to commutation of liabilities of private persons.

“ 13.—(1.) Where any person within the district of a Conservancy Board is liable by reason of tenure custom prescription or otherwise to do any act or thing or construct any work

by this Act included under the description of 'maintenance of works,' 'improvements of works,' or 'construction of new works,' such Board may, if they think fit, commute such liability for such sums of money as may be agreed on, or as in default of agreement may be settled in manner provided by this Act.

“(2.) Any commutation so made may be by way of gross or annual charge on the lands of the person in respect of which the original liability arose; and any charge so created shall be recoverable by the Conservancy Board in the same manner in which title rent-charge is recoverable, and shall have priority over all incumbrances subsequently created by any owner of the lands on which the same is charged.

“(3.) Any gross sum exceeding one hundred pounds received by the Board under this section shall be invested in securities in which trustees are for the time being authorised by law to invest, and the income thereof, and any annual payments made to the Board under this section shall be applied only in discharge of the commuted liability.

“(4.) The record of any such charge shall be deposited in the office of the clerk of the peace of the county in which the lands, or the greater part thereof, are situate, and that record, or any certified copy thereof, shall be receivable in evidence in all legal or other proceedings.

“(5.) In the absence of any such commutation, the liability of any person to defray or contribute towards the expense of making, completing, altering, amending or maintaining any sewer or drain, or any wall, bank or work for protecting the land against the force or encroachments of the sea, or of any river or flood, or doing any other work within the district of a Conservancy Board, shall continue as if this Act had not passed. In the case of any commutation under this section the Conservancy Board shall provide, so far as practicable, for not altering the liability of persons under any specific contract in respect of the obligation which is commuted.

Powers as to
enforcement of
liabilities of
private persons.

“14.—(1.) Where any person within the district of a Couserve-vancy Board is liable by tenure custom prescription or otherwise to do any act or thing or construct any work by this Act included under the description of ‘maintenance of works,’ ‘improvement of works,’ or ‘construction of new works,’ the Board may take such legal proceedings as they may be advised for the purpose of enforcing such liability.

“(2.) Proceedings for the purpose of enforcing such liability may (without prejudice to any other mode of proceeding) be taken in a court of summary jurisdiction on complaint by the Board, and the court may enforce the same by summary order, and may further, in the event of the defendant failing to comply with any order of the court directing him to construct any work or do any act or thing, empower the Board to construct such work or do such act or thing, and the Board may recover in a summary manner from the defendant any expenses incurred by them in constructing the work or doing the act or thing.

“(3.) Any person aggrieved by an order made by a court of summary jurisdiction in pursuance of this section may appeal from such order to a Court of Quarter Sessions.

“(4.) Where any defendant on appearing before a court of summary jurisdiction to a complaint by the Board objects to the complaint being decided by such court on the ground that the complaint involves a question of expenditure (exclusive of costs) of not less than two hundred pounds, the court, if such ground of objection is established to their satisfaction, shall not have jurisdiction in the matter.”

Classification of
Land Drainage
Act, 1861,
preserved.

The Bill in the 10th clause *supra* adopts almost the precise language of the Land Drainage Act, 1861, keeping the distinction of the three kinds of works, viz. : the maintenance of existing works, the improvement of existing works and the construction of new works, which may be undertaken by the Board, and preserving the somewhat ambiguous phraseology of the second proviso. The importance of this classification is seen in a subsequent clause, which provides that the whole of the expenses

of the improvement of works and the construction of new works and one half of the other expenses incurred by the Board, shall be borne by the *owners* of lands within the district. The remainder of the expenses incurred by the Board are to be borne by the occupiers of the lands within the district, except that such of those expenses as are assessed in respect of *uplands* are to be borne by the owners.

The power to commute liabilities *ratione tenuræ* proposed to be given in the clause above is analogous to the provision for commutation in the Land Drainage Act, 1861, but under the latter Act the consent of the Inclosure Commissioners is a preliminary step. It is somewhat remarkable that it is not proposed to give effect to the strongly pronounced opinion of Mr. Ridley in his evidence before the House of Lords Committee in 1877, that it should be obligatory upon the drainage authority to commute these liabilities, especially as the importance of the commutation being admitted, the Inclosure Commissioners could only report two instances of their consent being required between the years 1861 and 1877. The Somersetshire Drainage Act, 1877, by ss. 59-65 (*a*), illustrates the application of the compulsory powers which were advocated by Mr. Ridley, and which have been found necessary to deal with such prescriptive liabilities in a district where tidal rivers are enclosed by sea-banks, and the occupiers were liable for the repair of certain sections of them, varying from two to two hundred yards.

The following are two of perhaps the most important clauses in the Bill, but without them it would seem hopeless to propose any remedial measure for a uniform and comprehensive scheme of drainage in a district in the face of the existence of the numerous private Acts relating to drainage and navigation, which at the present time paralyse the action of Commissioners of Sewers and other public drainage authorities.

(*a*) The Somersetshire Drainage Act, 1877, 40 Vic. c. xxxvi., Part iii., ss. 59-65, will be found set out in Appendix C, *post*.

“LOCAL ACTS, &c.

Provisions
respecting local
Acts

“16. Where it is represented to the Local Government Board that any local Act in force within the district or proposed district of a Conservancy Board interferes or is likely to interfere with the exercise of the powers of the Conservancy Board under this Act, the Local Government Board may, by the provisional order establishing such Conservancy Board, or by any subsequent provisional order, alter or repeal such local Act, so far as may be requisite for enabling such Board effectually to execute the purposes of this Act, and may confer and impose on such Board all or any of the powers, rights, duties, obligations, and liabilities of the authority entrusted with the execution of such local Act.

Provisions
respecting
Commissions
of Sewers.

“17. Where the Local Government Board are satisfied that the district of a Conservancy Board cannot be effectually protected against floods without the interference with the powers of some Commissioners of Sewers, Drainage Board, or other conservancy authority under any general Act of Parliament, they may by provisional order modify or restrict the powers and duties of such Commissioners or other conservancy authority so far as may be requisite for enabling such Board effectually to execute the purposes of this Act.

Provisions
respecting
existing
conservancy
authorities.

“18. On the application of any conservancy authority, the Local Government Board may, by provisional order, invest such authority with all or any of the powers and duties of a Conservancy Board under this Act, and may alter the constitution and mode of election of such authority, and may declare the provisions of this Act or any of them to be applicable (with or without any addition or modification) to such authority as if they were a Conservancy Board established under this Act, and so far as may be necessary for such purposes, may repeal or alter any local Act constituting or relating to such authority: Provided that no rating powers under this Act shall be conferred on such authority by a provisional order under this section, unless the due representation of owners and occupiers

is secured by such order. Any provisional order under this section may provide for the extension of the provisions of any local Act referred to therein beyond the district within the limits of such Act."

The two clauses which here follow contain important powers to exempt lowlands or midlands from rates in certain cases, and to order certain works in the nature of private improvements.

“EXPENSES AND RATES OF BOARD.

“24.—(1.) Where it is represented to the Conservancy Board that any lowlands or midlands in their district, by reason of efficient works for the protection of such lands from floods having been already executed, or of money having been beneficially expended on an outfall for the common benefit before the establishment of the Board, ought not to be rated to or to the full amount of the conservancy rates, the Board shall take into consideration such representation, and if they are of opinion that the same is well founded, and no special provision for exemption of such lands is contained in any order confirmed by Parliament and in force within that district, they shall from time to time exempt such lands from the conservancy rates wholly or to such extent as, having regard to all the circumstances of the case, may appear to be just.

Power to exempt from rates in special cases.

“(2.) Any person who deems himself aggrieved by the decision of the Conservancy Board may, within one month after notice of such decision, address a memorial to the Local Government Board stating the grounds of his complaint, and shall serve a copy thereof on the Conservancy Board; the Local Government Board may, after local inquiry, make such order in the matter as to them may seem equitable, and such order shall be binding on the parties.

“25.—(1.) Where a Conservancy Board are of opinion that the improvement of any work, or the construction of any new work, would be of special benefit to any particular lands within their

Special private improvements.

district, and the expense thereof is not specially provided for by any order confirmed by Parliament in force within their district, they may make the execution of such improvement or new work conditional on the owners of those lands consenting to bear the whole or such part of the expense of the execution, or of the execution and maintenance thereof, as, having regard to all the circumstances of the case, may appear to be equitable.

8 & 9 Vic. c.18.

“(2.) Any person interested in any such lands, and being one of any class of persons enabled by the Lands Clauses Consolidation Act, 1845, to sell land under that Act, may consent to any arrangement under this section as if he were the absolute owner of such lands.

27 & 28 Vic.
c. 114.

“(3.) The improvement of any work, or the construction of any new work under this section, shall be deemed to be an improvement of land authorised by the Improvement of Land Act, 1864, and the provisions of that Act shall, with any necessary modifications, apply accordingly.”

Clause 39 of the Bill enables a municipal body to be constituted a Conservancy Board; in the Bill of 1881 the population of the city or borough was to be 25,000, but the latest proposal has reduced that number to 10,000.

Provisions as to
certain urban
authorities.

“39.—(1.) The council of a municipal city or borough having, according to the census for the time being in force, a population of not less than 10,000 inhabitants, may, on their application, be constituted by provisional order made by the Local Government Board, after such local inquiry as required by this Act, a Conservancy Board for a district corresponding with the area of their municipal jurisdiction; provided that where any part of the boundary of such area is the centre line or other imaginary line passing along the course of a river, any part of such river which abuts on such boundary may, by the provisional order, be included in the district for which the council are constituted a Conservancy Board; provided also that any lands belonging to the corporation of any such city or borough

and abutting on its boundary may, by the provisional order, be included in such district.

“(2.) The Local Government Board may also, on the application of any such council, declare by provisional order that any expenses incurred by them as such Conservancy Board shall be defrayed either wholly or partially out of the city fund or city rate, or borough fund or borough rate, instead of in the manner in this Act provided for defraying the expenses of Conservancy Boards; and may also, on the like application, make the like provision in any case where the area of any such city or borough as aforesaid is constituted a sub-district of a conservancy district under this Act, and placed under the charge of the council as the committee for such sub-district; and may also, on the application of any such council for the time being empowered to create and issue consolidated stock, authorise any loan for the purposes of this Act to be raised by the creation and issue of such stock.

“(3.) Accounts of all moneys received and expended under this Act by the council of any such city or borough shall, notwithstanding anything in this Act, be kept and audited in like manner as the other accounts of the council of such city or borough.

“40. A Conservancy Board may from time to time contract with the sanitary authority of any sanitary district which is wholly or partially included within the district of the Board, for the execution, or for the execution and maintenance, by such authority of any works which the Board are authorised to execute under this Act; and any expenses incurred under this section by a sanitary authority shall be deemed to be expenses properly incurred by such authority in the execution of its duties under the Public Health Act, 1875, and shall be defrayed accordingly, and shall, in the case of a rural sanitary authority be charged as general expenses.”

Power to contract with sanitary authority for execution of works.

The following special provisions as to fen lands were inserted in the Bill by a Select Committee to which the Bill was referred

in 1881, and are of considerable interest to those districts in which any extensive system of arterial drainage already exists.

Special provisions for fen lands.

“41. Notwithstanding anything in this Act, if any lands situate in the counties of Cambridge, Huntingdon, Lincoln, Norfolk, Northampton, Suffolk, the Isle of Ely, or the Liberty or Soke of Peterborough, and being at the passing of this Act taxable by any Commissioners for drainage purposes (hereinafter referred to as fen lands), are constituted or included in a conservancy district or sub-district, the Local Government Board may by the provisional order constituting such district or sub-district, or by any subsequent provisional order to be confirmed by Parliament, declare that the aggregate amount or proportion of the expenses of the Conservancy Board, or committee of such district or sub-district which is payable in respect of fen lands included therein, shall in lieu of being raised in manner provided by this Act (but subject to any exemption to which such land may be for the time being entitled under this Act) be defrayed from time to time by such Commissioners as aforesaid out of any acreage tax or other rate which they are by any Act empowered to raise as such Commissioners, or be raised and defrayed by them in addition to and in like manner in all respects as any such acreage tax or rate as aforesaid.

Contribution payable to or from fen lands.

“42. Where it can be shown to the satisfaction of the Local Government Board that any work of improvement proposed to be executed by a Conservancy Board either in the outfall or in the main channel leading thereto is for the general advantage of the drainage of the lands within the district of such Conservancy Board in common with the drainage of any fen lands, or where it can be shown in like manner that any like work proposed to be executed by any conservancy authority of fen lands is for such general advantage of the drainage of the lands within the district of such Conservancy Board, the Local Government Board may, by provisional order to be confirmed by Parliament, fix such a rate of contribution to be paid towards the expense of constructing and maintaining the work by the conservancy

authority of the fen lands on the one hand, or by such Conservancy Board on the other hand, in such manner and proportion as may appear to the Local Government Board after due inquiry, and with special regard to the money already expended by the conservancy authority of the fen lands for those purposes, to be just and reasonable.

“43. Where, on a petition praying for the constitution of a conservancy district, it is shown to the satisfaction of the Local Government Board that the outfall for the drainage of any fen lands would be inadequate to carry off, without material damage to such fen lands, the additional waters which might be sent down from the proposed district, the Local Government Board shall, in the event of the district being constituted, make provision in the order for the execution of the works that appear to them necessary for the improvement of the outfall, or of the main channel leading thereto before works calculated to cause such damage are undertaken by the Conservancy Board, and for the apportionment and recovery of the expenses of such improvement works from the Conservancy Board, and the conservancy authority or authorities of such fen lands, or any of them as to the Local Government Board may appear just.”

Further special provision for drainage outfall of fen lands.

The principal clauses in the Rivers Conservancy Bill have been now noticed. This measure which, as was before observed, was first introduced in the year 1879, has now become familiar to all those who are in any way connected with this subject, and the intention of Parliament is openly expressed as to the way in which the reform of arterial drainage is to proceed. It remains to be seen whether a vigorous expression of provincial opinion will net do more to promote the passing of the Bill than the unsupported efforts of a Government Department.

CHAPTER II.

COMMISSIONS OF SEWERS.

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COMMISSIONS OF SEWERS date from an early period of English History (a). They were issued by the Sovereign for

Origin of Commissions of Sewers.

(a) Callis, 25; "The Laws of Sewers," 1; Fitz. Nat. Brev. fol. 113, where is set out an ancient Commission to inquire into the Parts of Holland, in Lincolnshire; Hale, de Jur. Mar. cap. ii. The word *sewer* has been variously derived—by Callis as a diminutive of a river; a sea wear; Suere to issue, 4 Inst. 275; scoir and can, Termes de la Ley. An old charter, temp. Edward III., runs in this form: "*Quod ipsi mariscum prædictum cum pertinentiis assewiare et secundum leges marisci vallis includere et in culturam redigere—et mariscum sic assewiatum.*" It is well described as a "fresh water trench, or little river encompassed with banks both sides, to

the purpose of inquiring into the causes of inundations, and the necessity for surveying and repairing sea-banks and walls in order that measures might be taken to protect the land from the inroads of the sea.

The failure of the ancient works of drainage and defence constructed by the inhabitants of the country (*a*) led to the granting of Commissions by the Crown, the issue of which was the right of the Sovereign by the common law. Thus Sir Edward Coke (*b*) says that the King, before the making of any Statute of Sewers, might grant Commissions for the surveying

carry the water into the sea, and thereby preserve the land from inundation," Tomlin's Law Diet. And it is in this original meaning that the word is used throughout this work, and not, unless the contrary is expressed, in the modern signification of a drain or channel, both open and covered, to carry off sewage and feculent drainage. The distinction between the original and modern meaning of the word is pointed out by Kindersley, V.-C., in *Sutton v. Mayor, etc., of Norwich*, 27 L. J. Ch. 739; "Originally the word meant a sea-wall, weir, dam, or defence against tides and inundations, or, according to others, a trench supported by banks for carrying fresh waters into the sea." In the case of the Poplar District Board *v. Knight*, 28 L. J. M. C. 37, we find the meaning extended to include the wall and bank of the River Thames protecting its low lands from the floods, 18 & 19 Vic. c. 120, s. 20 *et seq.*

(*a*) Instances are to be seen in Foss-Dyke and Car-(or Corr) Dyke, in Lincolnshire; the old sea dykes or banks bordering the estuary of the Wash, or the seaboard of Lincolnshire, now in part become roads, all of which are attributed to the Romans. Many banks or mounds of earth, still called "Roman banks," are to be found in the vicinity of Wisbeach. Dugdale mentions a long causeway of gravel extending twenty-four miles across the fen from Denver in Norfolk, over the Great Wash, to Cheek (now Creek), in the hamlet of March, thence to Eldernell, near Whittlesey, and so to Peterborough. Wells' "Laws of the Bedford Level," vol. i. p. 60. Among early works of drainage, we may notice the reclamation of Deeping Fen by Richard de Rulos, in the reign of Henry I. "Hist. of Lincolnshire," Allen, 1833; "Fens and Floods," by Padley, 1883.

(*b*) Case of the Isle of Ely, 10 Rep. 1 Ha; see also Callis 25; *Hudson v. Tabor*, 1 Q. B. D. 225; 45 L. J. Q. B. 190; 2 Q. B. D. 290; 46 L. J. Q. B. 463; Holt, C.J., is reported in these words in *Vill of Shandriganny v. Vill of Sholdam*, 12 Mod. 331; Holt's Cases 623;—"Commission of Sewers to defend the kingdom against the sea is very ancient, and even by special prescription in some cases; but sewers for melioration of land are by Act of Parliament."

and repairing of walls, banks, and rivers and other defences, and where such sea-walls or other works were found defective order their repair, and make ordinances for their future maintenance. This power, however, was limited to existing works and contributions from persons liable by prescription (*a*). In a recent case it was said by the Court that the power to erect a sea-wall or embankment as a protection against the sea, or from the influx of the tide in rivers, is one of those things which emanate from the prerogative of the Crown for the general safety of the public (*b*).

The form of Commission in 6 Henry VI. c. 5, runs thus: "*Nos pro eo quod ratione dignitatis nostre regie ad providendum salvationi regni nostri Anglie circumquaque sumus astricti;*" so also the recital in 23 Henry VIII. c. 5. It is laid down by Fitzherbert (*c*) "The king, by the tenure and prerogative of his crown, was bound to see and foresee the safety of the realm as well against the sea as against the enemies thereof, so that it should be neither drowned nor wasted, and also to provide that his subjects pass by all ways through the kingdom with safety, and therefore, if the sea-walls be broken, or the sewers or gutters not scoured so as the fresh waters cannot have their courses, the king ought to grant a Commission to inquire thereof and to hear and determine their faults." This obligation cannot be enforced by the subjects against the Crown (*d*), but when a private individual is the owner of the foreshore he will be restrained from interference with a natural barrier against the sea which the Crown is bound to protect (*e*).

(*a*) Magna Carta, cc. 15, 16, 23.

(*b*) Att.-Gen. v. Tomline, 12 Ch. D. 214; 48 L. J. Ch. 493; 14 Ch. D. 58; 49 L. J. Ch. 377; per Coekburn, C. J., in Greenwich Board of Works v. Maudslay, L. R. 5 Q. B. 397; 39 L. J. Q. B. 205.

(*c*) Nat. Brev. fol. 113; Herne, Reading on Sewers, 2; Dugdale on Embanking, c. 53; Henly v. Mayor of Lyme, 5 Bing. 91; 3 B. & Ad. 77; 1 Bing. N. C. 222.

(*d*) Hudson v. Tabor, 2 Q. B. D. 290; 46 L. J. Q. B. 163, per Lord Coleridge, C. J.

(*e*) Att.-Gen. v. Tomline, 12 Ch. D. 214; 48 L. J. Ch. 493; 14 Ch. D. 58; 49 L. J. Ch. 377.

Commissioners were thus appointed by the Crown and were empowered to view the district, to inquire through whose default or neglect to repair the inundations were occasioned, and to assess those persons who were contributory. They were to see that the proper repairs were executed, to raise money by rates, and to distrain on those who refused to contribute their proportion of rate, or who neglected to execute their due repairs.

Of these early Commissions, the most important was that issued by Henry III. for the draining of Romney Marsh, inasmuch as the subsequent legislation of Henry VIII. takes the law and customs of Romney Marsh, in the county of Kent, as precedents to be followed (*a*).

During the reigns of Henry VI., Edward IV., and Henry VII., several statutes were passed for appointing Commissions of Sewers in all parts of the Kingdom (*b*). The law, however, received permanent shape in the great statute of Henry VIII., known as "The Bill of Sewers," which is in force at the present day, and upon which is founded the whole law relating to Commissions of Sewers (*c*).

(*a*) The Charter, and several other ordinances concerning Romney Marsh, are reviewed at length in the "Laws of Sewers," 136-176. The chief of this Commission was Sir Henry de Bathe. See Dugdale on Embanking, Chap. xi. Coke, 4 Inst. 276, writes, "from which laws not only other parts of Kent but all England receive light and direction."

(*b*) See 6 Henry VI. c. 5, in which is set out a form of Commission issued to the parts of Lindsey in Lincolnshire. Sir Edw. Coke, in his report of the Isle of Ely Case, 10 Rep. 141*a*, states the first statute to be 9 Henry III. (Magna Carta); these and subsequent Acts of Parliament were only confirmatory of the common law. See, per Cockburn C. J., *Hudson v. Tabor*, 1 Q. B. D. at p. 233; 45 L. J. Q. B. at p. 198.

(*c*) This statute is the text for Callis' well-known reading on the Law of Sewers, delivered by him as reader of Gray's Inn in 1622. His treatise was described by Buller, J. as "one of the best performances on the subject, and as good authority," *Dore v. Gray*, 2 T. R. p. 365; Park, J. also in *Duke of Newcastle v. Clark*, 8 Taunt., p. 266, speaks of it as "that very learned reading which is much regarded as an authority in Westminster Hall," and in recent times, Cockburn, C. J., has referred to it as a work of considerable weight and authority, *R. v. Warton*, 31 L. J. Q. B. p. 273. Callis was born about 1574, and was a Commissioner of Sewers for his own county, Lincolnshire. He died in 1641. Herne delivered a

There are now six general Acts from which Commissioners of Sewers derive their powers, duties, and liabilities. These are— Statutes in force.

- (1) 23 Hen. VIII. c. 5 (The Bill of Sewers), A.D. 1531.
- (2) 7 Anne, c. 10, A.D. 1708, relating to sale of copyhold lands by Commissioners of Sewers.
- (3) 3 and 4 William IV. c. 22, A.D. 1833, a general Act amending the Law of Sewers.
- (4) 4 and 5 Vic. c. 45, A.D. 1841, as to levy of a Sewer Tax.
- (5) 12 and 13 Vic. c. 50, A.D. 1849, providing for a subdivision of districts, and the recovery of sewer rates and fines.
- (6) 24 and 25 Vic. c. 133; The Land Drainage Act, 1861, Part i., relating to Commissions of Sewers. In Part ii. of the Act are directions for forming Drainage Boards, to be invested with the powers possessed by Commissioners of Sewers (*a*).

These Acts do not apply to Scotland or Ireland. The Irish Drainage Acts, of which the principal is 26 & 27 Vic. c. 88, amended by 28 & 29 Vic. c. 52, are spoken of as working exceedingly well by Mr. S. V. Roberts, in his evidence before the Select Committee of the House of Lords on Conservancy Boards (*b*). Unfortunately a perusal of the Irish text-books and reports affords no assistance in applying the English Acts.

The statute 23 Hen. VIII. c. 5, having enumerated the various reasons for enactment, proceeds to vest the appointment of the Commissioners in the Lord Chancellor and the Lord Appointment under old law.

reading on the same statute in 1638, which he dedicated to the Commissioners of Sewers for the City of London. These readings were followed by an anonymous work on the same subject, entitled "The Laws of Sewers." The second edition was published in 1732; it is chiefly useful as containing forms relating to Commissioners of Sewers, several of which, as adapted to modern requirements, will be found set out in Appendix B.

(*a*) These statutes will be found set out in Appendix A., *post*. A summary of them will also be found at p. 246 of Appendix A.

(*b*) Questions 649-763.

Treasurer of England, and the two Chief Justices for the time being, or three of them, the Lord Chancellor being one (a).

The form of the Commission is contained in the second section of the 23 Hen. VIII. c. 5, and at the present day, when it becomes necessary to appoint new Commissioners to fill the vacancies occurring in the Commission, the writ of *Dedimus Potestatem*, which issues from the Crown Office, is in the same language (b).

The Land Drainage Act, 1861 (24 and 25 Vic. c. 133, s. 4). further enables her Majesty, upon the recommendation of the Inclosure Commissioners, to issue Commissions of Sewers for new areas, but no alteration can be effected in the jurisdiction of any Commission without the consent of a special meeting of the Commissioners. By s. 60, "All powers given by this part of the Act (Part i., relating to Commissions of Sewers) shall be deemed to be in addition to and not in derogation of any other powers conferred on Commissioners of Sewers by Act of Parliament, law, or custom; and Commissioners of Sewers may exercise such other powers in the same manner as if this

(a) The Commissioners were named by the Lord Chancellor and the Commission issued by the Crown. By the kindness of the officials of the Crown Office (House of Lords), the authors were permitted to inspect the old forms relating to the grants of Commissions of Sewers; accordingly certain forms obtained from that office will be found in Appendix B. Among the orders in Chancery made by Lord Chancellor Bacon, as set out in Beame's Orders in Chancery, is one relating to the appointment of Commissioners of Sewers as follows:

Ord. 94. Upon suit for the Commissioners of Sewers the names of those that are desired to be Commissioners are to be preferred to the Lord Chancellor in writing; then his lordship will send the name of some privy councillor, lieutenant of shire, justice of assize, being resident in the parts for which the Commission is prayed, to consider of them that they be not put in for private respects; and upon the return of such opinion his lordship will further order for the Commission to pass.

Ord. 95. No new Commission of sewards (*sic*) shall be granted while the first is in force, except it be upon discovery of abuse or fault in the first Commission, or otherwise upon some great or weighty ground.

(b) See Appendix B, where the writ is given; and s. 14, Land Drainage Act, 1861, 24 and 25 Vic. c. 133.

Issue of
Commission.

Writ of *Dedimus
Potestatem*.

Land Drainage
Act, 1861.

Act had not passed; and notwithstanding anything in this Act contained, Commissions of Sewers may be issued by her Majesty in manner in which the same have been issued previously to the passing of this Act."

The effect of this section is discussed in the course of this work, for the cumulative powers here given produce a considerable variance in the working of different Commissions. On the one hand, certain Commissioners proceed entirely according to the machinery of the earlier law, while others have adopted the provisions of this statute. By s. 2, the Act, "in so far as the same relates to Commissions of Sewers shall include any Commission of Sewers granted by her Majesty, and for the time being in force, whether such Commission is or is not granted in pursuance of this Act . . . and in so far as the same relates to Commissioners of Sewers, shall include Commissioners acting under any such Commission as aforesaid" (*a*).

The recommendation is obtained by a petition (*b*) to the Inclosure Commissioners, signed by the proprietors (*c*) of one-tenth of the land within the area, showing the proposed extent of the Commission, and supported by such evidence as the Inclosure Commissioners may require, together with security for costs. The Inclosure Commissioners then send down an inspector to make inquiries. If proprietors (*d*) of one-third of the land dissent, then the Inclosure Commissioners are to dismiss the petition; but if there is no such dissent and the Inclosure Commissioners are in all respects satisfied, they are to convey their approval to her Majesty, and a Commission of Sewers is forthwith issued (*e*).

Petition to the
Inclosure Com-
missioners.

The Inspector.

Issue of
Commission.

(*a*) See remarks by Mr. Thring in his Treatise on the Land Drainage Act, 1861, p. 22; and the Land Drainage Act, 1861, its provisions, working and results, by Mr. Richard B. Grantham, C.E., F.G.S., Inspector of Drainages under the Inclosure Commissioners, p. 11.

(*b*) A form of petition is given in Appendix B., *post*.

(*c*) Proprietors are defined by ss. 6-10.

(*d*) *Ib.*

(*e*) See Chapter I., p. 4. The Rivers Conservancy Bill of 1883 provided in some respects a similar scheme for commencing operations; it was thought, however, expedient to dispense with certain requirements of the Land Drainage Act, 1861, with a view to obtain a more general acceptance throughout the country.

QUALIFICATION OF COMMISSIONERS OF SEWERS.

There have been extensive alterations from time to time by statute of the qualification necessary for a Commissioner of Sewers.

Qualification of
Commissioner.

Prior to 1833, the qualification by estate depended upon 23 Hen. VIII. c. 5, s. 10; 3 and 4 Edw. VI. c. 8; and 13 Eliz. c. 9, ss. 4 and 7 (*a*); but by 3 and 4 Will. IV. c. 22, s. 1 (*b*), it is required that a Commissioner shall be—

Estate.

(1) The owner in his own right, or in right of his wife, in actual possession or receipt for life of a freehold or copyhold estate, situate in the county in which he shall act as Commissioner, or in an adjoining county (*c*), of the yearly value of £100; or the heir apparent of such freehold or copyhold estate of the yearly value of £200;

(2) Or a leaseholder (*d*) of an estate of 60 years, of £100 yearly value:

(3) Or a leaseholder of an estate of 21 years, of which 10 years are unexpired, of £200 yearly value;

(4) Or an agent of corporate bodies or Commissioners whose estate is of £300 yearly value (*e*).

(*a*) The provisions of these statutes, as to the qualification of Commissioners, are repealed.

(*b*) The statute recognises the three earlier Acts in the preamble, and states that it was expedient to increase the amount of qualification.

(*c*) By 25 Hen. VIII. c. 10, no one was bound to act in the Commission, unless dwelling in the same county. "Laws of Sewers," p. 15.

(*d*) But by 13 Eliz. c. 9, s. 4, no farmer, for years, of lands which may be chargeable by laws of the Commission, wherein he shall be named Commissioner, not having an estate of freehold within England of £40, shall sit or intermeddle with the execution of such Commission during the time that he continues farmer of such lands; *ib. s. 7, secus* as to lands of which he is not farmer. "Laws of Sewers," p. 17.

(*e*) Owners of large properties are frequently represented by their agents, who discharge the various duties of Commissioners. The agent must, however, in the first instance, be appointed by writing (in case of corporation under seal), and must take an oath as to the sufficiency of his principal's property according to the form of oath in s. 3.

The Act further provides that the qualification may be situated either partly in each of the counties into which such Commission runs, or wholly in any one of such counties (*a*). Situation of qualification.

Ex-officio Commissioners, such as mayors, bailiffs, &c., of towns, are not required to qualify independently of their respective offices (*s. 5*), but must before acting deliver a certificate, under the hand of the legal officer of the corporation in question, showing authority for serving on the Commission (*b*). Commissioners ex-officio, qualification of.

The qualification must be possessed at the time of the sitting of the Commissioners, and the office is vacated if the qualification is parted with (*c*).

A penalty is imposed by the 3 and 4 Will. IV. c. 22, s. 4, of £100, upon any person acting without having qualified; but the section expressly saves the proceedings from being impeached, which have been done under the Commission by the unqualified person. Penalties for not qualifying.

The section also describes the manner of suing for the penalty. It is sufficient, without further proof, if the Commissioner has acted. The penalty is recoverable in the Superior Courts. Callis questions whether an indictment would also lie, and though thinking it would not, quotes Crofton's case (*d*) as an authority to the contrary.

The 5th section of 23 Hen. VIII. c. 5, gives the form of oath which each Commissioner must take before entering on his office. The oath is taken before the Lord Chancellor, or such persons as are named in the writ of *Delimus Potestatem* for that purpose (*e*).

(*a*) Herne, in his "Reading of Sewers," says that a *jeune* and an infant may be a Commissioner of Sewers. Herne, 4, 5; Callis, 250.

(*b*) Among the Commissioners included *ex-officio* in a Commission of Sewers are to be found the following:— Deans of cathedrals, mayors, recorders, aldermen, burgesses, common councilmen, stewards, town clerks, and justices of the peace of cities and boroughs.

(*c*) Callis, 245.

(*d*) 1 Mod. 34; Callis, 249.

(*e*) The writ and oath are set out in Appendix B. The Clerk of Sewers is generally named in the writ, and the oath is taken before him.

The oath as to qualification.

As to office.

It is further prescribed by the 3rd section of 3 and 4 Will. IV. c. 22, that the Commissioners (a) qualified as above, before acting in execution of their office, shall take an oath as to their qualification by estate, in addition to the oath contained in the 23 Hen. VIII. c. 5, s. 5, which the later Act preserves (b).

By an Act for draining certain lands in Lincolnshire, it was provided that the lords of the manors of Bardney, Topholme and Stixwold, or in their absence their respective agents, appointed in writing, should be Commissioners for executing the Act, but that no person should act as Commissioner until he had made and subscribed a declaration in the form given by the Act. None of the lords of the above manors ever subscribed the declaration contained in the Act, but they severally appointed their stewards to act for them, and their stewards subscribed the declaration and then acted as Commissioners. It was held that the stewards, being appointed by the lords, were themselves Commissioners, and that in appointing the stewards the lords did not act as Commissioners, and it was not, therefore, necessary for them to make the declaration (c). This decision was affirmed on appeal (d).

To meet the case of persons refusing to take the oath ordained by the statute of 23 Hen. VIII. c. 5, the 25 Hen. VIII. c. 10 was passed, which, by s. 2, enacted that any Commissioner refusing to be sworn, and that refusal returned into the Court of Chancery, should forfeit five marks for every such contempt, unless reasonable cause was shown to the Lord Chancellor. This statute also provides (s. 1) that no person shall be compelled to be sworn, or to sit in execution of any

(a) Quakers are exempted upon making the statutory affirmation (s. 2).

(b) In the event of a Commissioner objecting to comply with this requirement, he would be enabled to avail himself of a declaration in lieu of oath, 31 and 32 Vic. c. 72, s. 12. The penalty, under 23 Hen. VIII. c. 5, for a Commissioner sitting unsworn, is £40 (s. 10).

(c) *Ostler v. Cooke*, 18 L. J. Q. B. 185.

(d) 22 L. J. Q. B. 71.

Commission of Sewers, unless resident in the county. The Metropolitan Sewers Act (11 & 12 Vic. c. 112, s. 145, now repealed), in adopting the statute 23 Hen. VIII. c. 5, especially excepted those provisions which applied to the oath and qualification of the Commissioners.

As the 3 & 4 Will. IV. c. 22 had no retrospective operation, 3 & 4 Will. IV. c. 22 not retrospective. for some time after the passing of the Act it was necessary to refer to the early statutes already alluded to as to qualification, &c. For this purpose the learning of Callis (*a*) upon the various classes of estates, and the ecclesiastical and other offices (*b*) which gave a qualification, together with an account The old law. of those persons who were rendered incompetent by the Act of Hen. VIII. provides a discursive study, which finds further expression in the pages of "Woolrych on Sewers" (*c*). At the present day it is surmised there are but few instances of Commissioners appointed before the year 1833.

DURATION OF THE COMMISSION.

A Commission of Sewers could be terminated by writ of *supersedeas* by 23 Hen. VIII. c. 5, s. 16. and by this process some 800 Commissions of Sewers in the Metropolitan districts were swept away; but now a Commission of Sewers is declared by the Land Drainage Act, 1861 (24 & 25 Vic. c. 133, s. 14), to continue until it is superseded by her Majesty. Duration of Commissions. Before this enactment the duration of a Commission was confined to 10 years (*d*); and as a consequence, considerable expense was involved in renewing the Commissions.

(*a*) Callis, 233-253; 7 Com. Dig. Tit. Sewers, 339.

(*b*) As to plea of privilege, in answer to an appointment as expeditor, see Arch. de Rochester's case, 1 Lev. 303; 1 Vent. 105; 1 Mod. 282; the reporter remarks that the reason for excusing the Archdeacon was that the land giving the qualification was in lease, and the obligation therefore the tenant's.

(*c*) Ed. iii., 1864, pp. 30-42.

(*d*) 3 & 4 Will. IV. c. 22, s. 6. The Act of 23 Hen. VIII. c. 5, by s 16, continued Commissions of Sewers for three years. This period was extended to five years by 3 & 4 Ed. VI. c. 8, and later, by 13 Eliz. c. 9, to 10 years.

Duration of laws and decrees.

By 3 & 4 Will. IV. c. 22, s. 7, the laws, acts, decrees, constitutions and ordinances made at a Court of Sewers remain in force until they are altered or repealed by a subsequent Court. (*a*) In early times these laws of sewers were co-extensive only with the particular Commission, unless they were engrossed and certified into the Court of Chancery, and the King's assent given. (*b*)

OFFICERS OF THE COMMISSIONERS.

Appointment.

The appointment of officers to carry out and conduct the business of the Commission is provided for by the statute 23 Hen. VIII. c. 5, which enumerates keepers, bailiffs, surveyors, collectors, expeditors and other officers. (*c*)

23 Hen. VIII. c. 5.

Election of discretionary.

The election of these officers, according to Callis, is in the discretion of the Commissioners. (*d*)

Where the Commission extends to the whole county, and the county is administered by separate Commissions with their own clerks, it appears that any Commissioner in the county is

(*a*) *Post*, Chap. VII.

(*b*) 23 Hen. VIII. c. 5, s. 17; this section is repealed. By 13 Eliz. c. 9, justices of the peace were enabled, for one year after the expiration of a Commission, to execute its laws, &c., though if within the year a new Commission issued their powers ceased. For an interesting case upon this now repealed statute, *see* R. v. Commissioners of Sewers for Somerset, 7 East, 71; 9 East, 109. A presentment of a jury under an old Commission was held good when confirmed by a new one Taylor v. Loft, 8 Ex. 269; 22 L. J. Ex. 131.

(*c*) The surveyor, Callis, 106. From the "Laws of Sewers," p. 86-88, we learn that the bailiff serves the warrants, precepts and summonses of the Court. The surveyor has charge of the banks, walls, &c., and has to inquire into their repair, &c. For his presentment, *see post*. The collector receives the money ordered by the rates, and must account for it, and pay it to the expeditor, who disburses the amount upon the repairs. *See* Appendix B., *post*, for forms of appointment to the office of bailiff, surveyor, collector and expeditor. Clerks and dyke reeves are only mentioned in the later statutes, *see post*.

(*d*) Callis, 113.

entitled to vote in the election of clerk for each Commission; and where such persons as the mayor, recorder, aldermen, steward, town clerk, sheriff, common councilmen and justices of the peace of the various cities and boroughs in the county are so named in the Commission, each of such persons is entitled to vote individually.

The mode of appointment is not prescribed by statute, and it may be said to be completed by election. The statutes do not provide for the qualification of these officers.

Before, however, they enter upon their respective duties, the Commissioners are empowered, by 3 & 4 Will. IV. c. 22, s. 50, to take security from them (*a*). The security is given by a bond or bonds to the clerk of the Commissioners (*b*) for the time Security.
Bond.

(*a*) The 50th section enumerates treasurer, collector, receiver, expeditor and other ministers and officers.

(*b*) The amount of security is a question for the discretion of the Commissioners. The bond is usually one with two sureties. For form of bond, see Appendix B, *post*. The effect of concealment from the surety of fraud committed by the officer is to discharge the surety. See *Philipps v. Foxall*, L. R. 7 Q. B. 66; 41 L. J. Q. B. 293, and the cases there cited; *Burgess v. Eve*, L. R. 13 Eq. 450, 458; 41 L. J. Ch. 515; *Saunderson v. Aston*, L. R. 8 Ex. 73; 42 L. J. Ex. 64. So, also, upon the officer accepting an appointment to an office which is inconsistent and incompatible with the first, *Malling Union v. Graham*, L. R. 5 C. P. 201; 39 L. J. C. P. 74 (assistant overseer and collector of poor rates); but see *Skillett v. Fletcher*, L. R. 1 C. P. 217; 35 L. J. C. P. 154; affirmed L. R. 2 C. P. 469; 36 L. J. C. P. 206. As to what constitutes a new appointment, see *Holland v. Lea*, 23 L. J. Ex. 122. As to the effect of the duties of the office being changed, see *Pybus v. Gibbs*, 6 E. & B. 902, 913; 26 L. J. Q. B. 41.

Where time is given to the officer, where the contract is altered between him and his principals, or where the officer and his principals deal together so as to affect the position of the surety, the surety is discharged. *Croydon Gas Co. v. Dickinson*, 2 C. P. D. 46; 45 L. J. C. P. 869. As to where the contract is separable, *ib*. For a decision on a bond (Sewers), *Saunders v. Taylor*, 9 B. & C. 35.

See further as to liabilities of sureties on a change of officers' duties, and in other events, *Oswald v. Mayor of Berwick-on-Tweed*, 5 H. L. Ca. 856; 25 L. J. Q. B. 383; *Mayor of Clifton, &c. v. Silly*, 26 L. J. Q. B. 90; *Frank v. Edwards*, 8 Ex. 214; *Evans v. Bremidge*, 25 L. J. Ch. 102. Note, too, the case of a treasurer's liability under circumstances where the clerk to guardians had been fraudulent, *Halifax Union v. Wheelright*, L. R. 10 Ex. 183; 44 L. J. Ex. 121.

being, who, in case of default being made, sues in his own name, and is indemnified against all costs and charges in respect of the suits, which do not abate by reason of the death, resignation or removal of the clerk, or by the expiration of the Commission.

Sec. 51.

The clerk and treasurer.

The same person is not to be clerk and treasurer, and a similar disqualification is imposed upon the clerk's partner or clerk holding the office of treasurer or deputy treasurer, and *vice vers*. This provision is frequently found in local Acts; *e.g.*, the Public Health Act, 1875 (38 & 39 Vic. c. 55), s. 192. The object of the prohibition is obviously to prevent any misapplication of the Commissioners funds. It was held, under a local Act with similar provisions, that the corporation could not appoint the clerk's clerk to the office of assistant treasurer; but where the appointment had been made, the *bona fides* of the officer in accepting it was a question for the jury, upon which depended the liability and the penalty (*a*). The treasurer cannot hold any other office of trust under the Commissioners. The penalty for a breach of this statutory provision is £100, for which any person, not a corporation (*b*) may sue; but an action brought by a common informer must be within the year of the offence (*c*).

Remuneration of officers.
23 Hen. VIII.
c. 5.

The 13th section of the statute of 23 Henry VIII. c. 5, fixed a daily payment of 2s. to be made to the clerk out of the rates,

It may here be observed that it is advisable that the terms of the bond be so drawn as to provide against it becoming inoperative by reason of any change in the tenure of the office, or in the amount of salary or mode in which it is paid, or by change of district or increase or diminution of duties of office.

Gratuities to officers.

Gratuities given to officers out of rates have been held illegal. *Ex parte Mellish*, 8 L. T. N. S. 47; *R. v. Poor Law Board*, 41 L. J. M. C. 16; *conf. R. v. Mayor of Norwich*, 8 A. & E. 633.

(*a*) *Hawkins v. Newman*, 4 M. & W. 613.

(*b*) *Guardians of St. Leonard's, &c., v. Franklin*, 3 C. P. D. 377; 47 L. J. C. P. 727.

(*c*) *Dyer v. Best*, L. R. 1 Ex. 152; 35 L. J. Ex. 105; and *see* the recent case of *Bradlaugh v. Clarke*, 8 App. Ca. 354; 52 L. J. H. L. 505.

and also gave the Commissioners a general discretionary power of remunerating their officers from the same source (*a*).

By s. 16 of 3 & 4 Will. IV. c. 22, a very wide power is given to the Commissioners, not only of paying their clerks and other persons employed by them out of the rates for their services, expenses, etc., but also witnesses who may appear in support of or in opposition to presentments, and generally for their professional services to the Commission (*b*). The 4 & 5 Vic. c. 45, s. 7, provides that jurymen may be paid for their loss of time and expenses in attending the Court.

The removal of an officer appears to be a matter for the discretion of the Commissioners. It was decided in a recent case (*c*) that a *quo warranto* information would be refused where, upon an applicant charging an illegal dismissal from office, it appeared that if reinstated he would again be legally dismissed. It is submitted that as the Clerk of Sewers holds at the pleasure of the Commissioners a *quo warranto* will not lie in accordance with a decision of the House of Lords (*d*) that a *quo warranto* information

(*a*) "Laws of Sewers," 13.

(*b*) The power of the Commissioners to levy a rate to defray the expenses and costs of litigation will be noticed, *post*, p. 105. A mandamus will issue to compel the Commissioners to levy a rate to reimburse the clerk, who at their request has opposed a bill in Parliament, *R. v. Commissioners of Sewers of Norfolk*, 20 L. J. Q. B. 121, *see post*, Rating. As to the recovery of salaries by officers acting under local Acts, it has generally been considered that the procedure to obtain payment of a salary was by mandamus directed to the Commissioners, or by an action against the treasurer or other officer. It was once held that no action could be brought against Commissioners under a local Act directly for salary, when there was no contract under seal, *Bogg v. Pearse*, 20 L. J. C. P. 99; *Addison v. Mayor of Preston*, 21 L. J. C. P. 146. But the case of *Hall v. Taylor*, 27 L. J. Q. B. 311 (following and approving *Kendall v. King*, 17 C. B. 483; 25 L. J. C. P. 132), decided that the clerk of a Local Board could bring an action of debt against the Commissioners for the time being in the name of their clerk; in that case the action was for services rendered to former Commissioners. The judgment, however, will be enforced by mandamus, *see Kendall v. King, supra*.

Recovery of salaries.

(*c*) *Ex parte Richards*, 3 Q. B. D. 368; 47 L. J. Q. B. 498.

(*d*) *Darley v. Reg.*, 12 C. & F. 520; *see in re Fox*, S E. & B. 939; 27 L. J. Q. B. 151.

is only applicable to offices of a public nature and of substantial character, where the functions are not those of a deputy or servant holding at the will and pleasure of others. Thus the Court of Queen's Bench, in the year 1805, decided (*a*) that the office of Registrar of the Bedford Level, and other offices which are held at the will of that Corporation, being offices not affecting any franchise or other authority holden under the Crown, could not be inquired into by *quo warranto*. There is an old report to the effect, that the dismissal from the office of clerk may be questioned in the Court of Queen's Bench upon a *certiorari* to remove the order discharging the officer, and that the Court will inquire into the title. The judges were at variance upon the question whether the issue of the writ was of right or discretionary, looking to the office of clerk as one affecting the interests of the public (*b*), and comparing it to that of clerk of the peace. The reporter of the case seemed to think that the office of clerk to the Commissioners was held only at will. The collector, according to the form (*c*) which is found in the "Laws of Sewers," holds during the will and pleasure of the Commissioners.

Certiorari.

Officers discharged being in possession of Commissioners property.

3 & 4 Will. IV. c. 22, s. 49.

Where an officer has been discharged by the Commissioners, and he remains in possession of their property, whether houses, buildings, land, materials, &c., and refuses to give up such property within two days after notice (*d*) of his being discharged and of his being required to give up the property, a

(*a*) *R. v. Corporation of the Bedford Level*, 6 East, 356.

(*b*) *R. v. Banks and Arthur, Fortese*, 374; *sub-nom Arthur v. Commissioners of Sewers for Yorkshire*, 8 Mod. 331; Callis, 291; 7 Com. Dig. tit. Sewers 351. The ground for dismissal was that the appointment of the clerk had been made by surprise.

(*c*) See Appendix B, *post*, form of appointment of a Collector of Sewers.

(*d*) The notice may be left at his last place of abode. (As to what is the last place of abode, see the cases under the County Court Acts.) The same process may be directed against the wife, widow or family, or representatives of any officer or servant who resists such orders of the Commissioners, *ib. s. 49*.

warrant, under the hands and seals of six Commissioners, may be issued ordering a constable to expel him, and to take possession of the property in question. It should be observed that constables serving within the jurisdiction of the Commissioners are bound to obey the orders, warrants, &c., of the Commissioners under the 22nd section of 3 & 4 Will. IV. c. 22, and under the 55th section they may be required to levy distress (a).

It appears upon the authority of Callis that officers of sewers may be fined for neglect of their duties (b). He further lays it down that an expeditor or collector, on being required to account for moneys received, and refusing to do so, may be fined. But now, by the 48th section of 3 & 4 Will. IV. c. 22, officers of sewers are, when required by the Commissioners, to give an account of their payments and to deliver up vouchers for the same, and if there is a balance in hand to pay it over (c). In cases where an officer fails to comply with the Commissioners order to account and deliver up his vouchers, or, after 14 days, does not produce them, and all books, papers, &c., in his possession, the Court of Sewers, in a summary way, can order the amount due from him to be recovered by distress and sale of his goods and chattels (d). If the distress proves

Constables.

Punishment of officers.
Fines.

3 & 4 Will. IV.
c. 22, s. 48.

Officers to account.

Failure of officer to account.
Sec. 48.

Distress.

(a) *Post*, p. 125.

(b) The expression used is, "misdemean himself in his office." A tithing-man refused to make a presentment and was fined; so, too, a juryman who departed after he was sworn, Callis, p. 175. He also quotes a case where a man refused to serve an office of sewers and was fined. (*Post*, Chap. VII. Fines.)

(c) The Commissioners will require an officer taking more distress than is required, to return the overplus, Callis, 219, where he refers to the charter of Romney Marsh in like case. See also, 7 Com. Dig. tit. Sewers, 341.

(d) This is a continuing offence and not within Jervis' Act, 11 & 12 Vic. c. 43. See the decision in *Mayer v. Harding*, 17 L. T. N. S. 140, upon a similar section in the Public Health Act of 1848. Under the Public Health Act, 1875, s. 196, the defaulting officer may be committed to gaol for a period not exceeding six calendar months, it being doubtful whether the justices have a discretion. See *R. v. Justices of Norfolk*, 4 B. & Ad. 238. It was held in *R. v. Masters*, L. R. 4 Q. B. 285; 38 L. J. M. C. 73, that a discharge in bankruptcy extinguished the balance of an account due from

insufficient, and he continues wilfully to neglect to comply with the Commissioners orders, the Court of Sewers may commit him to gaol for any period not exceeding six calendar months.

Imprisonment.
Dyke-reeve.
12 & 13 Vic.
c. 50, s. 3.

An officer, whose name is specially mentioned in 12 and 13 Vic. c. 50, is the dyke reeve.

The expression "dike (*sic*) reeve" occurs once in 3 & 4 Will. IV. c. 22, s. 15. Callis mentions the word "dyke (*sic*) reeve" incidentally at p. 110. The officer bearing this name is in many Commissions little more than collector of the rates. He is sometimes elected by vestry, and his election confirmed by the Court of Sewers. He is nearly always a paid officer, and in no way the same person designated by this Act. It may be noted that in many of the old Commissions a marsh bailiff or dyke reeve is appointed whose duty it is to look after the drains, outfalls, &c., making his report to the Commissioners (*a*), and it has been suggested that the dyke reeves are the successors of the old standing juries in Somersetshire, which were discontinued in consequence of the decision in *R. v. Somerset* (*b*), declaring the institution of a standing jury to be irregular.

Upon the formation of sub-districts, according to the statute, the Commissioners may appoint this officer. To qualify for the office he must be an occupier of not less than ten acres of sewable lands situated in the district over which he acts as dyke reeve. He may be appointed over a sub-district created in virtue of this Act, or over a district previously constituted. He must serve without fee or reward, and the penalty for refusing to serve the office is any sum not exceeding £20. He may nominate a deputy,

Sec. 3.

Qualification,
s. 4.

Without fee or
reward, s. 5.

an overseer, and that such balance was a debt only. An action for breach of duty in failing to account as town clerk, and to deliver up books, vouchers, &c., has been held to be against the defaulter, notwithstanding the summary remedy before justices of the peace provided by statute. *Mayor of Lichfield v. Simpson*, 8 Q. B. 65; see Callis, 175.

(*a*) Land Drainage Act, 1861, by Richard B. Grantham, C.E., F.G.S., p. 15.

(*b*) 7 East, 71.

subject to the approval of the Commissioners, and he is empowered also of himself to make a presentment, and to act in conjunction with the other officers of Sewers. Presentment by, ss. 6, 7, 9.

REGULATIONS AS TO MEETINGS OF COMMISSIONERS AND COURTS OF SEWERS.

The 3 & 4 Will. IV. c. 22, is the first statute which gives any directions as to the meetings of Commissioners and their Courts.

The Court of Sewers is a Court of Record. Callis considers the question at some length (*a*). The principal reasons for his opinion that it is a Court of Record being—(1) the statutes 12 Edw. IV. c. 7 and 23 Hen. VIII. c. 5 call the Commissioners justices, and no one can be a justice but in a court; (2) There are legal proceedings and process conducted in the Court of Sewers; (3) the Commission of Sewers is a member of the ancient Court of *Oyer and Terminer*; (4) the Commissioners have a clerk proper to themselves to register their laws; (5) writs of error have been brought to reverse judgments given in that Court. It was observed by Patteson, J., during a case (*b*) in which the liability of Commissioners of Sewers for trespass committed in distraining for a sewers rate was being questioned, that “Commissioners of Sewers, in issuing their warrant, stood in the situation of justices,” and the learned judge referred to a case decided in 1818 (*c*), where Commissioners of Sewers for Pevensey Level brought an action against the Commissioners of Rye Harbour for breaking down a dam, and in which the power and authority of Commissioners of Sewers was much discussed. In the judgment of the Court, Court of Sewers.

(*a*) Callis, 164–166.

(*b*) *Pocock v. O’Shaunessy*, 6 A. & E. 807, p. 808; *Commins v. Massam*, March 201. Court of Record.

(*c*) *The Duke of Newcastle v. Clark*, 8 Taunt. 602.

Dallas, C. J., (*a*) referred to the Sewers Court as "a Court of Record," and Park, J. (*b*) in discussing the powers conferred on Commissioners of Sewers by 23 Hen. VIII. c. 5, said: "The Commission itself undoubtedly gives many powers. . . . It constitutes the Commissioners a Court, and gives them every power incident to a Court of Oyer and Terminer," and Burrough, J., added (*c*) that "Commissioners of Sewers are persons holding a Court of Record." In speaking of ancient writs, a Commission of Sewers directed to the parts of Holland is classed by Fitzherbert among writs of oyer and terminer (*d*). Sir Edward Coke also, in enumerating Courts of Record, includes Courts of Oyer and Terminer and Courts of Sewers (*e*); and Page-Wood, V.-C., observes that Commissioners of Sewers armed with their powers are constituted a Court of Record, and carry out the purposes of the Act (*f*).

By s. 44 (now repealed) the Court (*g*) might be held at any place within five miles of the limits of the Commission. This enactment was amended by 4 & 5 Vic. c. 45, s. 11, and the distance extended to ten miles. The meetings of Commissioners are now regulated by s. 8 of 3 & 4 Will. IV. c. 22, which provides that any three of the Commissioners or their clerk (*h*), by direction in writing of three Commissioners, may

(*a*) *The Duke of Newcastle v. Clark*, 8 Taunt. 625.

(*b*) *Ib.* p. 627.

(*c*) *Ib.* p. 631.

(*d*) Fitzherbert Nat. Brev. 113.

(*e*) *Gregory's Case*, 6 Rep. fol. 19 *b*. It is said that actions for illegal distress levied for sewers rates may be brought in the Court of Sewers, and that labourers and workmen employed by the Commissioners may recover their wages in the Sewers Court. *Callis*, 217-220; *Herne*, 7.

(*f*) *Crossman v. Bristol and S. Wales Union Rail.*, 1 H. & M. 531; 11 W. R. 981.

(*g*) By 3 & 4 Will. IV. c. 22, s. 60, the word "Court," or "Courts of Sewers," means every Court, session, assemblage, or meeting of any six or more Commissioners of Sewers (three whereof being a quorum) named in any Commission of Sewers, and acting in execution thereof.

(*h*) The clerk signs the notice. See form Appendix B.

appoint a meeting at such time or place as they shall think fit, ten clear (a) days notice being given by advertisement in some paper of the county generally circulated in the district.

Upon the Commissioners assembling, proclamation is made, and the Court opened by the erier, after which the clerk is sworn, who produces and reads the notice convening the meeting (b). The choice of a chairman is to be made by the majority of Commissioners present (4 & 5 Vic. c. 45, s. 10); and if there is an equality of votes, the person who is first on the Commission is to be chairman. In cases of an equal number of votes the chairman is to have a casting vote.

Section 8 of 3 & 4 Will. IV. c. 22, enacts that no order or determination is to be valid unless the majority of Commissioners present concur; all acts, orders and proceedings are to be done, made and executed by the majority present, the whole number present not being less than six. This number is now reduced to three (Land Drainage Act, 1861, 24 & 25 Vic. c. 133, s. 15), except in those cases where improvements in existing works, or the construction of new works (defined in that Act), are in question, in which case the quorum of six is necessary.

The majority of the Commissioners present may, whatever their number, adjourn the meeting (4 & 5 Vic. c. 45, s. 12) (c). If, however, a sufficient number of Commissioners have not met at the place appointed, and the Court or meeting has not been duly adjourned, one or more of the Commissioners may by writing appoint another meeting. Ten clear days (d) notice must be given in the county newspaper, or, if the Commission runs into

(a) The time must be computed exclusively.

(b) The newspapers containing copy of the notice should be produced, and together with the notice convening the meeting, filed among the records of the Court.

(c) 3 & 4 Will. IV. c. 22, s. 8, gave power of adjournment, but presumably it required the consent of six Commissioners.

(d) *Supra*, note (a).

more than one county, then in some newspaper circulated in each of the counties in question (4 & 5 Vic. c. 45, s. 12).

Again, by 3 & 4 Will. IV. c. 22, s. 9, if after the adjournment of a meeting it is on an emergency considered advisable that a special meeting should be called for an earlier day than that fixed for the adjournment, any three Commissioners, or their clerk, upon their direction in writing, may appoint such special meeting. Ten clear days notice (*a*) of the meeting and of the purpose for which it is called must be given by advertisement as above, and no other business is to be transacted at the meeting but that specified in the notice.

The same section provides that, in the event of any imminent danger from high tides or any other cause, where in the judgment of two Commissioners the exigencies of the case will not admit of the delay of ten days, two or more Commissioners, or their clerk under their direction in writing, may, by circular letter to each Commissioner, convene a special meeting for as early a day as they think fit (*b*). The circular must specify the particular object for which the meeting is convened, and no business is to be transacted at such meeting except that which strictly relates to the particular object of the meeting.

(*a*) *Supra*, note (*a*), p. 51.

(*b*) Herne, in his "Reading on Sewers," is of opinion that the Court of Sewers may sit on Sunday, "though the same be not in law *dies juridicus*; for judicial acts *propter necessitatem* are good on that day; and the sea is an enemy not to be repelled but by this Court," Herne, p. 7-8.

Special Meetings,
3 & 4 Will. IV.
c. 22, s. 9.

Notice of.

No other
business.

Emergency
meeting.

Circular letter.

CHAPTER III.

POWERS AND DUTIES OF COMMISSIONERS OF SEWERS. (a)

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I. *Existing Works.*

THE early Commissions of Sewers being issued for the purpose of inquiring into the state of defences against inroads of the sea existing at that time, it follows that the jurisdiction of the Commissioners thus appointed extended only to existing works (*b*).

From 23 Hen. VIII. c. 5, down to the Land Drainage, 1861, Powers extended by statutes. the legislature has by a series of Acts enlarged the jurisdiction of Commissioners of Sewers from existing maritime works to the construction of new works, both inland and maritime, and the powers with which they are at the present day invested receive confirmation in the last-named Act. But it is useful to review the increase of power which has from time to time been

(a) All powers vested in Commissioners of Sewers are exerciseable by Drainage Boards (24 & 25 Vic. c. 133, s. 67).

(b) *Ante*, p. 33.

conferred by the legislature, in order to appreciate the extent of jurisdiction which is defined by that Act (*a*). Cases may also arise which are not provided for by the Land Drainage Act, 1861, and therefore reference must be made to the previous Acts.

The heads of jurisdiction.

The jurisdiction of Commissioners of Sewers has always been divided into two main branches, and it is expedient to keep them separate. Their powers are divided under the following heads :—

Existing works.

Maintenance and improvement of existing works.

Construction of new works.

23 Hen. VIII. c. 5.

It was held, as will be seen later on (*b*), that the statute 23 Hen. VIII. c. 5, did not confer on Commissioners of Sewers the power to execute new works.

That statute, after drawing attention to the damage occasioned by the sea and land water, to the impediments in rivers which obstructed their flow and interrupted the navigation, and to the want of repairs of walls, ditches, banks, sewers, &c., proceeded to authorise the Commissioners to survey and repair the same, and to remove any impediments (*c*).

(*a*) By the Rivers Conservancy Bill of 1883, it was proposed to invest Commissioners of Sewers with the powers and duties of a Conservancy Board if occasion required.

(*b*) *Post*, p. 59.

(*c*) The following works are specified in this statute :

Enumeration of works.

Works to be Surveyed and Repaired.

| | |
|-----------|-----|
| Walls. | (1) |
| Banks. | (2) |
| Calcies. | (3) |
| Bridges. | (4) |
| Streams. | |
| Gutters. | |
| Ditches. | |
| Sewers. | (5) |
| Gates. | (6) |
| Trenches. | |

Works described as Impediments.

| | |
|----------------|------|
| Mills. | |
| Streams. | |
| Bridges. | |
| Milldams. | |
| Floodgates. | |
| Ponds. | |
| Locks. | |
| Hebbing Weares | (7) |
| Wears. | |
| Hecks. | (8) |
| Kedels. | (9) |
| Fishgarths. | (10) |
| Gores. | (11) |

The statute 3 and 4 Will. IV. c. 22 extended the jurisdiction of Commissioners of Sewers, and set at rest some points of difficulty on this head which had been raised under the preceding statute (23 Henry VIII. c. 5). After mentioning

The only other works specifically mentioned in subsequent legislation affecting sewers are to be found in 3 & 4 Will. IV. c. 22, s. 19. They are tunnels, culverts, sluices, tumbling bays.

The definition of several of these terms in relation to the law of Sewers has been discussed by various authors on the subject, Callis on Sewers, p. 63, *et seq*; "The Laws of Sewers," 24; but the necessity for this having been rendered unnecessary by subsequent legislation, it is considered useful only to append definitions to those which seem to require special notice.

(1) *Walls*.—A wall in Sewers Acts is described as an artificial edifice, made of materials brought to the place where it is erected. The ownership of it belongs to him who built it, and he is bound to repair it, though his ground does not adjoin. Callis, 74; "Laws of Sewers" 25.

(2) *Banks*.—A bank of the sea or river is the utmost border of dry land, and is made of the same materials with the ground it stands on; the property in these banks is in him whose ground adjoins; but the use of them is common to all men, on which account they are compared to highways, Callis, 73; "Laws of Sewers," 25; Board of Works for Greenwich v. Maudslay, L. R. 5 Q. B. 397; 39 L. J. Q. B. 205. See the approval given to this distinction between a wall and a bank, by Park, J., in Duke of Newcastle v. Clark, 8 Taunt. 602, p. 627.

(3) *Calceys*.—Calceys, *i.e.* causeways. The jurisdiction of Commissioners of Sewers is confined to those causeways within their district which were carried over the fen and marsh lands. Callis is of this opinion, and he gives as instances those on Barston Bank and Southby Bank, and adds, that "the law does not extend to calceys lying in towns and villages in high, uplandish countries," p. 90. Dugdale, in his "History of Embanking," mentions a "causey" extending over the plain of Sedgemoor, from Somerset to Bridgwater, eight miles; see also "Laws of Sewers," 26. Most of these causeways were no doubt built for the purpose of affording passage over the fens and marshes when in their original undrained state. Such a causeway was made by William the Conqueror, at Aldreth, in Cambridgeshire, in order to attack the camp of refuge formed by Hereward the Saxon on the Isle of Ely. The authority of Commissioners of Sewers does not extend to causeways erected before the reign of Edward I.; case of Chester Mills, 10 Coke, 138 *a*, *sub-nom* Case of Sewers, 13 Coke 35; Crabb's Dig., tit. Sewers.

(4) *Bridges*.—According to Callis, the jurisdiction of the Commissioners over bridges is confined to those which are erected over sewers, &c. in the fen and marsh lands. Callis, 87; "Laws of Sewers," 26; see also Sapcotes v. Grantham, Callis, 89.

(s. 10) (1) maritime works and coast defences, (2) rivers, streams and watercourses, which are navigable or may become so, or in which the tide ebbs and flows, and sewers connected therewith, (3) the banks and other works erected on such rivers, &c., declares them to be within the authority of Commissioners of Sewers.

It had been doubted by Callis whether the banks, walls and other defences of fresh rivers which have their courses to the sea were within the jurisdiction of Commissioners of Sewers, but as was observed by Page-Wood, V.-C. (*a*), s. 47

(5) *Sewers*.—A fresh water trench, with a bank and small current; a diminutive of a river. Callis, 90; “Laws of Sewers,” 25; see also *ante*, p. 32, note.

(6) *Gotes*.—Engines erected with “portallese” and doors of timber, stone or brick, invented first in low Germany. They let out the fresh water and also the sea when it overflows; they sometimes serve as bridges; Callis, 91; “Laws of Sewers,” 27. Saxon, *geotan*, a sluice or drain. Wright’s Prov. Dict. Modern, *gout*.

(7) *Hebbing Weares*.—Weirs or engines made or laid at low water for catching fish. Tomlin, Law Dict.

(8) *Heck*.—A sort of fishing-net.

(9) *Kedels*.—Dams or open weirs in a river, with a loop or narrow cut in it to accommodate the laying of wheels or other engines to catch fish, mentioned in Magna Carta; see 2 Inst. fol. 38. Now called *kettles* or *kettle-nets*.

(10) *Fishgarths*.—Engines to take fish, mentioned in 23 Henry VIII. c. 5; places in the side of a river, so that they may be more easily caught. Halliwell’s Dict.

(11) *Gores*.—A weir. Coke derives the word from *gorges*, but better opinion from *gort*, the French for a weir, mentioned in Domesday Book; also used for a pool or pit of water for fish in ancient grants. *Termes de la Ley*. It is also considered by some to be the same as *gote*, *supra*.

Callis is of opinion that the seas are within the bounds of the Statute of Sewers, p. 42; also islands, p. 44. Ports and havens by the coasts of the sea, unless their management is vested in some other body by a local Act, would seem to be within the jurisdiction of the Commissioners. Callis, 62.

The question whether the Eau Brink Cut could properly be called “a public or parish drain,” was discussed and decided in the negative in *Coulton v. Ambler*, 13 M. & W. 403.

(*a*) See *per* Page-Wood, V.-C., in *Crossman v. Bristol and S. Wales Railway*; 1 H. & M. 531; 11 W. R. 981.

of 3 & 4 Will. IV. c. 22, might very possibly have the effect of sweeping into its operation all things mentioned in s. 10, which includes tidal and navigable rivers as well as sea coasts.

There was for some time a doubt as to what streams and sewers—*i.e.*, whether navigable or otherwise—the jurisdiction of the Commissioners extended. The law, as laid down in the cases cited below (*a*), received confirmation by s. 10 of 3 & 4 Will. IV. c. 22 (*b*); but the Land Drainage Act of 1861 (24 & 25 Vic. c. 133), by extending the jurisdiction to all rivers, streams, drains, sewers and passages through which water flows, disposed of the question (*c*).

It may here be noticed, that although the Commission may reach over a wide district, the operations of the Commissioners are sometimes confined to one portion of it. Where it becomes desirable to bring into the area of actual supervision outlying parts of the Commission, a petition to this effect is presented to the Commissioners, who, if they think fit, accede to the application (*d*); and it is with a view to exclude such extension of operations of the Commissioners that a clause is frequently found in private Acts for draining areas within the Commission excepting the jurisdiction of Commissioners of Sewers.

The jurisdiction of Commissioners of Sewers was extended and their powers defined by the Land Drainage Act, 1861

(*a*) *Yeaw v. Holland*, 2 W. Bl. 717; *Dore v. Gray*, 2 T. R. 358, and cases cited in Callis at 98 (4th edition), editor's note. It is curious that the case of *R. v. Hide*, Sty. 60, an authority in the teeth of those decisions, was never referred to in the first two cases mentioned. In *R. v. Vachell*, 3 Keb. 446, a few years after *R. v. Hide*, the Court of King's Bench decided that Commissioners of Sewers could only interfere in the case of a public stream, and where a public interest was concerned.

(*b*) *Crabb's Dig.*, Part iii. tit. Sewers, states that the words of this section were designed to meet the cases of *Yeaw v. Holland* and *Dore v. Gray*, *supra*.

(*c*) 24 & 25 Vic. c. 133, s. 3. definition of watercourse; so too The Rivers Conservancy Bill, 1883, had a like definition.

(*d*) An instance of such an application being granted is the case of the Spalford Bank, in the Lincolnshire Commission, mentioned by the late Mr. Padley in his recently published work, "Fens and Floods."

(24 & 25 Vic. c. 133), and classified under the following three heads (*a*):—

1. Maintenance of existing works.
2. Improvement of existing works.
3. Construction of new works.

Maintenance of existing works.

These divisions are explained as follows: By s. 16, Commissioners of Sewers may *maintain all existing works*, such as cleaning and repairing any existing watercourse or outfall, or any existing wall or other defence against water. Watercourse, as defined by the Act, includes “all rivers, streams, drains, sewers and passages through which water flows.”

Watercourse.

Improvement of existing works.

They may, so long as the expenses do not exceed £1,000, *improve existing works* by deepening, widening and straightening any existing watercourse (*b*), removing mills, mill-dams, weirs, &c., subject to certain restrictions, and by raising or altering existing defences against water.

Works exceeding £1,000.

By s. 29, if any improvement of existing works or construction of new works involves an expenditure of more than £1,000, a notice containing plans and estimate of the proposed work, and the area to be rated and a list of the proprietors (*c*) and their acreage, must be circulated in the district, and advertised in some newspaper of the district for two months (*d*);

(*a*) The division under the above three heads was maintained by the Rivers Conservancy Bill, 1883, and is also found in the Somersetshire Drainage Act, 40 Vic. c. xxxvi.

(*b*) Should the Commissioners by any of these Acts alter the boundaries of counties or parishes, they must inform the Inclosure Commissioners, who may confirm the alteration in, or make other order thereon, in manner provided by the Act, s. 62. Compare a similar power given in the Rivers' Conservancy Bill, 1883, to the Local Government Board.

(*c*) For definition of proprietors, *see* s. 6.

(*d*) Sec. 30. The list of the proprietors may be corrected during the two months, but after that the list is conclusive evidence against the proprietors named therein.

Sec. 32. If the Commissioners are unable to discover the proprietor of any land, they are to state so in the notice; and if no proprietor is forthcoming, the land is to be excluded from the computation of proportion of expenses.

and a notice must be placed on the church door of the parish for three successive Sundays.

By s. 31, if the proprietors of half the rateable area dissent (*a*), the Commissioners cannot proceed; but if there is no such dissent they may execute the works.

It was probably the intention of the authors of the statute of Henry VIII. that Commissioners of Sewers should have power to order the construction of new works, where, in their discretion, it should be beneficial and necessary to construct them; but the Courts from the outset declined to accept such an interpretation of the enactments, and in the main adopted the narrower view which prohibited the making of entirely new works.

New works.

Decision of the Courts as to.

This point is argued at length by Callis (*b*); and the conclusion he arrives at is that the Commissioners had power to erect new works "upon urgent necessity in defence of the country, or for the safety thereof." The reasons he advances in support of his view are—first, that the statute of Henry VIII. was confirmatory of the previous legislation of Henry VI., upon which point the opinion of Coke agrees (*c*), while the urgent necessity which led to the passing of the Act must be construed as evidencing the *ratio legis*. He also adduces the controversy which arose in the reign of James I. about the construction of new cuts in the Isle of Ely, and which resulted in an order made by the Privy Council, recognising the power of the Commissioners to decree new works (*d*). Secondly, he relies

Callis' arguments.

Order of Privy Council, 12 Jac. I.

(*a*) The legislature has in this instance facilitated the proceedings of Commissioners, by requiring half the proprietors to take the initiative in expressing their dissent, instead of requiring the Commissioners to obtain the assent of three-fourths. See *post*, p. 61.

(*b*) P. 92-105; see also "Laws of Sewers," 32-16.

(*c*) The 6 Henry VI. c. 5, permitted the Commissioners to repair the ancient defences, "*et eadem et alia de novo construere*." Isle of Ely case, 10 Rep. 141a. Callis, p. 92, remarks upon the difference taken between "*nova construere*" and "*de novo construere*."

(*d*) Callis, 98; The "Laws of Sewers," 36, where the order is set out, bearing the signatures of Lord Chancellor Ellesmere, Sir Julius Caesar, Master of the Rolls, and Sir Francis Bacon, Attorney-General.

upon the decision in a case decided in the reign of Elizabeth (43 & 44 Eliz.). Two new "goats" had been erected for the drainage of the waters out of South Holland Fen into Boston Haven; and the Chief Justices, Popham and Anderson, decided that the statute allowed their erection, if they were for the general advantage of the country (*a*).

Isle of Ely case. But against this view of Callis is the great case of the Isle of Ely, decided by Sir Edward Coke (*b*), where it was laid down that ancient walls, if broken, might be replaced by new ones, because this could not be called a new work, but that nothing absolutely new, such as a river or stream, could be made by the Commissioners. This decision was followed in 1649, in a case where it was represented that the Commissioners sought to make a new wall, although when it afterwards appeared that the wall would not be entirely new, the construction was allowed (*c*).

Nevertheless the law was so uncertain upon this subject, that the statute of 2 Will. and Mary, c. 8, s. 14, was passed, which, to a certain extent, it being a local Act, removed the doubts that were felt. It enacted that new sewers in any of the parishes specified in the Act might be made by Commissioners of Sewers (*d*).

(*a*) Callis, 97; Sir Edward Dimock's case.

(*b*) 10 Rep. 141 *a*; 7 Com. Dig. tit. Sewers, 341, 342. Callis rather derides the reason for the decision—viz., that the havens of the kingdom may be stopped up. One of the causes of Coke's dismissal from office was his view as to the jurisdiction of Commissioners of Sewers. See Serjeant Moore's Rep. 828, and see *R. v. Somerset*, 8 T. R. 312.

(*c*) Vill. of Newton and Tyd. Styles, 192. But if an old wall or bank be thrown down by violence of a tempest, the Commissioners may order a new one, Pasch, 18 Car. I. B. R. See also *R. v. Pagham Commissioners*, 8 B. & C. 355. It is interesting to note the following passage in Magna Carta, c. 15: "*Quod nulla villa nec liber homo distringatur facere pontes, &c., nisi qui ex antiquo consuenerint,*" which tends to show that new banks could not be made by the Commissioners.

(*d*) The editor of Callis, p. 104, cites this Act. Callis himself also instances two private Acts enabling Commissioners to make new cuts (27 Eliz. c. 22; 3 Jac. I. c. 18).

New works were for the first time directly authorised by New works, 3 & 4 Will. IV. c. 22, s. 19. 3 & 4 Will. IV. c. 22. By s. 19, Commissioners of Sewers were empowered to construct entirely new works. In the words of the section, "they may decree and ordain any new walls, banks, sewers, &c., . . . and other works to be constructed, &c., . . . against the irruption and overflowing of the sea, or for draining and carrying off superfluous fresh waters" (a).

A formidable restriction, however, upon any large exercise of the power conferred by this statute is imposed by s. 21, Sec. 21. Consent of owners and occupiers. a proviso requiring the consent of owners and occupiers of three-fourths in value of the lands within the district chargeable with the expenses.

We may at this point sum up the three causes which Summary. operated to limit the action of Commissioners of Sewers, and which led to the necessity of further legislation.

- (1.) The interpretation placed by the Courts upon the early works, *e.g.*, the case of the Isle of Ely (b).
- (2.) The necessity for inquiry and presentment by jury as a step preliminary to any action by the Commissioners (c).
- (3.) The large number of consents required by 3 & 4 Will. IV. c. 22, s. 21, before the Commissioners could undertake anything in the nature of new works, coupled with the absence of power to acquire land, except for the purpose of improvement of existing works (d).

The Land Drainage Act, 1861 (24 & 25 Vic. c. 133), materially Land Drainage Act, 1861, s. 16, new works. amends the law touching these points. Section 16, sub-sec. 3,

(a) Mr. Thring considers this power to be limited to the construction of new works for maritime purposes only; but it is difficult to appreciate what meaning he can then give to the words "for draining superfluous fresh water."

(b) *Supra*, 10 Rep. 141a.

(c) This point is dealt with in the next chapter.

(d) 3 & 4 Will. IV. c. 22, s. 24.

extends the powers of Commissioners of Sewers to "Making any new watercourse (*a*), or new outfall for water, or erecting any new defence against water, to erecting any machinery . . . required for the drainage . . . warping (*b*) or irrigation of the area within the limits of their jurisdiction hereinafter referred to under the expression 'The construction of new works.'"

Proviso.

The section then continues with a proviso, "That no work shall be deemed to be a new work that is in substitution for an old work, in cases where such old work is so much out of repair, or so inefficient as to make it expedient to construct a new work in place thereof" (*c*).

Thus the first point above mentioned is dealt with by this statute.

Presentment by jury.

The second, as to presentment by jury, is met by s. 33 of the Act, which enables the Commissioners to dispense with such presentment (*d*).

Land Drainage Act, 1861, new works.

The third, as to consent of owners and occupiers, is also affected by the Act, and requires consideration.

Purchase of land.

The 21st section of the Act enables the Commissioners to purchase land for new works. First, they may do this if the owners along the line of projected works consent to sell. Secondly, if the owners are unwilling to sell, then a provisional order must be obtained from the Inclosure Commissioners, which must receive the sanction of Parliament (*e*).

(*a*) Watercourse, by s. 3, is defined to include all rivers, streams, drains, sewers and passages through which water flows.

(*b*) The subject of warping has been exhaustively treated in an able paper read by Mr. T. C. Smith-Woolley, at the Surveyor's Institute, 10th December, 1877.

(*c*) In the case of an old work, such as a sluice, outfall or cut, considered inefficient, and a new work constructed some distance off in order to relieve it, a difficult question might arise. According to this proviso, the work constructed is not a new work, and it could not, without straining the language, be termed an improvement of an existing work.

(*d*) See *post*, Presentment by Jury.

(*e*) For a more detailed account of this, see *post*, Purchase of Land.

By s. 29, before they undertake the construction of any new works involving an expenditure of £1,000, notices must be given, and the dissent of the proprietors (*a*) of half of the area of land to be rated according to the notices issued prevents the Commissioners proceeding (*b*).

£1,000 expenditure.

Dissent of proprietors.

Thus, subject to these restrictions, the Act enables Commissioners of Sewers to erect new works, to purchase land for the purpose, and requires a greater opposition in the district to stay their construction than did the statute of Will. IV.

Where Commissions or drainage districts are not coterminous or co-extensive, *e.g.*, with the rivers or streams upon which the works are proposed to be undertaken (*c*), it may be convenient for Commissioners to avail themselves of the power given by s. 59 of the Land Drainage Act, 1861, which enables different bodies of Commissioners to execute works in each other's districts, and is as follows:—"Commissioners of Sewers having jurisdiction within any area may, with the consent of the Commissioners having jurisdiction within an adjoining area, do and execute in such adjoining area any works that such first-mentioned Commissioners might do and execute within their own area, upon such terms as to payment or otherwise as may be agreed upon between the said bodies of Commissioners; and any sums agreed to be paid by any body of Commissioners, in pursuance of this section, shall be payable out of the rates leviable by such Commissioners in the same manner as if the expenses had been incurred within their own area; and the

Arrangements with adjoining areas.

Land Drainage Act, 1861, s. 59.

(*a*) Proprietors are defined in s. 6.

(*b*) The procedure is the same for improvement of existing works when expenditure exceeds £1,000, s. 29.

(*c*) See an interesting case in 1842, in which the Drainage Commissioners of Bourn North Fen and Dyke Fen widened a drain under the control of the Black Sluice Commissioners; the decision turned upon the construction of a private Act of Parliament, and therefore does no more than illustrate the state of circumstances which might lead to an application of the section quoted above. *Smith v. Bell*, 10 M. & W. 378; 2 Rail. Ca. 877.

powers hereby given to one body of Commissioners in relation to another body of Commissioners may be exercised by them in relation to any drainage board constituted under this Act, or by any such drainage board in relation to any other drainage board.”

A similar power authorising conservancy boards, and also conservancy authorities of adjoining districts, to combine for execution of works, was proposed in the Rivers Conservancy Bill, 1883.

General powers
and duties.

Having reviewed the subject of the maintenance and improvement of existing and the construction of new works, the next step is a consideration of some of the general powers and duties of Commissioners of Sewers in respect of the performance of the ordinary objects of the Commission.

REMOVAL OF OBSTRUCTIONS.

Removal of
obstructions.

And first as to the removal of obstructions. Commissioners of Sewers can only remove those which exist without lawful authority, *i.e.*, without custom or prescription, but they have power to order the removal of any increase, *e.g.*, to an immemorial weir in a navigable river (*a*). Thus, in an old case cited by Callis, it appeared that the plaintiff was possessed of an ancient weir in the river Wye. The Commissioners of Sewers caused a jury to be impanelled and sworn, who found a verdict that the weir was “excessive high and hurtful, and an impediment to the common passage of boats, and an annoyance to the whole county.” The Commissioners thereupon ordered

Ancient weirs.

(*a*) *Inhabitants de Oldberry v. Stafford*, 1 Sid. 145; the case of *Chester Mills*, 10 Coke, 138 *a* and *sub-nom* Case of Sewers, 13 Coke, 135. The well-known passage in *Magna Carta*: “*omnes kydelli deponantur de cetero penitus per Tamesiam et Medwayam et per totam Angliam nisi per costeram maris*” has been decided to refer to navigable rivers. *Leconfield v. Lonsdale*, L. R. 5 C. P. 657; 39 L. J. C. P. 305, which is confirmatory of the passage in *Callis*, p. 258, 259. Coke, 2 Inst. p. 38 (citing a passage from *Glanville*), and Hale, *De Jure Maris*, cc. 3 & 5.

the weir to be removed, and directed their warrant to the defendants ordering them to abate it, which was done. On removal of the cause into the Court of the Duchy of Lancaster at Westminster, the Judges (*a*) were of opinion that the weir, being an ancient weir, ought not to have been overthrown by the decree of the Commissioners, and that the verdict of the jurors was defective, because, though they found the weir to be high and enhanced, they did not present, *in quanto* nor *in quâ parte*, the weir was enhanced above the ancient assize (*b*).

Commissioners of Sewers can also compel the person who has created an impediment to remove it (*c*). It is thus said by Callis, that "if a stranger, of his malice or wrong, doth pitch down piles or set down stakes in the rivers and streams, he is to be fined or amerced for this offence, as the case shall require, and he is to be ordered to remove the nuisance at his own costs and charges;" and the author goes on to say, "if it cannot be found out who did the nuisance, then the Commissioners of Sewers are to order those to remove that annoyance which in all likelihood are to sustain most damage thereby" (*d*).

Compelling persons to remove obstructions.

The latter alternative was resorted to in an old case in the year books, where certain persons were presented for pitching stakes in the river Lea, and it was awarded that those persons should reform the same; and because some of the persons named could not be discovered who had done another part of the nuisance, it was ordered that the sheriff should abate that part of the nuisance, taking to his assistance those persons who had grounds next adjoining (*e*).

Stakes in the river Lea.

If an impediment be a nuisance, Commissioners of Sewers ought not to preserve the impediment and try to remedy the

(*a*) Sir Humphrey May, Sir John Denham, Sir Thos. Chamberlain, Sir Ed. Mosley.

(*b*) Hall v. Mason, 19 Jac. 1; Callis, 262; *see post*, p. 85. Survey and Jury Procedure.

(*c*) They may also fine, *see post*, p. 160, Fines; *see post*, p. 183, Indictment.

(*d*) p. 267.

(*e*) 19 Ed. 3 Lib. Ass. plac. 6; Callis, 268.

nuisance by erecting other works, such as locks, &c., their duty being to remove the nuisance (*a*).

Private banks, or banks erected as fences to private grounds, were said by Callis to be not within the jurisdiction of Commissioners of Sewers. He relates that in the parts of Holland, in the County of Lincoln, and other parts of the country, private individuals had cast up great banks for the protection of their lands; these in his opinion were not within "the protection and defence" of the Sewers Laws; but he maintained that they could be demolished if they were a hindrance to the common good of the country (*b*).

This view of the law, however, was considerably affected by the proviso contained in 3 and 4 Will. IV. c. 22, s. 10, which enacted that dams, flood-gates and other works erected on rivers for ornament previous to the Act, were not to be interfered with by Commissioners of Sewers without the consent of the owner; and by s. 37, which enacted that the Commissioners were not to take down, remove or make use of any house, building, garden, paddock, or enclosed land planted ornamentally, without the consent of the owner.

But these enactments are now practically superseded by the provisions of the Land Drainage Act, 1861 (24 and 25 Vic. c. 133), which empowers Commissioners of Sewers to remove all obstructions, subject to the following restrictions in ss. 17-20 of that Act. By those sections Commissioners of Sewers may, with the owner's consent, remove any mill-dam or weir or other obstruction; but if he does not consent, then the Commissioners' right to remove has to be determined by a consideration of the following questions (*c*):—

(*a*) *R. v. Inhabitants of Westham*, 10 Mod. 159; *Kerrison v. Sparrow*, 19 Vesey, jun., 449; *Coop. Ch. Ca.* 505.

(*b*) p. 76.

(*c*) These questions may be determined by two justices if the owner agrees, but if he does not, by arbitration. The justices have only power to determine the questions of fact; they have no power to try questions of "litigated title," *per* Jessel, M. R., in *Hedley v. Bates*, 13 Ch. D. 498; 49

Private banks not within jurisdiction of Commissioners of Sewers.

Demolition of private banks.

3 & 4 Will. IV. c. 22 s. 10.

As to removal of dams, s. 37.

Land Drainage Act, 1861, ss. 17-20.

With owner's consent.

1. Whether the proposed removal is necessary for the drainage of the district. Without owner's consent.
2. Whether the removal will cause injury to the owner.
3. Whether the injury can be compensated by money.

If either the first or second questions be answered in the negative, the Commissioners may not remove the obstruction: if answered in the affirmative, they may remove the obstruction on making compensation to the owner (*a*). The duty of removing obstructions is discretionary, and no action will lie against the Commissioners for a *nonfeasance*. Thus, in a case where an unpaid body of trustees under a private Act were empowered at their discretion to "remove all obstructions and impediments" to the navigation of a river, it was attempted to render them liable for an accident to a barge, which was injured by striking on a submerged pile in the river. The jury found that the pile was dangerous, that the trustees ought to have been aware of the danger, and neglected their duty: but it was held by Pollock, B., on further consideration, that the action could not be maintained (*b*). Removal discretionary.

The gravel, soil, mud, weeds, or earth, which in process of dredging or cleansing is cast up on the banks of rivers or sewers by the orders of the Commissioners, may or may not prove valuable. In order to provide for questions which may arise between the Commissioners on the one hand and the riparian occupier on the other, it is provided by 3 & 4 Will. IV. c. 22, ss. 22, 23, that the occupier may remove the same for his own use; if Cleansing of rivers.
Deposit of gravel, &c.
3 & 4 Wm. IV. c. 22, ss. 22 and 23.

L. J. Ch. 170, which was a decision upon Part. iii. of the Land Drainage Act, 1861, where there is a similar procedure.

(*a*) By s. 20, the compensation is to be ascertained by the procedure of the Lands Clauses Act, 1845.

(*b*) *Forbes v. Lee Conservancy Board*. 4 Ex. D. 116; 48 L. J. Ex. 402; *see post*, p. 190. By the Rivers Conservancy Bill, 1883, it was proposed that the Conservancy Board, or other authority invested with their powers, should have power to remove any mill-dam, weir, or other obstruction, upon making compensation.

within six months he does not exercise his right to do so, the Commissioners can remove it, or they may be compelled to remove it by the owner or occupier.

NAVIGATION.

Navigation.

The question of navigation is considered to be not within the purview of Commissioners of Sewers, inasmuch as they were constituted for the purposes only of protecting the country from inundation, and for draining of the land. At the present day, the navigation of rivers is generally under the control of conservancy authorities appointed under private Acts (*a*). Callis is of opinion that if streams cannot be made navigable but by the removal of impediments which belong to private persons, and which have existed from time immemorial, then the Commissioners cannot make the streams navigable because they have no power to remove such impediments, but otherwise if there are none (*b*). It is further said in an old case (*c*), that Commissioners of Sewers have no power to make a stream navigable, nor even to improve the navigation of a river beyond what it was before. "They may preserve it in the state it was by removing obstructions, and other natural ways, but they cannot even help the navigation by erecting docks or by any such artificial methods." It is worthy of notice that one of the complaints against an order of Commissioners commanding the removal of an impediment to the flow and reflow of water, was that the removal would spoil the navigation (*d*). It was remarked by a learned judge (*e*), that public rights of navigation might be put an

Not within
jurisdiction of
Commissioners.

(*a*) As to the immense number of private Acts for purposes of navigation, and the effect their powers have upon the drainage of the country, see Rep. of House of Lords Committee on Conservancy Boards, 1877 Questions, 75-88.

(*b*) Callis, 270.

(*c*) *R. v. Inhab. of Westham*, 10 Mod. 159.

(*d*) *Kerrison v. Sparrow*, 19 Vesey, jun., 449; Coop. Ch. Ca. 305.

(*e*) Per Bayley, J., in *R. v. Montague*, 4 B. & C. 598, at p. 603.

end to, *inter alia*, by Commissioners of Sewers, if there were any appointed for the district, and they found that it would be for the benefit of the level. But this dictum is *obiter*.

THE FORESHORE.

The *prima facie* title to the foreshore (a) everywhere is in the Crown (b), but by ancient grant, charter, or prescription, it may vest in the subject. It has been decided that the foreshore is within the jurisdiction of the Commissioners of Sewers. In a case where sand had been taken away on the coast of Lincolnshire, a conviction was obtained against an individual for so doing. Upon motion of *certiorari* to quash the conviction, the Court were clearly of opinion in favour of the Commissioners title, and refused the rule (c). The rights of a lord of the manor, who claimed to be owner of the foreshore, to remove a natural barrier of shingle, with the result of causing injury to the adjoining property, were considered in a recent case in the Chancery Division. It was there held that it was the duty of

Foreshore.

Within jurisdiction of Commissioners.

Removal of natural barrier.

(a) For the precise limits to be given to this expression, see *Att.-Gen. v. Chambers*, 4 De G. M. and G. 206. By 29 & 30 Vic. c. 62, the rights and interests of the Crown in the shore and bed of the sea, and of every channel, creek, bay, estuary, and of every navigable river in the United Kingdom, as far up the same as the tide flows (called in the Act the foreshore), are transferred from the Commissioners of Woods to the Board of Trade. The soil of the River Thames is vested by Act of Parliament in the Conservators. By the Rivers Conservancy Bill, 1883, Conservancy Boards were to obtain the consent of the Board of Trade to the execution of any work below high-water mark in a tidal river. As to the right of the Crown to the foreshore, and generally as to ports, harbours, havens. see Hale, de Port. Mar., and his *Treatise on Foreshore*, p. 283; Hall on the Seashore; Jerwood's *Dissertation on the right to the Sea Shore and to the Soil and Beds of Tidal Harbours and Navigable Rivers*, pp. 43, 44; Selden, *Mar. Clausum*. Bracton, lib. Chap. v. s. 7; Craig Jus. Feud. lib. 1. Dig. 15. s. 17; Shepherd in his "Grand Abridgment of the Common and Statute Law of England," cited by Jerwood.

(b) *Mayor of Penryn v. Holm*, 2 Ex. D. 328; 46 L. J. Ex. 506.

(c) *Ex parte Stevenson*, 47 L. T. J. 8. The case is not reported elsewhere.

the Crown to protect the realm from the inroads of the sea by maintaining the natural barriers against it, or by raising artificial barriers, and therefore, that though that was a duty which, as against the Crown, could not be enforced, yet against the subject who took the foreshore theoretically from the Crown, it could, and an injunction was accordingly issued (*a*).

Gradual dereliction.

The property in land formed by the gradual recession of the sea, which is called derelict, belongs to the subject (*b*), as also does land gradually and imperceptibly (*c*) formed by alluvion, or the projection of ooze, soil, sand or other matter by the sea (*d*). But where land becomes derelict by some sudden retreat of the sea, leaving a large tract of its bottom uncovered, the property vests in the Crown (*e*). It is not necessary for the

Alluvion.

action of the sea to be in a sense an extraordinary withdrawal, it is sufficient if there is evidence that the quantity and limits of the land cannot be mistaken by ordinary observation (*f*).

Sudden dereliction.

JURISDICTIONS EXCEPTED.

Navigable rivers, canals, ports and harbours, are at the present day generally placed by private Acts under the management of conservators, Commissioners or trustees. These Acts are expressly excepted from the jurisdiction of Commissioners of

Private Acts exempted.

(*a*) Attorney-General *v.* Tomline, 12 Ch. D. 214; 48 L. J. Ch. 593; 14 Ch. D. 58; 49 L. J. Ch. 377.

(*b*) Callis, 50; 2 Roll. Abr. 168; Com. Dig. Prerog. vol. iv. 75; Hall on the Sea Shore, p. 108-135.

(*c*) *i.e.*, imperceptible in progress and not in result. *R. v. Lord Yarborough*, *infra*.

(*d*) *R. v. Lord Yarborough*, 3 B. & C. 91; 2 Bligh, N. R. 162; 5 Bing. 163; Note to Dyer, 326 *b.*; Blackstone Com. vol. ii. 261; Bracton, lib. ii. c. 2. Hale, De Jure Maris, p. 28, explaining Bracton.

(*e*) For the distinction between lands formed by alluvion and lands derelict, see *R. v. Lord Yarborough*, *supra*.

(*f*) Callis, 50, 51; Com. Dig. Prerog. vol. iv. 75; Hale, De Jure Maris; Hall on the Sea Shore, 108-135.

Sewers by 3 & 4 Will. IV. c. 22, s. 61; 4 & 5 Vic. c. 45, s. 15; and 24 & 25 Vic. c. 133, s. 57 (Land Drainage Act, 1861).

Romney Marsh, Bedford Level, Sandwich Haven, City of London and Metropolitan Sewers.

There are also other special exemptions of local districts, such as Romney Marsh, Bedford Level, the Nene Outfall, Sandwich Haven, City of London and Metropolitan Sewers (now transferred to Metropolitan Board of Works by 18 & 19 Vic. c. 120, s. 68). (See 3 & 4 Will. IV. c. 22, ss. 20, 61, 62; 4 & 5 Vic. c. 45, ss. 15, 16, 17, 18.)

By 24 & 25 Vic. c. 133, s. 54, the general rights of persons acting under local or private Acts relating to sewers, canals, waterworks, or wharfingers, are preserved, and cannot be interfered with without the written consent of the authorities in question (*a*).

Land Drainage Act, 1861, 21 & 25 Vic. c. 133.

An unauthorised interference would be restrainable by injunction (*b*), or be actionable at the suit of the party injured (*c*).

Notwithstanding consent given by the authorities above mentioned, the Commissioners will not be protected from the consequences arising from any public nuisance they may commit in the course of executing works (*d*). By s. 53 of the Land Drainage Act, 1861, Commissioners of Sewers are restrained from diverting rivers so as to diminish the supply of water to any harbour, except by consent of the conservators or other authority.

BORROWING POWERS.

Commissioners of Sewers are empowered to borrow money for the purposes of the Commission. The statutes regulating the exercise of this power are 3 & 4 Will. IV. c. 22; 4 & 5

Borrowing.

3 & 4 Will IV. c. 22.

(*a*) See similar saving clause, Rivers Conservancy Bill, 1883.

(*b*) *Birley v. Chorlton-upon-Medlock*, 3 Beav. 499; and see also *Grand Junction Canal Co. v. Slugar*, L. R. 6 Ch. 483.

(*c*) *Brownlow v. Met. Board of Works*, 31 L. J. C. P. 140, decided on a similar provision in 21 & 22 Vic. c. 104 (Metropolitan Management Thames Act) now repealed in part.

(*d*) *R. v. Proprietors of Bradford Canal*, 34 L. J. Q. B. 191; *Attorney-General v. the same*, L. R. 2 Eq. 71; 35 L. J. Ch. 619.

4 & 5 Vic. c. 45.

Vic. c. 45, and 24 & 25 Vic. c. 133 (the Land Drainage Act, 1861).

Land Drainage Act, 1861.

Under the first two Acts the Commissioners are independent of any Government restriction, but the Land Drainage Act, 1861, in conformity with modern practice (*a*), imposes upon them the condition of first obtaining the sanction of the Inclosure Commissioners. Nevertheless, the earlier statutes being unrepealed, it is still necessary to consider their provisions in this behalf, although it is apprehended that it is in every way more satisfactory for the Commissioners to adopt the later legislation.

3 & 4 Will. IV. c. 22, s. 41.

By s. 41 of 3 & 4 Will. IV. c. 22, the Commissioners may from time to time borrow money at interest for—

Purposes.

- (1) Purchase of land.
- (2) Defraying costs of work required to be done within limits of the Commission.
- (3) Making, repairing, maintaining any sea-bank, wall or other defence.
- (4) Making and maintaining any new cut.
- (5) The better draining of floods and superfluous fresh water.
- (6) Building, repairing and maintaining flood-gates, sluices, bridges, dams, or other necessary works.
- (7) Constructing anything which the Court (Sewers) may consider necessary for defence and security and improvement of the land, &c., within its jurisdiction.

For old and new works.

It should be observed that this power may be exercised in respect both of old and new works.

Secured on the land.

The same section continuing, provides for the repayment of the sum borrowed and interest secured by a decree or ordinance under the hands and seals of not less than six Commissioners, charging the lands benefited by the works, and the owners and occupiers of such lands in proportion.

Consent of owners.

The consent of the owners and occupiers respectively of

(*a*) *e.g.* Under the Public Health Act, 1875, ss. 233-244, the consent of the Local Government Board is required, and there was a like provision in the Rivers Conservancy Bill, 1883.

three-fourths in value of the lands proposed to be charged must be certified to the Commissioners (not less than six) in writing: and further, no owner of land is chargeable to a greater extent than one-fifth of the value of his lands at the time the money is borrowed. Limit of chargeability.

The decree of the Commissioners authorising the loan must state the time within which the amount borrowed will be paid off. The period for repayment is by the Act limited to 14 years. Time for re-payment.

The Court of Sewers (s. 42) may, by a certificate under the hands and seals of six Commissioners, grant securities to the persons advancing the money. Grant of securities.

The certificate must show (1) the amount borrowed and the rate of interest; (2) the time for repayment; (3) a general description of the particular lands, or if by assessment, the district or level within which are situated the lands charged. Certificate.

The 43rd section enables the persons advancing the money to the Commissioners to effect transfers (*a*) of their rights to the money secured to them as above, by indorsement on the back of the security in the presence of one witness. This transfer must be produced to the Commissioners clerk, and registered by him, before any payment of principal or interest in virtue of the transfer is made (*b*). Transfers of securities.
Indorsement of certificate.

It has been seen for what purposes money borrowed under this Act may be applied, but inasmuch as there are other contingent expenses to which the Commissioners may be put, 4 & 5 Vic. c. 45, by s. 4, allows the Commissioners to borrow money for the purposes there mentioned (*c*). A most Borrowing powers under 4 & 5 Vic. c. 45.

(*a*) The 42nd section gives the form of security, and the 43rd the form of transfer. See Appendix B. *post*.

(*b*) These securities once issued cannot be impeached in the hands of *bonâ fide* holders, and this is so even where they have been improperly given; *secus*, if the loan is without legal sanction. See *Webb v. Commissioners of Herne Bay*, L. R. 5 Q. B. 642; 39 L. J. Q. B. 221. Under the Local Loans Act, 1875 (see Rivers Conservancy Bill, 1883), local securities can be given with an indefeasible title.

(*c*) *e.g.* Charges incurred in surveying and valuing lands, in making

Security of Rates.

important distinction, however, exists under this later Act. By the 3 & 4 Will. IV. c. 22, the security the Commissioners give is the land, but by this Act (s. 4) they are enabled to charge the general sewers rates, or any of them raised under the Act, with the repayment of the sum borrowed, with interest (*a*).

Further distinctions.

Two further distinctions to be noticed are, (1) that the time for repayment of the sum borrowed and interest is limited to seven years; (2) that the certificates of securities, which the Commissioners have power to issue (s. 5) must specify the particular general sewers rate which is charged. The provisions in the two Acts as to the decree under the hands or seals of at least six Commissioners, guaranteeing the repayment, as to the transfer of securities, and the form of transfer, with other incidents, are in the same terms, and it is therefore not necessary to make further reference to them.

Land Drainage Act, 1861.

The 40th section of the Land Drainage Act, 1861, again extends the borrowing powers of the Commissioners. The Commissioners have by it a general power of mortgaging the rates for the purpose of defraying any costs or charges authorised by any Act of Parliament, law or custom, the exercise of the power being subject to two regulations:—

Sanction of Inclosure Commissioners.

(1) The sanction of the Inclosure Commissioners must first be had.

(2) The repayment of the amount borrowed must be made within 30 years, or within such shorter period as the Inclosure Commissioners approve.

In cases where the Commissioners have borrowed money to be applied only for the benefit of part of a district within the Commission, the repayment is to be made out of the rates of that district only which is benefited.

collecting and expending rates, in hearing objections, or in carrying on any litigation connected with the Commission, and generally in working the Commission. (*ib.* s. 1.)

(*a*) The form of security is given in the 5th section, and of the transfer in the 6th. See Appendix B, *post*.

The application to the Inclosure Commissioners for their approval of the proposed loan should carefully specify the nature of the works for which the money is required; it should state, in the event of the works proposed being improvements or new works (s. 16), that the requisite notices, under s. 29, have been given. The application should be made under the signature of the quorum of the Commission or Drainage Board, or in case of the latter, under the seal. It should state the time within which the proposed loan will be paid off: information should be given as to the incidents of the rating, and whether the charge will be upon the owners or occupiers. It is advisable, where possible, to forward any report of an engineer as to the works in question, together with a tracing. In the Appendix will be found the form of reply from the Inclosure Commissioners to a requisition for a loan, which the authors have obtained through the courtesy of the officials of that department. When the Inclosure Commissioners are satisfied as to these preliminaries, they make their order.

The 41st section proceeds to incorporate certain clauses (*a*) The Commissioners Clauses Act, 1847. of the Commissioners Clauses Act (10 & 11 Vic. c. 16), which relate to mortgages created by the Commissioners. These clauses refer to the form of mortgage, the register (*b*), the transfer, the payment of interest, repayment of the principal, mode and time of paying off the mortgage, arrears of interest, etc., and have been characterised as a ready and inexpensive method of managing the mutual relations of mortgagor and mortgagee (*c*).

(*a*) Sections 75-88. See the Act in the Appendix A.

(*b*) The omission to register will not, it seems, invalidate the creditor's claim, though possibly until registration or the tender of the deed for that purpose, he would not be able to obtain payment of principal or interest.

(*c*) The mortgagees have no priority one over another according to the dates of their mortgages, but are entitled equally to the proportion of the rates pledged as security.

PURCHASE OF LAND.

3 & 4 Will. IV. c. 22. The statute 3 & 4 Will. IV. c. 22 confers upon Commissioners of Sewers for the first time the power of acquiring land for certain purposes, which, as will be seen hereafter, is further dealt with in the Land Drainage Act, 1861. It must be carefully observed, however, for what purposes the Act authorises land purchases. Section 24 enumerates them, "widening, deepening, strengthening, maintaining, repairing, and amending any rivers, streams, watercourses, walls, banks, and other works, aids and defences, within the jurisdiction of the Commissioners." Thus the Commissioners are restricted in purchasing land to the extent of maintaining and improving existing works, and accordingly it may be here noted that, although this statute gives the power of executing new works, yet for the construction of such new works the Commissioners cannot purchase an acre of land. It is important to bear this distinction in mind.

Purchase of land. The 24th section enables owners and other persons interested in lands (a) to agree with the Commissioners for the purchase of them, and provides for the conveyance of them to the Commissioners. Section 25 gives the form of conveyance; s. 26 deals with persons neglecting or refusing to treat, in which case the Commissioners may issue a warrant (b), directing

Conveyance.

(a) Although the statutes do not expressly mention copyholds, yet it is submitted that the Commissioners have power to purchase them. In a case, under a private Drainage Act, where a vendor had kept back from the Commissioners the fact that his land was copyhold, the Court would not permit the objection to be taken to the power of the Commissioners to purchase it. *Reg. v. S. Holland Drainage*, 8 A. & E. 429.

(b) The case of *Ostler v. Cooke*, 18 L. J. Q. B. 186, a decision in 1849 upon a clause in a private Act of Parliament of like import, shows that the warrant and inquisition need not refer to the notice, or give any particulars of the land required, in order to give sheriff and jury jurisdiction to inquire into the land in question. The case was affirmed in error, 22 L. J. Q. B. 71. See also *Taylor v. Clemson*, 11 Cl. and F. 610. The Court, however, intimated in the former case that it was more convenient to particularise the land. See also *Reg. v. S. Holland Drainage*, 8 A. & E. 429.

the sheriff to impanel a jury to appear at Quarter Sessions. Jury.
Witnesses may then be examined, the jury may be challenged, may view, if necessary, the land in question, may give damages accordingly, and their verdict is final (*a*). The justices present give judgment in accordance with the verdict, and the Commissioners are empowered, by s. 27, to impose a fine for any default made by the sheriff or jury. All agreements, contracts, verdicts, judgments, &c., are filed with the clerk of sewers, who allows inspection and copies of the same to be taken on payment of certain fees (s. 28). The 30th section points out the fund from which purchase and compensation money is raised. Sections 31, 32 and 33, provide for the case of persons under certain disabilities, and corporations, and indicate the investment of the money payable to them. Where there is a difficulty about the title to the money, the party in possession is deemed entitled, unless the Court of Exchequer is satisfied to the contrary (s. 34). In the event of compensation money being refused, or a title to the land not being made, the money is paid into the Bank of England, subject to the order of the Court of Exchequer (s. 35). Under s. 31, provision is made for the investment of the purchase-money in the purchase of other lands where the vendors are under any disabilities noticed in the section to be settled to the like uses; and the 36th section enables the Court of Exchequer to direct the payment of the Commissioners expenses incurred for such purposes. If the Commissioners propose to take any houses, gardens, parks, &c., of an ornamental description, they must obtain, in writing, the consent of the owner (s. 37). The 38th section vests the land purchased in the Commissioners, and the two following sections provide for the sale of superfluous lands.

Judgment.
Agreements filed.
Vendors under disabilities.
Title.
Purchase of other lands by Commissioners.
Expenses.
Sale of gardens, parks, &c.

Having briefly remarked upon the various sections which treat

(*a*) In the event of the jury awarding more money than the Commissioners have offered, the Commissioners bear the cost of the proceedings; in the contrary event, the vendor pays them (s. 29).

Land Drainage Act, 1861.
Purchase of land.

For new works

of land purchases under 3 & 4 Will. IV. c. 22, the next step is to consider the provisions of the Land Drainage Act, 1861. This Act, it will be remembered, by s. 16, sub-sec. 3, gives powers to the Commissioners in the matter of new works, which had, under the 3 & 4 Will. IV. c. 22, been more narrowly defined. As a complement to this increase of jurisdiction, the Commissioners are authorised, for the execution of new works (s. 21), to purchase land: and as these works may now be of an extensive character, involving a large expenditure of money, the Commissioners are, in case of opposition to their proposed purchases, placed under the control of the Inclosure Commissioners, and must obtain the sanction of Parliament for their undertakings.

Purchase of land with consent of owners.

Compulsory taking.

If the owner of land consents to sell to the Commissioners, the elaborate machinery of the Act is not called into operation. Should, however, there be opposition, and it becomes necessary to resort to compulsory powers, the Commissioners are guided by certain regulations, which must now be considered.

Consent of Parliament.

It is enacted by the 21st section of the Land Drainage Act, 1861, that the Commissioners shall obtain the consent of Parliament to their purchase of any land for the purpose of new works (except in those cases where they effect an agreement with the owners of the property). The following are the requisites (set forth in the 22nd section) to be complied with in order to obtain the Parliamentary sanction(*a*):—

Advertisement.

I. Publication once (1) in the "London Gazette"; (2) in a newspaper circulating within the limits of the Commission, of an advertisement describing shortly the nature of the proposed undertaking, a place where a plan of the same can be seen, and the quantity of land required.

(*a*) This procedure is very similar to that required by Standing Orders of Parliament in case of a private Bill. The Commissioners must use great care in the preparation of these documents, as mistakes might lead to the rejection of the petition,

II. Service of a notice on every owner (*a*), lessee and occupier of the lands required, defining the land to be taken, and requiring an answer assenting, dissenting or neuter, as the case may be.

The notice must be delivered personally; or The notice.

(1) On the party's agent, if he be absent, abroad; or

(2) It must be left at such party's usual or last-known place of abode; or

(3) It must be forwarded by post in a prepaid letter addressed to the usual or last-known place of abode.

These formalities being observed, the next step is for the Commissioners to present to the Inclosure Commissioners a Petition to Inclosure Commissioners.

petition stating the land intended to be taken, and the purposes for which it is required, while the prayer of the petition is for leave to the Commissioners to avail themselves of the provisions of the Lands Clauses Consolidation Act in relation to the compulsory taking of land, and supported by such evidence as the Inclosure Commissioners may require (s. 23). Upon receipt of the petition, and having ascertained that the necessary preliminaries have been complied with, the Inclosure Commissioners proceed to consider the petition. Prayer of petition.

If they think fit, they may dispatch an inspector to the district in order that they may have the benefit of his inquiry before they assent to the petition (s. 24). The inspector, before opening his inquiry, must give notice of his intention so to do, fixing in the notice a time and place at which he will hear persons who may wish to attend before him (s. 25). The inspector. Inquiry by

When the inquiry is completed, the Inclosure Commissioners may make a provisional order (*b*) enabling the Commissioners of Sewers to use the provisions of the Lands Clauses Consolida- Provisional order.

(*a*) Or reputed owner or reputed lessee.

(*b*) See the similar machinery in the Rivers Conservancy Bill, 1883, by which the Local Government Board were to make a provisional order, authorising the application of such sections of the Lands Clauses Consolidation Act as they thought fit.

Confirmed by
Parliament.

tion Act for the compulsory purchase of land, and this done, the Inclosure Commissioners must obtain the confirmation of such order by Parliament, which, when so confirmed, becomes a general Act (*a*) (s. 26).

Costs.

All costs, charges and expenses incurred by the Inclosure Commissioners in obtaining the Act of Parliament must be paid by Commissioners of Sewers out of the rates (*b*) applicable to the works, in view of which the provisional order is obtained (s. 27).

Acts
incorporated.

The 28th section then proceeds to incorporate the provisions of 8 & 9 Vic. c. 18 (the Lands Clauses Consolidation Act, 1845) and the 23 & 24 Vic. c. 106, amending it, with this Act; but it must be noticed that some material sections of the former of the incorporated Acts are omitted (*c*). These are:—

Sections 16 and 17, requiring capital to be subscribed before compulsory purchase powers are used, which is evidenced by the certificate of two justices (*d*).

(*a*) Until confirmed, the provisional order is of no validity, *ib*.

(*b*) Leviable under this Act. (s. 27).

(*c*) In a local Act (City of London Sewers Act, 1848) the 2nd section incorporated the provisions of the Lands Clauses Act; but the 3rd excluded the provisions of that Act relating to the "purchase and taking of land otherwise than by agreement," which words are the descriptive heading of ss. 16 to 68 of the Lands Clauses Act. No compensation was given by the special Act for the injurious affecting of land, which was the subject of dispute in the case. Held that s. 68 of the Lands Clauses Act was not incorporated in the Local Act. *Ferrar v. Commissioners of Sewers in the City of London*, L. R. 4 Ex. 227; 38 L. J. Ex. 102. Where, however, the entire Act is incorporated, no other enactment beyond s. 68 is needed, in order to confer the right to compensation for land injuriously affected, *Reg. v. St. Luke's*, L. R. 6 Q. B. 572; 40 L. J. Q. B. 305; affirmed, L. R. 7 Q. B. 148; 41 L. J. Q. B. 81; and the fact of compensation being expressly given by certain sections of the local Act was held not inconsistent with the intention that it should be given in cases within a section silent as to compensation, by virtue of the general enactment in s. 68 of the Lands Clauses Act, 1845.

(*d*) As in these sections the legislature had in view the formation of speculative schemes, it is obvious that they have no application to this subject.

Sections 84 to 91 (inclusive), relating to the entry on land, and the conditions upon which entry may be made before purchase.

Section 123, imposing a limit of time for compulsory purchase.

Upon payment made by the Commissioners, the lands, &c., purchased become vested (*a*) in them, by virtue of s. 30 (3 & 4 Will. IV. c. 22). There are besides two sections in the same Act which renew and elaborate the point. Thus s. 38 enacts that upon payment or legal tender of the amount due as compensation within 30 days, the Commissioners, their agents, servants, &c., may enter upon the messuages, lands, &c., and thenceforth all the land, &c., and all the estate and interest of any person therein, vests in the Commissioners for ever, such payment or tender barring all right and title to the property in question, and also to wife's dower, estates tail, and other estates in reversion or remainder.

Vesting of property in the Commissioners.

3 & 4 Will. IV. c. 22 s. 38.

Ib. s. 47.

Again, by s. 47 of the same Act, the property in all lands, buildings, works and other things purchased, obtained or erected, or which are or shall be within the view, cognisance or management of the Commissioners (*b*), and also in the goods, tools, utensils, materials, &c., is vested in the Commis-

View and cognisance of Commissioners.

(*a*) Prior to this Act, the Commissioners had no property in the land, an inconvenience which was felt in the case of the Duke of Newcastle *v.* Clark, 8 Taunt. 682; 2 Moore, 666, where it was held that the Commissioners had neither property nor possession sufficient to maintain an action of trover.

(*b*) In *Crossman v. Bristol and S. Wales Railway*, 1 H. & M. 531; 11 W. R. 981, V.-C. Page-Wood was of opinion that this section would include banks, sea-walls, &c., by tidal or navigable rivers. It had been doubted whether these were included under the statute 23 Hen. VIII. c. 5. In the same case a natural embankment, which protected the land from floods, was held to be within the "view, cognisance, or management of the Commissioners," although the freehold had been in the lord of the manor and by him conveyed to the defendants; evidence was given that for 40 years the Commissioners had exercised jurisdiction over the embankment, making ordinances for its protection, and had fined persons for taking material from it.

sioners. It will be found, on reference to the section itself, that the terms of it are most wide, and its language vague and loose.

In a case (*a*) where it was moved to restrain a railway company from digging up a deposit of beach on the banks of the river Severn, within the lower level of the County of Gloucester, it was objected that the Commissioners had no property in the beach to enable them to resist the acts of the railway company. Page Wood, V.-C., after reviewing the case of the Duke of Newcastle *v.* Clark (*b*), continues, in these words: "Without subsequent legislative authority the plaintiff (the Clerk of Sewers) would fail, but 3 & 4 Will. IV. c. 22 is meant to obviate this difficulty. That Act, by section 47, vests in Commissioners of Sewers all lands, &c., not noticing artificial works specifically, but using words large enough to cover all works, natural or artificial, over which the Commissioners have jurisdiction. . . . The section admittedly vests in them a special property for the purpose of enabling them to maintain actions and prefer indictments, and this Court will interfere by interlocutory injunction to prevent any injury to their property pending such action or indictment."

The contention that the 47th section gave the fee simple of all lands within the view and management of the Commissioners was, however, set aside by an important decision in the Court of Exchequer (*c*), in which the Court held the section to mean that all lands were vested in the Commissioners *after due purchase*; and all buildings, works, &c., which came within their view, were vested in them, thus separating the subject-matter of the section. It was also observed that the Act for

(*a*) *Crossman v. Bristol and S. Wales Railway*, 1 H. & M. 531; 11 W. R. 981.

(*b*) 8 Taunton, 262; 2 Moore, 666.

(*c*) *Stracey v. Nelson*, 12 M. & W. 535; 13 L. J. Ex. 97, *per* Parke, B. It has been held there is nothing inconsistent with the purpose of a sea or river-wall or embankment, erected to protect neighbouring lands, in a right of way along the surface. *Board of Works for Greenwich v. Maudslay*, L. R. 5 Q. B. 397; 39 L. J. Q. B. 205.

the first time made the Commissioners *qua* a corporation, and that this clause enabled not only the Commissioners who purchased the lands to hold them, but also subsequent Commissioners.

In the Lands Clauses Act (8 Vic. c. 18, s. 81), which, as has been seen, is incorporated with the Land Drainage Act, 1861, it is provided that all conveyances made, &c., shall be effectual to vest the lands thereby conveyed in the promoters of the undertaking, terms of years being thereby merged and all estates tail being barred.

Commissioners
a corporation.

Lands Clauses
Act, 1815.

CHAPTER IV.

SURVEY AND JURY PROCEDURE.

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SURVEY.

HAVING described the works to which the authority of Commissioners of Sewers extends, the next consideration is the procedure necessary to enable them to undertake the execution of the various purposes of the Commission (*a*).

In the first place, by 23 Hen. VIII. c. 5, s. 3, the Commissioners are directed to view and survey the streams, defences, and obstructions (*b*), in order to inform themselves of what is necessary for the drainage of the district. The statute not only empowers the Commissioners to view in person, but also to View and survey.

(*a*) Drainage Board can make use of all the powers vested in Commissioners of Sewers. 24 & 25 Vic. c. 133, s. 67.

(*b*) See Callis, 106, and *R. v. Warton*, 31 L. J. Q. B. 265; 2 B. & S. 719. But since they are directed to survey themselves, Herne, in his Reading of Sewers, is of opinion that a blind man cannot therefore be a Commissioner (p. 3). In some Commissions the jury used to view and survey in company with the surveyor, *e.g.* Tower Hamlets Commission. See evidence given before the Select Committee of the House of Commons, July, 1823.

ascertain the requirements of the district by the opinion of surveyors, engineers, and other competent persons (*a*).

With jury.

The next step, up to the passing of the Land Drainage Act, 1861 (24 & 25 Vic. c. 133), was to summon a jury to make inquiries, and return a presentment of the requisite repairs and works, or of any obstructions to be removed (*b*), and the persons liable for their execution or removal (*c*). Now, however, by

Without jury.

24 & 25 Vic. c. 133, s. 33, the presentment of a jury may be dispensed with (*d*), but as this section is merely permissive, and as presentment by jury is in fact the procedure continued at the present day in many parts of the country, it is necessary to review the statutes and authorities on the subject.

In many local Acts (*e*) of a date preceding the Land Drainage Act, 1861, a clause is found giving the particular authority the powers of Commissioners of Sewers. The language of the section must, in each of these Acts, be construed strictly, for unless words which will bear the meaning of the "powers hereafter possessed by Commissioners of Sewers" are inserted, it is the better opinion that the application of the powers of the Land Drainage Act, 1861, is excluded, and that the only powers given are those possessed by the Commissioners at the date of the passing of the Act in question.

(*a*) See *ante*, p. 54, for a list of works and impediments. But as the survey would in the present day extend to all works of drainage in the district, it is unnecessary to regard the particularity of description in vogue in the earlier statutes, further than as a guide to the class of works intended to be within the jurisdiction of the Commissioners.

(*b*) See *Kerrison v. Sparrow*, 19 Vesey, jun. 449; Coop. Ch. Ca. 305, for an instance of this.

(*c*) 23 Hen. VIII. c. 5, s. 3; 3 & 4 Will. IV. c. 22, s. 11. Persons disputing their liability cannot traverse the survey, but must traverse the presentment, *Callis*, 216. The traverse must be before the decree, *ib.*; 7 Com. Dig. 350. See *post*, p. 93.

(*d*) An order made without presentment may be appealed against at Quarter Sessions (24 and 25 Vic. c. 133, ss. 33, 47). For the steps to be taken, see *post*, title Appeal to Quarter Sessions.

(*e*) *e.g.* Navigation, Rivers Conservancy, Drainage, and other Acts of a similar character.

INQUIRY AND PRESENTMENT BY JURY.

The sheriff of the county (*a*) has, on receipt of a warrant from the Commissioners, to summon a jury of not less than 18 nor more than 48 in number, whose qualification must be that of grand jurymen at quarter sessions (*b*). In some counties it is the custom for the sheriff to appoint as his deputy the Clerk of Sewers, to discharge such ministerial duties as are directed to him by Commissioners of Sewers (*c*). The presentment must now be made by 18; formerly, 12 were required (*d*). In other cases, such as the purchase of land, &c., the ordinary number of 12 is sufficient. It is only, it is submitted, in matters of presentment, where the jury are performing the duties of a grand jury, that the larger number is required. The jury are summoned to attend at the appointed Court of Sewers until discharged. Notice of the Court is to be affixed to the church and chapel doors in the parishes affected by the inquiry, or, if there is no church or chapel, in some conspicuous place in the parish. The notice must be signed by the clerk seven days before the Court, and must be advertised in some newspaper of the district seven days before the inquiry (*e*).

Jury, how summoned.
3 & 4 Will. IV.
c. 22, s. 11.

Notice of the Court.

The jury ought to be summoned from the body of the county—*de corpore comitatus*—and not from the particular district which is affected by the inquiry (*f*).

Whence summoned.

(*a*) See Forms of Writ of Attendance at Sewers Court, and of appointment by sheriff of Clerk of Sewers as his deputy, Appendix B.

(*b*) 3 & 4 Will. IV. c. 22, s. 11.

(*c*) *R. v. Somerset*, 7 East, 71. See form in Appendix B.

(*d*) 23 Hen. VIII. c. 5; *Commins v. Massam*, March, 198. In the Tower Hamlets Commission the presentment used to be made by 23 jurymen; see Report of Select Committee, July, 1823.

(*e*) 3 & 4 Will. IV. c. 22, s. 11.

(*f*) *R. v. Somerset*, 7 East, 71; *Birkett v. Crozier, Moor & Malk*, 119; 3 C. & P. 63. These decisions arose from the words of 23 Hen. VIII. c. 5, s. 3, directing the jury to be of the "said shire or shires, place or places."

In one case, where the precept required the sheriff to summon "a sufficient number of good and lawful men of the county (of Lincolnshire) in nowise concerned in the said drainage," it was attempted to impeach the validity of the presentment on the ground that the jury were summoned from a particular hundred, but the Court held that, as this was in law *de corpore comitatus*, the proceedings could not be impeached. In giving judgment, Pollock, C. B., said: "The sheriff has, in his discretion, as he well may, in obedience to the precept, summoned jurors who resided in a particular hundred, but in law they are still jurors *de corpore comitatus*. He had an unlimited jurisdiction given him, and, like a wise man, he exercised it in the most convenient way" (a). The inhabitants of a district placed by a local Act under the exclusive jurisdiction of drainage Commissioners cannot therefore claim exemption from serving on juries at the general Court of Sewers (b).

It was at one time the custom to elect standing juries, but this practice was discontenanced and held irregular by Lord Ellenborough, C. J. (c)

The jury are sworn (d), and are directed to inquire into the want of repair, the removal of obstructions, by whose default they are occasioned, and who is liable for the same (e). The Chairman charges the jury as to their duties and the points to which their inquiry is to be directed, and after inquiring, by evidence brought before them, into the matters requiring investigation, the jury make their presentment.

(a) *Taylor v. Loft*, 22 L. J. Ex. 131; 8 Ex. 269.

(b) *Ex parte Owst*, 9 Price, 117.

(c) *R. v. Somerset*, 7 East, 71.—The practice was for the sheriff to summon the jury on the first occasion only. This jury then became a standing jury, and on subsequent occasions was summoned by the foreman on the order of the sheriff. See Grantham on the Land Drainage Act, 1861, p. 17, *ante*, p. 48.

(d) The form of oath is given in Appendix B. By 30 & 31 Vic. c. 35, s. 8, jurors may make an affirmation in lieu of an oath.

(e) 23 Hen. VIII. c. 5, s. 3; 3 & 4 Will. IV. c. 22, s. 11.

The Commissioners have power to summon before them all the necessary witnesses (*a*). The evidence should be received Witness. in open Court; and in a case where this was not done, but the jury were sent out to prosecute their inquiries, and on the information they picked up to make their presentment, the proceedings were held to be irregular, and set aside (*b*).

The Commissioners may fine jurors for misconduct, such as refusing to make a presentment, departing after being sworn on the jury, or before being sworn if appearance be recorded (*c*).

It is said that a surveyor may make a supplemental presentment, as for example, that "J. S. ought to have repaired a certain ditch, but has not done so." But he cannot make an original presentment (*d*). It is doubtful whether the Commissioners have power to order repairs on the evidence of the marsh bailiff expeditor (*e*) and "an indifferent person," such persons not being competent or skilled in the matter (*f*). Several defaults may be included in one presentment and separately traversed (*g*). Presentments by surveyor, dyke-reeve, &c.

When once a jury has presented anyone as liable to repair any defence, it is not necessary that a further presentment Second presentment. should be made on each occasion when the same defences require repair, unless there is a change of owner in the mean

(*a*) 3 & 4 Will. IV. c. 22, s. 11; and to allow witnesses their expenses out of the rates, *ib.* s. 16.

(*b*) *R. v. Somerset*, 7 East, 71.

(*c*) *Callis*, 175; 3 & 4 Will. IV. c. 22, s. 27. See *post*, *Fines*, p. 159.

(*d*) *Callis*, 111. A presentment made by Commissioners of Sewers, upon their own survey, or by the surveyor, is not traversable. *Callis*, 216; *Herne*, 23, 27; "Laws of Sewers," 50. As to presentments by dyke reeves and other officers of sewers, see *ante*, *Officers*.

(*e*) See the forms on their appointment, *post*, Appendix B, which describes them as merely officers, the one to execute warrants, the other to disburse money levied by rates.

(*f*) *R. v. Warton*, 31 L. J. Q. B. 265; 2 B. & S. 719; but see 3 & 4 Will. IV. c. 22, s. 46.

(*g*) 3 & 4 Will. IV. c. 22, s. 46.

time (*a*), 3 & 4 Will. IV. c. 22, s. 13. The effect of an order made under that section in virtue of a presentment which failed to allege the want of repair was lately criticised in the Queen's Bench Division (*b*). It is clear that such an order under the section must be preceded by a presentment stating the default of the individual charged with the liability, and that in the event of any change of owner there must be a new presentment. (*c*) Whether or not, an order under the section after a valid presentment may be the subject of an appeal to Quarter Sessions (*d*) seems open to doubt; but the language of the Land Drainage Act, 1861, 24 & 25 Vic. c. 133, rather points to an order in respect of the execution of work which the Commissioners, but for the Act (the Land Drainage Act, 1861), might have made with presentment, and that as the owner might have traversed the presentment in the first instance, he cannot appeal from an order giving effect to that presentment.

By 3 & 4 Will. IV. c. 22, s. 17, it is enacted that nothing in that Act is intended to preclude the Commissioners from causing inquiry and presentment by jury, or to abridge or alter any of their customs, with a view probably to enable the Commissioners, in case of any change of circumstances, to inquire into the facts by a new jury and new presentment, just as if no previous presentment had been made (*e*).

In order to provide for the case of two juries differing in an inquiry relating to lands, &c., partly within a county and partly within a minor jurisdiction (*f*) in the county, it is enacted that in case of such difference a fresh jury of eighteen

(*a*) *R. v. Warton*, 31 L. J. Q. B. 265; 2 B. & S. 719.

(*b*) *R. v. Commissioners of Sewers for Fobbing Levels*, 53 L. J. Q. B. (to be reported).

(*c*) *R. v. Warton*, *supra*.

(*d*) 24 & 25 Vic. c. 133, s. 33.

(*e*) *See per Pollock, C. B. in Taylor v. Loft*, 22 L. J. Ex. 131; 8 Ex. 269.

(*f*) *e. g.* counties at large, in which there are cities and towns being counties of themselves, cinque ports, hundreds, liberties and precincts having jurisdiction exclusive of the sheriffs, bailiffs, or other returning officers of each county at large.

may be impanelled, half from the county and half from the minor jurisdiction (3 & 4 Will. IV. c. 22, s. 12). Where such a composite jury did not sit together, and the presentment was made by one jury only, the Court were prepared to set aside the proceedings on account of the irregularity (*a*).

TRAVERSE OF PRESENTMENT.

The general practice seems to be for the presentment to be made at one Court, and then for an adjournment to be ordered to a later day (*b*). At this adjourned Court the presentments are severally called over and confirmed, except those to which an objection is taken. This objection—the traverse to the presentment—is generally made in the form of a plea of not guilty, and according to some authorities should be in writing (*c*), and in some levels the defendant is bound over in recognizances to try his traverse. At a subsequent adjourned Court, issue is joined by the Commissioners upon the traverse (*d*), and the same is duly entered, a jury is sworn, and a trial had upon the evidence (*e*), and a verdict is ultimately taken of guilty or not guilty. The jury may be compensated for their expenses and loss of time (*f*).

Traverse of presentment.

Recognizances.

Issuc.

Verdict.

(*a*) *R. v. Matthias*, 2 Jur. 13.

(*b*) A detailed account of the practice of the Sewers Court of the Commission for the east parts of the East Riding is to be found in *Ramsey v. Nornabell*, 11 A. & E. 383. See also *R. v. Baker*, L. R. 2 Q. B. 621; 36 L. J. Q. B. 242.

(*c*) See form of traverse of presentment, Appendix B, *post*. In some Courts the jury by which the traverse is tried is called "the traverse jury." See Report of Select Committee on Met. Sewers, July, 1823, p. 17.

(*d*) The Commissioners, by their clerk, may demur, as was done in the case of *R. v. Tower Hamlets Commissioners*, 5 Q. B. 357; 11 L. J. Q. B. 231.

(*e*) By 40 Vic. c. 14, on the trial of any indictment for non-repair, &c., or for any proceedings instituted for purpose of trying or enforcing a civil right, every defendant, and the wife or husband of any such defendant, shall be admissible witnesses, and compellable to give evidence.

(*f*) 4 & 5 Vic. c. 45, s. 7.

This sketch of the proceedings is merely given to show the regularity which may be observed, and which is observed in certain Commissions of Sewers, but the authors have, in the course of their investigations, found so many varieties of practice, and there is such scanty authority in the books, that they are unable to lay down any general rule of law or custom.

Objections to form of presentment.

In early times objections taken to the form of presentments were not unfrequently fatal to the orders made upon them by Commissioners of Sewers. It was held in an old case (*a*), that a presentment was not good which did not state that it was by the oaths of twelve jurors, the Court observing that it might without that have been by a smaller number (*b*).

Presentment must disclose liability;

Again, the presentment must show on its face that the parties presented to repair the work in question are bound to do it (*c*), and Herne states that the jury cannot present that one ought to repair by reason of his tenure, but that he has time out of memory, &c., repaired, and therefore ought to repair (*d*).

and the jurisdiction.

The presentment must state the alleged breach to be within the hundred whence the jury come (*e*), and it must show that the townships charged are also within the hundreds (*f*).

(*a*) *Commis v. Massam*, Mar. 196; Pasch. 18 Car. I.

(*b*) *Ib.* p. 198. The presentment is now by 18, *ante*, p. 87.

(*c*) *Madox Firm. Burgi*. 81. In the ninth year of Charles I., certain fines were imposed by Commissioners of Sewers upon the burgesses of Axbridge, in Somerset. The burgesses appeared in the Court of Exchequer, and plead and receive judgment of discharge. *Consideratum est inter eosdem Barones quod Burgenses de Axbridge predicti. . . evenerunt pro eo quod non presentatum fuit per juratores ad sessionem predictam respective juratos quod predicti Burgenses sufficientem pontem apud inferiorem finem de Notlake predicta ponerent. Sed quod predictus pons esset positus . . . per illos qui illum ibidem ponere debent et non constat per presentationem predictam quod Burgenses predicti pontem illum ponere debuissent.* Mich. Communia, 9 Car. I. Rot. 111; *Bighin v. Wylie*, 36 L. J. Q. B. 307; *Brungy v. Lee*, Sty. 178.

(*d*) *Herne*, 27.

(*e*) *Custodes Libertat. &c., v. Inhab. of Outwell*, Styles, p. 184; Mich. 1649, noticed in *R. v. Commissioners for Somerset*, 7 East, at p. 80.

(*f*) *Styles*, 191; Hil. 1649; *R. v. Apsley*, Sty. 15, and cases there cited.

A presentment which failed to set out *in quanto* and *in quâ parte* a certain obstruction existed, *i.e.*, how great the increase had been and in what place it had occurred, was held void (a). Locality and amount of obstruction.

The presentment must also state the want of repair. In a case (b) where a rate was made upon an order of Commissioners to repair a wall, after a presentment which did not allege that the wall was out of repair, Lord Denman, C. J., in quashing a *certiorari* to remove the proceedings into the Court of Queen's Bench, said :—" There are also formidable objections to the presentment itself, for it is not stated that there is any 'let, impediment, or annoyance,' nor is it stated that the wall is out of repair, therefore the finding may be true, and yet no legal consequence ought to follow."

With regard, however, to these technical objections to presentments, it is always important to determine whether the proceedings are under 23 Hen. VIII. c. 5, or under the later Act of 3 & 4 Will. IV. c. 22; for it has been held that the powers given by the former statute still exist, and that the Commissioners are at liberty to proceed in the same way as before Will. IV., although the mode of proceedings under the later Act is more convenient and expeditious. Thus a presentment which does not allege notice to repair as is required by 3 & 4 Will IV. c. 22, s. 15, but states that the costs and charges of repairing amount to a certain sum, and a judgment thereon, ordering that payment, is good (c).

The presentment, traverse and verdict, together with the judgment and decree thereon, are entered of record in the Court of Sewers, and when once recorded no traverse is admissible, Record of proceedings.

(a) See *Hall v. Mason*, 19 Jac. I.; *Callis*, p. 262-264.

(b) *R. v. Mathias*, 2 Jur. 13. The report of this case is meagre and unsatisfactory, and no argument is given in support of the presentment. The decision was in 1838, and therefore after the passing of 3 & 4 Wm. IV. c. 22. See, however, remarks upon this point in *R. v. Commissioners of Sewers for Fobbing Levels*, 53 L. J. Q. B. (to be reported), *post*, p. 151.

(c) *R. v. Baker*, L. R. 2 Q. B. 621; 36 L. J. Q. B. 242.

inasmuch as the decree is the final judgment of the Court, which, being a judicial act, cannot be traversed, the remedy being by writ of error (*a*).

PROCEDURE WITHOUT JURY UNDER LAND DRAINAGE ACT, 1861.

The Land Drainage Act, 1861 (24 & 25 Vic. c. 133), by s. 33, enables Commissioners of Sewers, without the presentment of jury, "to make any order in respect of the execution of any work, the levying of any rate, or doing any act which they might, but for this section, have made with such presentment; subject to this proviso, that any person aggrieved by any such order made by the Commissioners without the presentment of a jury, may appeal therefrom in manner hereinafter mentioned." Thus, in some Courts, the practice is now for the orders, &c., to be made upon the presentment of the general surveyor; notice is given to the party affected, generally by furnishing him with a copy of the order made, after which he can appear at a subsequent Court to urge his objections. The proceedings, however, vary, according to the custom of the particular district, some Courts of Sewers still continuing to use the presentment by jury, while others have adopted the provisions of the Act of 1861 (*b*). The practice, therefore, may now be alternative. If the procedure antecedent to the Land Drainage Act, 1861, is still observed in the particular Court,

(*a*) *Callis*, 215-217.—He adds, that if in the Session of Sewers the cause proceed to a decree, the party grieved is to prefer a bill of reversal in manner as is done in the High Court of Chancery. See also *Commissioners of Sewers v. Wilmore*, 2 Keb. 137; *Herne*, 7. In *Warren v. Dix*, 3 C. & P. 71, it was suggested that a party who had not traversed the presentment was estopped from bringing an action for illegal distress against the officer of the Commissioners, but the point does not seem to have been actually decided.

(*b*) In investigating the practice in the various parts of Lincolnshire, which in that county exhibits considerable variety, much reluctance to adopt the Act of 1861 has been found to exist.

24 & 25 Vic.
c. 133, s. 33.

The practice
variable.

presentment and traverse (if any) remain the foundation of an order; but if the powers of the Land Drainage Act, 1861, are resorted to, the order of the Commissioners, with the right to appeal from such order, takes the place of presentment and traverse. The effect of an order made under s. 33 of the Land Drainage Act, 1861, by Commissioners of Sewers, as contrasted with the old practice, is well explained by the Court (Lord Coleridge, C. J., and Cave, J.) in a recent case (*a*). "Under the former system the question of liability was put in issue by a traverse of the presentment, and after the trial of the presentment and verdict found, it is impossible to conceive that, so long as that verdict stood, the liability so found could be disputed. * * * The order of the Commissioners is, by the section already quoted (24 & 25 Vic. c. 133, s. 33), to have the same effect as if it had been preceded by the necessary presentment and an appeal to the quarter sessions is substituted for the traverse to the presentment."

This method of objecting to the action of the Commissioners is now briefly considered.

APPEAL TO QUARTER SESSIONS.

The Land Drainage Act, 1861, allows an appeal to Quarter Sessions from any "order, requisition, rate or act" of the Commissioners (*b*). It was with a view to give any person aggrieved by any order, etc., an opportunity of raising his objection, which he formerly did by traversing the presentment, that this right of appeal to the Sessions is conferred by the Statute.

Land Drainage Act, 1861, s. 47.

Appeal to Quarter Sessions.

Accordingly, where the whole practice of presentment by jury prevails, this section does not apply, nor in those cases in

(*a*) *R. v. Commissioners of Sewers for Fobbing Levels*, 53 L. J. Q. B. (to be reported).

(*b*) By s. 67, Drainage Boards are vested with the powers of Commissioners of Sewers.

which Commissioners of Sewers exercise such powers as, under the old statutes, did not require the presentment of a jury.

Certiorari not taken away.

The power to remove the orders, rates, etc., of the Commissioners by *certiorari* into the Queen's Bench Division is not taken away by the statute, for the rule of law is, that although a *certiorari* lies unless expressly taken away, yet an appeal does not lie unless expressly given by statute (*a*); but the cases quoted below show that other remedies are ousted by the power given to appeal (*b*).

Other remedies.

Powers of the Court.

The section enables the Court of Quarter Sessions to confirm, annul or modify the order, rate, &c., appealed against.

Then follow certain steps of procedure which it is incumbent upon the appellant to observe, and which may be summarised thus:—

Time for appealing.

The appeal must be made within four months next after the making of the order, &c (*c*).

Ten days' notice.

Ten days' notice in writing of the appeal previously to the Quarter Sessions, stating the grounds of the same, must be served on the Commissioners (*d*).

(*a*) *Reg. v. Hanson*, 4 B. & Ald. at p. 521.

(*b*) Notwithstanding the words "may appeal," *Bonnell v. Brighton*, 5 T. R. 182; *Hutchins v. Chambers*, 1 Burr. 580; *Durrant v. Boys*, 6 T. R. 580; *Marshall v. Pitman*, 9 Bing. 595; *Overseers of Birmingham v. Shaw*, 10 Q. B. 868; 18 L. J. M. C. 173; *Fawcett v. Fowles*, 7 B. & C. 394. See *contra*, *Leader v. Mason*, 2 W. Bl. 926; *Birley v. Chorlton-on-Medlock*, 3 Beav. 499; and so where the Commissioners have acted without jurisdiction, *Weaver v. Price*, 3 B & A. 409; *Bristol v. Wait*, 1 A. & E. 264; *Sibbald v. Roderick*, 11 A. & E. 38; *Lord Amherst v. Lord Somers*, 2 T. R. 372, and see *post*, p. 166, *Certiorari*.

(*c*) The safest course is to bring the appeal to the next practicable Sessions, or to enter and respite within that time. Months mean calendar months, 13 & 14 Vic. c. 21, s. 4. As to various decisions upon the computation of time in appeals to Sessions, see *Leeming & Cross*, Quarter Sessions, 2nd ed., 363. Even if the party has had no notice of the order, &c., of the Commissioners, the time runs against him, *R. v. Derbyshire J.J.* 7 Q. B. 193; *R. v. Staff*, J.J. 3 East, 151; *R. v. Suffolk*, 4 D. & L. 628.

(*d*) The General Quarter Sessions, not adjourned Sessions. The notice should state that the appellant is a person aggrieved, *R. v. Essex*, J.J. 5 B. & C. 44, and must show such facts as will lead to the necessary inference that he is so, *R. v. Blackawton*, 10 B. & C. 792; *R. v. W.*

The Commissioners appear by their Clerk (*a*).

Appearance.

Within four days after service of the notice of appeal on the Commissioners, the appellant must enter into recognisances with two sureties, conditioned to prosecute the appeal, and to abide the order of the Court (*b*).

Recognizances.

The appeal should be entered with the clerk of the peace, and care should be taken to observe any special rules of the Sessions. If notice of appeal is given, and the appeal is not entered, the Court may give costs to the Commissioners (*c*).

Entry of appeal.

Costs.

The Sessions may adjourn the appeal from one Sessions to another (*d*).

Adjournment.

The Court may award costs to the successful party (*e*).

The Sessions may state a case for the opinion of the Superior Court. The party complaining of the decision of Quarter Sessions must obtain a rule *nisi* calling on the opposite party to show cause why the order of Quarter Sessions should not be quashed (*f*).

Special case.

Riding, 4 B. & A. 685. The grounds of appeal must be set out, but not to the extent of showing the evidence to support the facts to be proved, but so as to give the Commissioners reasonable means of inquiry, *R. v. Derbyshire*, 6 A. & E. 885, per Littledale, J. It might be held that notice served on the Clerk or one Commissioner would be a good service, 3 & 4 Will. IV. c. 22, s. 57, but it is safer to serve each Commissioner who made the order, &c. See *R. v. Bedfordshire*, 11 A. & E. 133. Personal service is not necessary, *R. v. N. Riding*, 7 Q. B. 154.

(*a*) 3 & 4 Will. IV. c. 22, s. 57.

(*b*) The entering into recognisances is a condition precedent to the right to try the appeal, *R. v. Oxfordshire*, 1 M. & S. 446; *R. v. Lincolnshire*, 3 B. & C. 548. A corporation cannot enter into recognisance, *R. v. Manchester*, 26 L. J. M. C. 65.

(*c*) By 12 & 13 Vic. c. 45, s. 6.

(*d*) *R. v. Wiltshire*, 13 East, 352; *R. v. Bond*, 6 A. & E. 905.

(*e*) 12 & 13 Vic. c. 45, s. 18. Costs may be recovered by warrant of distress, 11 & 12 Vic. c. 43, s. 27.

(*f*) The order of Sessions had formerly to be removed into the Superior Court, by writ of *certiorari*, Corn. Cr. Pr. 70. The Summary Jurisdiction Act, 1879 (42 & 43 Vic. c. 49), in rendering writs of *certiorari* no longer necessary in such cases (s. 40), has provided no other means of removal. It is therefore the practice at the Crown Office to require the party com-

A special case may also be stated after notice of appeal to the Sessions without going to the Sessions previously (*a*).

Land Drainage Act, 1861, s. 48.

The 48th section of the Land Drainage Act, 1861 (24 & 25 Vic. c. 133), gives power to the Court to refer the matter in question to arbitration under certain circumstances (*b*).

Arbitration.

Thus, where the subject of appeal involves questions of account or of engineering or scientific matters, the Sessions may order an arbitration, in which the award is enforceable as an order of Quarter Sessions. By the following section (49) the provisions of the Common Law Procedure Act, 1854, relating to compulsory references, are made applicable to such an arbitration (*c*).

Sec. 49.

The effect of the reference is to make the decision of the arbitrator equivalent to that of the Court of Quarter Sessions and enforceable by the same process. The award should be entered as the judgment of the Sessions, and the justices have no power to vary it (*d*).

The award.

Special case.

The 5th section of the C. L. P. Act, 1854, enables the arbitrator to state a special case for the opinion of the Superior Court. The arbitrator (unless otherwise directed) conducts the reference with the same powers, &c., as in a reference made by consent (s. 7), and should make his award within three months, unless by consent of the Sessions the time is enlarged. By s. 9

Power of arbitrator.

Time for making award.

plaining of the order to move for a *rule nisi*, which is obtained by hand motion, and is then put into the Crown paper for argument. The party complaining of the order begins. See "Law Journal," Legal News, 1883, p. 684.

(*a*) 12 & 13 Vic. c. 45, s. 11.

(*b*) It is apprehended that the appeal to Sessions generally takes the form of arbitration, *see* the evidence of Mr. Grantham, Rep. Committee upon Conservancy Boards, 1877, Question 921, and it is therefore on that account mainly that the above bare outline only of the procedure under s. 47 has been given.

(*c*) It is not in the power of either party to revoke the reference without the leave of the Court of Quarter Sessions—3 & 4 Will. IV. c. 42, s. 39.

(*d*) R. v. Middlesex L. R. 6 Q. B. 220; 40 L. J. M. C. 109,

application to set aside the award must be made within the first seven days of the term next following the publication of the award (a). Power to set aside award.

The order of reference should state the terms as to costs, otherwise each party pay their own (b). Costs.

To illustrate matters which have been the subject of arbitration by Commissioners of Sewers, reference may be made to the cases cited below (c), although these did not occur under the Land Drainage Act, 1861, but were the result of an ordinary action at law.

The subject of arbitration under the Lands Cl. Con. Act, 1845, is dealt with *post*, p. 222. L. Cl. Con. Act, 1845.

(a) For the grounds for setting aside an award, *see* Russell on Awards, Part iii. s. 3; *Edwards v. Edwards*, 23 L. J. Q. B. 278; *Watson v. Beavan*; 8 W. R. 612; *In re Denton*, L. R. 9 Q. B. 117; 43 L. J. Q. B. 41.

(b) *Bell v. Postlethwaite*, 5 E. & B. 695; 25 L. J. Q. B. 63; *Leggo v. Young*, 16 C. B. 626; 24 L. J. C. P. 200. If the order of reference is silent as to costs, and the arbitrator awards them, the award is irregular. *West London Extension Rail v. Fulham Union*, L. R. 5 Q. B. 361; 39 L. J. Q. B. 178; *R. v. Middlesex*, L. R. 6 Q. B. 220; 40 L. J. M. C. 109.

(c) *Doddington v. Bailward*, 7 Dowl. 640, the removal of weirs and hatches in a river; *Medley v. Pritchard*, 6 Bing. N. C. 442, obstruction of a watercourse.

CHAPTER V.

RATING.

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RATE HOW MADE.

COMMISSIONERS OF SEWERS having, by survey and present- Rate how made.
ment, (a) ascertained the expenditure required for the works
and other purposes in their district, proceed to raise the amount
by a rate. (b) Under the Land Drainage Act, 1861, 24 & 25 Vic.
c. 133, s. 33, the Commissioners may also, as has already been
shown, assess a rate for the same purposes without the present-

(a) See *ante*, p. 85.

(b) All the powers vested in Commissioners of Sewers are exercisable
by Drainage Boards. (24 & 25 Vic. c. 133, s. 67).

ment of a jury (*a*), and by s. 39 the overseers are to allow the Commissioners to inspect the poor rates. In some commissions, where the district is divided into levels, each level being coterminous with a parish, it is the practice for each parish to settle its own rate in vestry, and for the Commissioners to hold a Court, when all the rates thus made are confirmed. It has also been the practice for the Court to nominate assessors (*b*), (following the direction of Callis), who state the apparent value of each man's estate which the jury find liable to be assessed, and which, upon proper evidence, is adopted. An estimate is then made by the surveyor of the necessary expenses of those works upon which the rate is founded at so much in the pound.

Subdivision of districts.

Prior to 3 & 4 Will. IV. c. 22, it had been held by the Courts that Commissioners of Sewers had power to subdivide their districts (*c*), and this decision the legislature approved by directly empowering Commissioners to partition into sub-districts the several levels or districts within their Commission and to rate each district separately (3 & 4 Will. IV. c. 22, s. 14). In the same manner, 12 & 13 Vic. c. 50, ss. 1, 2, empowers the Commissioners to unite and rate separately the several districts within their Commission (*d*).

TAX IN GROSS.

General Sewers Tax, 4 & 5 Vic. c. 45.
Tax in gross.

The 4 & 5 Vic. c. 45, s. 1, enables Commissioners of Sewers to levy a tax in gross for certain purposes in each parish, township, or place, on lands and hereditaments which are

(*a*) See *ante*, p. 94.

(*b*) Callis, 127.

(*c*) *R. v. Commissioners of Sewers for the Tower Hamlets*, 9 B. & C. 517.

(*d*) Affirming the decision of *St. Katharine Dock Co. v. Higgs*, 10 Q. B. 641; 14 Q. B. 348; 16 L. J. Q. B. 377, which had decided that Commissioners of Sewers could, in their discretion, unite districts or levels within their Commission.

within, or partly within, the jurisdiction of their Court. The lands and hereditaments must contribute in proportion to the benefits received from the Court. This tax is called the General Sewers Tax, and is recoverable by distress and sale in the same way as a fine or amercement imposed by a Court of Sewers. The tax is to be apportioned among the occupiers of the lands and hereditaments within the township, parish, or place in such proportions and upon such persons as of right ought to pay the same.

According to benefit.

Apportionment of.

Before this Act was passed great doubt existed upon the question whether rating in gross was legal or not. On the one hand, in favour of such assessment was the authority of an early case in the Book of Assizes (*a*), and the opinion of Callis (*b*), while on the other hand the report of Coke, on the case of Isle of Ely, was against it (*c*). It would seem that where there was a special custom capable of proof of levying the tax upon the township, the tax was considered good, although the cases are conflicting and difficult to reconcile. An important decision, however, in 1837 (*d*), distinctly affirmed the proposition that, though the custom might exist, it could not vary the law as to such rating, and that a sewers rate assessed in gross on a township at large was bad, though laid only for defraying the expenses attending the issuing of a Commission.

Four years after this case the 4 & 5 Vic. c. 45 was passed, to which attention has been called. The statute amends on this point the 3 & 4 Will. IV. c. 22, as to the provisions of s. 16.

4 & 5 Vic. c. 45, amending 3 & 4 Will. IV. c. 22, s. 16.

(*a*) 37 Ass. pl. 10; 38 Ass. pl. 15.

(*b*) Callis, 123-129, where the various authorities up to his time are collected and remarked upon; Comyn, Dig. tit. Sewers, E. 2; Herne, Reading of Sewers, 13.

(*c*) 10 Rep. 141 *a*. The resolutions in this case were disapproved of by the Privy Council, reported in Moore, 824. See also Hetley v. Bowyer, Cro. Jac. 1. 336; 2 Bulst. 197; Custodes v. Inhabitants of Outwell, Sty. 178; Viners Ab. tit. Sewers, 418; 2 Phil. Ev. 443, 7th ed.

(*d*) Emerson v. Saltmarsh, 7 A. & E. 266; 2 Nev. & P. 416; 1 Jur. 476.

By this section of the latter Act certain payments to clerks and other persons employed by the Sewers Courts, the costs, charges and expenses incurred in surveying and valuing lands preparatory to making, collecting and expending certain taxes, and the expenses of carrying on any litigation by the Court, and of putting the various Sewers Acts into execution, together with the contingent expenses of working the Commission, were authorised to be paid out of the taxes, rates, and scots. The statute, having stated that these powers in some cases were not found sufficient, gives powers to the Commissioners to tax in gross for all or any of these purposes. The purposes for which the Commissioners are enabled to raise this General Sewers Tax are limited to those enumerated in the 16th section of 3 & 4 Will. IV. c. 22.

It may be difficult in certain cases to give effect to the words "in proportion to the benefit and advantage capable to be received from the said Court," as neither these words, nor others of like meaning, are found in the 3 & 4 Will. IV. c. 22, s. 16, and the powers therefore given by the earlier Act would enable the costs, &c., to be spread over the whole level. However, the matter is entirely one for the careful consideration of the Commissioners, for their apportionment when made, and their decision as to the General Sewers Rate (*a*) is final (*b*). Objections to the apportionment are noticed *post*.

PURPOSES OF RATE.

By the 3rd section of 23 Hen. VIII., Commissioners of Sewers were empowered to tax, assess, and charge all persons (defined

(*a*) Presumably "General Sewers Tax," as it is so called in s. 1.

(*b*) 4 & 5 Vic. c. 45 s. 3. A case of apportionment among "the parishes, townships, and places in the Isle of Axholme, in Lincolnshire," is reported, *R. v. Whittaker*, 9 B. & C. 648, but the apportionment was by virtue of a local Act, and the decision is only valuable to show that the apportionment made by two out of the three Commissioners was valid, because a matter of public duty and trust. See on this latter point, *Cook v. Ward*, 2 C. P. D. 255; 40 L. J. C. P. 551.

Purposes of
s. 16.

Apportionment
of tax
discretionary.

23 Hen. VIII.
c. 5, s. 3.

by the Act) according to their property, for the purpose of making and amending the various works therein mentioned. It had been decided in 1830, that the Commissioners might make a rate to defray the expenses of works already done without the previous presentment of a jury (*a*), or to defray previous law expenses of the Commission *bonâ fide* incurred by the Commissioners in discharge of their duty (*b*). The effect of these decisions is seen in 3 & 4 Wm. IV. c. 22, s. 16, which authorised ^{3 & 4 Will. IV. c. 22, s. 16.} Commissioners to pay out of their taxes, rates, &c., the expenses of their clerk and other officers employed by them, to provide for the expenses incurred in carrying on litigation arising out of their duties as Commissioners of Sewers, for the expenses of witnesses in support of or in opposition to any jury or presentment, and for any contingent expenses in working the Commission. In a case after the passing of this statute, where the Commissioners of Sewers for Norfolk had opposed a Bill in Parliament promoted by owners of land in the Middle Level of the Fens, it was held that the Commissioners might levy a gross rate, under 4 & 5 Vic. c. 45, s. 1, to pay the expenses ^{4 & 5 Vic. c. 45, s. 1.} attending their opposition to the Bill in question which had been conducted *bonâ fide*, on the ground that such opposition was a "litigation or controversy" arising out of their duties as Commissioners of Sewers within this 16th section, and that a mandamus would lie to compel them to make a rate (if they had no other funds) for the repayment of costs incurred by their clerk under their authority in such opposition (*c*). But now the purposes of the Sewers Rate are summarised in the Land Drainage Act, 1861, s. 38, which in effect declares the existing ^{Rates. Land Drainage 1861.} law on the subject. Rates accordingly may be made by the Com-

(*a*) *R. v. Commissioners of Sewers for the Tower Hamlets*, 1 B. & Ad. 232; following the case of the Level of Hull, 2 Str. 1127.

(*b*) *Ib.*, approving, *R. v. Essex*, 4 T. R. 594. See also *Harrison v. Stickney*, 2 H. L. Ca. 108, for the retrospective effect of a rate under a local Drainage Act. See *ante*, p. 45.

(*c*) *R. v. Commissioners of Sewers for Norfolk*, 15 Q. B. 549; 25 L. J. Q. B. 121.

missioners to meet all costs, charges and expenses (*a*) incurred, or to be incurred by them under the authority of any Act of Parliament, law, or custom. Thus this section disposes of a difficulty which had been experienced in applying the provisions of 23 Hen. VIII. c. 5, 3 & 4 Will. IV. c. 22, and 4 & 5 Vic. c. 45. by empowering the Commissioners to discharge any expenses lawfully incurred by them by a rate to be levied for the purpose.

SPECIAL RATE.

Special rate.

It is to be observed that when the purpose of the rate is to provide for expenses over £1,000 incurred in improving existing or in making any new works, the rate is called a special rate (s. 38), and is to be a tax on the owners of property (*b*); but if the proprietors of one-half of the area of land within which a rate is proposed to be levied dissent, the works cannot be carried out (s. 31).

Unless the particular works are made which may be defrayed by a special rate, any expenditure connected with them must be included in the general rate which falls upon the occupiers and

(*a*) There are several instances of special payments which Commissioners are empowered to defray out of the rates, *e.g.*, allowance to a jurymen for loss of time (4 & 5 Vic. c. 45, s. 7), expenses in obtaining an issue of a Commission under the Land Drainage Act, 1861 (24 & 25 Vic. c. 133, s. 12); of obtaining a provisional order from the Inclosure Commissioners to purchase land (*ib.* s. 27); of mortgaging the rates for the purpose of borrowing (*ib.* s. 40); of legal proceedings, (*ib.* 52).

(*b*) Defined by the section. By the Rivers Conservancy Bill, 1883, it was proposed that if a work in an outfall or a main channel executed by a Conservancy Board, was for the general advantage of lands within the jurisdiction of a Commission of Sewers, and of lands within the jurisdiction of the Conservancy Board, the Commission might be called upon by the Local Government Board to pay contribution, and if the outfall for fen lands should become inadequate to carry off the additional water which might be poured into it by the action of the Conservancy Board, the Local Government Board might arrange for the improvement of the outfall or main channel, and apportion the expenses between the Conservancy Board and the Commissioners of Sewers.

Contributions
under Rivers
Conservancy
Act.

not upon the owners. Thus, a Drainage Board for a separate drainage district incorporated under this Act incurred expenses amounting to more than £2,000 in making surveys and plans for certain proposed works, which were to cost about £10,000, and the proprietors of more than one-half of the area of land within the district dissented from the execution of these works (s. 31), which were never carried out. The Board made a general rate on the occupiers of land within the district in order to pay for the expense of surveys and plans, and the Court of Queen's Bench held that the provision at the end of s. 31 did not come into operation where the works have been stopped by the proprietors refusing their assent, and that the abortive preliminary expenses were payable out of the general rate, and were not a charge upon the owners under a special rate (*a*).

PRINCIPLE OF RATING.

It is important to observe the distinction between a liability to repair and a liability to contribute to the rate. The former liability may have arisen in the first instance from the broad principle of benefit, but, in some instances by reason of alteration and change, it may be difficult to point out the particular benefit which the land derives, and it cannot therefore be accurately said that this liability depends on the principle, since the liability continues when the original reason has disappeared.

a Distinction between liability to repair and liability to contribute.

The liability to contribute to the rate, however, depends solely on the principle of benefit, and when the benefit ceases so does the liability. The liability to repair cannot strictly be placed under the head of rating, although it is a liability to contribute to the drainage works of the district, and, as there are many special considerations affecting the subject, it is more convenient

(*a*) Griffiths *v.* Longdon Drainage Board, L. R. 6 Q. B. 738; 41 L. J. Q. B. 25.

to place it under a separate chapter, which will be found immediately succeeding this.

Principle of rating.

The principle of rating which was enunciated by 23 Hen. VIII. c. 5, and has been preserved in all subsequent statutes, is that all persons whose property situate within the Commission derives benefit or avoids danger from the execution of the works are liable to be rated—an application of the maxim *qui sentit commodum sentire debet et onus* (*a*).

A direction similar to that given by 23 Hen. VIII. c. 5 appears in the older statute of 6 Hen. VI. c. 5 (repealed), in language which perhaps shows more distinctly the power of the Commissioners as well as their duty (*b*). The direction in that statute is: "That no tenants of lands or tenements, nor any having common of pasture or fishing, rich or poor, nor other of what condition, state or dignity, which have or may have any defence, commodity, and safeguard by the said walls, ditches, gutters, sewers, bridges, causeways, or weirs, or else any hurt by the said trenches (whether they be within liberties or without) shall in anywise be spared this." The principle of benefit is also stated broadly in 4 & 5 Vic. c. 45.

The benefit need not be immediate (*c*), and the quantum of benefit is a question for the Commissioners (*d*). Rateability once

(*a*) *Callis*, 222; *Herne*, Reading on Sewers, 4; *Master v. Scroggs*, 3 M. & S. 417; *Isle of Ely Case*, 10 Rep. 141 *a*; *Keighley's Case*, 10 Rep. 139 *a*; *Rooke's Case*, 5 Rep. 996; *Dore v. Gray*, 2 T. R., per Buller J. at p. 366; *Stafford v. Hampston*, 5 Moore, C. P. Rep. 608; 2 B. & B. 691, per Dallas, C. J.; *Soady v. Wilson*, 3 A. & E. 248; *Netherton v. Ward*, 3 B. & A. 21; *R. v. Commissioners of Sewers for the Tower Hamlets*, 9 B. & C. 517; per Lord Campbell, C. J., in *Metropolitan Board of Works v. Vauxhall Bridge Co.* 7 E. & B. 964; 26 L. J. Q. B. 253; also per Cockburn, C. J. in *Hudson v. Tabor*, 1 Q. B. D. 225; 45 L. J. Q. B. 190; *Hammer-smith Bridge Co. v. Overseers of Hammersmith*, L. R. 6 Q. B. 230; 40 L. J. M. C. 79.

(*b*) See per Lord Tenterden, C. J. in *R. v. Commissioners of Sewers for the Tower Hamlets*, 9 B. & C. at p. 522.

(*c*) *Soady v. Wilson*, 3 A. & E. 248.

(*d*) *St. Katharine Docks v. Higgs*, 14 L. J. Q. B. 348, affirmed on appeal, 10 Q. B. 641; 16 L. J. Q. B. 377.

established, no question as to the amount of the benefit based on the particular use to which the property has been applied can arise (a). The Commissioners can, of course, only tax lands within their district (b).

The statute (23 Hen. VIII. c. 5) directs that all those persons, *i.e.*, those benefited, are to be rated "after the quantity of their lands, tenements and rents by the number of acres and perches after the rate of every person's portion, tenure or profit, or after the quantity of their common of pasture or profit of fishing or other commodities there." The rate may be levied on those who are benefited by the drainage according to the value of their property and not according to their acreage, a conclusion which is arrived at by Lord Blackburn in the following language: "An objection was made, which I may dispose of at once. It was said that if this was a rate under the Land Drainage Act, it ought to be an acreage rate, that is, the persons assessed ought to be rated according to the extent of their land, and not according to its value; and a second objection incidental to the preceding has been raised, although it has not been seriously argued, that the rate ought to be levied only upon land, and that the increase in its value ought to be levied only upon land, and that the increase in its value by the erection of houses or other improvements ought not to be taken into account. But these objections seem to be quite untenable, for the Sewers Act, 23 Hen. VIII. c. 5, has always received the construction that the rate is to be levied upon those who are benefited by works according to the value of their properties, and it would be unjust if the construction of the Act were to be that the rate was to be levied according to the superficial extent of the land benefited by the drainage and not according to its value" (c).

This principle thus confirmed in 1871 is derived from the construction of 23 Hen. VIII. c. 5, and is the existing law;

(a) *R. v. Head*, 32 L. J. M. C. 115.

(b) *Whitley v. Fawcett*, Sty. 13; Vin. Abr. tit. Sewers, p. 427.

(c) *Griffiths v. Longdon and Elderfield Drainage Board*, L. R. 6 Q. B. 738; 41 L. J. Q. B. 25.

but it is worthy of remark that drainage rates in the Fens and other parts of the country are frequently levied by acre, and the same method of assessment is given under the powers of local Acts (*a*).

An assessment on "all lands from such a place to such a place" is a bad assessment; it should be on particular lands, according to the damage they lie in (*b*). And although the rate may be laid upon the number of acres (*c*), yet it is not necessary that the value of every acre should be inquired into; it is sufficient if the general value of the property be ascertained and the rate levied accordingly (*d*).

It is not alone sufficient that the property derives benefit, it is also necessary there should be a rateable occupier. Thus it was held that no rate could be imposed on that part of Bridewell Prison which was inhabited only by the prisoners (*e*), nor on that part of Chelsea Hospital which was occupied only by the pensioners (*f*).

PROPERTY RATEABLE.

Having, in accordance with the guiding principle of sewers rating, ascertained what property within the level or district is liable to be rated for the expenses of the proposed works, the next matter which presents itself is the various descriptions of property which may be rated, and as a part of this the persons who are liable in respect of such property.

(*a*) See Report of Committee of the House of Lords on Conservancy Boards, 1877; Question 1546, *et seq.*; 1774, *et seq.*; 1998, *et seq.*

(*b*) *Per* Lord Chancellor Macclesfield, in *Bow v. Smith*, 9 Mod. 94.

(*c*) *Brungy v. Lee*, Sty. 178.

(*d*) *Commissioners of Sewers v. Newburg*, 3 Keb. 827.

(*e*) *Tracey v. Taylor*, 3 Q. B. 966.

(*f*) *Neave v. Weather*, 3 Q. B. 984; 12 L. J. Q. B. 32 (*sub nom.* *Neave v. Wrather*). 7 Jur. 168. Commissioners under a navigation Act in receipt of tolls which they receive as bare trustees for the purposes of the Act are not rateable in respect of such tolls. *R. v. Commissioners of Salter's Lode*, 4 T. R. 730.

Rateable
occupation.

Property
rateable.

The Statute 23 Hen. VIII. c. 5, from which, as has been stated, the power of rating is originally derived, alone attempts any definition. By it Commissioners of Sewers are authorised to assess "all who hath or holdeth any lands or tenements or common of pasture or profits of fishing, or hath or may have any hurt, loss, or disadvantage by any manner or means after the quantity of their lands, tenements and rents by the number of acres and perches after the rate of every person's portion, tenure, or profit, or after the quantity of their common of pasture or profit of fishing or other commodities there."

According to Callis (*a*), "the word *land* is of large extent, for it reacheth to houses, arable pastures, meadows, mills, tofts and to all other edifices, moors, marshes, woods, wood-grounds. The word *tenements* is of larger extent than lands, for it containeth all which the word *lands* doth, and all things else which lie in tenure." While these words of 23 Hen. VIII. c. 5, do undoubtedly include numerous descriptions of property, it must nevertheless be remembered that, in order to be rateable to the Sewers Rate, the property must derive *benefit* from the works in accordance with principle already referred to (*b*), with a view to which the following descriptions of property are briefly considered.

The rateability of tithes presents a question of considerable importance and difficulty. Tithes have been defined (*c*) "as the tenth part of the increase yearly arising and renewing from the profits of lands, the stock upon lauds, and the personal industry of the inhabitants," which Coke, in his Institutes (*d*), says are not subject to temporal burthens at the common law, when in the hands of a spiritual person. Callis, in a discussion of some

(*a*) Callis, 139. See Coke on Litt. 6 *a*.

(*b*) *Ante*, p. 108.

(*c*) Blackstone's Comm. Book ii. p. 24; Castle on Rating, 309. Tithes are hereditaments, R. v. Capel, 12 A. & E. 383; Lumley's Parochial Assessments, p. 70, and are classed as incorporeal tenements by Burton, Law of Real Property, 3rd. ed., 404, see R. v. Skingle, 1 Str. 100.

(*d*) 2 Inst. 642; Fitz. N. B. 228.

length upon this subject, comes to the conclusion that tithes in the hands of an ecclesiastical person are not rateable, but that in the hands of a layman they are (*a*), and his view is adopted by Chief Baron Comyn (*b*). Herne states: "As to tythes, I conceive them not chargeable: for, notwithstanding the general words of *status cujusque status*, yet without the particular words of ecclesiastical livings, they shall not be charged *onere seculari* as they are excepted from toll. Otherwise of glebe land, for that is not so sacred but comes through temporall hands * * Also tythes are lyable to a temporall charge or tax after they come into temporall hands; but here they continue spiritual, therefore not well taxed" (*c*). But this exemption in favour of ecclesiastical persons has ceased to be of any value, for at the present day they are liable to all temporal charges imposed upon real estates by Acts of Parliament, such as the rates for the relief of the poor and for the repair of highways, bridges, and other purposes to which parochial and county rates are applicable (*d*).

It is stated by Wood in his Institutes (*e*) that tithes are liable to be taxed by Commissioners of Sewers, although they were not liable to any temporal charges at common law. This is the only author who has ventured an opinion upon the point, and the question in the absence of more recent authority

(*a*) Callis, 132. The editor of the edition of 1685 writes: "Notwithstanding the opinion of our reader here, it seems that tithes, though in the hands of a spiritual or ecclesiastical person, may be rated or taxed by the Commissioners of Sewers, or by the general words of the statute of 23 Hen. VIII. c. 5." From this opinion the editor, Mr. Broderip, who himself edited Callis' Treatise in 1821, differs.

(*b*) Dig. vii. Sewers, E. 5.

(*c*) Herne, p. 9.

(*d*) Eagle on Tithes, 17. The distinction between a sewers tax and a Parliamentary tax is pointed out in *Palmer v. Earith*, 14 L. J. Ex. 256; see also *Brewster v. Kitchell*, 2 Salk. 615; *Waller v. Andrews*, 3 M. & W. 312; 7 L. J. Ex. 68. A Parliamentary tax is one that is imposed *directly* by Act of Parliament, *ib*.

(*e*) Vol. i. p. 176.

Herne.

Wood.

does certainly present matter for doubt (*a*). In Burns Ecclesiastical Law (*b*) it is observed that it does not seem a settled thing whether or not tithes are liable to be rated by the Commissioners of Sewers, and in much the same language Sir Robert Phillimore writes: "It does not seem a settled point whether tithes or rent-charge in lieu of tithes are liable to be rated by Commissioners of Sewers" (*c*). While Shelford, a great authority on the subject of tithes, dismisses the point summarily in these words, "on the question whether they are rateable (*i. e.*, by Commissioners of Sewers) or not the writer can give no information" (*d*).

There does not appear to be any direct decision of the Courts of law on the subject, but an important case under the Metropolis Local Management Act, 18 & 19 Vic. c. 120, throws some light upon the general question (*e*). There the owner of the tithe commutation rent-charge claimed exemption, *inter alia* (under s. 164 of 18 & 19 Vic. c. 120), from so much of the poor-rate as included charges in respect of sewers, on the ground that prior to the passing of the Act neither the tithes nor the tithe commutation rent charge were ever assessed to the sewers rate, and this was proved to have been the practice of the particular Commission. In giving judgment, Coleridge, J., said, "Both the practice before and the decision (*f*) under this Act were fully warranted from a consideration of the nature of the property and the principle which regulates the imposition of the sewers

(*a*) The following authorities on tithes have been consulted, but they are silent on this question—Cook, Selden, Comber, Prideaux, Degge and Mirehouse.

(*b*) Burns Eccl. Law, 9th ed., vol. iii. p. 720.

(*c*) Phillimore Eccl. Law, 1721.

(*d*) Shelford on Tithes.

(*e*) R. v. Goodchild, E. B. & E. 1; 27 L. J. M. C. 251. This case has been virtually overruled upon another point quite distinguishable from the present by Mersey Docks Cases, 11 H. L. C. 443; 35 L. J. M. C. 1; see R. v. Sherford, L. R. 2 Q. B. 503; 36 L. J. M. C. 113.

(*f*) *i. e.* the appeal of the plaintiff against the rate under 11 & 12 Vic. c. 112, which had been decided in his favour by the Commissioners.

rate, namely, that of actual benefit received by the property rated." In commenting upon this case, Phillimore writes, "In *R. v. Goodchild*, in the particular circumstances of the case, the rent charge was holden not to be liable to the sewers rate. Apparently, whenever tithe was not charged to sewers rate, the rent charge in lieu of it is not chargeable; but in cases where tithe was charged to sewers rate, a question may still arise whether the fixed rent charge in lieu of tithe is or is not now chargeable" (a).

The judgment of Coleridge, J., (b) which has been cited, might seem to assert that tithes are not subject to the sewers rate, but a careful consideration of the language of that most learned judge, taken in connection with the particular circumstances of the case, appears not to warrant so sweeping a construction, more especially as it was not necessary for the purpose of the decision to decide the point. The particular class of work, in that case executed in the Metropolis, from which benefit could be said to have been derived, was of a character so wholly different from that contemplated by the General Sewers Acts, that the judgment on this point can hardly have been meant to apply to large works of defence and arterial drainage. In the same way a dictum of Lord Campbell, in the course of the argument (c) to the effect that a tithe rent-charge can derive no benefit from the sewerage, while tithes in kind might, may be explained, although it is difficult to appreciate the distinction when the effect of the Tithe Commutation Act, 6 & 7 Will. IV. c. 71 (d) is considered.

Summary.

A summary, therefore, of the foregoing considerations points

(a) Phillimore *Ecc. Law*, p. 1751.

(b) In *R. v. Goodchild*, E. B. & E. 1; 27 L. J. M. C. 251.

(c) *R. v. Goodchild*, E. B. & E. at p. 35; 27 L. J. M. C. at p. 254. The dictum is slightly different in language in the two reports.

(d) By s. 69 it is enacted "that every rent-charge payable as aforesaid, instead of tithes, shall be subject to Parliamentary, parochial and county and other rates, charges and assessments in like manner as the tithes commuted for such rent-charge have heretofore been subject.

to these conclusions: That the authority of Callis would be given to the rateability of tithes to the sewers rate now that the distinction between the ecclesiastic and lay occupier is gone; that such view is shared by Wood in his Institutes; that the authorities on ecclesiastical law and tithes only regard the matter as doubtful in the absence of a concurrence of authority, and that the expressions in the case of *R. v. Goodchild* (*a*) are capable of the explanation which has already been given; and thus, having regard to the principle of benefit upon which alone property can be rated to the sewers rate under the 23 Hen. VIII. c. 5, and which is invariably insisted upon in all the decisions of the Courts, it would seem to follow that if the property from which the tithe issues is benefited by the works of the Commission, the tithe is subject to the sewers rate.

Callis observes (*b*) that the glebe lands and houses of incum- Glebe.
bents are liable to the sewers rate, and he continues, with an interesting discussion of archaic interest, as to the liability of copyholds, which he concludes in the affirmative, though, as he Copyholds.
is careful to point out, there could be no decree of such land for non-payment of the rate. This difficulty was, however, met by the 7 Anne c. 10, which gave Commissioners of Sewers the requisite powers of sale which they had not before.

The statute 23 Hen. VIII. c. 5, mentions commons of pasture, Commons.
but Callis also adds that those who have common of piscary, turbary, or of pasture in great fens, marshes and wastes, may be charged to the sewers rate (*c*). As has been already stated, there must be a beneficial occupation (*d*).

It may be a nice question whether a ferry is rateable to the Ferry
sewers rate. There is an old case in the Book of Assizes (*e*),

(*a*) E. B. & E. 1; 27 L. J. M. C. 251.

(*b*) Callis, 131; Phill. Eccl. Law, 1873; Dalton Just. c. 73; Herne, p. 9.

(*c*) Callis, 137.

(*d*) Mayor of Lincoln v. Overseers of Holmes Common, L. R. 2 Q. B. 482; 36 L. J. Q. B. 73. See *ante*, p. 110.

(*e*) 37 Lib. Ass. pl. 10. A ferry is a franchise, Com. Dig. tit. Piscary B.; Sheph. Touch, 231, 240; Newton v. Cubbitt, 12 C. B. N. S. 32; 31 L. J.

which appears to affirm the liability, and Callis remarks, "and so for a ferry one may be charged by this law" (*a*). The proper view of the question depends, it is submitted, upon whether the soil on either side is or is not (*b*) in the owner of the ferry, and, as the case may be, so the test of benefit to be derived from the sewer works must be applied.

Profit of fishing. The statute 23 Hen. VIII. c. 5, especially mentions that profit of fishing may be assessed, and that presumably on the ground of benefit to be derived; it would therefore seem to follow, by analogy, that other profits of like nature may be chargeable to sewers rate.

Parks and
Warrens,
Mortgagors.

Callis (*c*) enumerates parks and warrens as being rateable. Under this discussion he observes that a mortgagor is not rateable for his equity of redemption. This assertion as to a mortgagor must be taken to be subject to the fact whether he is or is not in receipt of the rents and profits, for where a mortgagor not in actual possession but in receipt of the rents and profits of lands was charged with the repair of a sea bank, the Court held a presentment and judgment to be well founded. Cockburn, C. J., thus deals with the question: "The proceeding is against the defendant as the owner of this estate. It turns out that he has mortgaged the estate, but he is in possession, though not personally, by means of his tenant who pays a rent. That is quite enough to enable the Commissioners to exercise their authority as against him. They are not bound to inquire whether the legal estate is in him or whether he has parted with it to somebody else. They find him in possession of the estate, and he 'hath or holdeth' the estate, and thereby satisfies the terms of the statute of Hen. VIII." (*d*)

C. P. 246; *R. v. Cambrian Rail. L. R. 6 Q. B. 427*; 40 *L. J. Q. B. 169*, and as such, comes within the definition of tenement given by Lord Coke, *Co. Litt. 6 a*.

(*a*) Callis, 137; also *Herne*, 5.

(*b*) *Peter v. Kendall*, 6 *B. & C. 703*.

(*c*) Callis, 138.

(*d*) *R. v. Baker*, *L. R. 2 Q. B. 621*; 36 *L. J. Q. B. 242*.

Among other descriptions of property Callis (*a*) speaks of annuities, offices, markets, and advowsons, all of which he considers not rateable.

It is enacted by the statute of 23 Hen. VIII. c. 5, in the 9th section, that the lands and tenements of the king are subject to the laws, etc., of Commissioners of Sewers. ^{23 Hen. VIII. c. 5.}

Thus, in an old case (*b*) where it appeared that there were 800 acres of land in the hands of the king which were not taxed as by law as they ought, it was held that the tax laid upon the other persons within the level was unjust and illegal, because by the not taxing of those 800 acres a greater burden was laid upon the rest of the land within the level than of right ought to be, for that the king's lands are taxable by the statute 3 & 4 Edw. VI. c. 8, which, by a general legislative direction, extended the provisions of the Act of Hen. VIII. so far as to allow a distress for a sewers rate to be taken upon the lands of the king (*s. 2*). ^{Crown property.}

The question of the liability of Crown property to the sewers rate was argued in the King's Bench in 1819 (*c*), where the contention of the plaintiff in trespass was, that he was a Government officer and paid no rent for his house, and that consequently the 3 & 4 Edw. VI. c. 8, s. 2, did not apply; but it was successfully maintained by the Commissioners that the property was rateable, inasmuch as the statute did not limit the operation of 23 Hen. VIII. c. 5, s. 9, but was explanatory, and that the principle of benefit from the Commissioners works, clearly showed the duty of a contribution by the Crown tenants with the public at large. It should be observed, however, that a distress for a sewers rate cannot, any more than the ordinary process, be levied within the precincts of a royal palace occupied as the residence of the sovereign (*d*).

(*a*) Callis, 138.

(*b*) Whitley *v.* Fawsett, Sty. 12, 13; cited in Callis, 224, note ed. 1685.

(*c*) Netherton *v.* Ward, 3 B. & A. 21; Soady *v.* Wilson, 3 A. & E. 248.

(*d*) Thus Kensington Palace; see Attorney-General *v.* Donaldson, 10 M. & W. 117; 11 L. J. Ex. 338, for the reasons there given; compare on this

Exemptions.

The following exemptions from rating are stated by Callis : (1) Grounds lying between the sea banks and the seas ; (2) Grounds on an ascent and not on the level, because they receive no benefit ; (3) Where one be tied to repair a bank, wall or other defence by custom, prescription, tenure or otherwise, all others be in law and reason exempted (*a*). He also alleges a curious instance from Lincolnshire, in which Sir George Fitzwilliam asserted and established a custom in his town and manor of Mablethorp, called Swiftage, to be exempt from the charge of sea banks, because, in consideration thereof, he and his ancestors had used in regard of their manor to do some other repairs as beneficial for the commonwealth (*b*).

In like manner it is recorded that the owners and occupiers of lands and messuages in Poplar were exempted from the sewers rate, on the ground that by reason of their tenure they were bound to cleanse and scour the Poplar Ditch (*c*).

PERSONS LIABLE.

Occupier liable

The sewers rate is essentially a landlord's tax, but as a general rule it may be stated that the beneficial occupier is rated, leaving him to adjust his liability with his landlord. But where the rate is to meet extraordinary expenses incurred for operations of a permanent character, the landlord is chargeable (*d*).

point Attorney-General *v. Dakin*, L. R. 2 Ex. 290 ; L. R. 3 Ex. 288 ; 39 L. J. Ex. 213 ; L. R. 4 E. & I. App. 338.

(*a*) Callis, 222.

(*b*) Sir G. Fitzwilliams' case, Callis, 223.

(*c*) See *Horne v. Farmer*, cited in Woolrych's *Met. Man. Acts*, 103, 2nd ed.

It is worthy of remark that by the Rivers Conservancy Bill, 1883, it was proposed that where a Conservancy Board embraced a district which might be under a Commission of Sewers, power should be given to exempt the district from any rates levied by the Conservancy Board, if efficient works for the protection of the lands had been executed.

(*d*) Callis, 140.

This principle is recognised by the Legislature in the Land Drainage Act, 1861 (24 & 25 Vic. c. 133, s. 38) (*a*), where it is enacted that an expenditure exceeding £1,000 incurred for the improvement of existing works, or for the construction of new works, is to be defrayed by a special rate on the owners of property (*b*). This section does not come into operation where the works have not been constructed, although expense has been incurred in preparations for their execution. In a case where a Drainage Board incurred expenses in obtaining surveys and plans for proposed works, which were to cost more than £1,000, but which were never executed, it was held that the occupiers and not the owners were liable (*c*).

In the same section (38) it is declared that agreements between landlord and tenant are not to be affected by the statute.

Agreements
between
landlord and
tenant.

There are numerous decisions of the Courts upon the interpretation of terms introduced in contracts for tenancies as to the payment of sewer taxes and charges *ejusdem generis*. It may be noted that a sewers tax is not a Parliamentary tax, for a Parliamentary tax is one that is imposed directly by Act of Parliament (*d*).

Sewers tax not a
Parliamentary
tax.

In a case (*e*) where marsh land was demised subject to the

(*a*) *Ante*, p. 106.

(*b*) The definition of owner, s. 38, is practically the same as that in the Public Health Act, 1875 (38 & 39 Vic. c. 55) and other Local Government Acts, and the decisions on those statutes are therefore useful for the interpretation of the term.

(*c*) *Griffiths v. Longdon and Eldersfield Drainage Board*, L. R. 6 Q. B. 738; 41 L. J. Q. B. 25. In this case the works were not executed, because the proprietors of half the district dissented. (s. 31)

(*d*) *per Parke, B.*, in *Palmer v. Earith*, 14 M. & W. 428; 14 L. J. Ex. 256, citing *Brewster v. Kitchell*, 2 Salk, 615. See also *Baker v. Greenhill*, 3 Q. B. 148; 11 L. J. Q. B. 161.

(*e*) *Waller v. Andrews*, 3 M. & W. 312; 7 L. J. Ex. 67. Again, in the cases arising for instance under a Local Improvement Act, *Payne v. Burridge*, 12 M. & W. 727, under the Metropolitan Management Act, 1855, *Thompson v. Lapworth*, L. Rep. 3 C. P. 149; 37 L. J. C. P. 74, the rates were held to come within the terms of the covenants. But in *Baker v. Greenhill*, 3 Q. B. 148; 11 L. J. Q. B. 161; *Tidswell v. Whitworth*, L. Rep.

condition that the tenants should pay and discharge all outgoings whatsoever, rates, taxes, scots, &c., whether parochial or Parliamentary, which should be chargeable on account of certain marsh lands (land tax excepted), it was held that an extraordinary assessment of Commissioners of Sewers for works of permanent benefit was within the meaning of the agreement, the Court observing that the word "scot" usually meant the sewers rate on marsh lands, which would be comprised in the terms "all Parliamentary scots," though not perhaps technically so, as not being imposed directly by Parliament, but by Commissioners deriving their authority from an Act of Parliament.

Apportionment. The 3 & 4 Will. IV. c. 22, s. 18, provides for the apportionment of sewers rates between outgoing and incoming tenant.

Sewers rate a deduction from the rent. In calculating the rateable value of property, the sewers rate is a legitimate deduction from the rent, though paid by the landlord. The principle of assessing lands to the poor rate is to ascertain the net rent which a tenant at rack rent would pay, he discharging all rates, charges and outgoings. Thus, it follows, the sewers rate, though paid by the landlord (or the owner or occupier) should be allowed, as a deduction from the rent.

Accordingly, it has been held that the occupier of land which required occasional expenditure to protect it from floods, was not rateable to the poor at the same sum as the occupier of lands of similar quality and equal annual produce in the same parish

2 C. P. 326; 36 L. J. Q. B. 103; and *Rawlins v. Briggs*, 3 C. P. D. 368; 47 L. J. C. P. 487, the payment by the tenant was excluded.

The cases of *Sweet v. Seager*, 2 C. B. N. S. 119, and *Cross v. Raw*, L. Rep. 9 Ex. 209; 43 L. J. Ex. 144, are instances of words in covenants being held large enough to include payment of sewers taxes by the tenant. The most recent decision upon the subject is *Budd v. Marshall*, 5 C. P. D. 481; 50 L. J. C. P. 24, where the tenant was held liable to pay expenses incurred under the Public Health Act, 1875 (ss. 94, 98, 104), the words of his covenant to pay being "all other taxes, rates, duties and assessments whatsoever, whether Parliamentary, parochial or otherwise." See also *Allum v. Dickinson*, 9 Q. B. D. 632; 52 L. J. Q. B. 190; *Wilkinson v. Collyer*, 53 L. J. Q. B. 278.

who was not liable to the sewers rate ; but that the former should be rated at that sum, minus the sewers rate (*a*).

Again, the owner and occupier of a house and land has been held entitled to deduct from the poor rate the general sewers tax imposed by Commissioners of Sewers, and the annual tax imposed by them for the maintenance and cleansing of sewers and works within the district, and the amount expended by him in the maintenance of a portion of a sea wall, which he was bound prescriptively to keep up under a presentment of a jury (*b*).

Deducted from
poor rate.

Applying the same principle, a deduction was allowed to a tenant in respect of an annual drainage rate which was spent in drainage works, without which the land would have been flooded at times and considerably diminished in value. The rate was made under a local Act, by which it was made a landlord's tax, and the landlord had always paid it. It was held that the charge was an expense necessary to maintain the land in a state to command the rent, and therefore within the exceptions of the Parochial Assessment Act, 1836 (6 & 7 Will. IV. c. 96, s. 1), and that it was immaterial whether the charge was primarily leviable on the landlord or the tenant (*c*).

But an owner who has undertaken a charge on his land for the benefit of other lands and not merely for his own, cannot deduct the amount of the charge (*d*).

Where not
deducted.

Where lands had been granted in fee, on condition that the owner embanked and kept from inundation all the lands in the level, and the land had been granted free of charge, but the expense of keeping up the embankment equalled the rack rent, it was held that the owner was rateable for the beneficial occupation of the land, and that he was not allowed to deduct the amount of the charge (*e*).

(*a*) *R. v. Adames*, 4 B. & Ad. 6; 11 L. J. M. C. 117.

(*b*) *R. v. Hall Dare*, 5 B. & S. 785; 34 L. J. M. C. 17.

(*c*) *R. v. Gainsborough Union*, L. R. 7 Q. B. 64; 41 L. J. M. C. 1.

(*d*) *R. v. Vange*, 3 Q. B. 242; 11 L. J. M. C. 117.

(*e*) *Ib.*

OBJECTIONS TO RATE AND MODE OF OBJECTING.

The course to be taken by a person aggrieved by a rate imposed upon him by the Commissioners depends entirely upon the nature of the practice which prevails in the particular Court. If the procedure is that of presentment by jury, it is open to the objecting party to traverse the presentment (*a*). This is usually done at a subsequent Court held for the purpose; the parties may appear by attorney, and the jury, after hearing arguments and witnesses for and against the presentment, find their verdict, which either confirms or sets aside the presentment which had been made by a jury at the previous Court. The proceedings are entered in the records of the Court of Sewers (*b*) and the decree there entered is final (*c*). If, however, the party assessed fails to avoid the rate and distress issues, his remaining remedy is by action for illegal distress (*d*).

In districts where the Commissioners have adopted the provisions of the Land Drainage Act, 1861 (24 & 25 Vic. c. 133), and no longer have recourse to presentment by jury, the person aggrieved by any rate made by the Commissioners is entitled (s. 47) to an appeal to Quarter Sessions. The justices are by that section empowered to confirm, annul, or modify the rate appealed against. There are several requirements as to the mode of proceeding to the appeal, which have been considered (*e*) together with the powers possessed by the Court of Quarter Sessions of ordering a reference.

(*a*) A presentment made by Commissioners of Sewers upon their own survey or by their own surveyor is not traversable. See Callis, 216; "Laws of Sewers," 50, where inquiry by Commissioners and by jury respectively is contrasted. The jury trying the traverse is called the "traverse jury" in some Courts. See Report of Select Committee on Met. Sewers, July, 1823, p. 17.

(*b*) Callis, 215—217.

(*c*) For an account of the proceedings by presentment and traverse, see *ante*, p. 85, Survey and Inquiry by Jury.

(*d*) *Post*, p. 132.

(*e*) See *Ante*, p. 95.

When
presentment by
jury.

Traverse.

Verdict.

Decree.

Land
Drainage Act,
1861.

Appeal to
Quarter
Sessions.

The statute 4 & 5 Vic. c. 45, which, as was seen (a), Proceedings under 4 & 5 Vic. c. 45. provided for the imposition of the General Sewers Tax in gross upon a township or parish, contains some important directions as to the form of proceedings taken to question this rate. In the first place, after the rate is duly made and the surveyor has been appointed to make the right apportionment, the party upon whom the rate is made is allowed by the Act (s. 2) to have ten days notice of this apportionment before the sitting of the next Court which is to finally decree the rate. Ten days notice of apportionment. If no complaint is made at the next Court the apportionment becomes final. Supposing that the party objects to the rate or apportionment, either on the ground of its inequality or his non-liability, the Commissioners will then, at some subsequent Court, proceed to investigate the objection by examination of witnesses, &c., tendered by either side, and, upon the conclusion of the hearing, the rate and its apportionment becomes final (s. 3).

Passing on to the 8th section of the same statute, it is enacted that, on all appeals from *any* rate made under the authority of any Commissions of Sewers, it shall be lawful for the Court before whom the appeal is made to amend such rate, Power to amend, &c. either by inserting therein or striking out therefrom the name of any person, or by altering the sum charged on any person without quashing the rate, although, if the Court think fit, they may quash the rate (b). It is a little difficult to say positively whether this section actually covers the case of all objections to rates, or whether it is limited in its operation to the particular tax provided for by this Act. It is curious that in s. 3 there is no mention of any particular course to be followed by the Commissioners upon the investigations there mentioned, and it may well be that this 8th section applies only to the functions of Commissioners who are entertaining the inquiry there specified. In the other view of the case, viz.,

(a) *Ante*, p. 102.

(b) The section following (s. 9) is repealed.

that this section gives these extensive powers of amending, &c., to Commissioners who may be engaged in trying with a second jury, the presentment of the first, it is not easy to see how in practice such powers are to be exercised.

Certiorari.

Another way of reviewing a rate is to remove by *certiorari* into the Q. B. Division of the High Court of Justice the order making the rate. It is not intended here to enter into this question of proceeding by *certiorari* (*a*), it being sufficient to notice that the application must not be delayed (*b*), that the Court generally speaking grants the writ, and that the removal includes the presentment, judgment, rate and order.

ENFORCEMENT OF RATE (*c*).

Distress.

Goods and chattels.

The payment of a sewers rate may be enforced by distress first on the goods and chattels, and secondly on the lands of the person in default. This power was originally conferred by 23 Hen. VIII. c. 5, s. 3, and the mode of execution was partially indicated by 7 Anne, c. 10, s. 3, but many points of difficulty were left open until 12 & 13 Vic. c. 50, intitled "An Act for further amending the laws relating to Sewers," laid down clear regulations for the recovery of sewers rates and fines.

12 & 13 Vic.
c. 50, s. 7.

Section 7 of this statute contains the existing law, and is the authority from which Commissioners of Sewers mainly derive their powers for the enforcement of rates and fines. By this section, upon the complaint of any officer of sewers that any person (*d*) liable to the payment of any sewers rate fines, ameracements, penalties or forfeitures, [which will be noticed

(*a*) It is considered *post*, p. 166, under the head of Legal Proceedings.

(*b*) *R. v. Tower Hamlets Commissioners*, 5 Q. B. 357; 13 L. J. Q. B. 12; *Dav. & M.* 232.

(*c*) All the powers vested in Commissioners of Sewers are exercisable by Drainage Boards (24 & 25 Vic. c. 133, s. 67).

(*d*) Includes bodies politic, corporate, or collegiate (12 & 13 Vic. c. 50, s. 10.)

hereafter] has not paid, and has refused to pay the same (*a*), one Commissioner may issue his summons to the party to appear Summons. before the Commissioners to show cause why he refuses to pay, and upon proof of service of the summons and a refusal to pay, two Commissioners are to issue their warrant to levy the sum, together with the costs of obtaining the warrant, by distress and sale (*b*) of the goods of such person (*c*).

The warrant must specify the sum to be raised (*s. 7*), and Warrant. the question of whether a warrant is necessary is thus settled (*d*).

The warrant would in general be executed by a sewers officer, but there is no reason why it should not be executed by the sheriff (*e*). The statute 7 Anne, c. 10, authorised the Commissioners to issue their warrant of distress to "any person or To whom issued. persons;" by 3 & 4 Will. IV. c. 22, ss. 52, 55, constables and peace officers are required to execute the warrants, &c., of Commissioners of Sewers; and the 12 & 13 Vic. c. 50, s. 9, directs Execution. that the warrant may be directed to "the bailiff, expeditor, dyke-reeve, collector, or other sewers officer within such limits, and to any other person or persons, or to any two or more of

(*a*) This involves a demand which before had been held to be necessary. *Whitley v. Fawsett*, Sty. 13.

(*b*) The statute 23 Hen. VIII. c. 5, did not directly empower a sale of the goods distrained, and Callis devotes several pages to a discussion on the point; in the end he comes to the conclusion that Commissioners of Sewers may sell a distress, and in support he cites the cases of *Combs v. Cheny*, Alyn, 92; and *Whitley v. Fawsett*, Sty. 13. The statute 7 Anne, c. 10, s. 3, directly authorised a sale. It has been the practice in some Courts to summon defaulters or persons aggrieved before the Court, in order to show cause why they should not pay the rate before issuing a distress warrant.

(*c*) This fixes the person whose goods are to be distrained, and disposes of difficulties arising from charges on the land as distinguished from charges on the goods. Callis, 185, 192; 7 Com. Dig. tit. Sewers, 348; *Whitley v. Fawsett*, Sty. 13.

(*d*) Callis was of opinion that in the case of neglect to pay a rate, the officer might distrain without a warrant, p. 180. The statute 7 Anne, c. 10, s. 3, required the warrant to be issued by six Commissioners.

(*e*) Callis, p. 183.

them, as by the Commissioner granting the same shall be deemed fit."

A warrant issued to two persons could, it would seem, be executed by one. Thus, where Commissioners under a local Act for draining the fens and maintaining the navigation of the river Witham, were authorised to issue their warrant of distress to their collector or collectors, and they issued their warrant to *L.* the collector and *M.* the bailiff, which was executed by *M.* alone, the warrant was held to have been regularly executed (*a*).

The defaulting ratepayer must be named in the warrant (*b*), and by s. 8 of 12 & 13 Vic. c. 50, any number of defaulting ratepayers may be included in one warrant.

DISTRESS.

Distress on
lands.

If no sufficient distress can be found, the rates, fines, costs, charges and expenses are to be levied upon the lands, tenements and hereditaments (*c*) of the party charged which are situate within the Commission.

Distress where
levied.

A distress on the goods of the person may be taken at any place within the United Kingdom (*d*); but a distress on land is by the statute 12 & 13 Vic. c. 50, s. 7, confined to the limits of the Commission, thereby confirming the opinion of Callis (*e*).

Power to sell
lands.

In order to determine whether Commissioners have power to sell the lands, it is necessary to consider their power to distrain

(*a*) *Lee v. Vessey*, 1 H. & N. 90; 25 L. J. Ex. 271. See also *Lashbrooke's case*, *Hutt*, 127; *Lambard*, *Eirenarcha*, c. 2, p. 89; *Co. Litt.* 181 *b*.

(*b*) *Farr v. Crisp*, 2 Barn. 321.

(*c*) The large import of these terms has been noticed, *ante*, p. 111.

(*d*) *Callis*, 184; *Herne*, *Reading on Sewers*, 14, 29; *Com. Dig.* tit. *Sewers*, 348.

(*e*) *Callis*, 204. There is also a *distringas ad reparandum* upon a presentment, in which case the distress can only be taken within the limits of the Commission. *Callis*, 183. This will be noticed in the next chapter, in considering the means of enforcing a liability to repair. In like manner, the lord of whom lands are holden to make the repairs can only distrain on those lands. *Callis*, 184.

on land conferred by the various statutes. The 23 Hen. VIII. c. 5, s. 8, enabled Commissioners of Sewers for the first time to "decree" the lands of persons assessed and not paying the imposed charges from the owners and their heirs for life, in fee simple, or in tail. By s. 9, the lands of the king are expressly made subject to the Commissioners' decrees with casual profits, advantages and commodities: and by 7 Anne, c. 10, ss. 1, 2, copyholds are included. The decree is to be engrossed on parchment, and certified under the hands of the Commissioners into the Court of Chancery with the King's Royal assent, and then all parties interested are bound (*a*).

It might have been doubtful under this 9th section of 23 Hen. VIII. c. 5, whether the Commissioners could distrain on the king's lands to enforce payment of a rate; but to remove any doubt on this subject, and in furtherance of the statute of Hen. VIII., the 3 & 4 Edw. VI. c. 8 was passed, which contains a general direction that a distress for sewers rates might be taken upon lands of the king; but a distress cannot be levied within the precincts of a royal palace, occupied as the residence of the sovereign (*b*), or where it is possible to infer an intention

Lands of the
king.

(*a*) Callis devotes several pages to this enactment. He comes to the following conclusion, (1) That land can only be sold for non-payment of a sess, not for fines or amercements, and that therefore lands, in respect of which a liability to repair arises, cannot be sold for the non-repair; (2) That the person in default must be named, and that therefore in the case of a charge on a township, lands cannot be sold unless some person is particularised; (3) That only those lands can be sold as are within the commission, and only such lands as are charged with the sess; (4) That the lands of persons under disability, such as married women, infants, lunatics, &c., can be sold; (5) That for non-payment by a joint tenant or tenant in common, of his part of the assessment, only his moiety of the land shall be sold; (6) That the lands of prebends, parsons or vicars, deans, bishops, seised of lands in their public capacity, may be decreed away from them, but not so as to bind their successors; (7) And that lands cannot be decreed to a corporation by reason of the statute of mortmain. Callis, 202-213.

(*b*) *Netherton v. Ward*, 3 B. & Ald. 21; *Soady v. Wilson*, 3 A. & E. 248; *Attorney-General v. Donaldson*, 10 M. & W. 117; 11 L. J. Ex. 338; see also *Attorney General v. Dakin*, L. R. 2 Ex. 290; L. R. 3 Ex. 288; 30 L. J. Ex. 213; L. R. 4 E. & I. App. 338.

on the part of the sovereign to retain the power of immediately resuming personal residence at pleasure.

12 & 13 Vic. c.
50, s. 7.

These sections are still in force (*a*), and it is necessary to consider their effect taken in conjunction with the 12 & 13 Vic. c. 50, s. 7. The earlier statute authorises the sale only of such lands as are assessed in the first instance (*b*), but it is clear the 12 & 13 Vic. c. 50, s. 7, allows a distress on any lands of the defaulting party situate within the Commission. It is to be observed that no sale is specifically provided for by the 12 & 13 Vic. c. 50, s. 7, and having regard to the common law conditions of a distress, it is submitted that no sale is permissible under that Act (*c*), but the latter part of the section would seem to declare that the lands so distrained on are to be considered as liable in the first instance to the rates, fines, amercements, penalties, forfeitures, costs, charges and other expenses in respect of which the distress is levied. If this interpretation be correct, it follows that since the lands distrained on by virtue of 12 & 13 Vic. c. 50, are to be considered as though liable, in the first instance, to the rates, &c., they can be decreed from their owners by virtue of 23 Hen. VIII. c. 5, and the earlier statutes, which in this way would be extended to other lands than those originally charged, and to the enforcement of fines, amercements, penalties, forfeitures, costs, charges and other expenses.

Summary.

To sum up the above considerations, it appears that in the first instance a distress of goods and chattels must be resorted to; next a sale of the goods distrained; next, a distress on the lands; and, lastly, a sale of the lands by virtue of 23 Hen. VIII. c. 5, s. 8, and 12 & 13 Vic. c. 50, s. 7, combined. It will, how-

(*a*) It is worthy of notice that the Metropolitan Sewers Act, 1848, 11 & 12 Vic. c. 142, now repealed by s. 145, expressly excepts the power of decreeing lands from the owner.

(*b*) 23 Hen. VIII. c. 5, s. 8; Callis, 161; Com. Dig. tit. Sewers, 348.

(*c*) A distress on lands does not empower a sale, it only authorises the distrainer to seize and hold the lands, and as a natural consequence to take the rents and profits until the charge is satisfied. Gilbert on Distress, 67.

ever, be probably found that the powers conferred by 12 & 13 Vic. c. 50, s. 7, are sufficient.

The Commissioners ought not to sell more land than will satisfy the demand; in the event of decreeing an entailed estate the entail would be barred (*a*). In an old case, it is stated that in the fen county of Lincolnshire "the sale is made four months after default of payment twice in the year, and their use is to expose first ten, or fewer or more acres, for the sum in arrear, and so increase till a chapman offer, &c., and never sell for more than what is in arrear of the tax and penalty, and it seems can sell for no more" (*b*). Amount to be sold.

Power to seize the cattle of a stranger pasturing on the land it is considered would be conferred (*c*), but not the power to sell (*d*), for the stranger is not in default; but the cattle of an assignee of a person rated may be sold, for he is not a stranger, but takes the land *cum onere* (*e*). Cattle of stranger.

It has been noticed (*f*) that the 4 & 5 Vic. c. 45, s. 1, Tax in gross. authorises the Commissioners to tax a parish or township in gross, and by s. 2 to apportion the tax among the occupiers. The apportioned tax is declared by s. 3 to be recoverable by distress and sale of the effects of the persons respectively rated, but no distress of lands is authorised by this statute. A question might therefore arise as to whether the subsequent statute, 12 & 13 Vic. c. 50, s. 7, authorises a distress on the lands of such persons, but though the language of the latter statute is general, and might be said to be applicable to all sewers rates and taxes, it is submitted it is not; the 4 & 5 Vic. c. 45 is dealing with a special tax, the means of enforcing it must be taken not only as

(*a*) Callis, 166; Com. Dig. tit. Sewers, 349.

(*b*) *Brown v. Hamond*, 2 Ch. Ca. 250.

(*c*) Callis, 185.

(*d*) Callis, 192; 7 Com. Dig. tit. Sewers, 348. See, however, per Roll, C. J., in *Combs v. Cheney*, Aleyn, 92, disposing of a doubt entertained by him in *Whitley v. Fawsett*, Sty. 13.

(*e*) Callis, 193.

(*f*) *Ante*, p. 102.

specially confined to that tax, but as excluding other means of enforcement (*a*).

Cost, &c., of
Commissioners.

In the same way costs, charges and expenses of the Commissioners and their officers may, after the same are decreed, be levied on the goods and chattels of the person ordered to pay, and in default of distress of goods the same may be levied on his lands, tenements and hereditaments within the Commission (*b*) as under 12 & 13 Vic. c. 50, s. 7. The latter part of this section (*c*) is almost identical with 12 & 13 Vic. c. 50, s. 7, and the same observations as to the distress and sale of goods and lands will apply (*d*).

Land Drainage,
Act, 1861.

But another and better mode of raising costs, charges and expenses is given by 24 & 25 Vic. c. 133, s. 38, by which a rate may be levied for defraying all costs, charges and expenses incurred by the Commissioners under any Act of Parliament, law or custom.

Land Drainage,
Act, 1861.
Special rate.

The special rate leviable by Commissioners of Sewers under 24 & 25 Vic. c. 133, s. 38 for defraying the expense of improvements in existing works, or new works involving an expenditure of £1,000, is to be deemed to be a tax on the owners of the property (*e*), but it may be enforced against the occupier of the land and his goods and chattels in the same way as if the same were a rate due from him (*f*). This seeming hardship is relieved by a proviso that the occupier is not to be liable to pay a higher amount than his rent, and that he may deduct the sum paid from his rent.

(*a*) A warrant of distress under this section must be issued by six Commissioners (s. 3).

(*b*) 3 & 4 Will. IV. c. 22, s. 55.

(*c*) *Ib.* (d) *Ib.*

(*e*) *See ante*, p. 106.

(*f*) *i.e.*, with all the powers conferred by 12 & 13 Vic. c. 50, s. 7 and the older statutes.

REPLEVY.

With the exception of the enforcement of a tax in gross, ^{Replevy.} apportioned under 4 & 5 Vic. c. 45, ss. 2 and 3, in which case it is enacted that "no distress for such apportioned rate shall be replevied by any sheriff, &c.," the Acts are silent as to the power of replevying rates, and the few authorities on the point are rather conflicting. The 23 Hen. VIII. c. 5, seems to allow of replevins by the express provision enabling the defendant in an action for taking any distress to make avowry that the distress was levied under the authority of the Commissioners of Sewers. Nevertheless, Callis, although he admits this, is of opinion that replevin ought not to lie if granted of the sheriff, because the sheriff is not of sufficient power to supersede the Court of Sewers; when, however, the goods are sold out of the custody of the Court of Sewers they are then repleviable. (a) In the famous case of *Rooke*, reported by Sir Edw. Coke (b), replevin was sued for the delivery of a distress taken by the power of the law of Sewers, but Callis distinguishes this case on the ground that there Carter was assessed, but the goods of *Rooke* were taken against whom there was no law of Sewers in force, nor was he within the jurisdiction of the law of Sewers (c), but he admits that a distress taken by a lord on his tenant for not repairing a work of sewers which he was bound to do *ratione tenuræ*, is repleviable from the Sheriff, for in such a case the distress is not taken or detained by the warrant judgment or decree of a Court of Sewers. The value, however, of Callis's opinion was questioned in a case which came before the Court of King's Bench, in 1796, where, though his authority against replevin of a distress taken by the order of the Court of Sewers was much pressed at the bar, ^{Opinion of Callis.} Lord Kenyon, in the course of the argument, expressed strong ^{Questioned by Lord Kenyon.}

(a) Callis, 197.

(b) 5 Rep. 100.

(c) Callis, 197.

No direct
authority.

doubts respecting the soundness of that view (*a*). There is no authority directly deciding whether a distress issued by Commissioners of Sewers is repleviable or not, but as a result of the authorities referred to in the note, it might be asserted that a replevin will lie in all cases of distress made under the authority of Commissioners of Sewers, except in the case of tax in gross above alluded to, which no doubt is excepted because the distress there follows on an adjudication by the Commissioners, after an appeal in which the party complaining has the opportunity to be heard, and is therefore in the nature of an execution.

ACTION FOR ILLEGAL DISTRESS.

Action for
illegal distress

If the party charged fails to avoid the rate and distress issues, he may bring an action (*b*) for illegal distress, either against

(*a*) *Pritchard v. Stephens*, 6 T. R. 522. Callis's opinion, moreover, is directed against warrant of replevin issued by the sheriff, and it would not prevail against an action of replevin brought in the Superior Court under 19 & 20 Vic. c. 108, ss. 65, 66. Replevin does not lie for goods taken in execution, *Gilbert, Replevin*, p. 138; *see Pearson v. Roberts, Willes, 672, n., Com. Dig. tit., Replevins D.*, but it lies at common law in all cases where goods are improperly taken. *George v. Chambers*, 11 M. & W. 149. It was formerly held when goods were taken by virtue of a statute by which distress and sale was given, replevin did not lie, inasmuch as this was considered in the nature of an execution. *Bradshaw's case, Bacon's Abr. tit., Replevin C.*, and cases there cited. *Willes, 672, note (b)*, unless the statute by implication empowered the party whose goods were seized to replevy them. *Fletcher v. Wilkins*, 6 East 287; *Milward v. Catlin*, 2 W. Bl. Rep. 1330; *Hurrell v. Wink*, 8 Taunt., 369; but the Common Pleas refused to set aside proceedings in an action of replevin brought for goods taken on distress for an assessment under the Highway Act, 13 Geo. III. c. 78, s. 47, *Fenton v. Boyle*, 2 New Rep. (Bos & Pull), 399, and in *Pritchard v. Stephens*, 6 T. R. 522, on motion to set aside proceedings, the Court refused to enter into the question whether replevy lay or not. In *Ramsey v. Nornabell*, 11 A. & E. 383, replevin was brought for goods taken under a warrant of distress issued by Commissioners of Sewers to enforce an amercement; but although Callis's opinion as to the replevin was cited in the argument the point was not decided on by the Court, because no sale nor anything beyond the detention was stated in the declaration.

(*b*) The same remedy is open to a party against whom distress issues to recover a fine.

the person employed to levy the distress without joining the Commissioners, or he may make them parties to the suit. If the latter, he will have to prove their warrant as the means of connecting them with the acts of their agents (*a*). If the action be brought against the person employed to levy the rate, the defendant may justify, alleging that the act was done by the authority of the Commissioners of Sewers (*b*). In this action *onus probandi*. the *onus probandi* is on the Commissioners, and they have to show that all proceedings are regular (*c*). They will have to prove that the rate or fine has been duly made, and for this purpose to produce the assessment and inquisition (*d*). The authority of the Commissioners must be proved, either by the production of the commission, or by showing that they have acted as Commissioners. It must be proved that the plaintiff was an occupier within the level and benefited (*e*); that a notice of the rate was served (*f*); and that the steps required by 12 & 13 Vic. c. 50, s. 7, for recovery of rates and fines have been taken (*g*).

The presentment of the jury and the decree of the Commissioners are not conclusive (*h*), and it is open to the plaintiff in Presentment and decree not conclusive.

(*a*) For this purpose a *subpœna duces tecum* should be issued, see Phillips on Evidence, vol. ii. p. 433, 7th ed.

(*b*) 23 Hen. VIII. c. 5, s. 11.—It is said that if the defendant pleads specially, he waives the special plea, *Whitley v. Fawsett*, Sty. 12. By s. 12 it was enacted, that if the issue was in favour of the defendant he might recover treble damages. In *Warren v. Dix*, 3 C. & P. 71, the recovery of these damages was discouraged by Lord Ellenborough, C. J., and now all enactments whereby double or treble costs are recoverable are repealed by 5 & 6 Vic. c. 97, s. 2.

(*c*) *Wingate v. Waite*, 6 M. & W. 739.

(*d*) If found by presentment of jury. If found by the Commissioners without the presentment of a jury, under the powers of the Land Drainage Act, 1861, 24 & 25 Vic. c. 133, s. 33, the minutes or other mode of recording the resolution of the Commissioners should be produced.

(*e*) *Brungy v. Lee*, Sty. 198.

(*f*) *Whitley v. Fawsett*, Sty. 12.

(*g*) As to these steps, see Enforcement of Rate, *ante*, p. 124.

(*h*) *Neave v. Weather*, 3 Q. B. 984; 12 L. J. Q. B. 32, *sub nom*, *Neave v. Wrather*; 7 Jur. 168; *Stafford v. Hamston*, 2 Bro. & Bing. 691. In

Grounds for
resisting.

reply to show any legal grounds for resisting the defence. He will succeed if he shows that the Commissioners have acted without jurisdiction (*a*), or that the inquisition, rate or warrant is irregular (*b*). Where the collector of the Commissioners had seized the plaintiff's goods which the warrant did not authorise, and judgment was given against him, but not against the Commissioners who had issued the warrant, Patteson, J. observed that the Commissioners, in issuing their warrant, did not stand in the situation of a sheriff, but rather that of a justice (*c*). It may be proved that the lands on which the charge is made are not within the level taxed, or not likely to receive benefit from the works of the Commissioners (*d*); that the person assessed is not owner or occupier (*e*); or that others who have rateable property and are benefited in common with himself are omitted from the rate, in consequence of which the rate is partial and unequal (*f*). The rate must also be according to the inquest, and if made upon other persons than those who are found by the inquisition to be benefited or to be liable, it is irregular (*g*), and it ought not to be on the persons of the inhabitants (*h*).

Warren *v.* Dix, 3 C. & P. 71, it was considered by Lord Ellenborough, C. J., that a party who had not traversed the presentment was estopped from bringing an action for illegal distress, but it seems the point was to have been raised in a special case, and this was never argued.

(*a*) Wingate *v.* Waite, 6 M. & W. 739; Brungy *v.* Lee, Sty. 178.

(*b*) *Ante*, presentment of jury, p. 87 *et seq.*

(*c*) Pocock *v.* O'Shaunessy, 6 A. & E. 807. See also Duke of Newcastle *v.* Clark, 8 Taunton, 602, at p. 627.

(*d*) Whitley *v.* Fawssett, Sty. 13; Viner's Abr. tit. Sewers, p. 427; Master *v.* Scroggs, 3 M. & S. 447; Brungy *v.* Lee, Sty. 178; R. *v.* Wright, 2 Keb. 42; Ansehn *v.* Barnard, 2 Keb. 675.

(*e*) Tucker *v.* Maitland, 24 L. T. Journal, 111; see Milward *v.* Caffin, 2 W. Bl. 1330.

(*f*) Whitley *v.* Fawssett, Sty. 13.

(*g*) Hackney Level *v.* Commissioners of Sewers for Tower Hamlets, K. B. 14 May, 1825; thus cited in Phillips on Evidence, vol. ii. 437, 7th ed., possibly the same case as R. *v.* Tower Hamlets Commissioners of Sewers, 9 B. & C. 516.

(*h*) *Custodes Libertat. v.* Inhabitants of Outwell, Sty. 184.

RATEABILITY OF PROPERTY OF COMMISSIONERS OF SEWERS TO THE POOR RATE.

Apart from the question of rating by Commissioners of Sewers ^{Poor rate.} of lands within their jurisdiction, is the rateability to the poor rates of the property of the Commissioners vested in them in their official capacity. It may be stated, as a general proposition, that Commissioners of Sewers are not rateable to the poor rate in respect of the sewers embankments and works for the improvement of the drainage, unless they are the subject of beneficial occupation; but they are rateable in respect of land or buildings occupied by them in connection with the sewers, which have an occupation value (a). And so much of the property of the Commissioners as is liable to be rated to the relief of the poor should be rated at the value for which ^{Basis of rateability.} the same would let to a hypothetical tenant from year to year, supposing it was not used for the purpose of main drainage, but was entirely disconnected therefrom, and applied to any purpose for which it might be available (b).

(a) *R. v. Metropolitan Board of Works*, L. R. 4 Q. B. 15; 38 L. J. M. C. 24. See also the following decisions where the rateability of the property of Commissioners, and other drainage and navigation authorities, e.g., dams, locks, weirs, sluices, cuts, tolls, etc. to the poor rate, have been considered. *R. v. Sculecoates*, 12 East, 40; *R. v. Mersey & Irwell Navigation Company*, 9 B. & C. 95; *R. v. Lower Mitton*, 9 B. & C. 810, *per* Bayley, J.; *R. v. Thomas*, 9 B. & C. 114, *sub nom.* *R. v. Avon Company*, 4 M. & R. 23; *R. v. Aire & Calder Navigation*, 9 B. & C. 820; 4 M. & R. 728; *R. v. Aire & Calder Navigation*, 3 B. & Ad. 139; *R. v. Chelmer & Blackwater Navigation*, 2 B. & Ad. 14; *Bruce v. Willis*, 11 A. & E. 463; *R. v. Commissioners of Salter's Lode*, 4 T. R. 730; *R. v. Mitton*, 3 B. & A. 112; *R. v. Cardington*, 2 Cowp. p. 581; *R. v. Nicholson*, 12 East, 330; and as to the rateability of a lighthouse maintained by tolls levied upon vessels using the Mersey Docks or entering the port of Liverpool, see *Mersey Docks and Harbour Board v. Overseers Llancilian*, 31st May, 1884, not yet reported.

(b) *Metropolitan Board of Works v. Overseers of West Ham*, L. R. 6 Q. B. 193; 40 L. J. M. C. 30; see also *Commissioners of New Shoreham v. Lancing*, L. R. 5 Q. B. 489; 39 L. J. M. C. 121.

CHAPTER VI.

LIABILITY TO REPAIR.

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INDEPENDENTLY of the ordinary liabilities of contributing to rates for the general purposes of the Commission, in many parts of the country landowners are bound by virtue of their tenure, and for other reasons (which will be considered in this chapter), to repair, or to contribute to the repair of sea-walls, banks and defences of like character. The origin of these obligations is most difficult in the majority of cases to trace. In some instances the lands subject to the liability are not within the limits of the Commission, and it has been asserted that this state of things arises from some arrangement made between the Crown and the individuals, by which, in consideration of being excluded from the authority of the Commissioners of Sewers, the latter became bound to keep up at their own charges the defences in question. But ordinarily the lands chargeable with this liability to repair, or to contribute to the repair, are within the area of the Commission, and the origin of the obligation which has thus become engrafted on the property can only be surmised by an inquiry into the history of the particular case.

Metropolitan
Commissions
of Sewers.

Many examples of these forms of liability are found in the records of the Sewers Commissions which used to exist within the Metropolitan area. In the Greenwich Commission various persons were liable by reason of tenure, to scour the ditches and cut the weeds, while in some cases the works extended to strengthening and heightening the bank or wall of the Thames. The general practice in these cases was (and still is in certain parts of the country) to impanel a jury, who presented the parties liable, upon which the Court caused notices to be served, ordering execution of the works, on pain of forfeiting certain specified sums.

Established by
presentment of
jury.

Before the Land Drainage Act, 1861 (24 & 25 Vic. c. 133, s. 33), these liabilities were necessarily established by the presentment of a jury, for in a case where in a parish consisting of two districts which had been immemorially assessed to the repairs of a sea-bank, and one had been rated exclusively to the repair without the presentment of a jury, the Court held that the rate so made was void for want of the presentment (*a*).

DESCRIPTIONS OF LIABILITY.

PRESCRIPTION.

Prescription.

The greater number of obligations to repair are imposed by prescription, and this head of liability is therefore placed first as being most important (*b*).

The liability by prescription, established by evidence of immemorial usage, to repair, &c., attaches to the land and not to

(*a*) *Wingate v. Waite*, 6 M. & W. 739. By s. 33 of the Land Drainage Act, 1861, 24 & 25 Vic. c. 133, presentment by jury is rendered unnecessary. See *ante*, p. 94.

(*b*) *Callis* (115-122) divides liabilities to repair, and places them under the following heads:—Frontage, Ownership, Prescription and Custom, Tenure, Covenant, and *Usus Rei*. But his arrangement, though doubtless of historical value, does not illustrate the relative importance of each at the present day, and therefore the order taken in the text has been preferred.

the person (*a*). Consequently, a prescription that every occupier used to repair a defence was held to be too general and void, because it would include tenants at will, or at sufferance, or a disseisor, persons who could not charge the land (*b*).

A liability founded on custom is almost identical with prescription; but there is this distinction, that custom may attach to the person. Thus Callis says: "Bodies politick and corporate may be bound to repair without reference to their property without making mention in the presentment or indictment that they are to do the same *ratione talis messuagii terræ aut tenementi*" (*c*); and the year books supply an instance of a prior being presented to repair, and the presentment was held good although it charged no land. Custom.

The point is thus mentioned by Grant (*d*): "With respect to an indictment of presentment for not repairing sea-banks, &c., there is this difference between individuals and corporations, that whereas the former are only liable *ratione tenuræ*, yet a corporation may be liable to perform the duty in consequence of their having accepted a charter imposing it, although they have no land by the grant, and therefore an indictment charging that a corporation had, time out of memory, repaired, is good" (*e*). Callis mentions, at the same place, a curious liability *ratione resiantie* citing 19 Hen. VIII.

RATIONE TENURÆ.

The liability to repair *ratione tenuræ* is of frequent occurrence in various Commissions of Sewers. The individual is said *Ratione tenuræ.*

(*a*) Prescription doth not bind or tie one to the repair of anything, unless it be *ratione tenuræ*. Callis, 116.

(*b*) *Austye v. Fawkener*, Cro. Eliz. 446; 7 Hen. IV. 31; 21 Ed. IV. 38; 19 Hen. VII.

(*c*) Callis, 116, citing 21 Edw. IV. c. 38; 44 Edw. III.; Fitz. N. B. tit. Bar. Plac. 203.

(*d*) On Corporations, p. 284.

(*e*) See *Henly v. Mayor of Lyme*, 5 Bing. 91; affirmed, 3 B. & Ad. 77, and affirmed by the House of Lords, 1 Bing. N. C. 222.

to be liable by reason of the tenure of his lands, and the presentment of the jury (*a*) in such a case alleges that he, and those whose estate he has in the property in question from time immemorial, by reason of the tenure of their property, have been used to repair, &c., the defence. This form of liability differing from prescription, may or may not be founded upon immemorial usage, though immemorial repairs are evidence of the former obligation.

Origin of liability.

The property was doubtless originally held in many cases by service of repairing, apart from any question of benefit which it could derive by the execution of the work, for there are numerous instances of the lands chargeable being situated a considerable distance from the particular defence. Thus, in the county of Monmouth, persons are charged with the repair of the works within the level, although they have no land on either side of or abutting upon the sea-bank. Again, the obligation is sometimes said to originate in an agreement to repair in consideration of the individual being released from the ordinary rates payable in the district.

Corporation liable *ratione tenuræ*.

A corporation may be bound *ratione tenuræ*, as where the prior of St. Mark's, in Bristol, was obliged by the tenure of his land to repair a common sewer (*b*); and in another case, on an action brought against a corporation for non-repair of a bank, it was held they were bound to repair it *ratione tenuræ* (*c*).

Who liable.

The burden of repair lies upon the person who, according to the statute of Hen. VIII., "hath or holdeth the estate." In a recent case (*d*), the mortgagor of an estate not in actual possession, but in possession by his tenant and in receipt of the rents and the profits, was charged with the repair of a sea-bank *ratione tenuræ*. But a rule for a *certiorari*, which had been obtained to

(*a*) See form of presentment, *ratione tenuræ*, Appendix B. *post*.

(*b*) 12 Hen. IV. fol. 7; Callis, 117.

(*c*) Anon. Lofft. 556; evidently the same case as Mayor of Lynn *v.* Turner, 1 Cowp. 86.

(*d*) R. *v.* Baker, L. R. 2 Q. B. 621; 36 L. J. Q. B. 242.

quash the presentment, was discharged by the Court, as they held that it was not necessary for the Commissioners to inquire whether the prosecutor had the legal estate or not, it being sufficient that he was in receipt of the rents and the profits, thus satisfying the terms of the statute. It is worthy of notice that in the judgment of this case it was observed by Cockburn, C. J. (although he did not decide the point), that where the obligation to repair arises *ratione tenuræ*, it must be the possession of a higher estate than that of mere tenants from year to year to make the holders liable to a presentment for non-repair (a).

It may here be observed that to establish the obligation *ratione tenuræ* evidence of reputation is admissible, the matter being one relating to public interest (b). Obligation how established.

GRANT.

An obligation to repair may arise from the terms of a grant (c). Such a liability was created in the reign of Charles I., when the Crown granted the borough of Lyme Regis to the Grant.

(a) *R. v. Baker*, L. R. 2 Q. B. 621, p. 628; 36 L. J. Q. B. 242. The point, however, is by no means clear. In *Commis v. Massau*, March, 198, it is said that the Commissioners of Sewers may charge the lessor or lessee at their discretion, though it were for a new defence, Callis, 143. The cases upon liability *ratione tenuræ* to repair bridges are numerous, but the effect of the decisions is to put the burden upon the occupier. See *Reg. v. Bucknell*, 7 Mod. 55.; 2 L. Raym., 792, where Holt, C. J., says every tenant in possession, be he but tenant for years or at will, is bound to repair, and he draws a distinction in this respect between the obligation *ratione tenuræ* and by prescription. In *Baker v. Greenhill*, 3 Q. B. 148; 6 Jur. 710, the occupier was said to be responsible for the non-repair of a bridge, but entitled to look for reimbursement to the owner who held the land by the service of repair. See also *R. v. Watson*, 2 L. Raym., 856; *R. v. Sutton*, 3 A. & E. 597; *R. v. Ramsden*, E. B. & E. 949—a case of *ratione clausuræ*.

(b) *R. v. Bedfordshire Inhab.*, 4 E. & B. 535; 24 L. J. Q. B. 811.

(c) Sir Edward Coke, in Porter's case, 1 Rep. 26 a, writes thus: "Any man at this day may give lands and tenements or hereditaments to any person or persons and their heirs for . . . reparation of churchies, highways, bridges and causeways." See also Com. Dig. tit. Uses, 4, 7.

Mayor and burgesses, and directed that they and their successors should repair and maintain all banks and sea shores, &c., within the borough (*a*). So, too, in a case where lands were granted free of charge on condition that the owner embanked and kept from inundation all the lands in the Isle of Canvey (*b*).

COVENANT.

Covenant.

If a person binds himself by deed to execute repairs, he is liable by that covenant. The obligation, however, will not be binding on his heirs unless there are assets descending to them (*c*). Where a lessee had covenanted with his lessor, the Court held that if the land and the covenantor were within the jurisdiction of the Commissioners, they could take notice of the covenant, but otherwise if the covenant had proceeded from a stranger (*d*).

In a case before the Master of the Rolls in 1868, the owners in fee of five adjoining estates had mutually covenanted with each other that a certain wall of common benefit to them all should be repaired and maintained at the expense of the owners for the time being. The sea-wall was in existence at the time of the deed, and the Master of the Rolls held that the case came within the first resolution in Spencer's case, in other words that the covenant to repair by the persons named in the deed, their respective heirs and assigns, in proportion to an acre-scut, was one which extended to a thing *in esse*, the thing to be done by force of the covenant being annexed and appurtenant to the

(*a*) *Henly v. Mayor and Burgesses of Lyme*, 5 Bing. 91; affirmed 3 B. & Ad. 77, and affirmed by the House of Lords, 1 Bing. N. C. 222.

(*b*) *R. v. Vange*, 3 Q. B. 242; 11 L. J. M. C. 117.

(*c*) *Callis*, 118.

(*d*) *Commings v. Massam*, March, 198-201; *Callis*, 118-120. *Callis* makes the following distinction with reference to tenure, prescription and covenant. If the land is charged by tenure, under any circumstances the person in possession must repair; if by prescription, the heir is not necessarily bound, even if he have assets from his ancestor; if by covenant, the heir is bound if he have assets.

land conveyed, which went with the land binding the assignee, although not mentioned by express words (*a*).

FRONTAGE.

It was believed up to a comparatively recent period, that if Frontagers. the lands of an individual adjoined the sea, an obligation was thereby created to protect them, and to maintain any defences which existed. Such was the opinion of Callis (*b*).

The hypothesis was that some person must be bound to maintain the walls and other defences against the sea, regarding it as a public duty (*c*), and it is undeniable that support is given to that view by Lord Tenterden in a case decided in 1823 (*d*), and by

(*a*) *Morland v. Cook*, L. R. 6 Eq. 252; 37 L. J. Ch. 825. An estate consisting of fen land was charged by a local but public Act of Parliament with certain drainage taxes, and it was held that the purchaser of the estate at a sale by auction was not entitled to compensation for those taxes, though he had no express notice of them, *Barraud v. Archer*, 2 Sim. 433.

(*b*) Callis, 115, 121, the custom of Frontagers. His authority is a case from the *Liber Assize*, 37 Edw. III.: "And in 37 Lib. Ass., pl. 10, it seems that the frontagers are bound to the repairs; and in 8 Hen. VII. he whose grounds are next adjoining to a highway is bound to repair the same. . . . The ownership of a wall, or bank-wall or other defence, is a sufficient warrant to impose the charge thereof upon him, without being tied thereto by prescription, as it appears in 8 Hen. VII. fol. 5, and it stands with reason that every man should be bound to repair his own, and the consideration is also moving for that his grounds which lie nearest the waters are soonest subject to drowning, and if any increase be upon the small rivers, it falls to his share." He also relies upon the case of the Isle of Ely, 10 Rep. 141 *a*, and the decision of Sir Edw. Coke. The real value of these authorities and their true aspect is admirably dealt with by Cockburn, C. J., in *Hudson v. Tabor*, 1 Q. B. D. 225, pp. 231-233; 45 L. J. Q. B. 190; and his reasoning is wholly approved of by Lord Coleridge in the Court of Appeal in the same case, 2 Q. B. D. 290; 46 L. J. Q. B. 463. See Fitz. N. B. 113, 9th ed.

(*c*) *Henly v. Mayor of Lyme*, 5 Bing. 91; in error, 3 B. & Ad. 77; in the House of Lords, 1 Bing. N. C. 222; *Mayor of Lynn v. Turner*, 1 Cowp. 86.

(*d*) *R. v. Commissioners of Sewers for Essex*; 1 B. & C. 477, where it is said: "By law the obligation to repair sea-walls may be cast upon particular individuals or upon all the owners of land in the level. Upon which

Lord Romilly in 1868 (*a*). It is, however, unnecessary to pursue this interesting question any further, for the judgments in the recent case of *Hudson v. Tabor* (1876, 1877) conclude it (*b*). In that case the plaintiff was tenant of certain lands in Essex, which abutted upon a creek communicating with the sea, and the defendant was the owner of lands adjoining those in occupation of the plaintiff. Part of the plaintiff's and defendant's land was protected from the sea by a wall or earthen embankment passing continuously from one to the other. Evidence was given that a sea-wall had been maintained. After an extraordinary high tide a large body of water flowed over the defendant's wall, making its way on to the plaintiff's land and doing considerable damage. The plaintiff brought the action against the defendant for having neglected to maintain the wall. It is clear that had there been evidence that the defendant was bound by prescription to maintain it, the plaintiff would have recovered (*c*), but of this there was none, and the Court held that the mere fact of each owner having for his own protection kept up the wall did not establish a liability to do so for the protection of an adjoining owner, and that the length of time during which such repair had continued added nothing to the argument. This was the first point in the case. Having therefore disposed of it, the Court then referred to the liability

class the burden is to fall in each particular case must depend upon the usage if any can be established." The contest in the case was not between frontagers, but between frontagers and Commissioners of Sewers, and the affidavits were held in fact to establish the prescription.

(*a*) *Morland v. Cook*, L. R. 6 Eq. 252, p. 267; 37 L. J. Ch. 825, where it was held that there is a *prima facie* common law liability from which the purchaser of particular lands must show himself exempt. See also *Earl Devonshire v. Gibbons*, Hardres, 169.

(*b*) *Hudson v. Tabor*, 1 Q. B. D. 225; 45 L. J. Q. B. 190; affirmed 2 Q. B. D. 290; 46 L. J. Q. B. 463; and followed with approval in *Att.-Gen. v. Tomline*, 12 Ch. D. 214; 48 L. J. Ch. 593; 14 Ch. D. 58; 49 L. J. Ch. 377.

(*c*) *Keighley Case*, 10 Rep. 139 *a*; modifying the decision in *Rooke's Case*, 5 Rep. 100 *a*; *R. v. Commissioners of Essex*, 1 B. & C. 477. *Fitz. Nat. Brev.* 939.

which it was alleged existed at common law. After commenting upon Callis and the cases in the year books (*a*), which it was not considered bore out the construction put upon them by that learned writer, for one in reality came under the head of prescription, and in the others the subject-matter was in no way analogous to a sea-wall, the Court dwelt upon the general purposes of the statutes relating to Commissions of Sewers. It had been argued that it was the duty of the Crown to protect the lands adjoining the sea from being flooded, and that therefore the liability must have been capable of enforcement. (*b*) But the Court clearly demonstrated that this was not so, that it was the right, as part of the prerogative of the king, to defend the land from waste by the sea, and that the statutes of Sewers did but confirm the common law in this respect, while regulating the discretion which had existed in the Crown and prescribing the form of Commissions (*c*).

It was further laid down that the whole of the procedure relative to licences granted by the King, together with the machinery of the successive Statutes of Sewers, rebutted the notion that at common law the frontager could be compelled by

(*a*) *See ante*, p. 143, note (*b*), 18 Edw. III. ; 37 Lib. Assiz. Edw. III. pl. 10; 8 Hen. VII. fol. 5.

(*b*) *Henley v. Mayor of Lyme*, 5 Bing. 91; in error, 3 B. & Ad. 77; in House of Lords, 1 Bing. N. C. 222; in *Att.-Gen. v. Tomline*, 12 Ch. D. 214; 48 L. J. Ch. 593; 14 Ch. D. 58; 49 L. J. Ch. 377. Brett, L. J., says: "I confess that (*i. e.*, the duty of the king to protect the realm) is a duty of what is called imperfect obligation. Supposing the king were to neglect that duty, I know no legal means—that is, no process of law, common law, or statute law—by which the Crown could be forced to perform that duty, but there is that duty of imperfect obligation on the part of the royal authority, and that duty on the part of the king gives a corresponding right to the subject, but, inasmuch as the duty of the king seems to me to be a duty of imperfect obligation, the right of the subject is also an imperfect right."

(*c*) The form of Commission in 6 Hen. VI. c. 5, contains this passage: "*Nos pro eo quod ratione dignitatis nostre regie ad providendum salvationis regni nostri Anglie circumquaque sumus astricti.*" *See* the recital in 23 Hen. VIII. c. 5. Fitz. N. B. 113; *Isle of Ely Case*, 10 Rep. 141 a; *Heuly v. Mayor of Lyme*, *supra*.

action to repair defences as in this case (*a*). It must be remembered that if a Commission of Sewers had had jurisdiction over this particular wall, the result might have been very different on the question of prescriptive evidence, and Cockburn, C. J., (*b*) remarks that the proper remedy in such a case is to procure the issuing of a Commission, in which, by an equitable adjustment, the interest of all is secured.

Although, according to the law thus laid down, a frontager is not compelled to maintain a sea-wall, yet if his land is exposed to inroads of the sea, and he or Commissioners of Sewers acting in the interest of several landowners choose to erect or maintain a sea-wall, or to form any protective work for his lands against the sea, assuming that it is not unnecessary or improper, he is not responsible for injury that adjoining lands may suffer from the consequences of their enterprise (*c*). At the same time he will be restrained from doing anything which will have the effect of interfering with or destroying a natural barrier. In a case tried upon an information by the Attorney-General to restrain the defendant from removing shingle forming a natural bank, Fry, J., granted the injunction, and rested his judgment upon the ground of the duty of the Crown to afford protection to the land of the subject, and in the course of some observations upon the case of *Hudson v. Tabor*, drew the distinction between the case of an artificial bank or wall and a natural protection (*d*).

The principle of the decisions relating to persons protecting

(*a*) Fitz. N. B. 515; case of the Isle of Ely, 10 Rep. 141 *a*. Before there is licence to repair a trench coming from the sea, &c., there should be a writ *ad quod damnum* to inquire what damage it will be to the king and others, and Coke says that without a proper return the works would not be done.

(*b*) *Hudson v. Tabor*, 1 Q. B. D. at p. 234; 45 L. J. Q. B. at p. 199.

(*c*) *R. v. Commissioners of Sewers for Pagham*, 8 B. & C. 355.

(*d*) *Att.-Gen. v. Tomline*, 12 Ch. D. 214; 48 L. J. Ch. 593; 14 Ch. Div. 58; 49 L. J. Ch. 377. See also the report of a case, *Williams v. Nicholson*, which was a prosecution for removing shingle from the foreshore at Withernsea, published by Butterworths, 1870.

But frontagers may protect lands from the sea.

Must not destroy natural barrier.

Frontagers on tidal river.

lands fronting the sea is not applicable to the case of frontagers upon a river, although tidal (*a*).

USUS REI AND OWNERSHIP.

Callis also mentions *usus rei* as a ground of liability, and *Usus rei.* illustrates it by such instances of user as that of a river for boats, *liberum passagium*, a ferry, or an engine for drawing water, citing as his authority the Lib. Ass., where occurs a case of persons bound to the repair of the river because of their ownership and right of piscary, and the liability asserted of townships having a right of passage through the river (*b*).

Ownership (*c*) of a bank or wall he also classes with *usus rei*, *Ownership.* and frontage (*d*) but he is careful to note that these obligations to repair only exist in default of a better ground of liability, such as prescription, custom or tenure. At the present time, however, no common law liability can be said to exist in respect

(*a*) Att.-Gen. *v.* Earl of Lonsdale, L. R. 7 Eq. 376; 38 L. J. Ch. 335, citing the case of *R. v. Commissioners of Sewers for Pagham*, 8 B. & C. 355.

(*b*) 120-122. See the case commented upon and explained by Cockburn, C. J., in *Hudson v. Tabor*, 1 Q. B. D. p. 232, 233; 45 L. J. Q. B. 190, at p. 198. See also 38 Lib. Ass. pl. 15, Case of Bridges, 13 Rep. 33.

(*c*) In the case of *Inhabitants de Oldberry v. Stafford*, 1 Sid. 145, it was moved on *certiorari* to quash an order of Commissioners of Sewers on J. S. to repair the flood-gates of a mill, but it appearing that the prosecutor was the owner, the Court held that he ought to repair. In *R. v. Matthias*, 2 Jur. 13, one of the objections to a presentment to repair a bank was that the person charged was owner, and that he had erected it for his own benefit 25 years previously. The Court quashed the presentment on other grounds, and the point was not decided. See also *Syson v. Johnson*, 8 B. & C. 795.

(*d*) It was probably on some such ground as this that Commissioners of Sewers sought to charge a navigation company with the duty of cutting weeds in their river. The Court, however, held, in the absence of any express enactment in their private Act, that there was no such obligation cast upon the company, since their duties were confined to matters connected with navigation. *Parrett Navigation Co. v. Robins*, 10 M. & W. 593; 3 Rail. Ca. 383; 1 Gale & D. 223. See also *Cracknell v. Mayor, &c.*, of Thetford, L. R. 4 C. P. 629; 38 L. J. C. P. 353.

of *usus rei* and ownership, any more than in the case of frontage, which as we have seen, the Courts refuse to recognise (*a*).

EXONERATION FROM LIABILITY.

Exoneration
from liability.

Extraordinary
tide.

In ordinary cases, persons bound on account of any of the above reasons are exonerated if an extraordinary high tide, tempest, or *vis major* overthrows the defence which they are liable to maintain or repair, provided they are not in default. In such case the expense falls on the level (*b*). At the same time, in the face of authorities which undoubtedly appear to support this proposition, there is a decision in the Queen's Bench in the year 1840 (*c*) where it is said by Lord Denman, that a liability of a more extended nature may exist at law. That learned Judge speaks of the liability in these terms; "After argument and consulting the authorities, we are clearly of opinion that a liability of a more extended nature may well exist by law. Many prescriptive liabilities to repair must have existed before the date of the earliest statute for the issuing of Commissions of Sewers; many such may now exist where no Commission has issued. In such cases there is no legal reason to limit the liability by anything but the ability of the party liable on the value of the lands granted, as the case may be." And further, according to the authority of this case upon a presentment against an owner for want of repair, it ought not, in

(*a*) *Hudson v. Tabor*, 1 Q. B. D. 225; 45 L. J. Q. B. 190; 2 Q. B. D. 290; 46 L. J. Q. B. 463, *see ante*, p. 144.

(*b*) *Callis*, 146. *Rook's Case*, 5 Rep. 99 *b*; *Keighley's Case*, 10 Coke 139 *a*; *Griffith's Case*, Moore, 68, *id.* 73; Co. Litt. 53; 2 Inst. 305; *Commins v. Massam*, March, 198; *R. v. Commissioners of Sewers for Somerset*, 8 T. R. 312; *R. v. Commissioners of Sewers for Essex*, 1 B. & C. 477; *see also* *River Wear Commissioners v. Adamson*, 2 Ap. Ca. 743; 47 L. J. Q. B. 193; *Anon. Dyer*, 33 *a* pl. 10; *Nitrophosphate Manure Co. v. Lon. & S. Kath. Docks*, 9 Ch. Div. 503; 37 L. T. N. S. 330.

(*c*) *R. v. Leigh*, 10 A. & E. 398; 2 P. & D. 357. Evidence of liability may be given from orders of Courts of Sewers, though not proved to have been carried into effect, *sed quare* as to the admissibility of presentments of juries, *ib.*

point of law, to be left as the sole question for the jury, whether the walls, &c., are in a condition to resist *ordinary* weather and tides, but it is a question to be determined on the evidence, whether the proprietor was bound to provide against the effects of *ordinary tempests only, or of extraordinary ones also.*

A case (*a*) of considerable importance upon the question of liability to repair against damage caused by an extraordinary storm and high tide recently came before the Queen's Bench Division, and it seems desirable to dwell at some length upon the facts of that case, if only for the reason that the subject has not received judicial consideration since the year 1840. The prosecutor, who was the owner of certain lands within the jurisdiction of Commissioners of Sewers, upon which was a sea-wall, sued for a mandamus to reimburse himself for the expense he had incurred in repairing damage to the wall caused by the effect of the storm and high tide of 18th January, 1881. It was sought by the Commissioners to impose this extraordinary liability upon the prosecutor by evidence of certain documents which were found amongst the books and papers in the possession of the Commissioners, the most important of which were certain jury presentments (*b*). The first presentment to which the attention of the Court was directed was one of the year 1831, which alleged that the sea-wall in question was in a ruinous and defective state

R. v. Fobbing Levels.

(*a*) R. v. Commissioners of Sewers for Fobbing Levels, 53 L. J. Q. B. (to be reported). The facts were stated in the form of a special case.

(*b*) Among these documents was a draft of an affidavit in the handwriting of the Commissioner's Clerk in the year 1791, which had been used for the purpose of applying for the issue of a new Commission, and which, in furtherance of the application, alleged that breaches had been made in the sea-walls by inundation caused by an extraordinary high tide; but the Court were unable to infer from the language of the document that the tide in question was so high that it could not have been foreseen, or that there was no negligence on the part of the then owner, and it was remarked in the judgment that the allegations contained in the document might be coloured by the anxiety of the clerk for the renewal of his office. This evidence was set out in the special case, subject to the objection taken to it by the prosecutor.

and condition for want of due reparation and amendment, which was ascribed to the negligence and default of the owner of the farm, but the owner's neglect appeared so clearly, from the evidence given before the jury, that the Court held that the presentment was no authority for the existence of a liability to repair against extraordinary occurrences. There was another presentment of the year 1836, after the passing of the statute 3 & 4 Will. IV. c. 22, which was much relied on by the Commissioners. The presentment alleged a liability of precisely similar form to that which was so critically examined in the case of *R. v. Warton (a)*, and which, in that case, was a presentment under s. 13 of the Act (*b*). Commenting upon this presentment, the Court

(*a*) 31 L. J. Q. B. 265; 2 B. & S. 719. See also *Taylor v. Loft*, 8 Ex. 269; 22 L. J. Ex. 131.

(*b*) Sec. 13. "And whereas doubts have arisen whether a presentment of a jury is not necessary on each and every occasion to repair defences and works within the jurisdiction of Commissioners of Sewers, be it therefore enacted that, whenever, under any Commission now in force, or which shall hereafter issue, a jury shall have found and presented that any person, body politic or corporate, is or are liable to and ought to maintain and repair, or contribute to the maintenance and repair, of any defence, wall, bank, sewer, or other work within the jurisdiction of the Commission of Sewers acting under or by virtue of such Commission, in respect of any lands, tenements or hereditaments, or common of pasture or profit of fishing, it shall not afterwards, during the continuance of such Commission, be necessary to inquire by jury and obtain a presentment upon any subsequent wants of amendments and reparation of the same defences, walls, banks, sewers, or works, or any of them, but such persons, body politic or corporate, so presented as aforesaid, and the owners and occupiers for the time being of such lands, tenements, or hereditaments, or common of pasture, or profit of fishing, shall be liable, from time to time, to maintain and repair or contribute to the maintenance and repair of such defences, walls, banks, sewers, and other works, according to such presentment; and it shall and may be lawful for the Commissioners of Sewers to decree, order and direct the same to be maintained and repaired by such person, body politic or corporate, from time to time during the continuance of such commission accordingly."

Sec. 46. "And whereas in many cases the burthen of supporting, repairing and maintaining a common sea-wall, bank, sewer or other work may be divided among divers persons, each of whom may be liable to the repair of a certain portion thereof; and in order to avoid the necessity of

observed as follows: "This presentment appears to have been made under the combined operation of ss. 13 and 46 of that Act, but it does not appear at this time that the sea-wall was out of repair, and we are of opinion that that section does not warrant a presentment of liability to repair only where the wall is alleged to be out of repair, and that if the wall is out of repair in part it only warrants a general presentment of such parts as may be out of repair. There is no power to traverse a presentment where no default is alleged, and it is obvious that a trial of a presentment where no default was alleged, would impose an intolerable burden on the person supposed to be affected by such presentment, as it might happen that no default would occur while they continued owners."

Pausing at this point, it is worthy of note that neither in this case nor in *R. v. Warton (a)* was any objection taken in the argument to this *form* of the presentment, and, as is remarked above, the presentment in both instances is *verbatim* the same. The view, therefore, taken by the Court of this section seems to show that where a presentment is once made against an

presenting each such person separately in the respect of the non repair of such common sea-wall, bank, sewer, or other work, be it further enacted that it shall be lawful for any sewers jury, bailiff, surveyor, expeditor, or other person, to present the whole of such sea-wall, bank, sewer, or other work respectively, or such part thereof respectively as shall at any time be out of repair or require cleansing, and to allege in such presentment what persons or bodies politic or corporate, are liable to the repair thereof, and also to specify what part or portion of such sea-wall, bank, sewer, or other work each such person, body politic or corporate, is bound or liable to repair, without making a separate and distinct presentment against each such person or body politic, or corporate; and upon twenty-eight days notice of such presentment to be left with, or at the last or usual place of abode or office of such person, body politic or corporate, each such person, body politic or corporate, shall be at liberty to traverse the allegation contained in such presentment as to his liability to the repair of such part of such sea-wall, bank, sewer, or other work as in such presentment is alleged against him; and the trial of such traverse shall be thereupon had as if such presentment had been solely and exclusively made against such person, body politic or corporate, so traversing the same as aforesaid."

(a) *Supra*.

owner in default, and that presentment has shown a want of repair, an order in virtue of this section can be made upon the same owner in respect of subsequent defaults; and it is presumed that an order framed under s. 13 of 3 & 4 Will. IV. c. 22, which there was no power to traverse, cannot now be the subject of an appeal to Quarter Sessions under the Land Drainage Act, 1861, inasmuch as it is not an order which they (the Commissioners) might, but for s. 33 of the latter Act, have made with presentment.

Another general presentment was made in 1861, which was held by the Court to be open to the same objections as that of the year 1836.

In 1874, the owners of the land, bound, *ratione tenure*, to repair, were ordered to raise the height of the wall in consequence of the damage caused by a tide higher than any before recorded, and the owners did the repairs in question; the Court, however, declined to accept such evidence as sufficient to establish the fact from a proved usage that there was a liability to repair against the act of God. It was pressed by counsel in argument for the Commissioners that the fact that so far as could be gathered from the records extending back to 1729, no repairs had been done by the level, and that damage in that interval must have occurred at times from the act of God, pointed to the existence of the extensive liability contended for; but the Court held that it was quite as reasonable to conjecture that nothing of an extraordinary character had happened between 1729 and 1881, as to suppose that it had taken place, and repairs had been done by the frontagers without any trace being left on the records of the Commission; and further, that nothing ought to be *presumed against* a frontager, who was virtually defending himself from an attempt to impose upon him a large and indefinite liability, and that the evidence to satisfy the Court should be such as would satisfy a jury of reasonable men upon the trial of a traverse of a presentment. From the evidence therefore of which this

outline is given, the Court declared that the Commissioners of Sewers had failed to prove that the prosecutor was liable to make good all damage, however caused, and that the liability only extended to damage which could be traced to the negligence of the prosecutor or his predecessors.

It is also important to observe certain propositions of law which may be deduced from the judgment in this case. (1.) In establishing the liability of a frontager, the *onus probandi* is upon the Commissioners, who must show from usage the extent of the liability, whether arising by tenure, prescription, or custom, and that the damage which it is alleged the frontager is bound to repair, is such as falls within the ambit of the liability so made out. (2.) When repairs have been executed in accordance with the presentment of a jury, or an order of Commissioners, until the presentment is successfully traversed, or the order appealed from reversed by the Court of Quarter Sessions, or either presentment or order is quashed on *certiorari*, the presentment or order stands, and while it stands, a mandamus to reimburse will not be granted by the Court; but where repairs have been done on the direction of the marsh bailiff or other officer of the Commissioners, the mandamus will go to reimburse the frontager for expenses so incurred (*a*). (3.) The question of liability to repair, whether against ordinary or extraordinary occurrences, is for the jury, following the decision of the Queen's Bench in 1839 (*b*). And accordingly, where the practice is under the Land Drainage Act, 1861, it is within the jurisdiction of the Commissioners to make an order of like tenor with the finding of a jury.

Callis also mentions other instances where, in his opinion, liability would, of necessity, be cast upon the level, *e.g.*, where the lands in respect of which the obligation arises are "overthrown by the sea" (*c*); where the tenure becomes extinguished; Extinguish-
ment of tenur

(*a*) R. v. Essex, 8 T. R. 312.

(*b*) R. v. Leigh, 10 A. & E. 398.

(*c*) Keighley's Case, 10 Coke, 139 *a*.

Insufficiency
of estate.

and the land escheats; where the holder of the lands is unable, or incompetent, to make the repairs; or where lands are held by yearly payment of ten shillings towards the repair of a wall, and the money will not defray the charge (*a*).

Construction of
new work.

The liability by prescription, *ratione tenure*, &c., becomes extinguished if a new work is erected in lieu of the one to which the prescription, &c., attached, and it is submitted that any substantial (*b*) alteration of the structure would, in the same way, determine the obligation.

COMMUTATION OF LIABILITIES.

Commutation
of liabilities.

All these liabilities may now be commuted (*c*), (24 & 25 Vic. c. 133, s. 34), the Commissioners have first to obtain the consent of the Inclosure Commissioners (*d*). The commutation may be by way of gross or annual charge on the land, which is recoverable as a tithe rent-charge, with priority over other incumbrances (s. 35), and the record of such charge is to be deposited in the office of the Clerk of the Peace of the County (s. 36). All existing liabilities of this character are saved, unless thus commuted, and the rates to be levied under the Act are to be made only for purposes to which such liability does not extend (s. 37), so no one bound to repair *ratione tenure* escapes his liability by refusing to commute, nor can the Commissioners relieve him of his liabilities at the expense of the level (*e*).

(*a*) Callis, 145, *et seq.* See also *R. v. Leigh, supra*.

(*b*) Callis, 148. Instances of exemption from liability to contribute to the rates of the level, are noticed *ante*, Chap. Rating.

(*c*) The principle and working of commutation under the Act are considered in Chap. I., *ante*, p. 23. See the commutation sections of the Somersetshire Drainage Act, 1877, set out *post*, Appendix C.

(*d*) Compare the enforcement of a rent-charge granted under the Land Clauses Act, 1845, s. 10, in lieu of payment of a gross sum.

(*e*) *Ib.*

ENFORCEMENT OF LIABILITY TO REPAIR.

By 23 Hen. VIII. c. 5. s. 3, the Commissioners, upon a neglect to repair, may execute the necessary work without notice to the party, and inflict a fine upon him equivalent to the costs of the repairs.

A further and better mode of enforcing liability to repair is conferred by 3 & 4 Will. IV. c. 22, s. 15, by which, after seven days notice to the defaulting party (*a*), the Commissioners may execute the repairs, and charge him with the expenses.

In giving this further power of enforcing liabilities to repair, the legislature did not repeal that conferred by 23 Hen. VIII. c. 5, s. 3, and consequently the Commissioners may proceed by either mode (*b*). In a decision upon a case (*c*), in which this very point arose, the Court observed that the effect of this 15th section of 3 & 4 Will. IV. c. 22, was not to take away the procedure which existed under the statute of 23 Hen. VIII. c. 5, and that the object of the legislature was to give a cumulative mode of procedure, and that the Commissioners are at liberty to proceed in the same way as before 3 & 4 Will. IV. c. 22, was passed.

The payment of these fines, as well as amercements and penalties, imposed by the Commissioners for not repairing, cleansing, &c., may be enforced by distress and sale, either under 3 & 4 Will. IV. c. 22, s. 53, or the more comprehensive powers of 12 & 13 Vic. c. 50, s. 7 (*d*).

(*a*) Corporations are included in this section, as well as by the general interpretation section (s. 60).

(*b*) There is also a writ of *distringas ad reparandum*, mentioned by Callis, p. 183, in which case the distress can only be taken within the districts of the Commission. See Lib. 8 R. 2, Fitz. Avowry, 253.

(*c*) *R. v. Baker*, L. R. 2 Q. B. 621, at p. 629; 36 L. J. Q. B. 242.

(*d*) This would seem to be so, as the 12 & 13 Vic. c. 50, s. 7, deals with "the fines, amercements, penalties and forfeitures imposed by any Commissioners of Sewers." and, consequently, a distress levied to enforce the

Expenses.

By 3 & 4 Will. IV. c. 22, s. 55, the costs, charges and expenses of the Commissioners and their officers, which would include the expenses incurred under s. 15, may, after the same are ordered by decree, be levied on the goods and chattels of the person or body corporate ordered to pay. But as 12 & 13 Vic. c. 50, s. 7, embraces the various charges above referred to, the powers of enforcement conferred by that section will in all these instances be found sufficient (*a*).

12 & 13 Vic.
c. 50, s. 7.

payment of a fine incurred under 23 Hen. VIII. c. 5, s. 3, or expenses incurred under 3 & 4 Will. IV. c. 22, s. 15, may, in default of a sufficiency of goods and chattels, be levied on any lands of the defaulting party situate within the Commission. See this section discussed in the preceding chapter, p. 124.

(*a*) See the section discussed in the preceding chapter, p. 124.

CHAPTER VII.

DECREES AND PENALTIES.

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THE statute of 23 Hen. VIII. c. 5, in the 7th section, gives power to Commissioners of Sewers (*a*) to make laws, ordinances, and decrees. The definitions of these terms and their distinctions are a matter of antiquarian interest, rather than of practical value. ^{Laws.} “Commissioners of Sewers,” says Callis (*b*), “not only have power, *jus dicere*, but also *jus facere*.” Therefore the Commissioners may make laws for the particular purposes of the Commission, *i.e.* for the maintenance and improvement of existing works, for their alteration, and for the abatement of nuisances, and “the laws which the Commissioners shall make have the power of an Act of Parliament to strengthen and assist them.”

An ordinance is a law of only secondary power, and is compared by Callis to a bye-law, which has little strength of itself, but depends upon some Act of Parliament (*c*). ^{Ordinances.}

(*a*) Drainage Boards can avail themselves of all the powers of Commissioners of Sewers, 24 & 25 Vic. c. 133, s. 67.

(*b*) At pp. 281-284.

(*c*) Callis, 284. Ordinances are set out in *Hall v. Mason*; Callis, 262; and in *Crossman v. Bristol & S.W. Union Ry.* 1 H. & M. 531; 11 W. R. 981, is found a good illustration of Callis' definition. The Rivers Conservancy Bill, 1883, proposed to give the Conservancy Board power to make bye-laws.

- Decrees. A decree is a sentence or judgment in a Court of Justice, which is grounded upon a law or ordinance (*a*).
- Duration of. It is unnecessary now to consider the once vexed question as to the binding effect of laws, ordinances and decrees, made by one set of Commissioners upon their successors, since 3 & 4 Will. IV. c. 22, s. 7, extended the effect of all laws, ordinances and decrees from one Commission to another, until they were altered or repealed, while now by the Land Drainage Act, 1861, all Commissioners of Sewers are continued in existence until superseded by Her Majesty.
- Costs. By 3 & 4 Will. IV. c. 22, s. 55, Commissioners of Sewers are empowered to order that the costs, charges, and expenses incidental to the making and putting in force of their orders or decrees be paid by the person by whose default or for whose benefit the decree is made.

PUNISHMENTS AND PENALTIES.

Imprisonment.

Fines and Amercements.

- Imprisonment. It was the opinion of Callis (*b*) that the power of punishing by imprisonment was conferred on Commissioners by the statute 23 Hen. VIII. c. 5, s. 3, and that they possess this power because they have a Court of Record (*c*). If they seek to punish for contempt, the offence must have been committed in
- Contempt of Court.

(*a*) Callis, 285. For the form of decree *see* Appendix B, *post*.

(*b*) Callis, 169. "I suppose there will be words in the Commission and Statute which will bear this construction, which are as follows: "And all such as ye shall find negligent, gainsaying or rebelling in the said works, reparations or reformations of the premises, or negligent in the due execution of this our commission that ye do compel them by distress, fines and ameracements, or by other punishments, ways or means, &c., which words are strong enough, and large enough, to authorise the Commissioners of Sewers upon just cause to imprison the body."

(*c*) Callis, *ib*.

their presence, as for a mere disobedience to their orders, it seems they cannot imprison (*a*).

A case is cited in Callis, in which Commissioners were once severely punished for an illegal imprisonment (*b*).

The power of inflicting fines was also conferred on them ^{Fines.} by 23 Hen. VIII. c. 5, s. 3 (*c*), as a means of punishing their collectors who failed to account, and persons who failed to pay "arrearages" of tax, and also those persons who failed to execute repairs for which they were liable. Recourse is had to this power to recomp the Commissioners the expenses to which ^{In lieu of expenses.} they have been subject in executing repairs which the persons liable have refused or neglected to execute. In such case it is customary for the Commissioners to execute the repairs themselves, and fine the party liable in the amount of the expenses (*d*). A report of an old case (*e*) states that a "fine" was assessed on the village of D., and appointed to be levied on one man's cattle, but upon more accurate examination of the report, it appears to have been a tax or assessment, and so illegal on the principle laid down in the case of the Isle of Ely (*f*).

In cases where Commissioners may imprison they may also

(*a*) *Inhabitants de Oldberry v. Stafford*, 1 Siderfin, 145: "Though Commissioners of Sewers being a Court of Record may imprison for a contempt to them committed, yet they cannot imprison one for disobeying their order, for this is contrary to Magna Carta, c. 29. *Nullus liber homo imprisonetur*, &c. Viner's Abr. tit. Sewers. See also *Groenvelt v. Burwell*, 1 Ld. Raym. 454.

(*b*) *Hetley v. Boyer & Others*, 2 Bulstrode, 197; Cro. Jac. 336. It must, however, be observed that in this case the offence of the Commissioners was one of contempt of the Court of Queen's Bench rather than of excess of jurisdiction.

(*c*) *Supra*, note (*b*), p. 158.

(*d*) See an example of this in *R. v. Baker*, L. R. 2 Q. B. 621; 36 L. J. Q. B. 242. A better mode of raising these expenses is, as has been pointed out *ante*, p. 155, by 3 & 4 Will. IV. c. 22, s. 15.

(*e*) *Hetley v. Boyer*, *supra*, explained in *Ramsey v. Nornabell*, 11 A. & E. 383.

(*f*) 10 Rep. 111*a*.

Contempt of Court.

fine, as for contempt of Court (*a*). They may also fine for disobedience or opposition to their decrees, such as breach of their laws or ordinances (*b*), and for malicious injury to sewers, works, &c., within their jurisdiction. Several instances are recorded in the minutes of the Surrey and Kent Commissioners of Sewers of fines inflicted for non-compliance with orders, where it is shown that occupiers of premises adjoining the Thames at Rotherhithe, who had not obeyed the order of the Commissioners to raise their wharves, were summoned before the Commissioners' Court and fined (*c*).

Officers.

Refusal to accept office.
Purpresture.

Sheriff.

Juryman.

It has been shown they have power to fine their officers (*d*). A fine may also be inflicted for a refusal to accept an office of sewers (*e*) for a purpresture (*f*), *e.g.*, erecting a nuisance in a river or harbour or other place, the soil whereof is in the King. Commissioners of Sewers may also fine the sheriff for not returning a jury and a juryman for misconduct (*g*).

On an application to the Court of Exchequer (*h*) to dis-

(*a*) Callis, 170. *Groenvelt v. Burwell*, 1 *Ld. Raym.* 454.

(*b*) This would be inflicted on a presentment of a sewers jury or of one of their officers. See 12 & 13 *Vic. c. 50, s. 6*; *The Protector v. Bruster*, *Sty.* 445. For an instance of the application of this remedy in modern times. see *Crossman v. Bristol & S. Wales Ry.*, 1 *H. & M.* 531; 11 *W. R.* 981, where Commissioners of Sewers had inflicted fines for removing shingle from an embankment contrary to their bye-law. As to indictment for malicious injury to their property see *post*, "Indictment," p. 188.

(*c*) Report of Select Committee on the Thames River (Prevention of Floods) Bill, 1877, Question 16.

(*d*) Callis, 175. See *ante*, "Officers," p. 47.

(*e*) Callis, 174. A dyke reeve may be fined for refusing to accept office under 12 & 13 *Vic. c. 50, s. 5*.

(*f*) Derivation *pourpris*, a taking; *Termes de la ley*; *Spelm: Glossary*. For instances of purpresture, see *Att.-Gen. v. Johnstone*, 2 *Wils. Ch. C.* 87; *Att.-Gen. v. Richards*, 2 *Anst.* 603; *Herne*, at p. 19, instances imprisonment for purpresture for "inbauncing a wear within the river by force."

(*g*) Callis, 175: 3 & 4 *Will. IV. c. 22, s. 27*.

(*h*) The application was made to the Court of Exchequer, because in those days fines imposed by Commissioners of Sewers were estreated into that Court, 13 *Eliz. c. 9*; they are now payable to the Commissioners, 3 & 4 *Will. IV. c. 22, s. 53*.

charge certain fines and amercements imposed by Commissioners of Sewers for the county of Somerset, it appeared that it was the custom of the Commissioners to have standing juries who were sworn for life (*a*), and one of the fines complained of was inflicted on a standing jurymen for failing to attend the annual meeting, and another fine was for refusing to be re-sworn. The question involved turned upon the custom of the district and on the evidence brought before the Court. The judges discharged the first fine and refused to discharge the other, Alexander, C. B., remarking on the inconvenience of thus testing the validity of the fines, instead of removing the whole matter into the Queen's Bench by *certiorari* (*b*). In another case, certain jurymen, being fined for not attending when summoned under the authority of the Commissioners of Sewers, claimed exemption on the ground that the district from which they were summoned was subject to the jurisdiction of local Commissioners and not to that of Commissioners of Sewers. They were, however, held liable (*c*).

Under the procedure relating to the purchase of land in 3 & 4 Will. IV. c. 22, s. 27, Commissioners of Sewers may cause a fine to be imposed on the sheriff for not returning a jury, or a jurymen for not appearing, or refusing to be sworn, or to return a verdict, and on a witness for refusing to appear, or to be sworn, or to give evidence (*d*).

It is said by Callis that a person fined is imprisonable because commitment is incident to a fine; that a fine is not traversable unless imposed by presentment of a jury; and that all fines ought to be assessed in full Court (*e*). It was laid down by

(*a*) Standing juries were considered to be illegal by Lord Ellenborough in *R. v. Somerset*, 7 East 71. See *ante*, p. 88.

(*b*) *Ex parte Taylor*, 3 Young & Jervis, 91.

(*c*) *Ex parte Owst*, 9 Price, 117.

(*d*) These fines would be enforceable by the justices according to the procedure indicated by that section.

(*e*) Callis, 176; fines may be assessed only in *plena curia*, for out of Court Commissioners are not judges of record, *Horne*, 17.

Brampton, C. J., that the fine must be reasonable, and that if it be excessive a *certiorari* may be granted by the Court in order to moderate it (*a*).

Amercement.

A form of punishment, which is of a less arbitrary nature than a fine is amercement (*b*), *quod liber homo non amercietur nisi per sacramentum parium suorum* (*c*), and being thus imposed, and unlike a fine, is traversable (*d*).

The usual instances in which an amercement is imposed is for neglect of repair (*e*). It has been held that a township can be amerced, for neglect to repair works which by custom they are bound to repair, and in such case it is considered that execution may be levied on one man's goods and the rest be liable to contribute (*f*).

In the Book of Assizes it is recorded that there was a presentment to the effect that "J. S. had suffered trees to grow in the water and lay in the stream, by reason whereof ships were hindered in their passage; but it was held by Knivet, J., that J. S. should not be amerced because the nuisance was not an act of his, but the trees grew so naturally of themselves" (*g*).

It may be stated as a general proposition upon the above three forms of punishment—namely, imprisonment, fine and amercement, that the Courts of Law will not aid Commissioners of Sewers in their enforcement until they have exhausted all other powers at their disposal (*h*).

(*a*) *Hammon v. Roll*, March, 202.

(*b*) *Deriv. misericordia*, *Callis*, 177.

(*c*) *Fleta*, lib. i. c. 48.

(*d*) *Callis, ib.* He is also of opinion that it may be imposed by the presentment of a surveyor, but this it would seem is not traversable. *See ante*, p. 89.

(*e*) *Callis*, 178; amercements are generally for offences which consist in *non agendo*, and in this respect they differ from fines, for those are usually imposed on offenders for doing what they ought not to do. "Laws of Sewers," 116.

(*f*) *Ramsey v. Nornabell*, 11 A. & E. 383, also explaining *Hetley v. Boyer*, 2 Bulstr. 197. *see ante*, p. 159 (*n*).

(*g*) 42 Lib. Ass. p^l. 15; *Callis*, 178.

(*h*) *R. v. Gamble*, 11 A. & F. 61; 3 P. & D. 122.

Fines, amercements, penalties and forfeitures which have been imposed by Commissioners of Sewers must be paid to the treasurer, clerk, expeditor, or other person whom the Commissioners appoint (*a*), and are to be applied by the Commissioners to defray the general expenses of the Commission. Payment of fines, amercements, &c., to Commissioners' officer.

The power to enforce fines and amercements by distress was first conferred by 3 & 4 Will. IV. c. 22, s. 53, but since these penalties have been included in the wider powers of enforcement by distress given by 12 & 13 Vic. c. 50, s. 7, it is unnecessary to do more than refer to the former statute. The powers conferred by the latter Act have been fully discussed under the title distress (*b*). Enforcement of fines and amercements.

The fines imposed by Commissioners of Sewers on a sheriff, juryman or witnesses under 3 & 4 Will. IV. c. 22, s. 27 (*c*), are enforceable according to the procedure of that section—viz., by the justices.

By the Land Drainage Act, 1861, any person polluting any watercourse within the jurisdiction of the Commissioners of Sewers incurs a penalty, unless he had a right to do so (*d*). Penalties, Land Drainage Act, 1861.

A penalty may be laid upon overseers for refusing to allow Commissioners of Sewers to inspect the rates for the purpose of assessing a sewers rate (*e*). This penalty would have to be recovered before two justices, under the procedure of Jervis' Act (*f*), which is incorporated with the Land Drainage Act,

(*a*) 3 & 4 Will. IV. c. 22, s. 53. Formerly they were estreated into the Exchequer. For a form of warrant for levying, *see* form in Appendix B.

(*b*) *Ante*, p. 124. In *Ramsey v. Nornabell*, 11 A. & E. 383, an amercement was duly imposed on the "owners and occupiers" of lands liable to repair, and it was held that the amount might be levied on any one of them.

(*c*) *Ante*, p. 77.

(*d*) 24 & 25 Vic. c. 133, s. 58.

(*e*) *Ib.* s. 39.

(*f*) Jervis' Act, 11 & 12 Vic. c. 43. The information must be laid within six months of the time when the cause of complaint arose (s. 11); the penalty may be enforced by distress (s. 19), or commitment (s. 21). *See* also the Summary Jurisdiction Act, 1879. 42 & 43 Vic. c. 49.

1861, by s. 51 of that Act. This provision excludes other remedies, and no action will therefore lie for the enforcement of the penalty (*a*). It must be remembered that a corporation cannot sue for penalties as a common informer (*b*).

Commissioners acting without qualification.

A penalty is imposed on Commissioners of Sewers for acting without qualification by 3 & 4 Will. IV. c. 22, s. 4, which is to be recovered by action or information under the powers of that section (*c*).

Penalties under Lands Clauses Act, 1845.

The recovery of penalties under the Land Clauses Act, 1845, is regulated by ss. 136-149 of that Act (8 Vic. c. 18).

(*a*) *R. v. Wigg*, 2 Salk. 406; *Mayor of Blackburn v. Parkinson*; 1 E. & E. 71; 28 L. J. M. C. 7; *Vestry of St. Pancras v. Batterbury*, 2 C. B. N. S. 477; 26 L. J. C. P. 243.

(*b*) *Guardians of St. Leonard's, Shoreditch v. Franklin*, 3 C. P. D. 377; 47 L. J. C. P. 727.

(*c*) *Ante*, p. 39.

CHAPTER VIII.

LEGAL PROCEEDINGS.

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THE remedies available against Commissioners of Sewers (*a*) in cases where they may have acted arbitrarily in excess of their jurisdiction or where they have neglected the observance of some statutory authority, are the following:—

- 1.—*Certiorari*.
- 2.—Mandamus.
- 3.—Indictment.
- 4.—Injunction.
- 5.—Actions.

and it is proposed in this chapter to refer briefly to each one separately (*b*).

(*a*) The remedy, by appeal to quarter sessions under the Land Drainage Act, 1861, s. 47, finds a more appropriate place in the chapter, tit. "Survey, and Jury Procedure."

(*b*) It is clear, too, that these legal remedies can be used as occasion requires by Commissioners of Sewers in cases where the interests of the Commission are assailed, and when they themselves have to take the first step. The subject-matter of this chapter is equally applicable to Drainage Boards.

The action of Commissioners of Sewers is most generally questioned by *certiorari*, and it is this writ which obtains the greatest prominence in the history of Sewer Law.

Certiorari.

The writ of *certiorari* is the process which the Court of Queen's Bench (*a*) uses in the exercise of its authority over inferior jurisdictions, and by which it compels them to send their proceedings before them for the purpose, amongst others, of inquiry into their legality; thus (*b*), the proceedings of Commissioners of Sewers are brought into that Court (*c*).

Certain statutes (public and local) forbid the removal of

(*a*) Now the Queen's Bench Division. Order 68 of the Rules of Court, 1883, saving (*inter alia*) the practice of the Crown side of the Queen's Bench Division is as follows:—Order LXVIII.—Application of Rules in Crown, revenue and matrimonial cases.

1. Subject to the provisions of this Order, nothing in these Rules, save as expressly provided, shall affect the procedure or practice in any of the following causes or matters:—

(*a*) Criminal proceedings.

(*b*) Proceedings on the Crown side of the Queen's Bench Division.

2. The following orders shall, as far as they are applicable, apply to all civil proceedings on the Crown side of the Queen's Bench Division, including mandamus and prohibition, and also to *quo warranto* and to all proceedings on the revenue side of the said Division, namely:

(*a*) Order XXVIII. (Amendment);

(*b*) Order XXXIV. (Special case);

(*c*) Order XXXVIII. (Affidavits);

(*d*) Order LII. (Motions);

(*e*) Order LVIII. (Appeals);

(*f*) Order LXIV. (Time);

(*g*) Order LXV. (Costs);

(*h*) Order LXVI. (Notices, &c.);

(*i*) Order LXX (non-compliance);

Provided that Order LVIII. shall not apply to *quo warranto*.

(*b*) The illegality must appear on the face of the presentments; the Court will not go behind them. Mayo County, *in re* Ir. C. L. Rep. 392.

(*c*) Corner's Crown Practice, p. 50. The statutes regulating this exercise of the writ are 5 & 6 Will. IV. c. 33, and 16 & 17 Vic. c. 30, extending the earlier statutes. See *R. v. Oastler*, L. R. 9 Q. B. 132; 43 L. J. Q. B. 42.

proceedings taken under them by *certiorari*, e.g., The Public Health Act, 1875. When, for example, by a local Act, Commissioners were appointed to drain the fen lands of Lincolnshire within certain parishes, and the Act contained sections relating to summary proceedings before justices, and a clause prohibiting the removal of proceedings by *certiorari*, and a subsequent section gave a right to appeal to Quarter Sessions (*a*), it was held that the clause taking away the *certiorari* applied to the section giving the appeal to the Quarter Sessions. Accordingly it has been decided that the prohibition only applies to the defendant and not to the Court; but where, upon the face of the proceedings, there appears an absence of jurisdiction, it has been held that the prohibition does not operate (*b*).

The writ is granted upon motion to the Court to remove the orders of the Commissioners, or inquisitions, or presentments found before them, unless it appears that injury to the public would result from the necessary delay to the works, &c., which may have been undertaken by the Commissioners (*c*). The writ.

(*a*) *R. v. Lindsey*, J.J. 14 L. J. M. C. 151.

(*b*) *R. v. Gosse*, 30 L. J. M. C. 41; 6 Jur. N. S. 1369; *R. v. Broughton*, Local Board, 12 L. T. N. S. 310; so also where there has been an avoidance of jurisdiction, *R. v. Wood*, 5 E. & B. 49. See *Corner's Cr. Practice*, pp. 65-66, and note (*c*) *post*.

(*c*) The jurisdiction of the Court of King's Bench peremptorily and in all cases to inquire into the proceedings of the Commissioners, was in former times a much contested question, and there is some little difficulty in reconciling the older decisions. In the year 1700 was decided the case of *Rex. v. Inhabitants of Glamorganshire*, Trin. T. 12, Will. III. S. C. 12 Mod. 403; Salk. 146; 1 Ld. Raym. 580, where it is said that "this Court will examine the proceedings of all jurisdictions created by Act of Parliament, and if they, under pretence of such Act, proceed to encroach jurisdiction to themselves greater than the Act warrants, this Court will send a *certiorari* to them to have their proceedings returned here, to the end that this Court may see that they keep themselves within their jurisdiction, and if they exceed it, to restrain them. And the examination of such matters is more proper for this Court, as in the case in question, whether the Act of Elizabeth impowers the justices to raise money to mend the wears and to determine the doubts upon the Act. As to the cases of orders made by Commissioners of Sewers, and of the Fens,

A.D. 1700,
R. v. Inhab. of Glamorganshire;
Hawkins, P.C.
p. 400 and cases there cited;
Callis, pp. 167, 289-291;
Corner's Cr. Pr., 85, 86.

Motion for rule

The motion (*a*) is for a rule *nisi*, to show cause (*b*) of which it is unnecessary to give any notice, according to the present

the Court is (Str. 609; Com. Dig.; *certiorari*) cautious in granting *certiorari*, and first they make inquiry into the nature of the fact, and what will be the consequence of granting the writ, because the country may be drowned in the meantime, whilst the Commissioners are suspended by *certiorari*, but that is only discretionary execution of the powers of the Court." With this case it is instructive to compare the earlier case of *Ball v. Partridge*, 1 Sid. 296, pl. 20; 2 Keb. 82, where, on an application to remove some orders made by the Commissioners into the K. B., the Court held that no writ could issue, as the Commissioners were vested with a "new judicature," 12 Car. II. c. 11, giving them authority to receive claims concerning the Fens, to decide upon boundaries, to make decrees, and return them into Chancery. "*Ceo est novel judicature absolute en les Commissioners.*" But if they exceeded their statutory powers, all their proceedings would be void. "*Mes si ils ne proced accordant al statute doune tout est void (coram non judice) et les parties sont darge pur examine ceo in un action post al Common Ley.*" And in the same case reported (2 Keb. 82), the court likens the position of the Commissioners of Sewers to that of Commissioners of Bankrupts. It may be stated generally that the Court seldom refuses to issue the writ where there appears to be no danger to the country from delaying the orders or decrees of the Commissioners, and for this purpose affidavits usually accompany the application, alleging that no injury will happen in consequence; see the case of *Cardiffe Bridge*, 1 Salk. 146, the same case as *Rex. v. Inhab. of Glamorganshire*, *supra*. The following language is used by Holt, C.J., in *Grenville v. College of Physicians*, 12 Mod. 386:—"We do take it, that where a Court in its nature is a Court of record, a *certiorari* will lie to it by reason of the great superiority of this Court; which may command them to send their proceedings before them up hither that it may be seen whether they confine themselves to their jurisdiction; which, if they exceed, this Court may correct them; and how comes it to be granted upon convictions by Justices of Peace or orders of *Commissioners of Sewers*? I remember formerly the Commissioners of Sewers were advised by counsel not to obey *certiorari*'s, but they were all laid by the

A.D. 1666.
Ball v.
Partridge,
1 Sid. 296, pl. 20.

A.D. 1700.
Cardiffe Bridge,
1 Salk. 146.

(*a*) The application is by affidavit, intituled in the Q. B. D. (Rules of Court, 1883, Order LXVIII. 4), in the preparation of which great care must be taken. The application may be made before the Vacation Judge in Chambers, *Reg. v. Allen*, 33 L. J. M. C. 98; *Corner Cr. Pr.*, p. 72.

(*b*) *Corner Cr. Pr.* 86; 2 Chitty Rep. Anon. 137, where Lord Ellenborough said—"It must be a rule *nisi*, for we do not remove the proceedings from Commissioners of Sewers in the first instance." The rule should be served upon the clerk, 3 & 4 Will. IV. c. 22, s. 57, and perhaps on those Commissioners who acted.

practice of the Court. Rules of Court, 1844, rule 14. The rule is as follows: *No motion to file a writ.*—It shall not henceforth be necessary to make any motion to file any writ or other

Rules of Court
1844.

heals for following such advice, and obliged to obtain the king's pardon for the offence!" It has been said that the issue of the writ is the *right of the subject*, and to support this view is the case of *Arthur v. Commissioners of Sewers for Yorkshire*. There the plaintiff, who had been chosen clerk, was at a second meeting turned out, and he moved for a *certiorari* to have the order returned, alleging the right of the subject. The Commissioners opposed the application, offering to read affidavits to show that the first meeting at which application was made was informal. The Court, however declined to hear the affidavits, and granted the *certiorari*, which was a writ of right, although one of the judges observed that "a *certiorari* was not a writ of right, for if it was, it could never be denied to grant it, but it has often been denied by this court, who, on consideration of circumstances, may deny it or grant it at discretion, so that it is not always a writ of right. It is true, when a man is chosen into an office or place by virtue whereof he has a temporal right, and is deprived thereof by an inferior jurisdiction, who proceed in a summary way, in such case he is entitled *ex debito justitiæ*, because he has no other remedy, being bound by the judgment of the inferior judicature." The decision in this case corresponds with that in *Rex v. Commis. of the Fens*, 2 Keb. 43, where a *certiorari* was prayed to remove the Act of Parliament, and their proceedings which are absolute without appeal, suggesting, only without affidavit, that the Commissioners had proceeded unreasonably, which the Court granted *as the right of the subject*. There may be noticed at this point a curious case, *R. v. Lewis*, 1 Jnr. 151; *W. W. & Dav.* 60, where a *certiorari* was granted to remove a presentment of Commissioners of Sewers, the Chairman confessing he was ignorant of the law on the subject. It may be concluded, from an examination of the above cases, and others of like import, that the issue of the writ is discretionary with the court, that it is seldom, if ever, refused, and that as regards the general principle of granting it, an obvious distinction exists between cases where the removal of orders may or may not be prejudicial to the country. Thus, on this question of prejudice to the district, we find in the old case of *Signeur de Dunbarr*, 1 Sid. 78, that a procedendo was awarded because the person found liable to repair had not repaired the bank in accordance with the order, *Viner's Ab.* 424, tit. Sewers; *Rex. & Day v. Commissioners of Sewers* (a case bearing upon prescriptive liabilities), 2 Keb. 129; *Viner's Ab.* 429 tit. Sewers; 7 Com. Dig. 351. Instances are found of the remedy of *certiorari* being expressly taken away by Act of Parliament, as in the case of *Birley v. Constables. &c.*, of Chorlton-upon-Medlock, 3 Beav. 499, where a final jurisdiction was given to justices at Quarter Sessions, and their judgment was not to be removed by *certiorari* or otherwise.

Commissioners
of Sewers of
Yorkshire,
8 Mod. 331;
Fort, 371; Str.
609.

A.D. 1665.
*R. v. Com-
missioners of
the Fens*,
2 Keb. 43.

R. v. Lewis.

proceeding returned into the said Court [*i.e.*, Queen's Bench], but the same shall be filed at the Crown office without any rule first granted for that purpose. Crown office; new regulations, pursuant to the statute 6 Vic. c. 20 (*a*).

Time for application.

Unless specially provided for by statute, there is no limitation of time for making the application for the writ, the Court judging of the reasonableness of the application, looking to all the circumstances of the particular case (*b*).

Recognisances.

It was formerly the practice of the Court of Queen's Bench not to require a recognisance from a prosecutor who had obtained a *certiorari* to remove a presentment made by a Court of Sewers (*c*), but now by a more recent decision (*d*) the Court has laid it down that the case falls within the words of 5 & 6 Will. IV. c. 33, ss. 1 & 2, Wightman, J., observing that there was no reason why those provisions should not apply "just as much as in the case of an indictment for non-repair of a highway found at Assizes or Quarter Sessions," and that the expression Court of Sewers is included in the expression "any other Court" (s. 2).

Effect of removal of orders.

The orders, presentments, &c., being once removed, the Commissioners are prevented from taking any further action upon them, but of course the general work of the Commission in

(*a*) These rules and the practice now existing swept away a vast amount of curious and obsolete matter, which may be found in very early cases in the reports, and which is stated as practice by Woolrych on Sewers, ed. iii.; 1864, pp. 229-240.

(*b*) Reg. v. Sheffield, L. R. 6 Q. B. 652; 40 L. J. Q. B. 247, which decided that 13 Geo. II. c. 18, s. 5, only applied to orders, &c., of justices, and that there is no general rule of practice which requires application for *certiorari* to be made within six months of the making of the order, &c., sought to be quashed. Upon this point the case of R. v. Tower Hamlets Commissioners, 5 Q. B. 357; 13 L. J. Q. B. 12 is remarkable; also upon the pleading by traverse and demurrer in the Commissioners' Court.

(*c*) So stated by Corner, Cr. Pr. p. 63, and referred to in R. v. Baker, 28 L. J. Q. B. 377.

(*d*) R. v. Baker, *supra*. See also R. v. Wilks, 5 E. & B. 690; 36 L. J. Q. B. 242, as to the discretion of the Court.

other matters is not interrupted (*a*). Supposing the orders, &c., to have been acted upon, and the Commissioners have knowledge that they will be objected to, the Court has still power to review them, although if they have been *bona fide* acted upon, and the parties have altered their position without being aware of the objection, it may be a proper thing for the Court to consider whether in its discretion the *certiorari* should be granted to quash the orders (*b*).

The granting of the writ, it should here be observed, is a matter for the discretion of the Court, even in such a case as a fatal defect being patent on the face of the proceedings which it is sought to bring before the Court (*c*). Moreover, the Court will take into consideration the conduct of the party applying for the writ—for example, if he has waived his objections to the proceedings in the first instance (*d*).

After the issuing of the *certiorari* the return is made, which is now filed without any further formalities at the Crown office (*e*).

It depends upon the nature of the case and the return of the writ whether the party moves to quash the orders, &c., which are now before the Court, or whether he traverses or pleads and goes to trial thereupon.

As to the sufficiency and nature of the return (*f*) made by the Commissioners, it may be observed that the Court bestows a

Granting of writ discretionary.

The return.

(*a*) See on this point *The Protector v. Bruster*, Sty. 445.

(*b*) *Reg. v. Mayor of Sheffield*, L. Rep. 6 Q. B. 652, at p. 660; 40 L. J. Q. B. 247.

(*c*) *Reg. v. Manchester and Leeds Railway*, 8 A. & E. 413.

(*d*) *Reg. v. South Holland Drainage Committee*, 8 A. & E. 429. See *Corner*, Cr. Pr. p. 90.

(*e*) Again, upon the question of filing the return, the formalities of moving to file with other preliminaries have all been done away. See the cases upon this ancient practice cited in *Woolrych on Sewers*, ed. iii. 1861.

(*f*) The return to the *certiorari* ought to return the original proceedings, *Corner*, p. 75. It has been held insufficient to set out the tenor of the order, *Askew v. Hayton*, 1 D. P. C. 510; or to return a copy of it, *Palmer v. Forsyth*, 4 B. & C. 401.

liberal construction upon it, and it has been said (a) that the forms of Commissioners of Sewers are not so strict as indictments, and again that "the Commissioners shall have as much favour as may be" (b).

Amendment of return.

The return to the writ may be amended, provided that the amendment is effected during the term in which the return was made, for in a case where, in consequence of several exceptions being taken to the return, the Commissioners desired to amend, and their motion to amend was made in the term following, the Court refused leave, ordering cause to be shown on a later day why the return and proceeding should not be quashed (c).

Orders confirmed or quashed, *pro tanto*.

Assuming then the *certiorari* to be before the Court, and that there are some of the Commissioners orders good and others bad, there is authority for the Court to hold them bad in part and good in part, thus allowing some objections and disallowing others which may be taken to the return (d).

Refusal to obey the *certiorari*.

In cases where Commissioners have disobeyed the *certiorari* and have declined to make the return, the practice has been to proceed against them in the Court of Queen's Bench (now the

(a) *Seigneur de Dunbar's case*. Sid. 78; Vin. Ab. tit. Sewers, 428.

(b) For instances of exceptions taken to returns made by Commissioners of Sewers, see *Inhabitants of Bromley v. East Marsh at Blackwall*, 1 Keb. 4 pl. 9. In this case the exceptions to the return were highly technical, and the repairs ordered were of an urgent nature; see also *King & Heart v. Commissioners of Sewers in Lincolnshire*, 2 Keb. 339; *Viner Ab. tit. Sewers*, 429; *Warne's case*, Noy. 88; *sub nom. Thirsby v. Warne and Sands*, *Viner, ib.* 424, 425 (this case discusses fully the old pleading and practice). *Rex v. Wright*, 2 Keb. 42 pl. 85; *Anon. Mar.* 123, pl. 202; *Mich. Car. B. R. Anon.*; *Allen v. Carter*, Sty. 85, and cases there cited; *Rex v. Hide*, Sty. 60; *Rex v. Commissioners of Lincolnshire*, 2 Barnard, 379; *Rex v. Apsley*, Sty. 85; *Inhabitants de Oldberry v. Stafford*, 1 Sid. 145; 1 Keb. 521; 7 Com. Dig. 351.

(c) *Rex v. Apsley*, Sty. 85. The case is mentioned at length in *Callis*, p. 291.

(d) *Inhabitants de Oldberry v. Stafford*, 1 Sid. 145; 1 Keb. 521; 7 Com. Dig. 351; *Callis*, 290. This practice as to amendment of the return, and to the confirming and disallowing orders *pro tanto* must be taken to be of the rarest occurrence, and to be practically obsolete. The Court may also moderate a fine set by the Commissioners, *Hammon v. Roll*, March 202.

Queen's Bench Division) by moving for an attachment against Attachment. them (*a*) and the same remedy is available for other offences.

Order LXVIII. of the Rules of the Supreme Court, 1883, makes order LXV. as to costs applicable to all civil proceedings Costs. on the Crown side of the Queen's Bench (*b*). Proceedings before the Commissioners of Sewers (not being indictments) which are removed into the Queen's Bench Division, it is submitted are "civil proceedings," and consequently the ordinary law as to costs, which leaves them in the discretion of the Court or Judge, must be taken to apply.

MANDAMUS.

Commissioners of Sewers are subject to the jurisdiction of Mandamus. the Queen's Bench Division by the writ of mandamus in the exercise by that Court of its superintending and controlling power over public officers and others who are vested with the administration of law (*c*).

It is impossible within the limits of the present publication to enter into a discussion either of all the principles regulating the granting of the writ or of the definitions of the particular cases to which it is applied; it is only proposed here to instance a few of the leading cases which more particularly affect the subject of Commissioners of Sewers (*d*).

(*a*) Smith's case, 1 Vent., 66; 1 Mod. 44, 45. *Hetley v. Sir John Boyer, Sir Anthony Mildmay and others*; Cro. Jac. 1, 336; 2 Bulst. 299 (*see* this case also upon an indictment for a *premnative*); Callis, 290.

(*b*) *See* Order LXVIII., Rules of Court, 1883, *ante* p. 166.

(*c*) Case of Cardiffe Bridge, 1 Salk. 146; S.C., 1 Ld. Raym., 580; and the cases there cited.

(*d*) On the general law and practice of this writ *see* Tapping on Mandamus; Buller, N.P., p. 199, *et seq.*; Corner's Crown Practice, p. 205; Chitty's Statutes, 4th ed. tit. Mandamus; Bacon's Ab. Tit. Mandamus; Com. Dig. tit. Mandamus; Order LIII. of Rules of Supreme Court, 1883. "The mandamus spoken of in the 8th sub-sec. of sec. 25 of the Judicature

Granted where
no other
remedy.

Mandamus is a prerogative writ, and is only granted by the Court where there is no other specific legal remedy, and where in justice there ought to be one (*a*). Thus, for example, where such a remedy as amercement remained to Commissioners of Sewers the writ was refused. A rule had been obtained by the Conservators of the Bedford Level for a mandamus to compel certain persons liable *ratione tenuræ* to do repairs, and was discharged on the ground that by 15 Car. II. c. 17, s. 5, they had the powers of Commissioners of Sewers, and could therefore put in force a remedy (*b*). So, too, where recourse could be had to an action or proceedings in equity, the Court, it is apprehended, would deny the writ (*c*), although the decisions of the Courts on this point are not at first sight

Aer. 1873, is not the prerogative mandamus, but only a mandamus which may be granted to direct the performance of some act, of something to be done, which is the result of an action where an action will lie," per Brett, L.J., *Glossop v. Heston and Islesworth Local Board*, 12 Ch. D. p. 122; 49 L. J. Ch. 89.

(*a*) *Rex v. Barker*, 3 Barr, 1267, per Mansfield, C. J.; *Rex v. Bristol Dock Company*, 12 East, 429. See Bacon's Ab. tit. Mandamus, V. 256; Comyn's Dig. V. 27, 28. An indictment is not a remedy within this rule, being a proceeding *in pœnam*; *Rex v. Severn and Wye Railway Company*, 2 B. & A. 346; *ex parte Robins*, 7 D. P. C. 566; 3 Jur. 103; *Rex v. Bristol Dock Company*, *supra*. Where the remedy by *certiorari* is taken away, the court will not grant a mandamus, which will in effect get rid of the clause taking away the *certiorari*, *R. v. Yorkshire*, J.J. 1 A. & E. 563.

(*b*) *R. v. Gamble*, 11 A. & E. 69; 3 P. & D. 122. See also *Reg. v. Bristol Dock Company*, *supra conf.* *R. v. Stoke Damerd*, 1 N. & P. 56; 5 A. & E. 581.

(*c*) *Ex parte Robins*, 7 D. P. C. 566; 3 Jur. 103; *Reg. v. Hull and Selby Railway*, 6 Q. B. 70; 13 L. J. Q. B. 257; *Reg. v. Port of Southampton Commissioners*, 1 B. & S. 5; 30 L. J. Q. B. 241; 7 Jur. N.S. 990, *infra*. In this latter case proceedings were taken by mandamus by the Corporation of Southampton to compel the defendants to take "the necessary and legal measures and proceedings for obtaining and recovering payment," and it was held by the majority of the Court that the mandatory part of the writ was not too large, as it did not necessarily import that the defendants were to commence litigation, which might be unreasonable without an indemnity from the prosecutors. See also *Cane v. Chapman*, 5 A. & E. 647. As to the remedy in Equity, see *R. v. Stafford*, 3 T. R., per Buller, J., at p. 651.

easily reconcilable, nor will the Court grant the writ where the delay in applying for it has been considerable (*a*). Where a *certiorari* does not lie to remove proceedings they cannot be brought indirectly before the Court by mandamus (*b*).

If the Commissioners have exercised their discretion the Queen's Bench Division will not issue the writ to control that discretion or to order a rehearing of the case (*c*). Neither will the Court grant the writ unless it has been preceded by a distinct demand of the specific thing the performance of which is the object of the mandamus, and by a refusal of performance or conduct equivalent to that (*d*). It is necessary to show clearly by the affidavit in support of the rule that the party against whom the motion is made ought either by the common law or by statute to do the act required to be done, that he has been required to do such act, and that he has refused: the affidavit must make out a complete case, and show a title to the writ (*e*). Affidavit.

The writ has been issued to command the swearing in of a Commissioner of Drainage for certain lands; but where an office is full by an appointment to it made by those who *prima facie* have the power to appoint, and where there are means of trying the title to the office by action, the Court will, it has been held, not grant the writ (*f*). Offices.

The writ will also lie to compel the Commissioners to make To make compensation.

(*a*) *R. v. Cockermonth Inclosure*, 1 B. & Ad. 378; *Corner*, p. 219: but see also *Ward v. Lowndes*, 1 E. & E. 940; 29 L. J. Q. B. 49.

(*b*) *R. v. Yorkshire*, J.J. 1 A. & E. 563. See *ante*, p. 174 (*a*).

(*c*) *Corner*, Cr. Pr. p. 209.

(*d*) *R. v. Bristol Company*, 4 Q. B. 162; 3 G. & D. 384; 12 L. J. Q. B. 106; *R. v. Sealey*, 8 Jur. 496; *ex parte Thompson*, 6 Q. B. 721.

(*e*) *Corner*, Cr. Pr. 220.

(*f*) *R. v. Kelk*, 1 Q. B. 630; 9 L. J. Q. B. 362; 4 P. & D. 185; 1 G. & D. 127. The proceedings were under a local Act (30 Geo. III.) for draining lands near Newark, and the question was, whether the defendant ought to have admitted a person who was supposed to be elected to an office having reference to the drainage of the lands in question. See also

compensation, and it is not necessary for the claimant to demand any specific sum before he applies for the writ (*a*). In an important case upon the question of repair (which has been already discussed) (*b*) a rule *nisi* for a mandamus had been granted calling upon the Commissioners to reimburse the prosecutor for the cost he had incurred in respect of the repair of damage that had been caused to a wall abutting on his property, occasioned by an extraordinary high tide, and the Court said that, had he not been in default, or if the default had been doubtful, they would have granted the mandamus (*c*).

This case has recently been followed by a decision of the Queen's Bench Division (*d*). There the prosecutor, who was the owner of certain property in respect of which he was liable to the repair of a sea-wall which had been damaged by an extraordinary high wind and tide, had executed some repairs upon the mere instruction of the marsh bailiff, and others upon the orders of the Commissioners of Sewers, founded upon prior presentments of jury, by virtue of section 13 of 3 & 4 Will. IV. c. 22. With regard to the repairs executed according to the instructions of the marsh bailiff, the Court held that the prosecutor was entitled to a mandamus for reimbursement, he not being in default, but that the mandamus could not go *quoad* the repairs executed under the orders of the Commissioners of Sewers while the orders stood.

On another occasion, a rule *nisi* for a mandamus calling

R. v. Stoke Damorel, 1 N. & P. 56; 5 A. & E. 584, where it was held that if the office is full by a *void election*, and there is no other way of trying the question, a mandamus will be awarded to try the right. *R. v. St. Martin-in-the-Fields*, 20 L. J. Q. B. 423; 17 Q. B. 149. See also *R. v. Bedford Level*, 6 East, 356; and as to this, *ante*, tit. Officers. (*u*)

(*a*) *R. v. Burslem Local Board*, 28 L. J. Q. B. 315; 29 L. J. Q. B. 242; 1 E. & E. 1077, 1088; 6 Jur. N. S. 696.

(*b*) *R. v. Essex Commissioners of Sewers*, 1 B. & C. 477; 2 D. & R. 700.

(*c*) *Ante*, p. 148, liability to repair.

(*d*) *R. v. Fobbing Commissioners*, 53 L. J. Q. B. (to be reported).

upon Commissioners of Sewers to show cause why a mandamus should not issue commanding them to issue a precept to the sheriff to summon a jury for the purpose of inquiring what injury had resulted from their works for protecting their property from the sea, was discharged on the ground that the Commissioners, in the same way as all landowners, had the right to protect their property from the sea as being the common enemy (*a*).

A mandamus will issue to Commissioners to compel them to To levy rates. levy a rate to reimburse an expeditor (*b*), and to such a writ it is a good return that, prior to the issuing of the writ, the Commissioners have made a rate which, when collected, will be sufficient to pay the prosecutor. Commissioners having, by their clerk, incurred certain expenses in opposing a Bill in Parliament which, if passed, would have occasioned injury to their property, were compelled by mandamus to levy a rate on the land within their jurisdiction under 4 & 5 Vic. c. 45, and to pay off the amount due for such costs and expenses (*c*). A mandamus was issued commanding a dock Company to repair and To execute works. maintain parts of a bank (*d*), and to Commissioners to put certain banks in a state of security upon one uniform system, so far as that was practicable (*e*), and a mandamus commanding

(*a*) *R. v. Pagham Levels*, 8 B. & C. 355.

(*b*) *R. v. Commissioners for Essex*, 2 Ld. Raym. 1479; 2 Str. 763; *R. v. Commissioners of Sewers for Somerset*, 9 East, 109, where see forms of writ and return. This was an old case which turned upon the interpretation of 23 Hen. VIII. c. 5, s. 17, and 13 Eliz. c. 9, as to the enforcement of a decree made by a Commission under a former commission and the Court refused the mandamus to the new Commissioners to direct a rate to be levied on the level. Compare with this *R. v. New Outfall Commissioners*, 4 M. & R. 647. The writ was issued to command an apportionment among certain parishes of a sum of money which had been assessed by Commissioners under a Drainage Act. *R. v. Whitaker*, 9 B. & C. 648. See also *Grindley v. Barker*, 1 B. & P. 229.

(*c*) *R. v. Norfolk Commissioners of Sewers*, 20 L. J. Q. B. 121.

(*d*) *R. v. Bristol Dock Co.*, 2 Q. B. 64; 6 Jur. 216.

(*e*) *R. v. Ouse Bank Commissioners*, 3 A. & E. 541.

Form of
mandamus.

“the Directors of the Bristol Dock Company to make such alterations and amendments in the sewers as were necessary in consequence of the floating of the harbour,” was held to be in proper form, and that it was not necessary to call upon the Company for specific alterations, that being for their discretion (*a*). Further, it is apprehended that a mandamus would be directed to a local body to maintain and repair any particular work which they have been specifically ordered to erect, even in the absence of any statutory provision as to the maintenance or repair, on the principle of the cases cited below (*b*).

Inspection of
books.

In certain cases it is apprehended the writ will be issued to command the inspection of the Commissioners' rate-books, &c.; but where it was claimed as of right to inspect all entries of rates and matters not confined to the particular parish and the particular rate, the Court refused to grant a mandamus. (*c*)

Return to
mandamus.

There is a noteworthy case upon the return to a mandamus which may be here mentioned. To a writ of mandamus obtained against the Commissioners of the Ouse Bank, a return was made that the Commissioners had executed all such works “as should be or were from time to time deemed necessary.” This the Court held bad, saying that if the return had stated that the Commissioners thought such and such things necessary, and that they had done them, that would have been a sufficient answer (*d*). Again, upon the validity of a return where the mandamus alleged a want of repair, the defendants returned that they were not required by the statute to repair, and were not

(*a*) *R. v. Bristol Dock Co.* 6 B. & C. 181; 9 D. & R. 309.

(*b*) *R. v. Severn & Wye Rail. Co.*, 2 B. & A. 646; *R. v. Inhab. of Kent*, 13 East, 220; *R. v. Inhab. of Lindsey*, 14 East, 317; *R. v. Kerrison*, 3 M. & S. 526.

(*c*) *R. v. Commissioners of the Tower Hamlets*, 3 Gale & D. 92; 3 Q. B. 670; 11 L. J. Q. B. 231. See upon this, Buller N. P. p. 200 (*u*). *Reg. v. Ambergate Railway Company*, 17 Q. B. 957.

(*d*) *R. v. Ouse Bank Commissioners*, 3 A. & E. 544. As to the nature of a return generally, see Corner, p. 228. The return should be very minute, *Reg. v. Port of Southampton*, 1 B. & S. 5; 30 L. J. Q. B. 244.

otherwise liable, and that as near as circumstances had admitted they had maintained, &c. ; the Court held that return bad, first The return. because it traversed what was a matter of law, because a legal liability appeared, and secondly for not answering the mandatory part of the writ (a).

INJUNCTION.

Any nudue exercise of authority by Commissioners of Sewers Injunction. will be restrained by the High Court, where it is "just and expedient" so to do (b), and further the Court may in any case in which it has power to grant prohibition, grant an injunction to restrain the proceedings in the Sewers Court. (c)

The authority of the Courts to grant injunctions is stated by Lord Cottenham (d) in the following language:—"In many cases, *e.g.*, *Box v. Allen* (e), this Court has interfered to stay proceedings of parties whose jurisdiction is quite Against Commissioners of Sewers. as high as that of Quarter Sessions, viz., Commissioners of Sewers. The Commissioners possess jurisdiction founded on Acts of Parliament, and they have a right within due limits of their authority to do all necessary acts in execution of their functions. Nevertheless, if they so execute what they conceive to be their duty as to occasion a public nuisance, this Court has an undoubted right to interfere. The same question arose in

(a) *Reg. v. Bristol Dock Co.* 2 Q. B. 64; 6 Jur. 216. See also *Reg. v. Burslem Board of Health*, 28 L. J. Q. B. 345; 1 E. & E. 1077; on appeal, 29 L. J. Q. B. 242; 1 E. & E. 1088.

(b) The power to grant injunctions is given to all the judges of the High Court of Justice by Judicature Act, 1873, s. 25, sub-sec. 8, Order 50.

(c) *Hedley v. Bates*, 13 Ch. D. 498; 49 L. J. Ch. 170.

(d) *Att.-Gen. v. Forbes*, 2 Mylne & Craig, 133.

(e) 1 Dickens, 49.—The case is scantily reported, but it appears that a demurrer to so much of a bill as sought to alter any of the orders of Commissioners of Sewers, or to return any money by them received, was overruled. The ground on which it was attempted to sustain the demurrer was that the remedy was at law.

Kerrison v. Sparrow (a), where Lord Eldon, under the circumstances, considered he ought not to interfere, but the jurisdiction of the Court was not disputed or denied." In the case referred to by Lord Cottenham, the Lord Chancellor had dissolved an injunction to restrain Commissioners of Sewers from removing an obstruction on the ground that the party seeking the relief had a better and shorter remedy by *certiorari*, but his lordship added that he gave his decision without entering into the question of whether there might or might not be cases in which a Court of Equity would interfere.

In another case (b) an injunction was sought to restrain the defendant from proceeding to assess compensation by a jury under a local Act on the ground that he was not entitled to compensation. The Court there held that the defendant was entitled to compensation under the Act, and refused the injunction, but they left open the question as to whether the Court had power to interfere if it was clearly proved the defendant was not entitled to compensation.

Distress.

On another occasion (c) an application for an injunction was made to restrain Commissioners, under the Hatfield Chase Drainage Act, from taking any proceeding, either by distress or otherwise, for enforcing or recovering payment of rates. The ground on which the injunction was applied for was that certain irregularities in the proceedings of the Commissioners had been committed. It was argued *contra* that the Court had no jurisdiction, and that an appeal to Quarter Sessions was provided by the Act for "any person aggrieved by any order, judgment or determination of the Commissioners." But the Master of the Rolls (Lord Langdale) held that the Court had jurisdiction, and granted the injunction until further order. On appeal, Lord Cottenham continued the injunction, but upon the terms of payment into Court.

(a) 19 Vesey, Jun. 449; Coop, Ch. Ca. 305.

(b) *Barnsley Canal Co. v. Twibell*, 7 Beav. 19.

(c) *Armistead v. Durham*, 11 Beav. 556.

In like manner the Court will grant an injunction to restrain a landowner from taking proceedings before justices of the peace on irregular notices under the Land Drainage Act, 1861 (*a*). Land Drainage Act, 1861.

An injunction was applied for at the instance of the Commissioners of the River Witham (*b*) against the erection and use of a steam engine by the Nocton Trustees for draining adjacent lands. The engine was to be employed instead of the windmills which in that district had been used for draining the lands, and the Witham Commissioners based their application on the ground that the engine would, by throwing an increase of water into the Witham, probably damage the banks, and otherwise injure the drainage of land within their jurisdiction. The application was refused by Lord Brougham, who held that the injury was problematical, and *non constat* that the engine would be so used as to cause the injury which was apprehended. But an injunction was granted to restrain Inclosure Commissioners from altering the drains so as to obstruct the drainage of lands outside their jurisdiction (*c*).

Injunctions to restrain public nuisances are granted on the information of the Attorney-General at the relation of some informant (*d*).

The Courts will also grant an injunction at the suit of Commissioners of Sewers. Thus the Court granted an interim injunction on the application of the Commissioners of Sewers for the Lower Level in the county of Gloucester, to restrain the defendants from taking shingle, &c., from an embankment Injunction by Commissioners.

(*a*) *Hedley v. Bates*, 13 Ch. D. 498; 49 L. J. Ch. 170.

(*b*) *Earl of Ripon v. Hobart*, 3 M. & K. 169.

(*c*) *Dawson v. Paver*, 4 Hare, 415.

(*d*) As to when this will be granted, see *R. v. Mayor of Hertford*, 1 Salk. 374; *Att.-Gen. v. Richards*, 2 Anst. 603; *Att.-Gen. v. Johnston*, 2 Wils. C. C. 87; *Att.-Gen. v. Mayor of Basingstoke*, 45 L. J. Ch. 726. The Public Health Act, 1875 (38 & 39 Vic. c. 55), s. 69, requires the sanction of the Attorney-General to be obtained by local authorities before taking any proceedings to protect watercourses within their jurisdiction from pollution by sewage.

which had been formed by natural deposits and was a protection against inundations. It was shown that the embankment was the property of the lord of the manor, and had been conveyed to the defendants, but evidence was given that the Commissioners had for forty years exercised jurisdiction over it, and had fined persons for taking material from it in contravention of their ordinances. Page Wood, V.-C., held under these circumstances that the embankment was within the "view, cognisance or management" of the Commissioners, within the meaning of 3 & 4 Will. IV. c. 22, s. 47 (a).

It is also submitted that Commissioners of Sewers are entitled to restrain anyone from depriving works under their jurisdiction of lateral support, in accordance with the view taken by Cleasby, B., in a case where the Metropolitan Board of Works claimed to be entitled to such a right of support for their sewer against the Metropolitan Railway Company (b).

The judgment of that learned judge thus proceeds:—"I ought to say that I still retain the doubt expressed by me during the argument whether where works have been constructed, as in this case, by a body acting with all the powers originally given by 23 Hen. VIII. c. 5, and continued by various subsequent Acts, a right to lateral support ought not to be considered as conferred by those Acts, otherwise I should expect to find clauses enabling the Commissioners compulsorily to acquire so essential a right. The consequence would be that, after a work of great national importance—a sea-wall, for instance—had been constructed under those Acts protecting a large area of country, an adjoining owner might dig down any depth below its foundations, and on the water rising the wall would give way, and the country be flooded. The idea in

(a) *Crossman v. Bristol & S. Wales Co.* 1 H. & M. 531; 11 W. R. 981.

(b) *Metropolitan Board of Works v. Metropolitan Rail. Co.* L. R. 4 C. P. 193; 38 L. J. C. P. 172. See *Woolrych Metropolitan Loc. Man. Acts*, 2nd ed. p. 73. As to prescriptive right to lateral support, *Angus v. Dalton*, 6 App. Ca. 710; 50 L. J. H. L. 689.

my mind is that, as there is a right conferred to have the sewer, and there is conferred along with it a right to the under support and the lateral support by a liberal application of the maxim that, when anything is granted whatever is essential to the enjoyment of it, is, if it can be, granted also."

It is true that the judgment of the Court was against the plaintiff, but that case has recently been explained by the Court of Appeal (*a*) to the effect that the Exchequer Chamber would not say that there was an implied right to lateral support because there was no compensation clause in the Act of Parliament.

The principle of law, however, laid down by Cleasby, B., in his judgment, which has been cited, seems to be fully affirmed throughout the judgments of Brett and Lindley, L. JJs.

INDICTMENT.

A remedy by indictment is available against Commissioners of Sewers in all cases where public bodies would be indictable (*b*). Thus, in the language of Bayley, J. (*c*), "if they made unnecessary or improper works, not with a view to the protection of the level, but with a malevolent intention to injure the owner of other lands, they would be amenable to punishment by criminal information, or indictment for an abuse of the powers

Against Commissioners of Sewers.

(*a*) *In re* Corporation of Dudley, 8 Q. B. D. 86; 51 L. J. Q. B. 121. This case was under the Public Health Act, 1875, and the result of the decision was the passing of the Public Health Act, 1875 (Support of Sewers), Amendment Act, 1883, 46 & 47 Vic. c. 37.

(*b*) *R. v. Birmingham & Gloucester Ry.*, 3 Q. B. 223; 10 L. J. M. C. 136; *R. v. Scott*, 3 Q. B. 543; 11 L. J. Q. B. 254; *R. v. Gt. Northern Ry.*, 9 Q. B. 315; 16 L. J. M. C. 16; *R. v. Betts*, 16 Q. B. 1022. The indictment can be removed into the superior Court by writ of *certiorari*, and in such case the prosecutor has to enter into recognisances (16 & 17 Vic. c. 30, s. 4). It has been held that a corporation was not within this statute, *R. v. Manchester*, 26 L. J. M. C. 65.

(*c*) *R. v. Commissioners of Sewers for Pagham*, 8 B. & C. 355.

vested in them." The ordinary instance in which an indictment would lie against a quasi-corporate body such as Commissioners of Sewers (*a*) would be for a common nuisance, *e.g.*, any interference with the rights of the public as distinguished from private rights (*b*). The remedy can be preferred by indictment or presentment (*c*).

Nuisance to
highway.
Navigable river
or port.

Any encroachment on or obstruction to a highway is an indictable nuisance (*d*). So, too, a nuisance to a navigable river (*e*) or a port (*f*) is indictable.

The diversion of a navigable river (*g*), the placing on it of timber (*h*), the erection of any building in a port or navigable river, such as a wharf or wooden jetty (*i*), an embankment (*j*) or a bridge (*k*) would, if the navigation became thereby obstructed, constitute an indictable nuisance.

In order to support the indictment, it is necessary to show that the act is an obstruction to navigation. In the case of

(*a*) For the expression quasi-corporation as applied to Commissioners of Sewers, *see post*, Actions, p. 194. Drainage Boards, under the Land Drainage Act, 1861 (24 & 25 Vic. c. 133) are corporations, s. 66.

(*b*) An action may be brought for a public nuisance, but only in those cases where the party suing can clearly and substantially show that he has sustained a particular damage beyond the general injury to the public. *Rose v. Groves*, 5 Man. & Gr. 613; 12 L. J. C. P. 251; *Ricket v. Met. Ry.*, 34 L. J. Q. B. 257; 5 B. & S. 156; *Benjamin v. Storr* L. R. 9 C. P. 400; 43 L. J. C. P. 162.

(*c*) *Hale de Portibus Maris*, c. VII. 2 Inst. 701. Presentment for non-repair of highways is now abolished by 5 & 6 Will. IV. c. 50, s. 99. In *Stephen's Digest of Crim. Procedure*, p. 118, it is said that presentment is a more general term than indictment.

(*d*) Stopping a water-course and thereby overflowing the highway. *Crown Circuit Companion*, 376.

(*e*) *Hawk*, P. C. c. 32, s. 1; *Com. Dig.* tit. River; *Hale, de Jure Maris*, Pt. i. c. c. 2, 3.

(*f*) *Hale de Portibus Maris*, Pt. ii. c. 7; *Lutw.* 1523.

(*g*) 1 *Hawk*. P. C. s. 11.

(*h*) *Bac. Abr.* tit. Nuisance (*a*)

(*i*) *Dimes v. Petley*, 15 Q. B. 276; 19 L. J. Q. B. 449; *R. v. Grosvenor*, 2 Stark, 511.

(*j*) *R. v. Ward*, 1 A. & E. 381.

(*k*) *R. v. Betts*, 16 Q. B. 1022.

the Witham Commissioners, a verdict of the jury negating obstruction was held to be a verdict of not guilty (*a*). It has also been held that the amount of obstruction may be so insignificant as not to constitute a nuisance (*b*). It is no defence to such an indictment that although the work be in some degree a hindrance to navigation, it is advantageous, in a greater degree, to other uses of the port (*c*).

The neglect to repair a river bank pursuant to a liability *Ratione tenuræ* (*d*), or a sea-bank pursuant to a liability arising out of grant is indictable (*e*). So, too, the straightening or enlarging of ancient weirs as well as the erection of a new one *Weirs*. is treated as a public nuisance by Magna Cart. c. 23.

For such acts Commissioners of Sewers would be liable on indictment if committed in excess of their statutory powers, and even if within their statutory powers, it would be incumbent on them to show that they were acting reasonably within those powers, and doing an act absolutely necessary for the performance of the object of the statute (*f*).

Thus, where a Canal Company were empowered by Act of Parliament to take water from certain brooks, which at the time of the passing of the Act contained pure water, and the water afterwards became polluted by drains, and the Canal Company continuing to take it occasioned a nuisance by storing the polluted water in their canal, the Court of Queen's Bench held the Company to be indictable on the ground that the Act of Parliament did not directly authorise the nuisance, as in *R. v. Pease* (*g*), where the nuisance complained of was the noise.

(*a*) *R. v. Betts*, 16 Q. B. 1022.

(*b*) *R. v. Tindall*, 6 A. & E. 152; *R. v. Russell*, 3 E. & B. 942; 23 L. J. M. C. 173.

(*c*) *R. v. Ward*, 4 A. & E. 384; *A. G. v. Terry*, L. R. 9 Ch. 423, disapproving of *R. v. Russell*. 6 B. & C. 566.

(*d*) *R. v. Earl of Cadogan*, 5 B. & A. 902.

(*e*) *Healy v. Mayor, &c., of Lyme Regis*, 5 Bing. 91; 3 B. & Ad. 77; 1 Bing. N. C. 222.

(*f*) *R. v. Proprietors of the Bradford Navigation*, 31 L. J. Q. B. 191.

(*g*) 4 B. & Ad. 30; 2 L. J. M. C. 26.

smoke, &c., caused by the working of the engines of a railway authorised by Act of Parliament. The obvious distinction between the case of the Canal Company taking water for their canal, and the Commissioners of Sewers committing some act of nuisance within the powers of their Acts, would be that the former body were committing a nuisance for the purpose of their adventure, while the latter body would presumably be acting in the performance of a duty they owed to the public, namely, that of protecting the land from flood; nevertheless it is useful to notice the decision as showing that when once a public nuisance is established, it lies on the party causing it to show a justification, and that the Courts will require the jurisdiction to be clearly demonstrated (*a*).

How laid.

An indictment against Commissioners of Sewers would have to be laid in the name of one Commissioner or their clerk. By 3 & 4 Will. IV. c. 22, s. 57, it is enacted that Commissioners of Sewers may sue or be sued at law or in equity for or concerning any matter or thing whatever in the name of any one Commissioner, or in the name of the clerk. These words are large enough it is submitted to include indictment, and this view is strengthened by the language of the succeeding section (58), which enacts that such Commissioner or clerk shall be reimbursed the costs, damages and expenses which he shall be put to in consequence of any such action, suit, bill, information, *indictment* or prosecution. This statutory power avoids any difficulties which might be raised as to the manner of laying indictments by or against Commissioners of Sewers by reason of their quasi-corporate status (*b*).

In the case of an indictment, it would for many reasons be more convenient that the Commissioners should be indicted in the name of the clerk. It is provided by s. 59, that the clerk may be a witness, though the indictment is preferred

(*a*) See also *Attorney-General v. Cony Hatch*, L. R. 4 Ch. 116; 38 L. J. Ch. 265.

(*b*) See this subject dealt with *post*, p. 194.

against him. The Statute 40 Vic. c. 14, allows the defendant in an indictment for any nuisance to a highway, river, or bridge, or for any indictment or proceeding instituted for the purpose of enforcing a civil right only to be an admissible witness, and compellable to give evidence.

Although the powers possessed by Commissioners of Sewers By Commission of Sewers. are in the majority of instances sufficient to enable them to restrain or abate nuisances and other indictable offences committed within the jurisdiction, there is nothing to prevent them preferring indictments in the same way as other similarly constituted bodies; and by 3 & 4 Will. IV. c. 22, s. 47, they are expressly authorised to prefer indictments against persons damaging the works, or stealing the property which is vested in them, or which is under their "view, cognisance or management" (a), and by the same section the works, &c., are to be described as the property of the Commissioners without specifying their names. A similar provision is found in 7 Geo. IV. c. 64; "An Act for improving the 7 Geo. IV. c. 64. administration of the criminal justice in England," which by s. 11 enacts with respect to property under any Commissioners of Sewers "That in any indictment or information for any felony or misdemeanour committed on or with respect to any sewer or other matter with or under the view, cognisance or management of any Commissioners of Sewers, it shall be sufficient to state any such property to belong to the Commissioners of Sewers, with or under whose view, cognisance or management any such things shall be, and it shall not be necessary to specify the names of any such Commissioners." And by 11 & 12 Vic. c. 43, s. 4, "Any information or complaint, or the proceedings thereon, in which it is necessary to state the ownership of any property belonging to or in the possession of Commissioners of Sewers of any district, may be described as the property of such Commissioners without naming them."

(a) This would include an embankment under their control, though the freehold was vested in another. *Crossman v. Bristol and S. Wales Ry.* 1 H. & M. 531; 11 W. R. 981.

24 & 25 Vic. 97
s. 30.

By 24 & 25 Vic. c. 97, s. 30, any malicious injuries to sea or river banks, or to quays, flood-gates, harbours, &c., is made a felony; and by s. 31 the unlawful removal of piles or other materials used to secure sea or river banks, quays, harbours, &c., or the unlawful and malicious opening of floodgates with intent to obstruct navigation is a like offence.

There is a report of an old case (*a*) where the defendant moved to quash an indictment taken before Commissioners of Sewers for penning up the water in the river at his mill, whereby the highway was flooded. The indictment being moved into the King's Bench by the defendant, was there quashed on the ground that a nuisance to the highway was not within the jurisdiction of the Commissioners of Sewers.

How laid.

The indictment would be preferred in the name of the clerk or one Commissioner, in the same way as an indictment against the Commissioners. It is discussed in the pages of Callis (*b*) whether Commissioners of Sewers may be indicted for sitting without proper qualification, and he concludes that they may not (although Crofton's case (*c*) was to the contrary), on the ground that where the statute appoints a penalty for doing a thing which was no offence before, and appoints how it shall be recovered, it shall be punished by that means and not by indictment (*d*). The penalty for acting without qualification is fixed by 3 & 4 Will. IV. c. 22, s. 4, and the means of recovering it are there indicated (*e*).

Writ of
præmunire.

This is only one instance of an application for the formidable writ of *præmunire* against Commissioners of Sewers, and that was

(*a*) *R. v. Hide*, Sty. 60. Though it would appear from this case that Commissioners of Sewers were in the habit of trying indictments in the sense in which the proceeding is now understood, yet it is submitted this is not the case, but that the defendant in *R. v. Hide* was brought before them on presentment. Presentment is a more general term than indictment, see *Stephen Crim. Proceed.*, p. 118.

(*b*) See p. 219.

(*c*) 1 Mod. 34.

(*d*) See *Dwarris on Statutes*, p. 537; *Maxwell*, p. 366.

(*e*) See *Qualification of Commissioners*, *ante*, p. 39.

where the writ was issued against Sir Anthony Mildmay, a Commissioner of Sewers for the county of Northampton, for not appearing to a writ of attachment which had been issued against him and his brother Commissioners for contempt of the Court of King's Bench. He subsequently received the King's pardon (*a*). In another case (*b*) where Smith and others, Commissioners of Sewers, were brought before the Court of King's Bench on a writ of attachment, because they proceeded to fine a person after a *certiorari* delivered, Twisden, J., thus admonished them; "Sir A. Mildmay was a Commissioner of Sewers, and for not obeying a *certiorari* was indicted of a *præsumptio*, and was fain to beg the King's pardon."

ACTIONS.

Although the preceding remedies may be had against Commissioners of Sewers, yet it is to be observed that the common law right of action remains to any person who has suffered damage in consequence of their acts or defaults, and for whose case there is no compensation provided by statute. (*c*) Thus Chief Baron Comyn writes, "So an action lies against the Commissioners or those who act by their precept if they do anything out of their authority" (*d*).

The distinction between the relief to be given by mandamus and action respectively is well stated in the judgment by Mr.

(*a*) *Hetley v. Boyer*, 2 Bulstrode, 197; Cro. Jac. 336.

(*b*) 1 Mod. Rep. 45.

(*c*) An action lies against the Commissioners for illegal distress by them; see the cases in Chap. V. Rating, *ante*, p. 132. For acts which, notwithstanding the statutes containing a clause or clauses providing for compensation, remain wrongful, and for which there is a remedy by action; see *Broadbent v. Imperial Gas Co.*, 26 L. J. Ch. 276; *Uttley v. Todmorden Local Board*, 44 L. J. C. P. 19; *Biscoe v. Great Eastern Rail. Co.*, L. R. 16 Eq. 636; *Brine v. Great Western Rail. Co.*, 31 L. J. Q. B. 101; *Bramlen v. Met. Bd. of Works*, 13 C. B. N. S. 768; *Clothier v. Webster*, 9 Jur. N. S. 23.

(*d*) Com. Dig. tit. Sewers, vol. vii. p. 351. See the case of the Abbot of Glastonbury, 11 Hen. IV. 34.

Justice Blackburn in *Taylor v. Darlington Local Board (a)*. "The question is, whether that interference by the defendants is a matter for which he is entitled to compensation under the Acts, because if so the mandamus ordering the defendants to make compensation would be right enough. If, however, it is not a matter for compensation, but for which the remedy, if any, is by action at common law, then the mandamus ought not to go. The general rule is, that where something is done which interferes with the rights of an individual, and would therefore be actionable at common law, but which has been authorised by the Legislature, then, though it is a *damnum* to the party affected, it is no longer an *injuria*, and the loss must fall on him. To prevent that injustice the Legislature has said in most of the Acts authorising interference with private rights, that the parties affected shall be compensated whenever they are injured by the exercise of the powers given by the statute, and where the thing done is authorised by the statute the action at common law is taken away, and it is the object of compensation only. Where, however, the act done is not authorised by the statute, the action at common law remains."

Their liability depends upon the construction of the statute or statutes under which they act. The correct rule of interpretation of such statutes may be said to be that unless the Act of Parliament has expressed otherwise, the intention of the Legislature is that the body thus created by the statute shall be under the same obligations as the general law lays upon an ordinary individual under the same circumstances (*b*).

In *Forbes v. the Lee Conservancy Board (c)*, the defendants had

(a) 4 New Rep. 394. See also *R. v. Burslem Local Board*, 28 L. J. Q. B. 345; 29 L. J. Q. B. 242; 1 E. & E. 1077, 1088; *Ferrar v. Commissioners of Sewers for London*, L. R. 4 Ex. 1; 38 L. J. Ex. 173. This last-mentioned case was reversed on appeal, L. R. 4 Ex. 227; 38 L. J. Ex. 102, upon the question as to whether s. 68 of the Land Clauses Act, 1845, was incorporated with the local Act.

(b) *Mersey Docks v. Gibbs*, L. R. 1 E. & I. App. 93; 35 L. J. Ex. 225.

(c) 4 Ex. Div. 116; 48 L. J. Ex. 402.

a discretionary duty to remove obstructions, but they had not removed them, and damage was occasioned to the plaintiffs by non-removal. The Court held that the action could not be maintained, for the defendants were unpaid trustees for public purposes, and that their duty to remove the obstructions under the statute was only discretionary, and not compulsory, and the learned judge appeared to distinguish this case from that of the *Mersey Dock Trustees v. Gibbs* (*a*) on the ground (*inter alia*) that the language of the Act of Parliament was very different.

And where a public body acts in discharge of a public duty, and the injury occasioned is the inevitable result of what Parliament has expressly authorised to be done, an action will fail (*b*).

But the Commissioners, being entrusted with the execution of certain works, must use proper care and reasonable skill, for persons injured by their negligence will be able to maintain an action. Instances are given in the note below which, out of a large number of cases illustrating this proposition, appear to be especially in point as affecting Commissioners of Sewers (*c*).

(*a*) For cases where the duty imposed is express and liability follows upon the neglect of the duty, see *Hartnall v. Ryde Commissioners*, 4 B. & S. 361; 33 L. J. Q. B. 39; and *Ohrby v. Ryde Commissioners*, 5 B. & S. 743; 33 L. J. Q. B. 296; while for the discretionary instance see *re Newport Bridge*, 2 E. & E. 377; 29 L. J. M. C. 52; and *Parsons v. St. Matthew, Bethnal Green*, L. Rep. 3 C. P. 56; 37 L. J. C. P. 62.

(*b*) *Dixon v. Met. Board of Works*, 7 Q. B. D. 418; 50 L. J. Q. B. 772.

(*c*) Where bricklayers, acting under the orders of Commissioners of Sewers, were repairing a public sewer, and in course of their work did damage to a neighbouring house, it was held that Commissioners of Sewers and persons working by their order, in the course of the necessary repair of a sewer in the neighbourhood of houses, are bound to take all such proper precautions for securing them, and to shore them up, if necessary, as skilful persons would do, *Jones v. Bird*, 1 D. & R. 497; 5 B. & A. 837; see *Drew v. New River Co.*, 6 C. & P. 751. This case is one of considerable importance as bearing upon the general proposition that the defendants, (Commissioners of Sewers), in discharging a public duty, had acted *bonâ fide*, and were therefore not liable to an action. Bayley, J., there said:—“As to the merits of the case, it is contended the defendants are protected if they acted *bonâ fide*, and to the best of their skill and judgment. But

Commissioners' servants.

A public body like Commissioners of Sewers are answerable for the negligence of their servants just as if they were acting as the servants of a private individual and not for a corporation incorporated for a public purpose (*a*).

Commissioners' contractors.

Neither will the Commissioners be excused from liability by reason of their having employed a competent contractor to

that is not enough; they are bound to conduct themselves in a skilful manner, and the question was most properly left to the jury to say whether the defendants had done all that any skilful person could reasonably be required to do in such a case." But where Commissioners of Sewers were found not guilty of negligence, although the probability of damage accruing would have been in some degree less if the sewer in question had been made otherwise, the court gave judgment for them, it being held that the decision in *Sutton v. Clarke*, 6 Taunton, 29, in favour of public functionaries, who, without emolument, and acting *bonâ fide* according to the best skill, are to be held harmless, was well founded. *Grocer's Co. v. Donne*, 3 Bing. N. C. 34; 3 Scott, 356; 2 Hodges, 120. Nevertheless, in the event of Commissioners acting *bonâ fide*, and being a public body bound to discharge a public duty, without reward and without funds, they are liable for the negligence of those whom they employ. *Coe v. Wise*, L. R. 1 Q. B. 711; 37 L. J. Q. B. 262 (Ex. Ch.); 7 B. & S. 831; 14 L. T. N. S. 891. This case, which was decided upon 7 & 8 Vic. c. 106 (an Act for improving the Drainage and Navigation of the Middle Level of the Fens), is in principle the same as the *Mersey Docks and Harbour Trustees v. Gibbs*, L. R. 1 E. & I. Ap. 93; 35 L. J. Ex. 225, where the authorities are collected, and which is confirmed in *Winch v. Conservators of the Thames*, L. Rep. 7 C. P. 458, affirmed L. Rep. 9 C. P. 378; 43 L. J. C. P. 167; see also *Forbes v. Lee Conservancy Board*, 4 Ex. Div. 116; 48 L. J. Ex. 402, and remarks of Pollock, B., at p. 124. In addition to these cases, there may be noted the authorities collected under s. 135 of the Metropolis Local Management Act, 18 & 19 Vic. c. 120, by Mr. Woolrych in his work on the Metropolis Local Management Act, 2nd ed. p. 73-78; see also *Gale on Easement*, 4th ed. p. 114.

(*a*) *Mersey Docks v. Gibbs* L. R. 1 E. & I. Ap. 115; 35 L. J. Ex. 225. See also *Forman v. Mayor of Canterbury*, L. R. 6 Q. B. 214; 40 L. J. Q. B. 138. In *Scott v. Manchester Corporation*, 1 H. & N. 59; 26 L. J. Ex. 132, it was held that a corporation employing workmen is responsible for the negligence of the men employed. Alderson, B., there says:—"The person who selects the workmen is the party liable. Commissioners may get rid of their liability by making contracts, but if they employ their own servants and do the work they will be liable for the acts of those servants." See *Hall v. Smith*, 2 Bing. 156; 9 Moore, 226; *Harris v. Baker*, 4 M & S., 27. As to the corporate nature of Commissioners of Sewers, see *post*, p. 194.

execute work; but if they are able to prove satisfactorily that the work was, in fact, done in a competent manner, and that the injury arose from some accident or the act of God, they will be not liable (*a*).

Where they have employed an independent contractor, and injury is occasioned, as a natural consequence of the work which they have ordered to be done being executed without proper precautions, they will be held responsible. Supposing, however, the contractor to have been negligent during the process of carrying out the work in a manner which forms no part of the Commissioners' order, in that case the action would be against the contractor and not against the Commissioners (*b*).

The Commissioners are none the less liable in cases where they have done a negligent act in the first instance, but such act is separated from the injury done by the wrongful intervention of third parties. Thus by a Drainage Act for improving the navigation of the Middle Level of the Fens, Commissioners were to construct a cut with gates and sluices to keep out the waters of a tidal river, and a culvert under the cuts to be always kept open, but in consequence of the negligent construction of the gates and sluices the waters of the river flowed into the cut, and bursting the bank, flooded the adjoining land. The plaintiff impeded the passage of the water at the lower end of the culvert, but the occupiers of lands on the other side removed the impediment, and so let the water through on to the plaintiff's land to a much greater extent.

(*a*) *Grote v. Chester & Holyhead Ry. Co.*, 2 Ex. 251, of which the principle is explained in *Francis v. Cockrell*, L. Rep. 5 Q. B. at p. 505; 39 L. J. Q. B. 113; 9 B. & S. 950.

For an instance where a statute specially absolved from liability persons acting under the authority of Commissioners of Sewers (Metropolitan), see *Ward v. Lee*, 26 L. J. Q. B. 142; 7 E. & B. 426. The Court also said that the plaintiff's remedy was by action against the Commissioners as a body in the name of their clerk, and that damages would have been recoverable from the funds at their disposal.

(*b*) *Gray v. Pullen*, 5 B. & S. 970, 981; 34 L. J. Q. B. 265; *Bower v. Peate*, 1 Q. B. D. 321; 45 L. J. Q. B. 446.

The Court held that the Commissioners could not exonerate themselves by pleading the wrongful act of other persons, but that they were liable for the result of their own negligence. (*a*)

Commissioners
of Sewers a
quasi corpora-
tion.

Commissioners of Sewers are not, strictly speaking, a corporation. They may be considered a *quasi* corporation, and this term has judicial sanction. (*b*) Although possessing some incidents of a corporation, in the strict legal sense of the word they cannot be termed one. The various Acts creating and clothing them with authority nowhere constitute them a corporation; but for certain purposes, such as holding lands (3 & 4 Will. IV. c. 22, s. 47), they have corporate powers (*c*).

It should be observed that Drainage Boards, under 24 & 25 Vic. c. 133, s. 66, are made a body corporate, and Conservancy Boards proposed to be established under the Rivers Conservancy Bill, 1883, were so described.

3 & 4 Will. IV.
c. 22, ss. 57, 58,
59.

It has already been noticed that by 3 & 4 Will. IV. c. 22, ss. 57, 58, 59, it is provided that Commissioners of Sewers may be sued at law, or in equity in the name of their clerk (*d*) for the time being (*e*), or in the name of any one Commissioner,

(*a*) *Collins v. Middle Level Commissioners*, L. R. 4 C. P. 279; 38 L. J. C. P. 236.

(*b*) They are spoken of as a *quasi* corporation in *Crossman v. Bristol & S. Wales Rail. Co.*, 1 H. & M. 531; 11 W. R. 981.

(*c*) *Stracey v. Nelson*, 12 M. & W. 535; 13 L. J. Ex. 97. The case of the Conservators of the Tone *v. Ash*, 10 B. & C. 349, is instructive upon this point where the body in question, although not created a corporation by express words, were held to be one by implication. As to the term "*quasi* corporate" and its application, see *Witenell v. Gertham*, 6 T. R. at p. 396. In *Ruck v. Williams*, 27 L. J. Ex. 357; 3 H. & N. 308, Bramwell, B., describes the Improvement Commissioners as a *quasi* corporate body; trustees of turnpike roads are similarly described, *Whitehouse v. Fellows*, 10 C. B. N. S. 765.

(*d*) See also 24 & 25 Vic. c. 133, s. 52.

(*e*) *Clements v. Pollard*, 10 Ex. 817. The effect of this form of procedure has not unfrequently given rise to litigation. In *Kendall v. King*, 25 L. J. C. P. 132; 17 C. B. 483, a committee elected annually from among the justices of a county were authorised to make certain contracts, and were to sue and be sued in the name of their clerk, and Williams, J., there said, in giving

and that no action abates by reason of the death, resignation or removal of the Commissioners, or of their clerk, or of the expiration of the Commission under which they act. There is provision for the reimbursement of the Commissioners and the clerk's costs, and the clerk may be a witness. It is also enacted that no execution shall issue against the Commissioners or their clerk until six months after final judgment (*a*).

The 24 & 25 Vic. c. 133, s. 53, further provides that in cases of trespass or irregularity committed in the execution of the Act, if tender of sufficient amends be made before action brought to the party injured, he shall not recover in such action; while if no such tender is made, the defendant may by leave of the Court, while the action is pending, pay money into Court to abide the verdict. Thus, where (*b*) under a local Act the plaintiff's land had been taken without his consent in writing, for the purposes of the Act, and the defendant *bonâ fide* believing that he was acting in pursuance of the Act, committed the trespass

24 & 25 Vic.
c. 133, tender of
amends.

judgment: "In modern times an anomaly has been introduced into the law, namely, that persons as trustees or as visiting committee may contract though not a body corporate, without being personally liable under that contract, and may sue and be sued in the name of another person, a name which is only used for the purposes of the suit. Now, the consequences of this anomaly, so inconsistent with all the principles of the common law, and the remedies which the common law provides, no doubt lead to contradictions and crudities. . . . But still it is now become a familiar matter that trustees shall be allowed to make contracts, though they are not a corporation, without being personally liable upon them, and that where a judgment is recovered against them, the action being brought against a nominal person such as the clerk, the judgment so recovered shall not have the usual incidents of a judgment; it shall not be enforceable by writs of execution against any body, but only by mandamus or bill in equity, the effect of which is to compel the parties to do their duty where it appears they have the means of doing so. See also *Wormwell v. Hailstone*, 6 Bing. 668; *Harrison v. Timmins*, 4 M. & W. 510.

Kendall v. King.

(*a*) Proceedings under local Acts are generally regulated by notice of action to be given by a certain time; see *Breedon v. Murphy*, 3 C. & P. 574. The 5 & 6 Vic. c. 97, prescribes an uniform notice of action of one calendar month.

(*b*) *Jones v. Gooday*, 9 M. & W. 736.

Notice of
action.

complained of, the Court held he was protected by the Act, inasmuch as satisfaction was tendered before action brought, and refused by the plaintiff, and, further, that it was unnecessary to plead such tender, or to pay money into Court.

EVIDENCE IN ACTIONS AGAINST THE COMMISSIONERS.

The plaintiff, complaining of any act done under the authority of the Commissioners, may bring his action against the person employed to do the act complained of without joining the Commissioners, or he may make them parties to the suit (*a*).

Inspection of
books of
Commissioners.

The books kept by Commissioners of Sewers are in the same category as parish books (*b*), that is, they are not open to inspection by strangers; nor have parties assessed to the sewers rate a general right of inspection; they can only claim access to such entries and proceedings as have reference to the rate for which they are themselves assessed, and to the level in which their property is situated. Thus the Court refused to allow ratepayers objecting to a rate to have production of "all Commissioners' plans, rates, presentments, decrees, accounts, books, proceedings and minutes of proceedings relating to the district" (*c*).

Where the Lord of the Manor of Chelsea was indicted for not repairing a bank of the River Thames *ratione tenuræ*, the Court refused to allow inspection of the Court rolls of the manor, but this was on the ground that the procedure was criminal, and that the defendant was not bound to furnish evidence which might ultimately criminate himself (*d*).

(*a*) Phillips on Evidence, vol. ii. 433, 7th ed.; and *see ante*, p. 132, Action for illegal distress, where the evidence in actions against Commissioners of Sewers is noticed.

(*b*) Taylor on Evidence, vol. ii. 1262.

(*c*) *R. v. Commissioners of Sewers for Tower Hamlets*, 3 Q. B. 670; 11 L. J. Q. B. 231.

(*d*) *R. v. Earl of Cadogan*, 5 B. & A. 902.

Orders of the Commissioners of Sewers, requiring landowners to repair and alter sea-walls, may be given in evidence as adjudications by a Court of competent jurisdiction, without proof of their having been acted on. After a considerable lapse of time (as 70 years) it will be presumed that such orders were executed; but the Court in the case cited below upon the question of the admissibility of presentments gave no opinion (*a*).

The issue of a Commission of Sewers under the Land Drainage Act, 1861, is conclusive evidence that all the requirements of that Act in respect of the Commission have been complied with (*b*).

The making of a provisional order is conclusive evidence that all the requirements of the Act in respect of the constitution of a Drainage Board have been complied with (*c*).

The record, or any certified copy of a charge made by way of commutation of liability to repair (*d*), and contracts, agreements, sales, conveyances, verdicts and judgments certified by the clerk of the peace, and deposited with the clerk of sewers, and copies thereof are receivable in evidence in all legal proceedings (*e*).

Record of commutation charge.

Contracts, agreements, &c.

The clerk of sewers may be a witness in any action, suit, proceeding, prosecution, or indictment (*f*), and rated persons are competent witnesses before any Court of Sewers (*g*).

Witnesses.

Notices signed by the clerk to the Commissioners are receivable in evidence without any other proof (*h*), and notices served by the Commissioners on proprietors or owners are, if

Notices.

(*a*) *R. v. Leigh*, 10 A. & E. 398; 2 P. & D. 357; and see the evidence tendered in *R. v. Fobbing Commissioners*, 53 L. J. Q. B. (to be reported).

(*b*) 24 & 25 Vic. c. 133, s. 13.

(*c*) *Ib.* s. 65.

(*d*) *Ib.* s. 36.

(*e*) 3 & 4 Will. IV. c. 22, s. 28.

(*f*) *Ib.* s. 59.

(*g*) 4 & 5 Vic. c. 45, s. 9.

(*h*) 24 & 25 Vic. 133, s. 42.

due service has been made, to be binding on all persons claiming by, from, or under such proprietors or owners (*a*).

The service of notices on owners, corporations and occupiers is regulated by ss. 44, 45 and 46 of the Land Drainage Act, 1861.

Commissioners
Clauses Act, 10
Vic. c. 16, s. 99.

Summonses and notices, writs and other proceedings in the case of Drainage Boards may be sent through the post-office directed to the principal office of the Board, or be served personally on the clerk or some member of the Board. Notices required by the Act to be given by advertisement are to be advertised in the prescribed newspaper, or if no newspaper be prescribed, or if the prescribed newspaper cease to be published, in a newspaper circulating in the district.

Every order, summons, or notice, or other document requiring authentication by the Board, shall be sufficiently authenticated if signed by two of the Board or by the clerk to the Board. (*b*)

PLEADINGS.

Pleading.

References to some precedents in pleading in actions relating to Commissioners of Sewers are here appended.

Precedents.

The following are the precedents referred to:—Declaration against a corporation for not repairing sea-walls according to charter (*c*); against an adjoining proprietor for not repairing a sea wall pursuant to liability to repair, whereby the plaintiff's land was inundated (*d*); against Commissioners of Sewers for negligence in constructing a sewer whereby the plaintiff's house

(*a*) 24 & 25 Vic. 133, s. 43.

(*b*) This is in accordance with the procedure set out in the Commissioners Clauses Act, 10 Vic. c. 16, ss. 99, 100, 101, which is incorporated with Part ii. of the Land Drainage Act, 1861, relating to Drainage Boards (s. 71). The Commissioners' Clauses Act, 1847, 10 Vic. c. 16, will be found set out in Appendix A.

(*c*) *Henly v. Mayor and Burgesses of Lyme Regis*, 5 Bing. 91; 3 B. & A. 77; 1 Bing. N. C. 222.

(*d*) *Hudson v. Tabor*, 1 Q. B. D. 225; 54 L. J. Q. B. 190.

was injured (*a*); cognizance for an amercement by Commissioners of Sewers for a neglect to repair, alleging that the owners and occupiers of certain lands had immemorially repaired, and setting out proceedings at the Court of Sewers finding the above prescription, followed by a traverse of the presentment, a verdict against the traversers, and a subsequent amercement under which distress was levied on the plaintiff's goods (*b*).

(*a*) *Jones v. Bird*, 5 B. & Ald. 837; *Grocers' Company v. Donne*, 3 Bing. N. C. 54; *Ruck v. Williams*, 3 H. & N. 308; 27 L. J. Ex. 357.

(*b*) *Ramsay v. Nornabell*, 11 Ad. & Ell. 383.

CHAPTER IX.

ELECTIVE DRAINAGE DISTRICTS.

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THE second part of the Land Drainage Act of 1861, deals with the formation of Elective Drainage Districts and Electoral Drainage Boards. It has been observed (a) that the effect of this part of the statute is to provide an inexpensive method of obtaining a private Act of Parliament for the purpose of drainage, and it is true that in certain parts of the country considerable recourse has been had to its provisions. The scheme, however, is marked by many of those defects which have rendered the Act in some measure disappointing in its results, more especially by this creation of independent bodies which, while aiming at the common objects of draining a particular district or river basin, become, in the exercise of their powers, antagonistic to one another.

The following is a brief outline of the principal provisions of

24 & 25 Vic.
c. 133, Part ii.
Sec. 63.

(a) Thring, p. 77. The authors, through the kindness of Mr. Grantham, C.E., F.G.S., of the office of the Land Commission, have been furnished with a list of districts formed under Part ii. of the Land Drainage Act, 1861, which will be found set out in Appendix D.

this part of the statute:—By the 63rd section it is provided that the proprietors of one-tenth part of any bog, moor or other area for which it is desirable that there should be a combined system of drainage, may petition the Inclosure Commissioners for authority to constitute such area a separate drainage district. A proviso to this section, however, is to the effect that a district under the jurisdiction of Commissioners of Sewers, a borough, a Local Board of Health or Improvement Commissioners cannot be constituted a drainage district under this Act without the consent of such authorities. Upon this section Mr. Thring observes that the object is to substitute proceedings by provisional order for a special Act of Parliament, and that the powers given by it can scarcely be abused, for the petition must be presented by *one-tenth* of the proprietors, be assented to by two-thirds of the proprietors, be approved by the Inclosure Commissioners and be confirmed by Act of Parliament.

It appears that the officials of the Inclosure Commissioners were in doubt as to what meaning was to be given to the expression “Improvement Commissioners” in this section, but that now in accordance with the opinion of counsel it is not the practice of that office to allow a Commission of Sewers or drainage district to be formed without the consent of all public bodies in the district which are charged with the duty of carrying out local improvements including drainage (*a*).

MODE OF CONSTITUTING DISTRICT.

Sec. 64.
(1)

By s. 64, this petition must be signed by the proprietors and presented to the Inclosure Commissioners, and must refer *inter alia* to the boundaries of the proposed district (*b*).

Upon the receipt of the petition the Inclosure Commissioners send down an inspector to report upon the advisability of con-

(*a*) See Report of House of Lords Committee on Conservancy Boards, 1877, question 117.

(*b*) A form of Petition is set out in Appendix B.

stituting the proposed district, and to ascertain generally the opinion of the proprietors.

The inspector then furnishes the Inclosure Commissioners with his report, and after due notices in the *Gazette* and newspapers, if they are satisfied, they may, by provisional order, under seal, declare the area a separate drainage district. (2)

The Inclosure Commissioners are empowered to make such alterations of the boundaries of the area mentioned in the petition as they think fit; but it seems doubtful whether they could alter the boundaries so as to include land not mentioned in the petition (a). (3-6.)

As soon as the Inclosure Commissioners conveniently can, they must take steps to procure the confirmation of the provisional order by Act of Parliament; and, this done, it takes effect as a public general Act. Provisional order.

Provisional orders confirmed by Parliament have taken the place of private Acts, and are obtained at much less cost and with greater facility. The Bills for confirming such orders are treated as private Bills, subject to the proof of certain proofs before the examiner.

In discussing the effect of a provisional order made by the Board of Trade under the Tramways Act, 1870 (33 & 34 Vic. c. 78), the late Master of the Rolls, Sir G. Jessel, said:—"The legislature, instead of allowing proceedings to be taken before a Committee of either House, or a joint-committee of both Houses of Parliament, decided that these inquiries might be prosecuted more cheaply and beneficially before a local tribunal, or persons appointed to inquire into the matters locally. These proceedings are instituted, and the parties, instead of applying to Parliament, apply to the Board of Trade; and, after making a proper investigation into the locality, the

(a) See *In re* the District of Todmorden, 1 B. & S. 412; 30 L. J. Q. B. 305, where the question was raised, but not decided, whether the Secretary of State, in settling the boundaries of a district under 21 & 22 Vic. c. 98, had power to include portions of a neighbourhood not mentioned in the petition.

Board of Trade makes a provisional order; and then, if Parliament sees fit, that provisional order generally, with a great many more, is confirmed by an Act of Parliament, which is not procured at all by the applicants, but by the Board of Trade—that is, by the executive Government of the country” (*a*).

Until the provisional order is confirmed by Act of Parliament, it has no validity (*b*), and the Courts of Law will not entertain any application to interfere with its provisions, for if there is any opposition to it the Bill will be referred to a Select Committee (*c*). But a local Board was restrained from proceeding with an application for a provisional order, under the Metropolitan Commons Act, 1866 (29 & 30 Vic. c. 122), when the application was contrary to equity (*d*).

If any petition be presented to the House against a provisional order in the progress of the Bill, the Bill, so far as it relates to such order, is referred to the Committee of Selection, by whom a Private Bill Committee is appointed, and the petitioners are allowed to appear and oppose as in the case of private Bills. The Select Committee may award costs and examine witnesses on oath, 34 & 35 Vic. c. 83. Where orders are amended, the preamble recites that a provisional order has been made by the department and amended by Parliament, and is as so amended set out in the schedule to the Bill; and in the schedule appears the amended order referred to and confirmed by the Bill, comprising every amendment introduced by the committee (*e*).

Bills for confirming provisional orders or certificates being brought in as public are after the first reading referred to the examiner, and are not further proceeded with until after their report (*f*).

(*a*) *In re Morley*, L. R. 20 Eq. 17.

(*b*) Sec. 64 (6).

(*c*) *Frewen v. the Local Board of Health of Hastings*, 6 B. & S. 401; 34 L. J. Q. B. 159.

(*d*) *Telford v. Met. Board of Works*, L. R. 13 Eq. 574; 41 L. J. Ch. 389.

(*e*) Erskine May's Parliamentary Practice, 733.

(*f*) *Ib.*

Confirmed by
Act of Parlia-
ment.

Petition against
provisional
order.

Several orders are generally grouped together in one Bill. Orders grouped. Thus 26 & 27 Vic. c. 63 includes provisional orders under the Land Drainage Act, 1861, for constituting the following Drainage Boards:—Morden Carrs Drainage Board in Durham, the Longdon and Eldersfield Drainage Board in Gloucestershire, and the Maxey Drainage Board in Northamptonshire. These Acts being public general Acts, were formerly published in the edition of public statutes, but now they are published among the local Acts. See, for instance 36 Vic. c. XXIV., establishing a Drainage Board in Deeping Fen, in Lincolnshire; 44 & 45 Vic. c. I, establishing Drainage Boards at Swavesey and Fen Drayton in Cambridgeshire, and at Feltwell and Methwold in Norfolk.

If the petitioners are successful in obtaining the constitution COSTS (7). of the district, the costs of the proceedings may be discharged out of the rates leviable in the district in pursuance of this Act; if their application prove abortive, they will themselves have to defray the costs.

Prior, however, to the Inclosure Commissioners entertaining Security for COSTS. any petition, the petitioners have to give such security for costs as the Commissioners require. The taxation of these costs proceeds on the Chancery and not on the Parliamentary scale (a).

DRAINAGE BOARDS.

The drainage district once constituted is superintended in all Sec. 66. matters relating to drainage by an elective body, called the Drainage Board, which is made a body corporate. The Drainage Board.

Then comes the most important section of the enactment Sec. 67. (s. 67), which defines the powers of the Board. It provides that the Board may, within the limits of the district, exercise the same jurisdiction as is vested in Commissioners of

(a) *In re Morley*, L. R. 20. Eq. 17.

Sewers, while all the powers of the Commissioners of Sewers are at the same moment swept away (*a*).

Right of
appeal.

It will be remembered that by s. 47 of this Act, (*b*) where Commissioners of Sewers have made any order, requisition or rate, or done any act, an aggrieved person has the right of appeal to Quarter Sessions, and accordingly a proviso to this section is here inserted giving the same liberty of appeal in like cases to any person aggrieved by the orders, &c., of the Drainage Board.

REGULATIONS AS TO DRAINAGE BOARDS.

Sec. 68.

The next section proceeds to enumerate certain regulations to be observed in respect of Drainage Boards, and first as to what the provisional order must contain, which is as follows:—

1. The names and number of the members of the first Board.
2. The number of members who are to serve upon the Board.
3. The mode of summoning the first meeting of the Board.
4. The qualification of subsequent members of the Board.
5. The time at which the first members of the Board are to vacate their office, provided that the time is not later than the end of September in the year after the confirmation of the order by Act of Parliament.

The remaining sub-sections provide for the vacation of office (*c*) by members of the Board (sub-secs. 2 and 3); for the re-

(*a*) But the consent of the Commissioners of Sewers must be obtained to the establishment of a drainage district within the area of the Commission (s. 63).

(*b*) See *ante*, p. 95.

(*c*) See for similar provisions, Public Health Act, 1875, 38 & 39 Vic. c. 55, Sched. II.

election of retiring members (sub-sec. 4); for the appointment by the Board to casual vacancies on it (sub-sec. 5); for the conduct of the Board during such vacancies (sub-sec. 6); for the disqualification of members who become bankrupt, the consequent vacation of office and the penalties attaching in case of members acting after such disqualification (sub-secs. 7 and 8), and for the validity of acts done by the Board previous to the discovery of defective appointments or disqualifications of any of its members (sub-sec. 9) (*a*).

Assuming that the provisional order does not lay down anything to the contrary, the electors of the Drainage Board are subject to the following regulations. The persons who have during the year preceding such election been rated to the sewers rate of the district, and have paid all sewers rates, are the electors (*b*). By the interpretation clause of the Act (*c*) corporations would be included; but such bodies cannot, it is apprehended, vote as ratepayers, except by an officer appointed to vote in their name (*d*). The scale of voting is determined by the rateable (*e*) value of the land in respect of which the vote is given, and is copied from the Commissioners Clauses Act, 1847, giving proprietors of large estates a plurality of votes regulated by the acreage (*f*).

(*a*) See Commissioners Clauses Acts, 10 Vic. c. 16, s. 24 in Appendix A.

(*b*) See 69 (1). Previous to the appointment of the first Drainage Board there would be no such ratepayers; they would be created for the first time by that Board, which is named by the provisional order, s. 68 (1), *ante*, p. 206.

(*c*) Sec. 3.

(*d*) Regard should be had to the regulations of voting by proxy contained in the schedule to this Act, Part. 1. See also the provisions for the voting of corporations as ratepayers contained in 30 & 31 Vic. c. 106, s. 10.

(*e*) Presumably the net annual value in respect of which the voter is rated to the poor rate. This clause is adduced by Blackburn, J., as a reason for showing that the value of the land, and not the extent of it, is to be taken as the basis for ascertaining the amount to be assessed on it for the sewers rate. *Griffiths v. Longdon and Eldersfield Drainage Board*, L. R. 6 Q. B. 738; 41 L. J. Q. B. 25.

(*f*) Thring, p. 23.

Qualification
of electors.

Land of rateable value :—

| | | | | |
|-----------------------|-----|-----|-------|-----------|
| Under £50 | ... | ... | gives | 1 vote. |
| £50 and under £100 | ... | .. | „ | 2 votes. |
| £100 and under £150 | ... | .. | „ | 3 votes. |
| £150 and under £200 | ... | .. | „ | 4 votes. |
| £200 and under £250 | ... | .. | „ | 5 votes. |
| £250 | ... | .. | „ | 6 votes. |
| £500 and under £1,000 | ... | .. | „ | 8 votes. |
| £1,000 or more | ... | .. | „ | 10 votes. |

Sec. 70. The 70th section (again allowing for variation introduced in the provisional order) points out a schedule which gives the necessary machinery for conducting the election to the Board and proceedings at meetings of it, and a test section of the Act upon this subject incorporates certain provisions of the Commissioners Clauses Act, 1847, (*a*) with respect to—

10 Vic. c. 16.

1. Contracts and Deeds.
2. Liabilities of Commissioners, and legal proceedings by or against them.
3. The appointment and accountability of the Commissioners' officers.
4. The accounts of Commissioners.
5. Notices and Orders.

RULES AS TO ELECTION OF MEMBERS OF DRAINAGE BOARDS.

Election of
Members.

Rules as to the election of members of Drainage Boards are set out to the schedule to the Act. The Chairman of the Board of the previous year, or some person appointed by him, is to be the returning officer. To provide for the case of a default by the chairman to appoint an officer, and there being consequently no returning officer, provision is made for the appointment by

(*a*) 10 Vic. c. 16; (1) s. 56-59; (2) s. 60-64; (3) s. 65-74; (4) s. 89-95; (5) s. 99-103. See Appendix A, *post*, where the Act is set out.

the Inclosure Commissioners of a returning officer (*a*). The returning officer shall preside in person.

In a case where the returning officer for an election of a local Board of Health, under 11 & 12 Vic. c. 63, was absent during the election, which was conducted by two assessors, it was held that the election was void (*b*). The returning officer has to perform judicial duties, and therefore he must not be a candidate on the principle, *Nemo debet esse iudex in propria causa* (*c*). The returning officer is to give notice of the meeting for election, and is to preside and regulate the proceedings. If more candidates are proposed than the number to be elected, a poll may be demanded, but if not, the returning officer is to declare who are elected. In the event of a poll being demanded, the returning officer has to appoint a time and place for taking it. Votes may be given personally or by proxy; the proxy must be a qualified elector, and must be appointed in writing, and the instrument appointing him has to be deposited at the office of the Board seven days before day of election. The address of the voter, and the manner in which he votes, has to be entered in the polling-books, and at the close of the poll the returning officer has to sum up the votes, and publish the names of the elected candidates (*d*).

The returning officer has to exercise judicial duties; he has to decide on the validity of the votes, and the qualification of the candidates (*e*), and as no appeal is given, his decision would appear to be binding and conclusive (*f*); but with regard to those duties which are ministerial, such as casting up the

(*a*) Sched., Part i.

(*b*) *R. v. Backhouse*, L. R. 2 Q. B. 16; 36 L. J. Q. B. 7.

(*c*) *R. v. Owens*, 2 E. & E. 86; 28 L. J. Q. B. 316; *R. v. White*, L. R. 2 Q. B. 557; 36 L. J. Q. B. 267; *R. v. Ward*, L. R. 8 Q. B. 210; 42 L. J. Q. B. 126; Dalton on Sheriffs, 332.

(*d*) Sched., Part i. See *R. v. S. Pancras*, 7 E. & B. 954; 26 L. J. Q. B. 312.

(*e*) *R. v. S. Pancras*, *supra*.

(*f*) *R. v. Collins*, 2 Q. B. D. 30; 46 L. J. Q. B. 257.

votes, his decision is not conclusive, and can be reviewed on appeal.

RULES AS TO PROCEEDINGS OF DRAINAGE BOARDS.

Proceedings of
Drainage
Boards.

In Part ii. of the schedule are set out rules to regulate the meetings and the transaction of business. All questions are to be decided by a majority of votes of the members present. A majority of those who vote is not sufficient unless they form a majority of those present (*a*). Rules 2-5 provide for the appointment of a chairman, the filling of a casual vacancy in the office, or non-attendance at the meeting, and the casting vote of the chairman.

Committee.

By Rule 6 the Board may delegate their powers to committees, whose proceedings are regulated by the two following rules.

The proceedings of a committee appointed under these rules came before the Court in the case of the Deeping Fen Drainage Board in Lincolnshire, which had been constituted a drainage district by provisional order made in pursuance of the Land Drainage Act, 1861. The members of the Board were nine in number, three of whom were appointed a committee to act in any case of emergency. It was agreed among the committee that the Soak Dyke, which received the overflow of the river Glen, should be portioned out among them for supervision, and in the exercise of the power so delegated to him by his co-committeemen, one of the committee cut through the gateways leading to a close, the tunnels or culverts thereunder being too small to allow the water to pass away with sufficient rapidity. The owner of the close brought an action of trespass against the committeeman who had executed the work. It was proved that the course pursued was reasonable and proper, and necessary to

(*a*) *Re Ratepayers of Eynsham*, 12 Q. B. 398 *n*; 18 L. J. Q. B. 210; *R. v. Overseers of Christchurch*, 7 E. & B. 409; affirmed, *ib.* 421; 27 L. J. M. C. 23.

preserve the plaintiff's land from inundation, and that it was approved by the other two members of the committee; but the Court held that the plaintiff was entitled to succeed, because it was not competent to the committee to delegate their powers. In giving judgment, Lord Coleridge said: "I have come to this conclusion with reluctance, because I find that in this case the power which the defendant assumed to exercise was exercised *bond fide*, and if not to the direct advantage of the plaintiff, at least with no appreciable damage. The case raises a grave question upon an important Act of Parliament. It may be convenient that such things as were done here should be done in cases of emergency; but the powers conferred by the Act in question are very strong, practically superseding to a great extent the rights of private property, an interference with which is only permitted where it is for the general good; and in all cases the authority must be strictly followed." After discussing the rules of the schedule, his lordship continued:—"The committee, it seems, met and agreed that the part of the drain in question should be dealt with exclusively by the defendant. That was in effect, the committee assuming to clothe the defendant, a member of their body, with a power which the Board alone could clothe him with. It was not competent to them to delegate their powers, which required the united action of the three, to be exercised according to the unaided judgment of one of them. I come, therefore, to the conclusion that these powers should be carefully maintained by the Courts; that the authority given by the Act has not been exercised either according to the letter or spirit; and that judgment should be entered for the plaintiff." Lindley, J., concurred, and this decision was afterwards affirmed by the Court of Appeal (a).

Rule 9 provides for the keeping of minutes, of the appoint- Minutes.
ment of officers, of the names of the members present and the committees, of all orders made by the Board and committees,

(a) Cook v. Ward, 2 C. P. D. 255; 46 L. J. C. P. 554.

and of all resolutions and proceedings of meetings of the Board or committee of the Board, and declares that if duly signed, these minutes shall be receivable in evidence without further proof. In a case where a local Act directed the chairman of the meeting to subscribe his name at the end of the proceedings, it was held that the book of proceedings was admissible in evidence, although it appeared that in point of fact the chairman did not sign at the meeting itself, or at any other meeting (*a*).

In another local Act where the language was similar to the rules of the Land Drainage Act, 1861, it was held that a book of proceedings, purporting to be signed "W.S., deputy chairman," was evidence *per se*, without proof that W. S. was in fact deputy-chairman, or as such presided at the meeting (*b*).

(*a*) *Miles v. Bough*, 3 Q. B. 845; 12 L. J. Q. B. 74.

(*b*) *The Sheffield and Manchester Railway Company v. Woodcock*, 7 M. & W. 574; 11 L. J. Ex. 26.

CHAPTER X.

COMPENSATION.

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THE LANDS CLAUSES CONSOLIDATION ACTS, with certain excep-
tions, to be noticed in due course, are incorporated into the
Land Drainage Act, 1861, 24 & 25 Vic. c. 133 (a). The pro-
cedure to be observed in obtaining the requisite powers to put
the Act into operation has already been noticed (b).

Lands Clauses
Consolidation
Acts, 1845, 1860,
and 1869.

(a) 24 & 25 Vic. c. 133, s. 28.

(b) *Ante*, p. 78, Purchase of Lands; 24 & 25 Vic. c. 133, Part ii., s. 67, gives Drainage Boards all power vested in, and exercisable by Commissioners of Sewers. *Ib.* Part iii., s. 76, where adjoining owner dissents from the application for an outfall, or is under disability.

Compensation
under 3 & 4
Will. IV. c. 22.

The fact that the Act, 3 & 4 Will. IV. c. 22, contains sections (ss. 24-40) (a) which supply a mode for making compensation to persons whose lands are required by Commissioners of Sewers for the purposes of carrying out their works, must not be overlooked. That Act was passed twelve years before The Lands Clauses Consolidation Act, and there has been no subsequent amending enactment incorporating the latter; consequently, the difficulty (b) raised by s. 60 of the Land Drainage Act, 1861, occurs in this question of land purchase. In strictness it would seem that there is nothing to prevent Commissioners of Sewers proceeding under the extensive provisions of the earlier Act (c) if they choose to do so; but it must be remembered that the powers of land purchase conferred by ss. 24-40 of 3 & 4 Will. IV. c. 22, are limited to the purposes of maintaining and improving existing works (d).

Interpretation
of terms.

It is necessary to direct attention to the meaning of the following expressions which are used in the Land Drainage Act, 1861, and defined by the Lands Clauses Consolidation Act, 1845.

Special Acts.

The "Special Act," that is the Land Drainage Act, 1861;

Promoters.

"Promoters," this includes Commissioners of Sewers and Drainage Boards (Land Drainage Act, 1861, s. 28) (e);

Lands.

"Lands," this expression embraces easements (Land Drainage

Lease.

Act, 1861, s. 28) (f); "Lease," includes an agreement for

(a) The Lands Clauses Consolidation Act has no retrospective operation, *re* Cherry, 31 L. J. Ch. 351; 10 W. R. 305; 6 L. T. N. S. 31. See also *ex parte* Eton College, 20 L. J. Ch. 1; Lancashire & Yorkshire Rail. Co. v. Evans, 15 Beav. 322.

(b) *Ante*, p. 36.

(c) See *ante*, p. 76, Purchase of Land. (d) *Ib.*

(e) Throughout this chapter *ex convenienti*, the word "Commissioners" is used to designate the corresponding expression "promoters," and includes, unless the contrary is specified, Commissioners of Sewers and Drainage Boards.

(f) *Pinchin v. London & Blackwall Rail. Co.*, 5 De G. M. & G. 851; 24 L. J. Ch. 417; *Baker v. Vestry of St. Marylebone*, 35 L. T. 129; 24 W. R. 848; *Great Western Rail. Co. v. Swindon & Cheltenham Rail. Co.*, 22 Ch. D. 677; 52 L. J. Ch. 306.

lease (Lands Clauses Consolidation Act, 1845, s. 3); "Owner," ^{Owner.} is any person or corporation who, under the provisions of the incorporated Act, the Land Drainage Act, 1861, is enabled to sell and convey land, and the Land Drainage Act, 1861, 24 & 25 Vic. c. 133, confers the power of purchasing the land by agree- ^{Purchase of land by agree- ment.} ment; but it is submitted that the provisions of the Lands Clauses Consolidation Act, 1845, in such case, will be advantageously followed (a).

The land purchased must be strictly for the purposes of the Act (b); these purposes, it will be remembered, in the Land Drainage Act, 1861, are limited to "new works." Lands which the Commissioners may be compelled to take under s. 92 of the Lands Clauses Consolidation Act, 1845, as forming part of a house or manufactory, would be "for the purposes of this Act" (c). ^{Purposes of the Act.}

In all cases of purchase of land a notice to treat in accordance ^{Notice to treat.} with s. 18 of the Lands Clauses Consolidation Act, 1845, should be given. Such a notice is a neutral proceeding, and is not a putting in force of the compulsory powers of the Act. The notice to treat does not in itself constitute a contract, but places the parties in a condition to enter into a treaty and agreement (d), but when once an agreement to purchase settling the price is made a binding contract is effected (e). The notice to

(a) It has been pointed out that Commissioners of Sewers can purchase land by agreement under 3 & 4 Will. IV. c. 22, s. 24, but only for the purposes of maintenance and improvement of existing works, *ante*, p. 76.

(b) *Bostock v. N. Staff. Rail. Co.*, 4 E. & B. 798; 25 L. J. Ch. 325, where a railway company were restrained from using for the purposes of a regatta, a reservoir they had purchased.

(c) *Governors of St. Thomas's Hospital v. Charing Cross Rail. Co.*, 1 J. & H. 400; 30 L. J. Ch. 395.

(d) *Guest v. Poole & Bournemouth Rail. Co.*, L. R. 5 C. P. 553; 39 L. J. C. P. 329; *Haynes v. Haynes*, 1 Dr. & S. 426; 30 L. J. Ch. 578, where the effect of the notice and the views of various judges are minutely examined by Kindersley V.-C. See also remarks by Page Wood, V.-C., in *Gardner v. Charing Cross Rail. Co.*, 31 L. J. Ch. 181; 2 J. & H. 248; *Richardson v. Elmit*, 2 C. P. D. 9.

(e) *Harding v. Met. Rail. Co.*, L. R. 7 Ch. 154; 41 L. J. Ch. 37; *Mason*

treat in case of compulsory purchase under the Act is now considered.

LANDS PURCHASED OTHERWISE THAN BY AGREEMENT.

Notice to Treat.

The first step to be taken by the Commissioners in putting in force their compulsory powers for the purchase or taking of lands is to give a notice to treat (*a*) to the persons interested, and in the form prescribed by s. 18 of the Lands Clauses Consolidation Act, 1845.

This notice must show with accuracy the quantity and situation of the lands required, although it is not absolutely essential to adopt any special form (*b*).

v. Stokes Bay Pier & Rail Co., 32 L. J. Ch. 110; 11 W. R. 80. *In re Pigott* 18 Ch. D. 146; 50 L. J. Ch. 679. A Drainage or Conservancy Board being a corporation must contract under seal, *Finlay v. Bristol & Exeter Rail. Co.*, 7 Ex. 409; 21 L. J. Ex. 117.

(*a*) The notice to treat is not confined to cases of compulsory purchase. It may be used with a view to an amicable arrangement to be followed by an agreement. *Gnest v. Poole & Bournemouth Rail. Co.*, L. R. 5 C. P. 553; 39 L. J. C. P. 329, *see supra*. The Commissioners may, as is often done, give more than one notice to treat to the same owner, but it is the first notice which binds the lands and fixes the legal relationship between the parties; *Tawney v. Lynn, &c., Rail. Co.*, 16 L. J. Ch. 282; but the power of the Commissioners to take land and to give a second notice to treat is not exhausted when they have given one notice for a small quantity, and afterwards require a larger quantity for their works; *Stamps v. Birmingham, &c., Rail.*, 17 L. J. Ch. 431.

(*b*) *Stone v. Commercial Rail. Co.*, 4 My. & C. 124; 1 Rail. Ca. 375, *see* as to lands taken in small excess of powers and notice, and construction of word "delimited," &c., *Dowling v. Pontypool Rail. Co.*, L. R. 18 Eq. 714; 43 L. J. Ch. 761; *Huddersfield Corporation v. Jacombe*, L. R. 10 Ch. 92; 43 L. J. Ch. 748. The form of the notice may run as follows: "The lands of which particulars are contained in the schedule hereto, and which said lands so required are for the better description thereof delineated on the plan attached hereto and delivered herewith, and are thereon distinguished by a red colour." As will be stated later (*post*, p. 228), the warrant to the sheriff must coincide with the notice to treat.

Lands Clauses Consolidation Act, 1845.

Notice to treat, s. 18.

Accurate description of lands in notice.

Wording of notice.

The notice to treat must be given to "all the parties interested in such lands, or to the parties enabled by this Act to sell and convey or release the same, or to such of the said parties as shall, after diligent inquiry, be known to the promoters of the undertaking." As a matter of practice, it will be found more convenient to give a notice only to the parties enabled by the Act to sell, &c., when by so doing it diminishes the number of parties to be dealt with.

Under the expression "parties interested" are included the following: Mortgagees, equitable mortgagees (*a*), trustees and *cestui que trustent* (it is only where a trustee has a discretionary power of sale that he should alone be served), lessees and sub-lessees.

The notice should in case of Commissioners of Sewers be signed by the clerk (*b*), in case of Drainage Boards (under the Land Drainage Act, 1861), being corporations by statute, it should be authenticated by the seal of the undertaking. No stamp (*c*) is required, as it does not, as already stated (*d*), create a contract between the Commissioners and the owners until the price is ascertained, neither does it constitute "a debt owing or accruing" which can be attached under Order xlv., Rules of Court, 1883 (*e*). But when the price has been ascertained after the notice to treat, the contract can then be enforced by an action of specific performance (*f*) by either

(*a*) *Martin v. L. C. & D. Rail. Co.*, L. R. 1 Ch. 501; 35 L. J. Ch. 795. So, too, a tenant having an equitable lien on premises in respect of buildings erected by him; *Rogers v. Hull Dock Co.*, 34 L. J. Ch. 165; 11 L. T. N. S. 463. It is always better when possible to serve both trustee and *cestui que trust.*

(*b*) s. 42, Land Drainage Act, 1861.

(*c*) *Rawlings v. Met. Rail. Co.*, 37 L. J. Ch. 824; 18 L. T. N. S. 871.

(*d*) *Ante*, p. 215.

(*e*) *Richardson v. Elmit*, 2 C. P. D. 9; *Howell v. Met. Rail. Co.*, 19 Ch. D. 508; 51 L. J. Ch. 158.

(*f*) *Harding v. Met. Rail. Co.*, L. R. 7 Ch. 154; 41 L. J. Ch. 371; *Mason v. Stokes Bay Pier Co.*, 32 L. J. Ch. 110; 11 W. R. 80; *Regent's Canal v. Ware Co.*, 26 L. J. Ch. 566; *Grierson v. Cheshire Lines*, L. R. 19 Eq. 83; 44 L. J. Ch. 35. *In re Pigott & The Great Western Rail. Co.*, 18 Ch. D. 146; 50 L. J. Ch. 679.

To whom given

Parties interested.

Notice: how signed.

Does not require stamp.

Is not a "debt owing," &c., under Judicature Act, 1875.

party, but the provisions of the contract must be capable of being enforced at once (*a*).

Service of.

Lands Clauses Consolidation Act, 1845. Secs. 19, 20.

Sec. 21.

The notice must be served in accordance with ss. 19 & 20 of the Lands Clauses Consolidation Act, 1845. In the case of land being required from a corporation, the notice should be left at the principal office. When the owner is absent from the kingdom and cannot therefore treat, provision is made by ss. 58-67 (*b*).

Secs. 58-67.

It will be seen on reference to the Land Drainage Act, 1861, 24 & 25 Vic. c. 133, that the provisional order, which is a preliminary necessity to the Commissioners putting in force the compulsory clauses of the Lands Clauses Consolidation Act, 1845, may contain certain conditions and modifications as the Inclosure Commissioners may deem fit to make, and the time within which the notice to treat must be served may well be specified in that order. If, however, the Commissioners are not restricted to any period in the execution of their works, it would seem that no intendment as to reasonable time can be made (*c*).

Time within which served.

Lands Clauses Consolidation Act, 1845, s. 18.

The party upon whom the notice to treat has been served is required by it to state the particulars of his estate and interest in the land required, and his claim in respect of the same. If the description of the land in the notice (*d*) differ from that in the precept to the sheriff to summon a jury to assess compensation, it is an irregularity which is waived by appearance before the jury (*e*).

Notice binds the Commissioners.

The Commissioners having once served the notice to treat are bound by it (*f*), and within a reasonable time must take

(*a*) *Blackett v. Bates*, L. R. 1 Ch. 117; 35 L. J. Ch. 324.

(*b*) As to costs in such case, *see post*, p. 239.

(*c*) *Thicknesse v. Lancaster Canal Co.*, 4 M. & W. 472.

(*d*) Under s. 23 are words synonymous with these, viz.: "nature and interest."

(*e*) *Ex parte Bailey*, 1 Bail Court Ca. 66.

(*f*) Except where, under s. 22, there is a counter notice, *see Steele v. Mayor of Liverpool*, 7 B. & S. 261; 14 W. R. 311.

the necessary steps for assessing compensation (*a*), while the owner of the property thus affected by the notice to treat, remains also bound until the special time has elapsed which may be fixed by the provisional order for the completion of the works (*b*).

The time at which an owner's interest for the purposes of compensation is to be considered must be determined solely by the date of the notice to treat, from which time he can no longer deal with it, *e.g.*, by lease (*c*). A Court of Equity will restrain by injunction an owner from selling the property particularised in the notice (*d*).

Period fixing owner's interest.

PROCEEDINGS BEFORE JUSTICES.

The purchase-money or compensation to be paid by the Commissioners is ascertained by justices under the following circumstances:—

Justices.
Lands Clauses Consolidation Act, 1845.

I.—By s. 22 it is enacted that where the claim for the value of land taken or for injury done to it is under the sum of £50, the amount is to be determined by two justices. The claim of the owner is that which brings the case within the operation of this section of the Act (*e*).

(*a*) *Rex v. Hungerford Market Co.*, 4 B. & Ad. 327; *Morgan v. Metropolitan Railway Co.*, L. R. 3 C. P. 553; L. R. 4 C. P. 97; 37 L. J. C. P. 265; 38 L. J. C. P. 87.

(*b*) *Richmond v. North London Railway Co.*, L. R. 5 Eq. 352; 37 L. J. Ch. 273; L. R. 3 Ch. 679; 37 L. J. Ch. 886; *Kemp v. South Eastern Railway Co.*, L. R. 7 Ch. 364; 41 L. J. Ch. 404. See also *Baker v. Metropolitan Railway Co.* 32 L. J. Ch. 7.

(*c*) *Ex parte Edwards* L. R. 12 Eq. 389; 40 L. J. Ch. 697; *Tyson v. Mayor of London* L. R. 7 C. P. 18; 41 L. J. C. P. 6.

(*d*) *Metropolitan Railway Co. v. Woodhouse*, 34 L. J. Ch. 227; 12 L. T. N. S. 113.

(*e*) *Barber v. Nottingham & Grantham Railway Co.*, 33 L. J. C. P. 193; 15 C. B. N. S. 726.

Sec. 121.

II.—By s. 121 it is enacted that where a tenant for a year or from year to year is required to give up the possession of the lands he occupies before the expiration of his tenancy, the value of such interest and the injury done to it in the event of a portion only of his holding being taken is to be settled by two justices. It is to be noticed that it is a condition precedent to a proceeding under this section that the tenant should have been required to give up his land, for the notice to treat is not sufficient for this purpose (*a*).

Land taken.

A distinction must be drawn in proceedings under this section which may be stated as follows:—Where the interest of a party comes within the language of the section and the land is taken, even though his claim exceed £50, this section applies (*b*).

Land injuriously affected and not taken.

But where the land is only injuriously affected and not taken, the claim, if above £50, falls under the large words of s. 68 (jury or arbitration), and not the restrictive ones of s. 121 (*c*).

Lands Clauses Consolidation Act, 1845, s. 3.

Qualification of justices.

The qualification of the justices is defined by the 3rd section of the Act. They must be justices of the county, city, cinque port or place where the matter requiring their cognisance arises and where the lands are situate. The expression “two justices” means “two justices assembled and acting together.” The Commissioners at the hearing will appear by their clerk.

Again, with reference to the 121st section, it may be observed that when a tenant has less than one year to run of a term of years, it has been held that the proper course is to proceed under that section and not by arbitration under the 68th sec-

(*a*) *R. v. Stone*, L. R. 1 Q. B. 529; 35 L. J. M. C. 208; 14 L. T. N. S. 552; 14 W. R. 791. *Burkinshaw v. Birmingham, &c., Railway Co.*, 5 Ex. 475. See also *R. v. Commissioners of Rochdale*, 2 Jur. N. S. 861.

(*b*) *Knapp v. London, Chatham & Dover Railway Co.*, 32 L. J. Ex. 236.

(*c*) *Somers v. Metropolitan Railway Co.*, 31 L. J. Q. B. 261; *R. v. Manchester, &c., Railway Co.*, 4 E. & B. 88; 2 W. R. 591.

tion (a). But a tenant holding under an agreement with his landlord that he shall not be turned out so long as he pays his rent has an interest which excludes the operation of this section (b).

The tenant's interest must be reckoned from the time of the Commissioners giving notice of their intention to require the property and not from the expiration of such notice (c). Period of tenancy: how determined.

The 122nd section enacts that upon a claim for compensation being made in respect of an unexpired term or interest under any lease or grant, the claimant may be required to produce such lease or grant or the best evidence of it in his power; if, after demand made, such lease or other document of title is not produced within eleven days, the claimant is to be considered as a party holding from year to year and is entitled to compensation accordingly (d). Sec. 122.

The question of compensation is brought before the justices in accordance with the provisions of the 24th section, by which either the Commissioners or the claimant, as the case may be, may apply to a justice for a summons calling upon the other to appear before two justices and naming the time and place. Upon proof of service of the summons, and upon appearance of both parties, or in their absence of either of them, the justices may proceed to hear and determine the question of compensation (e). Lands Clauses Consolidation Act, 1815, s. 24. Proceedings: how brought before justices.

(a) *Reg. v. Great Northern Railway Co.*, 2 Q. B. D. 151; 46 L. J. Q. B. 4; 25 W. R. 41. So too in the case of an office held *durante bene placito* the interest is one determinable under this section, *R. v. Manchester, &c., Railway Co.*, 4 E. & B. 88; 2 W. R. 591.

(b) *In re King's Leasehold Estates*, L. R. 16 Eq. 521; but *secus* *Wood v. Beard*, 2 Ex. D. 30; 46 L. J. Ex. 100, where there is an uncertainty in the letting clause.

(c) *Tyson v. Mayor of London*, L. R. 7 C. P. 18; 41 L. J. C. P. 6.

(d) It is curious to note that this section entitles the claimant to 21 days' notice before he need produce his deed. Under s. 68 the Commissioners must issue their warrant within 21 days after the claimant's notice for compensation.

(e) The costs are in the discretion of the justices, *see post*, p. 240. The decision of the justices may be verbal, *R. v. Combe*, 32 L. J. M. C. 67.

Sec. 63. It is important to notice that in these proceedings before justices the assessment of compensation is to be based upon a consideration not only of the value of the land purchased, but of the damage which may have been done by severance, &c., to other lands.

Time for appli- If lands are the subject of compensation (under £50) which
cation where
lands inju- have been injuriously affected, and a portion of them has been
riously affected. taken, the adjudication of a justice is not an order for the pay-
ment of money within 11 & 12 Vic. c. 43, s. 11 (Jervis' Act),
and the six months' limit does not apply (*a*). The justices may
Mandamus. be compelled by mandamus to assess compensation if they
refuse to exercise their discretion (*b*).

ARBITRATION.

Arbitration. The amount of compensation is ascertained by arbitration
under the Lands Clauses Consolidation Act, 1845, in certain
Land Drainage cases arising under the Land Drainage Act, 1861, 24 & 25
Act, 1861. Vic. c. 133. Thus there is the general claim for compensa-
tion, which may be raised by any person who has been affected
by the powers of the Commissioners of Sewers, declared in
s. 16 of that Act (*c*).

Lands Clauses Adverting then to the Lands Clauses Consolidation Act,
Consolidation 1845, the 23rd section of that Act points out that where the claim
Act, 1845, s. 23. exceeds £50 it may be settled by arbitration or jury, at the
option of the party claiming (*d*).

Sec. 68. Again under the 68th section, where the lands are purchased
or taken, and the interest of the owner is greater than that of

(*a*) *R. v. Hannay*, 44 L. J. M. C. 27. In this case the judges, though distinguishing it from *R. v. Edmondson*, 17 Q. B. 67, commented unfavourably upon that case. See also *Jacombe v. Dodgson*, 32 L. J. M. C. 113; *Sweetman v. Guest*, 37 L. J. M. C. 59.

(*b*) *R. v. Stone*, L. R. 1 Q. B. 529; 35 L. J. M. C. 208; *R. v. Vaughan*, L. R. 4 Q. B. 190; 38 L. J. M. C. 49; 9 B. & S. 892; 17 W. R. 115.

(*c*) Under ss. 17 & 18, the right of the Commissioners to undertake the works mentioned in those sections is determined by arbitration.

(*d*) The procedure by jury will be noticed later *post*.

tenant from year to year, or a yearly tenant, the claim at the option of the owner may be settled by arbitration (*a*).

The owner must give notice of his desire to have his claim so settled, and he must state in his notice the nature of his interest in the lands in respect of which he claims compensation (*b*). The notice to the Commissioners should state the nature of the claimant's interest specifically, as an omission to define it accurately may endanger the award (*c*).

Notice of claim.

If the proceedings for an arbitration fail, either from the party neglecting to give notice, or from the expiry of time for making an award, recourse must be had to a jury. The Act contains no provisions for appointing a second arbitrator if the first proceedings fail (*d*).

Lands Clauses Consolidation Act, 1845, s. 23.

The appointment of an arbitrator is provided for by ss. 25-30 of the Lands Clauses Consolidation Act, 1845. The appointment in the case of Commissioners of Sewers should be under the hand of their clerk, in the case of Drainage Boards, under the common seal of the undertaking (*e*); if the parties do not concur in the appointment of a single arbitrator (*f*), then each on request of the other appoints an arbitrator to whom the dispute is referred. If for fourteen days after the dispute has arisen, and a written request to appoint has not been complied with by one

The appointment of arbitrator.

Lands Clauses Consolidation Act, 1845, ss. 25-30.

(*a*) See post, p. 227.

(*b*) With this compare the notice of claim, which the party must give under s. 18, the expression of the statute "nature of the interests" being equivalent to "particulars of the estate and interest," under s. 18.

(*c*) Russell on Awards, p. 91 (4th ed.).

(*d*) *Lind v. Isle of Wight Ferry Co.*, 7 L. T. N. S. 416. See also *Dare Valley Co. v. Rhys*, L. R. 4 Ch. 554; 38 L. J. Ch. 417; *Evans v. L. & Y. Rail. Co.*, 22 L. J. Q. B. 254; 1 E. & B. 754; s. 23 of the Lands Clauses Consolidation Act, 1845, applies to arbitrations under s. 68.

(*e*) s. 25, Lands Clauses Consolidation Act, 1845.

(*f*) It is desirable, if possible, to agree upon an arbitrator; *Yates v. Mayor of Blackburn*, 29 L. J. Ex. 447; 6 H. & N. 61; Russell on Awards, p. 93 (4th ed.) If the reference is to a single arbitrator, strict compliance with the form of the statute is not essential. The notices are only requisite when arbitration is compulsory, *Collins v. S. Staff. Rail. Co.*, 7 Ex. 5.

of the parties, the arbitrator who alone has been appointed may act for both and make a final award (*a*). Thus the claimant will first appoint his arbitrator and notify the appointment to the Commissioners, and then in writing call upon them to appoint their arbitrator.

The umpire.
Secs. 27, 28.

Before the two arbitrators enter upon the reference they must appoint by writing under their hands, an umpire to decide upon matters of difference between them; if they neglect or refuse to appoint an umpire, two justices on the application of either party appoint one (*b*). When there are two arbitrators and one refuses, or for seven days neglects to act, the other may proceed *ex parte*.

Sec. 30.

Submission a
rule of Court.

When the appointment is once made it is not revocable, except by consent, and the submission and arbitration may be made a rule of Court on the application of either party (*c*). And it may here be observed that arbitrations under the Lands Clauses Consolidation Act, 1845, fall within the provisions (*d*)

(*a*) s. 25; *Bradley v. Lond. & N. W. Rail. Co.*, 5 Ex. 769.

Vacancy by
death, &c.

Sec. 28.

(*b*) ss. 27 & 28. On the death or incapacity of a solo arbitrator, the matter is referred *de novo*, s. 29. In case of one of the two arbitrators failing, *see* s. 26. Where one of the parties is a railway company, the Board of Trade appoint an umpire, s. 28, but now *see* 46 & 47 Vic. c. 15, explaining s. 28, and *R. v. Sheward*, 9 Q. B. D. 741.

(*c*) This Act has been discussed with reference to arbitrations when directed by Quarter Sessions, under the Land Drainage Act, 1861. *See ante*, p. 98, *Russell on Awards*, 4th ed., pp. 558, 568.

Common Law
Procedure Act,
1854.

(*d*) When the arbitrator entertains a question not properly before him, application may be made to revoke the submission, *Faviell v. Eastern Counties Rail. Co.*, 2 Ex. 344; 17 L. J. Ex. 223. The submission is made a rule of Court, as of course, *Hawley v. North Staff. Rail. Co.*, 2 De. G. & S. 33, where form of order is given; *re Taylor*, 5 B. & A. 217. The submission being made a rule of Court, the appointment of umpire is one also. *Bradshaw's Arbitration*, 12 Q. B. 562; 17 L. J. Q. B. 362. But the appointment of both arbitrators should be made a rule; *Russell*, 4th ed., p. 569. The award, if made a rule of Court, is under s. 15 of the Common Law Procedure Act, 1854. *See* on submission being within Common Law Procedure Act, 1854; *Harper v. Great Eastern Ry. Co.*, L. R. 20 Eq. 39; 44 L. J. Ch. 507; following *Rhodes v. Airedale Commissioners*, L. R. 9 C. P. 508; 43 L. J. C. P. 323; *in re Newbold & Met. Rail. Co.*, 14 C. B. N. S. 405; and dissenting from *ex parte Harper*, L. R. 19 Eq. 539.

of the Common Law Procedure Act, 1854, with reference to arbitrations by consent.

The arbitrators can, therefore, state the award in the form of a special case, upon which an appeal can be brought from the decision of the Queen's Bench Division (*a*).

The Court has power to enlarge the time for making the award, or it may send the matter back to the arbitrator for him to reconsider, the effect of the latter proceeding being to avoid the award altogether, and the reference back becomes an original reference.

The arbitrators, or the umpire, as the case may be, having made the declaration (*b*) required by s. 33, are empowered by s. 32 of the Act to call for the production of documents (*c*) in the possession or power of the parties, and may examine witnesses upon oath. They must observe in their proceedings the ordinary rules which are laid down for the administration of justice, and the High Court of Justice will, when called upon, review their proceedings, and is bound to see that those rules have been observed (*d*).

Lands Clauses Consolidation Act, 1845, s. 32.

Conduct of proceedings.

The question which is for the arbitrators or umpire to decide is the quantum of compensation in strict reference to the notice of claim. No question of title can be considered in the arbitration (*e*).

Arbitrators cannot go beyond claim.

The arbitrators or umpire must deliver to the Commissioners the award. It must be in writing. The other party is entitled to a copy of it at the expense of the Commissioners, and may

The award.

(*a*) *Bidder v. North Staffordshire Railway Co.*, 4 Q. B. D. 412; 48 L. J. Q. B. 248; and see *Rhodes v. Airedale Drainage Commissioners*, 1 C. P. D. 402; 45 L. J. C. P. 337, 861.

(*b*) This declaration must be made and subscribed before a justice, in the form prescribed by the statute. It may be before any justice. *Davies v. Staff. Rail. Co.* 21 L. J. M. C. 52. The declaration must be annexed to the award.

(*c*) The terms on which unstamped instruments may be received in evidence are now extended to arbitration, 44 Vic. c. 12, s. 44.

(*d*) Per Turner, L. J., in *re Haigh's estate*, 31 L. J. Ch. 420.

(*e*) *Brandon v. London, Chatham & Dover Rail. Co.*, 34 L. J. Ch. 333. See also *R. v. Met. Rail. Co.*, 32 L. J. Q. B. 367; 4 B. & S. 315.

Declaration
annexed to it.
Sec. 33.

inspect it (*a*). The preliminary declaration of the umpire or arbitrators must be annexed to the award when made (*b*).

Time for
making award.

The arbitrators are to make their award within 21 days; they may enlarge that time so that it does not exceed three months.

Lands Clauses
Consolidation
Act, 1845,
ss. 31 and 23.

If the arbitrators allow the period of 21 days to expire without enlarging the time, their duties devolve as has been seen upon the umpire. He too is limited to three months in making his award, but the period dates from his appointment (*c*). If the three months limit expires, the matters are referred to a jury.

Lands Clauses
Consolidation
Act, 1845, s. 35.

The Commissioners are bound to take up the award and to furnish a copy, and a mandamus will issue to compel them to do so (*d*). But it is a good return to a mandamus for like purpose, that the defendant's property has not been injuriously affected within the meaning of the Act (*e*).

Mandamus.

Action on
award.

It is also competent for a person to enforce his claim under an award by bringing an action against the Commissioners, and for this purpose, with certain stringent limitations the evidence of the arbitrators or umpire is admissible (*f*).

Evidence of
arbitrator.

(*a*) See *infra* as to mandamus and taking up the award.

(*b*) s. 33.

(*c*) *Skerratt v. North Staff. Railway Co.*, 17 L. J. Ch. 161, *Bradshaw's Arbitration*, 17 L. J. Q. B. 362. The period prescribed by the statute can be exceeded by consent of the parties; the consent becomes a new submission. *In re Palmer and Metropolitan Railway Co.*, 31 L. J. Q. B. 259. The Common Law Procedure Act, 1854, s. 15 (*ante*, p. 224), enables a court or judge to enlarge the time although the three months have expired. *In re Dare Valley Railway Co.*, L. R. 4 Ch. 554; 38 L. J. Ch. 417; *Denton v. Strong*, L. R. 9 Q. B. 117; 43 L. J. Q. B. 41.

(*d*) *R. v. South Devon Railway Co.*, 20 L. J. Q. B. 145; 15 Q. B. 1043.

It would be no answer to the writ that the Commissioners were prevented by the arbitrator's refusal to deliver it up without payment of his fees, *ib*. The arbitrator's lien is not taken away by the statute, *ib*.

(*e*) *R. v. Cambrian Railway Co.*, L. R. 4 Q. B. 320; 38 L. J. Q. B. 198; 10 B. & S. 315, but an objection as to the notice under s. 23 will not be entertained upon showing cause against a rule for mandamus to take up the award. *Reg. v. Sutton Harbour Commissioners*, 2 W. R. 10; 22 L. T. 86.

(*f*) *Duke of Buccleuch v. Metropolitan Board of Works*, L. R. 3 Ex. 306, 5 Ex. 221; 5 Eng. & Ir. App. 418; 41 L. J. Ex. 137, where the question upon what points the evidence may be admitted is elaborately discussed.

Enlargement
of time.

ASSESSMENT BY JURY—ss. 38—57.

It has been shown by s. 23, that compensation exceeding £50 Sec. 23. may be settled by arbitration at the desire of the claimant (*a*) if the claimant does not signify his desire to have the compensation settled by arbitration, or if when referred to arbitration no award is given for three months, then the compensation is to be settled by the verdict of a jury (*b*).

It is here useful to notice the procedure with regard to Sec. 68. assessment of compensation by jury under s. 68, in a claim for Lands injuriously affected. compensation for lands taken or injuriously affected. If the claim exceeds £50 and the claimant desires the question to be settled by a jury, he takes the initiative by giving notice to that effect to the Commissioners, and unless they are willing to pay the amount they must within 21 days issue their warrant to the sheriff to summon a jury “for settling the same in manner herein provided (*c*),” or in default they will be liable to pay the amount claimed.

The procedure regulating the assessment of compensation by Lands sought to be purchased, s. 38. jury for lands which the Commissioners seek to purchase is to be found in ss. 38—57. The Commissioners must give 10 days’

(*a*) The assessment by jury under 3 & 4 Will. IV. c 22, has been discussed Assessment by jury. *ante*, p. 76. It will be remembered that under that Act land cannot be purchased for new works.

(*b*) It has been seen that if the interest of the claimant is not greater than Interest not greater than that of tenant from year to year. that of a tenant from year to year, and possession of the land is required, the compensation will have to be assessed by two justices under s. 121 of the Lands Clauses Act, 1845; but if the lands are merely injuriously affected then the claim, if over £50, falls under s. 68, when the compensation may be assessed by a jury if the claimant desires, *R. v. Stone*, L. R. 1 Q. B. 529; 35 L. J. M. C. 208; 7 B. & S. 769, *see ante*, Justices, p. 219.

(*c*) That is when once the Commissioners have issued their warrant all subsequent proceedings are to be in accordance with the procedure of ss. 38—57. *Railstone v. York, &c. Railway Co.*, 15 Q. B. 404; 19 L. J. Q. B. 464; *South Eastern Railway Co. v. Richardson*, 21 L. J. C. P. 122; *Hayward v. Metropolitan Railway Co.*, 33 L. J. Q. B. 73; 4 B. & S. 787.

notice of their intention to summon a jury, stating the amount they are willing to give for the land and for damage sustained by the execution of the works. The summons of the jury is, it is to be observed, only to be issued at the instance of the Commissioners. The owner has no power to commence these proceedings, as he would have, in case the Commissioners had already entered on the land and he was claiming compensation for lands injuriously affected under s. 68. After the notice to treat which, as has been shown, binds the land, the Commissioners would, by neglecting to issue their warrant for a jury, tie up the lands for an indefinite period, and it has therefore been held that they must issue their warrant within a reasonable time, and that if they do not they may be compelled to do so by mandamus (*a*).

Sec. 39.

Section 39 provides for the issue by the Commissioners of their warrant summoning a jury, which must be addressed to the sheriff.

Sec. 43.
Sheriff to
preside.

The jury having been summoned and impanelled (ss. 41 & 42), the sheriff presides at the inquiry, and the party claiming compensation is to be the plaintiff, and to have all the rights

(*a*) *Fotherby v. Met. Rail. Co.*, L. R. 2 C. P. 188; 36 L. J. C. P. 88; *Morgan v. Met. Rail. Co.*, L. R. 4 C. P. 97; 38 L. J. C. P. 87. The ten days' notice prescribed by s. 38 is required in those cases where the Commissioners are seeking to purchase the land, not to cases where they have already entered upon the land and compensation is sought under s. 68, *Railstone v. York, &c., Rail. Co.*, 15 Q. B. 404; 19 L. J. Q. B. 464; *Hayward v. Met. Rail. Co.*, 33 L. J. Q. B. 73; 4 B. & S. 737; 9 L. T. N. S. 680; 12 W. R. 577. The warrant should follow the notice to treat in precise terms, *Stone v. Commercial Rail. Co.*, 4 My. & C. 122; 1 Rail. Ca. 375; but there need not be a reference to the notice, *Ostler v. Cooke*, 13 Q. B. 143; 18 L. J. Q. B. 185. The jurisdiction should appear on the warrant and inquisition, *Taylor v. Clemson*, 2 Q. B. 978, affirmed 11 Cl. & F. 610; and it would seem sufficient if the warrant substantially complies with the provisions of the Act, *R. v. Lancaster & Preston Rail. Co.*, 6 Q. B. 759; 14 L. J. Q. B. 84; 3 Rail. Ca. 725; if issued by a Drainage Board the warrant should be under their common seal; if issued by Commissioners of Sewers it should be issued under the hand of their clerk as a notice under the Land Drainage Act, 1861, 24 & 25 Vic. c. 133, s. 62.

and privileges as a plaintiff in an action at law (a). If either party requires it the sheriff is to summon witnesses, and he may order the jury to view the *locus in quo* (b).

Sections 44, 45, mention the penalties to which the sheriff, jury and witnesses are subject for misconduct (c).

By s. 46 ten days notice of the time and place of inquiry is to be given by the Commissioners to the other party. Sec. 46.
Notice of
inquiry.

If the claimant fail to appear the inquiry cannot proceed, but the compensation is to be ascertained by a surveyor appointed by two justices (d). Sec. 47.
Claimant not
appearing.

The jury are sworn and should deliver separate verdicts for the sum to be paid for the purchase of the lands or interests, and also for the compensation for any severance or injuriously affecting of other lands of the party claiming compensation (e). Secs. 48, 49.
Jury to be
sworn and
assess sepa-
rately.

In the same way as an arbitrator the jury have no jurisdiction to inquire into the questions of title, they have only to

(a) These words are not intended to refer to costs, but to regulate the general course of proceedings, to remove doubts concerning the right to begin, and to show in other respects how the inquisition should be conducted, per Lord Denman, C. J., in *R. v. Gardner*, 6 A. & E. 112. A complaint for excess of jurisdiction should be by *certiorari* and not by prohibition to prevent the sheriff holding the inquiry, *Chabot v. Lord Morpeth*, 15 Q. B. 446; 19 L. J. Q. B. 377.

(b) It is doubtful whether the sheriff could order a view in another county, *Malins v. Lord Dunraven*, 9 Jur. 690. It seems he would have power to postpone the trial, *Fouraker v. Jackson*, 2 Jur. 329.

(c) If the sheriff does not act upon a requisition sufficiently valid, a mandamus will lie to compel him to do so, *Walker v. London & Blackwall Rail. Co.*, 3 Q. B. 744; 3 Rail. Ca. 396. For recovery of penalties, see ss. 136 *et. seq.* of the Lands Clauses Act, 1845, *post* penalties.

(d) In accordance with the procedure in the case of owners who cannot be found, ss. 58-59.

(e) This provision is directory, *Corrigall v. London & Blackwall Rail. Co.*, 5 M. & G. at p. 249; 12 L. J. C. P. 209; and the inquisition will not be set aside because the compensation is assessed in one gross sum, *Re London & Greenwich Rail. Co.*, 2 A. & E. 678; *in re Bradshaw's Arbitration*, 12 Q. B. 562; 17 L. J. Q. B. 362; 5 Rail. Ca. 527.

decide upon the question of compensation. (*a*) They may take into account prospective damages (*b*). When there are several interests to be compensated, they must apportion the compensation, for the finding of a gross sum would be a fatal objection (*c*).

If the inquisition is quashed on *certiorari* for want of jurisdiction, the sheriff is bound to proceed on the original warrant (*d*).

The jury having returned their verdict, the sheriff gives judgment, and the record is kept by the clerk of the peace (*e*).

Section 54 provides for the mode of summoning a special jury

Sec. 54.
Special jury.

(*a*) *R. v. Met. Rail. Co.*, 32 L. J. Q. B. 367; 4 B. & S. 315; *R. v. London & N. Western Rail. Co.*, 3 E. & B. 443; 23 L. J. Q. B. 185; *Chabot v. Lord Morpeth*, 15 Q. B. 446; 17 L. J. Q. B. 336.

(*b*) *R. v. Brown*, L. R. 2 Q. B. 630; 36 L. J. Q. B. 322; 8 B. & S. 456. See also under s. 68, *post*.

(*c*) *R. v. Trustees Norwich & Walton Road*, 5 A. & E. 563. The quantum of damages cannot be disputed afterwards, unless excess of jurisdiction is shown, *Mortimer v. S. Western Rail. Co.*, 1 E. & E. 375; 28 L. J. Q. B. 129; and on an action brought on the inquisition the defendants can show that the subject-matter of the claim is such as is not contemplated by the Act, *Chapman v. Mounmouthshire Rail. Co.*, 2 H. & N. 267; 27 L. J. Ex. 97; *R. v. London & N. Western Rail. Co.*, 3 E. & B. 443; 27 L. J. Q. B. 185; but they will not be allowed to plead that the claim is not *bonâ fide*; *Hooper v. Bristol Rail. Co.*, 35 L. J. C. P. 299.

(*d*) *Horrocks v. Met. Rail. Co.*, 19 C. B. N. S. 139. As to time for applying for a *certiorari* to quash, see *R. v. Sheward*, 9 Q. B. D. 741.

Inquisition.

(*e*) The inquisition should be signed by the sheriff, though held by his deputy, *R. v. Perkins*, 7 Q. B. 165; 9 Jur. 686; *Stroud v. Watts*, 3 D. & L. 799; 10 Jur. 497. The statute requires no regular form of inquisition, and the enactment that the verdict and judgment should be kept among the records of the Sessions and to be deemed records, does not render it necessary to draw them up with the formality required in setting out the judgment of an inferior Court, *R. v. Trustees of Swansea Harbour*, 8 A. & E. 439; *R. v. Manchester and Leeds Rail. Co.*, 8 A. & E. 413. It is sufficient if the jurisdiction appear on the warrant and inquisition, *Taylor v. Clemson*, 2 Q. B. 978; 11 Cl. & F. 610; and it is not necessary that the warrant and inquisition should refer to the notice; *Ostler v. Cooke*, 13 Q. B. 143; 18 L. J. Q. B. 185, a case in which compensation was sought for lands required by Commissioners under a Drainage Act. In the two last cases forms of inquisition are set out.

at the request of either party. The request must be made to the Commissioners before they have issued their warrant (*a*).

The 68th section of the Lands Clauses Consolidation Act, Sec. 68. 1845, becomes applicable in those cases where—

- I. The Commissioners have entered into possession of property for which they have not paid.
- II. Where they have, in the execution of their works, injuriously affected property, and are bound to make compensation (*b*).

In some statutes, notably the City of London Sewers Act, 1848 (11 & 12 Vic. c. 143); the Metropolis Local Management Act, 1855 (18 & 19 Vic. c. 120), ss. 16–68 of the Lands Clauses Consolidation Act, 1845, are not incorporated; the decisions as to the effect of this omission, are quoted below, but inasmuch as the Land Drainage Act, 1861 (24 & 25 Vic. c. 133), incorporates the Act without such qualification (*c*), it is not necessary to discuss the question.

If the compensation claimed does not exceed £50, it must be settled by justices (*d*), otherwise by arbitration or jury, at the option of the owner. After notice from the owner of his choice of proceedings, the Commissioners have twenty-one days in

Assessment of compensation.

(*a*) In the case of a notice given to the Commissioners under s. 68, they must issue their warrant within twenty-one days, *Glyn v. Aberdare Rail. Co.*, 28 L. J. Q. B. 271.

(*b*) Per Wigram, *V.-C. Adams v. London & Blackwall Rail. Co.*, 18 L. J. Ch. 357; 6 Rail. Ca. 271. The land must be actually taken, or actually affected, *Burkenshaw v. Birmingham, &c., Rail. Co.*, 5 Ex. 475; 20 L. J. Ex. 246. The distinction between the mode of procedure under s. 18 and s. 68, is well pointed out by Lord Cottenham in *Adams v. London & Blackwall Rail. Co.*, 19 L. J. Ch. 557; 2 Mac & G. 118.

(*c*) *Ferrar v. Commissioners of Sewers*, L. R. 4 Ex. 227; 38 L. J. Ex. 102, 21 L. T. N. S. 295; *Dungey v. Mayor of London*, 38 L. J. C. P. 298; 20 L. T. N. S. 921; *R. v. Vestry of St. Luke's, Chelsea*, L. R. 7 Q. B. 148; 41 L. J. Q. B. 81; 25 L. T. N. S. 914; *R. v. Lord Mayor of London*, L. R. 2 Q. B. 292; 16 L. T. N. S. 280. And as to the effect of incorporating certain sections by their introductory heading, see *Ferrar v. Commissioners of Sewers*, *supra*.

(*d*) *Ante*, p. 219.

which either to pay the amount claimed or to submit to the arbitration, or to issue their warrant for a jury, as the case may be (*a*). The owner must give, as under s. 18 (*b*), such a reasonable notice as to the particulars of his claim as will enable the Commissioners to judge whether they will pay the whole amount or what sum they will offer (*c*).

Lands Clauses
Consolidation
Act, 1845, s. 68.

Land taken.

Leascholder.

Covenants.

Profits of
trade.

Damage for
removal.

Landlord and
tenant claims.

Considering, then, the first head of compensation under the section already noticed, *i.e.*, where the lands are taken, it may be observed that, where the lands are let on lease, the Commissioners should treat separately with the lessee and the reversioner (*d*), and with regard to the latter an element of compensation is the value of covenants in the lease (*e*). Further, in dealing with the lessee, for example, of a mill, the Commissioners must make compensation, not only for the actual property which they take, but also for damage incurred in consequence of the disturbance to the profits of the trade (*f*), so too for damage occasioned by the removal (*g*), provided it is too remote (*h*).

With respect to claims for compensation by landlord and tenant, a calculation may be made as to the effect of the execu-

(*a*) There is a summary remedy by action for the whole claim if the owner desires a jury, and the Commissioners neglect to issue their warrant. *Secus* in case of arbitration.

(*b*) *Ante*, p. 218.

(*c*) *Healey v. Thames Valley Rail. Co.*, 34 L. J. Q. B. 52.

(*d*) *Brandon v. Brandon*, 34 L. J. Ch. 333; 2 Dr. & Sm. 305; 11 L. T. N. S. 658.

(*e*) *Penny v. Penny*, L. R. 5 Eq. 227; 37 L. J. Ch. 340; *see* also *Bailey v. De Crespigny*, L. R. 4 Q. B. 180; 38 L. J. Q. B. 98.

(*f*) *Ricket v. Metropolitan Rail. Co.*, 34 L. J. Q. B. 257; 13 W. R. 455. *Tubb v. Hull Dock Co.*, 15 L. J. Q. B. 403; 9 Q. B. 443; *Cooper v. Met. Board of Works*, 25 Ch. D. 472; 53 L. J. Ch. 109.

(*g*) In this may be included the value of fixtures, *e.g.*, machinery, *Gibson v. Hammersmith Rail. Co.*, 32 L. J. Ch. 337; 2 Dr. & Sm. 603; the goodwill, *White v. Commissioners of Public Works*, 22 L. T. N. S. 591; and *see* remarks per Bramwell, L. J., in *Bidder v. North Staff. Rail. Co.*, 4 Q. B. D. p. 432; 48 L. J. Q. B. 248.

(*h*) *Clarke v. Wandsworth*, L. B. 17 L. T. N. S. 549.

tion of the works upon the rent, for when it is lowered a reduction of the tenant's claim should be considered (a). The tenant of lands taken is entitled to the full marketable value of his holding. If the Commissioners give him notice ending with the current year of the tenancy, and at the expiration of that time take possession, he is not entitled to compensation (b).

Notice to tenants.

On the other hand the Commissioners may take possession and compensate the tenant for the value of his term between the time of his giving up possession and that when a landlord's notice to quit would have expired (c). It will be remembered that, under s. 121 (d), the compensation in cases of yearly tenancies is assessed by two justices.

Measure of compensation.

Sec. 121.

With respect to lands subject to tithes, it was decided in the year 1829, in a case where such land was required by the Commissioners of the Nene Outfall for a new cut, that the tithe owner was not entitled to compensation (e).

Titheable lands.

An owner of an estate in fee simple of which he is in possession, is entitled to compensation according to the following basis of calculation. The annual value of the lands is taken, and that is multiplied by the number of years purchase which the special circumstances require. The number of years purchase is calculated upon the interest which the purchaser would receive according to the recognised tables (f).

Fee simple owner in possession.

Compensation : how calculated.

In the case of a lessee or tenant, the value of the term or tenancy is the difference between the actual rental paid by him

Tenants of lessee.

(a) Lloyd on Compensation, 5th ed., p. 103.

(b) R. v. Southampton Rail. Co., 10 A. & E. 3. See also *ex parte Nadin*, 17 L. J. Ch. 421, as to claim by tenant against landlord.

(c) *Ex parte Nadin*, 17 L. J. Ch. 421. When a tenant prefers to continue in occupation, and gives up his right to claim for disturbance, he is in the same position as if he had received an ordinary landlord's notice, and cannot claim compensation. R. v. Southampton Rail. Co., 10 A. & E. 3.

(d) *Ante*, p. 220.

(e) R. v. Commissioners of Nene Outfall, 9 B. & C. 875.

(f) Inwood's Tables, see Cripps's Principles of Law of Compensation, p. 147.

Compensation. and the improved annual value that the property is worth to him multiplied by the number of years purchase, which depend upon the character of the property and on the length of the term or tenancy (*a*).

Compulsory sale.
Interest payable. Ten per cent. is added to the value of lands taken under compulsory powers; and interest at the rate of 4 per cent. is payable on the purchase-money (*b*).

Lands injuriously affected. There have been numerous decisions on the effect of the words "injuriously affected by the execution of works," some of them difficult to reconcile, but the following principles deduced from principles in the House of Lords have now been established.

1. The damage must be such damage as would have been actionable if it had not been done in the exercise of the statutory powers of the Commissioners; if done in excess of their powers or in wanton use of them, an action lies (*c*).

2. The damage must be an injury to the estate and not to any particular use to which it may from time to time be put, nor an interference with personal inconvenience (*d*).

(*a*) Cripps's Principles of Law of Compensation, p. 148, where a calculation in a given case is worked out, and in one also of the compensation payable for a reversion. See also Lloyd on Compensation, p. 67, quoting an abstract from Inwood's Tables. At the same page he considers a scale of claims, and gives some of the usual items.

(*b*) The question of the payment and the time from which it accrues is carefully considered by Jessel, M. R., in *In re Pigott & The G. W. Rail. Co.*, 18 Ch. D. 146; 50 L. J. Ch. 679; where he lays down the rule that upon the completion of the contract, the ordinary rules as between vendor and purchaser apply, disapproving of *In re Eccleshill Local Board*, 13 Ch. D. 365; 49 L. J. Ch. 214; 28 W. R. 531.

(*c*) *Ricket v. Met. Rail. Co.*, L. R. 2 E. & I. Ap. 175; 36 L. J. Q. B., 205; 16 L. T. N. S. 542; *Beckett v. Midland Rail. Co.*, L. R. 3 C. P. 82; 37 L. J. C. P. 11; 17 L. T. N. S. 499.

(*d*) *Met. Board of Works v. McCarthy*, L. R. 7 E. & I. Ap. 243; 43 L. J. C. P. 385. An injury temporary and personal is not the subject of compensation, *Ricket v. Met. Rail. Co.*, *supra*, while an injury permanent to the premises would be the subject of compensation, *Chamberlain v. West-end, &c., Rail. Co.*, 2 B. & S. 617; 31 L. J. Q. B., 201. The distinction between these two classes of injury is thoroughly investigated in *Met. Board of Works v. McCarthy*, *supra*.

3. The damage must arise by reason of the execution of the works of the Commissioners, and not from the use of them when executed (*a*).

In accordance with these principles the destruction of a draw-dock (*b*), the obstruction of a public (*c*) or private (*d*) road, or access to a ferry (*e*), or interference with ancient lights (*f*), whereby the value of the estate was diminished, would be capable of compensation; so would damage to goods in a house injuriously affected (*g*). Compensation recoverable.

If the Commissioners should alter a weir in a river, and thereby raise the water so as to damage a mill, it would seem that the miller could claim compensation from them (*h*), or if they were to divert a brook and cause injury (*i*), or construct works so as to flood proprietors on a low level (*j*), or erect an embankment on the foreshore so as to cut off access to the sea from the owner of adjoining land (*k*), any injury thereby done would be a subject of compensation. Thus where the foreshore of a river, which was vested in Conservators was used by a railway company in the construction of a bridge, it was held Weir.
Brook.
Embankment.
Foreshore.

(*a*) *Brand v. Hammersmith Rail. Co.*, L. R. 4. E. & I. Ap. 171; 38 L. J. Q. B. 265.

(*b*) *Met. Board of Works v. McCarthy*, L. R. 7 E. & I. Ap. 243; 43 L. J. C. P. 385.

(*c*) *R. v. St. Luke's, Chelsea*; L. R. 7 Q. B. 148; 41 L. J. Q. B. 81; *Beckett v. Midland Rail. Co.*, L. R. 3 C. P. 82; 37 L. J. C. P. 11; *Chamberlain v. West-end, &c., Rail. Co.*, 32 L. J. Q. B. 173; 2 B. & S. 617.

(*d*) *Glover v. N. Staff. Rail. Co.*, 16 Q. B. 912; 20 L. J. Q. B. 376.

(*e*) *In re Cooling*, 19 L. J. Q. B. 25.

(*f*) *Duke of Bedford v. Dawson*, L. R. 20 Eq. 353; 44 L. J. Ch. 549.

(*g*) *Knock v. Met. Rail. Co.*, L. R. 4 C. P. 131; 38 L. J. C. P. 78.

(*h*) *R. v. Nottingham Waterworks Co.*, 6 A. & E. 355.

(*i*) *R. v. Midland Rail. Co.*, 2 Rail. Ca. 1; *Ferrand v. Corporation of Bradford*, 21 Beav. 412; *Little v. Dublin & Drogheda Rail. Co.*, 7 Ir. C. L. Rep. 82.

(*j*) *Potter v. Hamilton, &c., Rail. Co.*, 3 Scotch Sess. Ca., 3rd Series, 83.

(*k*) *R. v. Rynd*, 16 Ir. C. L. Rep. 29. So also the substitution of a land access for a water access, *Duke of Buccleuch v. Met. Board of Works*, L. R. 5 E. & I. App. 418; 41 L. J. Ex. 137.

that this interference with the foreshore was to be paid for under s. 68 (*a*).

Compensation
not recoverable.

Again referring to the principles enunciated in the decisions in the House of Lords, compensation has been held to be not recoverable in the following cases:—The destruction of a draw dock, where the interest was merely personal (*b*); causing temporary loss of custom to the owner of a public house by the obstruction of a passage (*c*); tunnelling under a highway (*d*); interference with a right of shooting (*e*). So, too, the Commissioners would not be held liable to pay compensation for diverting subterranean water; as for instance, intercepting some underground spring, and thereby the flow of water to a well (*f*), nor for the loss of traffic to the owner of a ferry caused by a new highway, by bridge or ferry made to provide for a new traffic (*g*).

No set-off for
benefit.

In assessing compensation in the case of a railway company, it has been held that they are not entitled to set off the benefit accruing from the construction of their works (*h*), but it is curious to note that the Land Drainage Act of Ireland, 1863,

(*a*) *Conservators of River Thames v. Victoria Station, &c., Rail. Co.*, L. R. 4 C. P. 59; 38 L. J. C. P. 4.

(*b*) *R. v. Met. Board of Works*, L. R. 4 Q. B. 358; 38 L. J. Q. B. 20.

(*c*) *Ricket v. Met. Rail. Co.*, L. R. 2 E. & I. Ap. 175; 36 L. J. Q. B. 205.

(*d*) *Souch v. East London Rail. Co.*, L. R. 16 Eq. 108; 42 L. J. Ch. 477.

(*e*) *Bird v. Great Eastern Rail. Co.*, 19 C. B. N. S. 268.

(*f*) *Galway v. Great Southern Rail. Co.*, 4 Ir. C. L. Rep. 456; *New River Co. v. Johnson*, 2 E. & E. 435; 29 L. J. M. C. 93. The law relating to the rights to subterranean water, and the distinction between those rights and the rights to surface water is investigated and the result stated by Tindal, C. J., in the considered judgment of the Court of Exchequer, in *Acton v. Blundell*, 12 M. & W. 324; 13 L. J. Ex. 289; see also *Chasemore v. Richards*, 7 H. L. Ca. 349; 29 L. J. Ex. 81; *R. v. Met. Board of Works*, 32 L. J. Q. B. 105.

(*g*) *Hopkins v. Great Northern Rail. Co.*, 2 Q. B. D. 224; 46 L. J. Q. B. 265; L. R. 6 Q. B. 422; reversing *Reg. v. Cambrian Rail.*, 40 L. J. Q. B. 169.

(*h*) *Senior v. Met. Rail. Co.*, 32 L. J. Ex. 225; 2 Hurl. & C. 258.

26 & 27 Vic. c. 88, expressly provides by s. 28 that this is to be an element of compensation.

The question of application of the purchase-money or compensation for the protection of persons under disability or having interests in reversion or remainder, together with the provisions relating to the application of the purchase-money or compensation assessed or agreed upon when possession of the land is required, but the owners will not, under the special circumstances, convey, is purposely omitted (*a*). The treatment of this branch of the law of compensation would necessarily involve more space than the limits of this work permit, neither is the subject-matter so nearly related to the practical view of the law which the authors have endeavoured to give as to justify its insertion. For a lucid account of the various proceedings to be taken the reader is referred to Mr. Cripps's work on the principles of the law of compensation (*b*).

Application of purchase-money.

By s. 10, the vendor absolutely entitled, or the party under disability, 23 & 24 Vic. c. 106, s. 1, may sell for an annual rent-charge: by s. 11, this is to be charged on the tolls or rates, and arrears of payment of the same may be recovered by action or distress on the goods and chattels of the Commissioners (*c*).

Lands may be sold for a rent charge.

It may be added that the Lands Clauses Consolidation Act, 1845, specially provides for the cases where the Commissioners have to deal with copyholds (*d*), lands subject to mortgage (*e*), rent-charges (*f*) and lands subject to leases (*g*).

(*a*) ss. 69-80 of the Lands Clauses Act, 1845. (*b*) pp. 73, 204.

(*c*) This would be on the goods which in their corporate capacity a Drainage Board may hold and on the goods which Commissioners of Sewers may hold in their quasi-corporate capacity, as has been shown, *ante*, pp. 82, 194.

(*d*) ss. 95-98, enfranchisement, compensation for enfranchisement, apportionment of rent.

(*e*) ss. 108-114, part of mortgage lands taken, deposit of compensation money, rights against mortgagor reserved, compensation to mortgagee paid off before time.

(*f*) ss. 115-118, release of lands, apportionment, charge continuing on lands not taken.

(*g*) ss. 119-123, apportionment of rent if part of lands underleased taken.

COMMON LANDS, ss. 99-107.

Sec. 99.
Compensation
when held of a
manor.

When the right to the soil in common lands is in the lord of the manor, the compensation is to be paid to him, and the compensation for commonable rights is to be paid in the same manner as is provided when the right in the soil is in the commoners (*a*); upon payment, all commonable rights are extinguished (*b*).

Vesting of
lands in the
Commissioners.

The compensation being paid, the lord conveys his right in the soil to the Commissioners, which has the effect of vesting the land in them; in default of his doing so, the Commissioners may execute a deed poll in accordance with ss. 76 and 77 of the Lands Clauses Consolidation Act, 1845, and after making the deposit, the land vests in them. By s. 101, if the right to the soil is in the Commoners, the Commissioners may agree with a committee of the parties interested. By s. 102, a committee may be appointed at a meeting of the parties interested, to be convened by the Commissioners, by public advertisement, as required by the section (*c*). By s. 103, the decision of the majority at the meeting is to bind the minority, and all absent parties. By s. 104, the committee may enter into an agreement for the compensation, receive it and apportion it; the Commissioners are not responsible for the apportionment (*d*). By s. 105, all disputes are to be settled as in other cases of com-

Sec. 101.
Right to soil in
the commoners.

Sec. 102.
Meeting of
parties
interested.

Sec. 103.

Sec. 104.
Duties of
committee.

(*a*) See ss. 101-107, *infra*.

(*b*) If after payment to the lord of the manor of compensation in respect of his right to the soil, and receipt of conveyance by him, the Commissioners were to enter on the land and commence their works without having compensated the Commoners for their rights, an action would be maintainable against them by a Commoner for the disturbance of his rights of common; *Stoneham v. London, B. & S. C. Rail. Co.*, L. R. 7 Q. B. 1; 41 L. J. Q. B. 1.

(*c*) Ss. 101-106, are directory only and not imperative, and therefore the parties may enter into an agreement among themselves without following the provisions of those sections, *Bee v. N. Staff. Rail. Co.*, 23 W. R. 868.

(*d*) Instances of apportionment among the Commoners are to be found in *Nash v. Coombs*, L. R. 6 Eq. 51; 37 L. J. Ch. 600; *Fox v. Amherst*, L. R. 20 Eq. 103; 44 L. J. Ch. 666.

pensation. By s. 106, if no effectual meeting takes place the compensation is to be settled by a surveyor, nominated by two justices, as under ss. 59, 60, 61 (*a*). Sec. 106.
Abortive
meeting.

On payment to the committee, or deposit in the bank as provided by ss. 76 (*b*), and execution of a deed poll as provided by ss. 77, the lands vest in the Commissioners freed from all commonable rights. Sec. 107.
Vesting of
land.

As it is difficult to foresee the application of the sections (*c*) relating to superfluous lands, it has not been deemed necessary to encumber this portion of the work with a discussion of the principles and decided cases which surround the subject (*d*). Provision is made by s. 39 of 3 & 4 Will. IV. c. 22 for sale of lands by the Commissioners.

COSTS.

There is no provision for costs in the purchase of lands by agreement under the Lands Clauses Act, 1845, or under the Land Drainage Act, 1861, and provisions as to costs should therefore be embodied in the agreement (*e*). Purchase by
agreement.

The expenses of valuation by surveyors in the case of absent owners (s. 58), persons under disability (s. 9), entry on lands Valuation by
surveyors.

(*a*) *Ante*, p. 229.

(*b*) See a recent case where the Crown making an adverse claim to a portion of the foreshore, the purchase-money was paid into Court under this section, *In re* Manor of Lowestoft and Great Eastern Railway Co., 24 Ch. D. 253; 52 L. J. Ch. 912.

(*c*) Ss. 127, 131.

(*d*) The meaning and application of the 127th section of the Lands Clauses Consolidation Act, 1845, which refers to superfluous lands, are discussed at length in *G. W. Rail. Co. v. May*, L. R. 7 E. & I. Ap. 283; 43 L. J. Q. B. 233, and for recent cases upon the question, see *Hobbs v. Midland Railway Co.*, 20 Ch. D. 418; 51 L. J. Ch. 320; *London & South Western Railway Co. v. Gomm*, 20 Ch. D. 562; 51 L. J. Ch. 193, 530; *In re* Higgins, 21 Ch. D. 95; 51 L. J. Ch. 772. The costs of an arbitration held to settle the amount to be paid for the purchase of superfluous lands are in the discretion of the arbitrators, s. 130.

(*e*) Costs in cases of purchase of land under 3 & 4 Will. IV. c. 22, have been noticed *ante*, p. 77.

before purchase (s. 85), common lands (s. 106) are regulated by s. 62, and are to be paid by the Commissioners.

Assessment by justices.

If compensation is settled by justices, the costs of the inquiry are in their discretion (s. 24.)

By arbitrators.

The costs of arbitration are paid by the Commissioners, unless the arbitrators (*a*) award the same or a less sum than was offered (s. 34), when they are in the discretion of the arbitrators.

The costs need not be incorporated in the award, but may be ascertained at a subsequent time by the person who made the award (*b*), and they may now be settled by a Master of the Queen's Bench Division (*c*), whose decision is final (*d*). The costs may be recovered by action, although proceedings have not been taken to have the amount settled by the Master (*e*).

Sec. 51.
Assessment by jury.

The taxed costs become payable within a reasonable time, and the vendor has no lien on the land sold for the costs of the arbitration, but only for the amount of the purchase-money (*f*). If the jury give a greater sum than was previously offered (*g*)

(*a*) Or umpire; *Gould v. Staffordshire Potteries Waterworks Co.*, 19 L. J. Ex. 281; 5 Ex. 215.

(*b*) *Gould v. Staffordshire Potteries Waterworks Company*, *supra*.

(*c*) 32 & 33 Vic. c. 18 (Lands Clauses Act, 1869), s. 1.

(*d*) *See infra*, note (*b*).

(*e*) *Holdsworth v. Wilson*, 32 L. J. Q. B. 389; 4 B. & S. 1. *See Martin v. The Leicester Waterworks Company*, 27 L. J. Ex. 432.

(*f*) *Capell v. Great Western Railway Co.*, 9 Q. B. D. 459; 11 Q. B. D. 345; 51 L. J. Q. B. 601; 52 L. J. Q. B. 345; *Ferrers v. Stafford and Uttoxeter Railway Co.*, L. R. 13 Eq. 524; 41 L. J. Ch. 362.

(*g*) If the proceedings are in respect of purchase of land, this would refer to the sum offered at the time of the notice under s. 38; *see R. v. Smith*, 12 Q. B. D. 481; 53 L. J. Q. B. 115; if the proceedings are in respect of compensation under s. 68, such sum as was offered in reasonable time previously to the inquiry; *Hayward v. Met. Rail. Co.*, 4 B. & S. 787; 33 L. J. Q. B. 73; *Pearson v. G. N. Railway Co.* L. R. 7 Q. B. 785; *S. Eastern Railway Co. v. Richardson*, 21 L. J. C. P. 122; probably the same time as the notice of trial required under s. 46, viz., ten days, *Met. Rail. Co. v. Turnham*, 14 C. B. N. S. 212; 32 L. J. M. C. 149; the offer must be unconditional, *Balls v. Metropolitan Board of Works*, L. R. 1 Q. B. 337; 35 L. J. Q. B. 101; 7 B. & S. 177; and the original offer may be amended, *Hayward v. Met. Rail. Co.*, *supra*; *see R. v. Smith*, *supra*.

by the Commissioners, the latter will have to bear the costs of the inquiry; if the same or a less sum is given, or if the claimant fails to appear, the costs of summoning, impanelling and returning the jury and taking the inquiry is divided between him and the Commissioners, and each party bear their own costs (*a*).

In case of difference, the costs are to be settled by a Master of the Queen's Bench Division (*b*).

If the Commissioners have to pay the costs they must pay them within seven days after demand, or in default they will be recoverable by distress, and if any costs are payable by the claimant they may be deducted from the compensation, or if such costs exceed the compensation, the excess is to be recoverable by distress or warrant of justices (*c*).

In cases of money deposited in the bank, an order may be made by the Chancery Division upon the Commissioners to pay all reasonable charges and expenses, *i.e.*, the costs of the purchase or taking of the lands (*d*), of the investment of the moneys in Government or real securities, the costs of re-investment in the purchase of other lands, and of obtaining the proper orders for any of such purposes, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants.

(*a*) The costs to be divided between the parties would be merely the formal costs of the proceedings, *Bray v. South Eastern Railway Co.*, 19 L. J. Q. B. 1¹.

(*b*) The decision of the Master is final, and there is no jurisdiction to review his decision, *Owen v. London & N. Western Rail. Co.*, L. R. 3 Q. B. 54; 37 L. J. Q. B. 35; 7 B. & S. 758; *Sandbaeh Charity v. N. Staff. Rail. Co.*, 3 Q. B. D. 1; 47 L. J. Q. B. 10.

(*c*) The sections regulating distress are s. 138 *et seq.* of the Lands Clauses Act, 1845, *see* Appendix A.

(*d*) *Ex parte* Flower, L. R. 1 Ch. 599; 36 L. J. Ch. 193; of summoning a jury which was not afterwards required, *ex parte* Morris, L. R. 12 Eq. 418; for decisions upon this section *see* Chitty's Statutes, vol. iii. p. 1349, 4th ed.; Lloyd on Compensation, 5th ed. 198-215; Cripps on Compensation, 199-204, and *see In re* Bareham, 17 Ch. D. 329

Refusing to
give up
possession.

The costs occasioned by the owner or occupier refusing to give up possession have to be paid by him. The Commissioners may deduct such costs from the amount of compensation money, or if they exceed the compensation may recover them by distress on warrant of justices (a).

Interests
omitted to be
purchased.

The costs of claiming compensation for interest in lands omitted to be purchased (s. 124) are to be paid by the Commissioners if the claimant is successful in establishing his right (s. 126.)

(a) Sec. 91. The sections regulating distress are ss. 138 *et seq.*

APPENDIX.

APPENDIX A.

THE following Table shows by arrangement of sections and subject matter the progress and state of the existing law, and has been compiled in order to furnish an easy and comprehensive scheme for purposes of immediate reference. The Acts of Parliament which succeed the Table are in chronological order, and, together with the two incorporated Acts, comprise all the law in the statute book which relates to public arterial drainage.

PREAMBLE.

| 23 Hen. VIII. c. 5. | 7 Anne c. 10. | 3 & 4 Will. IV. c. 22. |
|--|---|--|
| To provide for the issue of Commissions of Sewers to all parts of the Realm. | To enable Commissioners of Sewers to decree the sale of copyhold lands in addition to freehold. | To define the powers of Commissioners of Sewers as to 1. Inquiry. 2. Execution of new works. 3. Rating. 4. Borrowing. And to increase the amount of qualification of Commissioners of Sewers. |

ISSUE OF A COMMISSION AND

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| <p>A Commission may be issued to persons named by the Lord Chancellor, &c.</p> <p>Sec. 2. Form of the Commission.</p> <p>The several causes of awarding the Commission.</p> | | |
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PREAMBLE.

| 4 & 5 Vic. c. 45. | 12 & 13 Vic. c. 50. | 24 & 25 Vic. c. 133. |
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| To increase the powers of taxation of Courts of Sewers. | To make further provision for enforcing sewers rates. | To amend the law relating to the drainage of land. Sec. 2. To apply to all Commissions of Sewers in England. Sec. 60. The powers conferred to be emulative. Sec. 63. Constitution of Elective Drainage Districts. |

APPOINTMENT OF COMMISSIONERS OF SEWERS.

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| | | <p>Sec. 4. Commissions may be issued for new areas on the recommendation of the Inclosure Commissioners.</p> <p>Sec. 5. The recommendation to be obtained on the petition of proprietors after investigation by an inspector.</p> <p>Sec. 6. Definition of proprietors.</p> <p>Sec. 7. Trustees to be deemed proprietors in certain cases.</p> <p>Sec. 8. Corporations.</p> <p>Sec. 9. Joint proprietors.</p> <p>Sec. 10. Provision in case of no proprietor.</p> <p>Sec. 11. Power of the inspector.</p> <p>Sec. 12. Expenses of obtaining the issue of the Commission.</p> <p>Sec. 13. Evidence of the issue of a Commission.</p> |
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QUALIFICATION AND OATH

| 23 Hen. VIII. c. 5. | 7 Anne c. 10. | 3 & 4 Will. IV. c. 22. |
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| <p>Sec. 5. Commissioners to take an oath. Form of oath.</p> <p>Sec. 6. Confirmation of previous statutes, including 25 Hen. VIII. c. 10, which is to the same effect as sec. 10 (<i>infra</i>).</p> <p>Sec. 10. No one to sit unsworn [or without having sufficient estate, repealed] penalty for so doing.</p> | | <p>Sec. 1. Qualification.</p> <p>(a) Estate of freehold or copyhold in the county or in an adjoining county of the yearly value of £100; or the heir apparent of such estate of the yearly value of £200.</p> <p>(b) Or an estate of leasehold of 60 years of the yearly value of £100.</p> <p>(c) Or an estate of leasehold of 21 years, of which 10 are unexpired, of the yearly value of £200.</p> <p>(d) Or an agent of corporate bodies, or Commissioners of Sewers, whose estate is of the yearly value of £300.</p> <p>Sec. 2. Quakers may act upon making an affirmation.</p> <p>Sec. 3. Additional oath (of qualification) to be taken by Commissioners.</p> <p>Sec. 5. <i>Ex officio</i> Commissioners not required to qualify.</p> <p>Sec. 4. Penalty on persons acting without qualification; but proceedings of the Commissioners are not to be quashed on account of disqualification.</p> |

OF COMMISSIONERS OF SEWERS.

| 4 & 5 Vic. c. 45. | 12 & 13 Vic. c. 50. | 24 & 25 Vic. c. 133. |
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DURATION OF

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| 23 Hen. VIII. c. 5. | 7 Anne c. 10. | 3 & 4 Will. IV. c. 22. |
| <p>Sec. 16. A commission to continue for three years — repealed. [Extended to 10 years by 13 Eliz. c. 9. A Commission or Commissioners discharged by writ of supersedeas.]</p> | | <p>Sec. 6. A Commission to continue for 10 years, unless renewed or repealed by writ of supersedeas.</p> |

LAWS, DECREES,

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| <p>Sec. 3. Commissioners authorised to make statutes, ordinances, &c., for the safeguard, &c., of the district.</p> <p>Sec. 7. To have power to make laws, ordinances and decrees, and amend the same.</p> <p>Sec. 17. How long the Commissioners' decrees shall endure—[repealed.]</p> | | <p>Sec. 7. The laws, decrees and ordinances made by any Court of Sewers to continue in force, notwithstanding the expiration of the Commission.</p> <p>Sec. 45. Laws, &c., of Commissioners, made at a Court held without the district of the Commissioners but within five miles, to be valid.</p> |
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A COMMISSION.

| 4 & 5 Vic. c. 45. | 12 & 13 Vic. c. 50. | 24 & 25 Vic. c. 133. |
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| | | <p>Sec. 14. Commission to continue until superseded, and vacancies may be filled up by Her Majesty, by writing under her sign manual.</p> |

AND ORDINANCES.

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OFFICERS.

| 23 Hen. VIII. c. 5. | 7 Anne c. 10. | 3 & Will. IV. c. 22. |
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| <p>Sec. 3. Commissioners of Sewers authorised to appoint bailiffs, surveyors, collectors, expeditors, and other officers, for the safety, reparation, &c., of the premises, and to hear the account of the collectors for collecting and laying out of money, and to distrain for arrearages of such collection.</p> | | <p>Sec. 48. Clerks, treasurers, &c., and other officers to account when required, penalty on refusal.</p> <p>Sec. 49. Removing officer from the possession of the property of the Court of Sewers.</p> <p>Sec. 50. Court of Sewers may take security from officers, and sue for forfeitures.</p> <p>Sec. 51. Clerk and treasurer not to be the same person.</p> <p>Sec. 52. Constables to obey the orders, execute the warrants, &c., of Commissioners of Sewers.</p> |

MEETINGS OF

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| | <p>Sec. 8. Regulations as to meetings of Commissioners. Six to form a quorum.</p> <p>Sec. 9. Special emergency meeting on 10 days' notice; in the event of the apprehension of imminent danger, a special meeting may be called on shorter notice.</p> <p>Sec. 44. Courts of Sewers may be held five miles outside the district —[repealed.]</p> <p>Sec. 45. All acts, orders, &c., of the Commissioners, done and made without the district but within five miles of the limit, to be valid.</p> |
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OFFICERS.

| 4 & 5 Vic. c. 45. | 12 & 13 Vic. c. 50. | 24 & 25 Vic. c. 133. |
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| | <p>Sec. 3. Power for the Commissioners to appoint dyke-reeves for districts and sub-districts.</p> <p>Sec. 4. Qualification of dyke-reeves.</p> <p>Sec. 5. Dyke-reeves to serve without fee or reward; penalty on refusal.</p> | |

COMMISSIONERS.

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| <p>Sec. 10. How Chairman to be chosen.</p> <p>Sec. 12. Regulations as to adjournment, &c.</p> <p>Sec. 11. Meetings may be held 10 miles outside the district.</p> | <p>Sec. 15. Three Commissioners to form a quorum, except in certain cases specified.</p> |
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POWERS AND DUTIES OF

| 23 Hen. VIII. c. 5. | 7 Anne c. 10. | 3 & 4 Will. IV. c. 22. |
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| <p>Sec. 3. What things the Commissioners are authorised to do in supervising walls, sewers, impediments, &c., within the Commission.</p> | | <p>Sec. 10. Description of sewers and other works under the jurisdiction of Commissioners of Sewers, viz.: embankments against the sea, navigable and tidal rivers, sewers, &c., connecting therewith. Rights of owners in certain cases preserved.</p> <p>Sec. 19. Commissioners authorised to make and maintain new works, and to inquire by jury who shall maintain, &c.</p> <p>Sec. 21. No entirely new works to be made without the consent of the owners and occupiers of three-fourth parts in value of the lands to be charged.</p> |

COMMISSIONERS OF SEWERS (WORKS).

| 4 & 5 Vic. c. 45. | 12 & 13 Vic. c. 50. | 24 & 25 Vic. c. 133. |
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| | | <p>Sec. 16. Declaration of powers of Commissioners as to</p> <ul style="list-style-type: none"> (a) Maintenance of existing works. (b) Improvement of existing works. (c) Construction of new works. <p>Sec. 17. Restrictions as to obstructions.</p> <p>Sec. 18. Questions as to the right to remove any obstructions. How to be decided.</p> <p>Sec. 19. Consequences of determination of questions.</p> <p>Sec. 20. Amount of compensation, how ascertained.</p> <p>Sec. 29. Notice to be given in the case of the improvement in existing works or new works involving an expenditure over £1,000.</p> <p>Sec. 30. Correction of list of proprietors.</p> <p>Sec. 31. Dissent of proprietors of half of area conclusive against new works.</p> <p>Sec. 32. Provision in case of no proprietor.</p> <p>Sec. 55. Commissioners not to divert river so as to injure harbours.</p> <p>Sec. 59. Power to execute works in other districts by arrangement.</p> |

BORROWING.

| 23 Hen. VIII. c. 5. | 7 Anne c. 10. | 3 & 4 Will. IV. c. 22. |
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| | | <p>Sec. 41. Power to borrow and take up money at interest for making and maintaining works.</p> <p>Sec. 42. Power to grant securities to persons advancing money. Form of security.</p> <p>Sec. 43. Securities may be transferred. Form of transfer.</p> <p>Transfers to be produced to the clerk to Commissioners, and to be registered by him.</p> |

PURCHASE

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| | | <p>Sec. 24. Commissions of Sewers authorised to contract for purchase of land for repairing, &c., <i>existing works</i>.</p> <p>Sec. 25. Form of conveyance.</p> <p>Sec. 26. Compulsory purchase; Commissioners to summon jury; examine witnesses on oath; jury to assess damages.</p> |
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BORROWING.

| 4 & 5 Vic. c. 45. | 12 & 13 Vic. c. 50. | 24 & 25 Vic. c. 133. |
|--|---------------------|---|
| <p>Sec. 4. Power to borrow on the rates and take up money at interest for expenses previously incurred.</p> <p>Sec. 5. Power to grant securities to persons advancing money.</p> <p>Form of security.</p> <p>Sec. 6. Securities may be transferred.</p> <p>Form of transfer.</p> <p>Transfer to be produced to the clerk of the Commissioners to be registered by him.</p> | | <p>Sec. 40. Power to mortgage the rates, subject to the sanction of the Inclosure Commissioners.</p> <p>Sec. 41. Incorporation of ss. 76-88 of the "Commissioners' Clauses Act, 1847" (10 Vic. c. 16), with respect to mortgages.</p> |

OF LAND.

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| | | <p>Sec. 21. Purchase of land for new works, unless with the consent of the owner, is to be subject to sanction of Parliament, obtained in the following manner:—</p> <p>Sec. 22. Commissioners to publish notices.</p> <p>Sec. 23. To present a petition to the Inclosure Commissioners.</p> |
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23 Hen. VIII. c. 5.

7 Anne c. 10.

3 & 4 Will. IV. c. 22.

Sec. 28. Agreements, contracts, sales, verdicts, &c., to be filed with the Clerk of Sewers.

Sec. 37. Houses, buildings, &c., not to be taken without consent.

Sec. 38. Vesting land in the Commissioners on payment of purchase-money.

Sec. 39. Sale of surplus lands by Commissioners.

Sec. 40. Form of conveyance.

Sec. 47. All property purchased, &c., to vest in the Commissioners.

COMPENSATION MONEY AND COSTS.

Sec. 29. If the Jury give more than was offered, the Commissioners to pay the costs; if no more or less, the person disputing.

Sec. 30. Purchase and compensation moneys to be levied on lands, &c.; receiving benefit from the works for which the land was purchased.

Sec. 31. Application of purchase-money exceeding £200.

Sec. 32. If no less than £200 and more than £20.

Sec. 33. If less than £20.

Sec. 34. Person in possession, *prima facie*, entitled to the purchase-money.

Sec. 35. If compensation money is refused or titles not made, or if persons to whom the money is assessed cannot be found, money to be paid into the Bank.

Sec. 36. The Court may direct payment of expenses where purchases of other lands are required to be made.

OF LAND—(continued).

| 4 & 5 Vic. c. 45. | 12 & 13 Vic. c. 50. | 24 & 25 Vic. c. 133. |
|-------------------|---------------------|---|
| | | <p>Sec. 24. Inclosure Commissioners to make inquiries by an inspector.</p> <p>Sec. 25. To give notice of inquiry.</p> <p>Sec. 26. A provisional order to empower the Commissioners of Sewers to put in force the Lands Clauses Act, 1845.</p> <p>Sec. 27. Expenses of obtaining the provisional order.</p> <p>Sec. 28. Incorporation of the Lands Clauses Acts, excepting certain sections.</p> |

| 23 Hen. VIII. c. 5. | 7 Anne c. 10. | 3 & 4 Will. IV. c. 22. |
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| <p>Sec. 3. Commissioners authorised to survey and inquire by jury, through whose default annoyances come.</p> <p>Sec. 4. Sheriff to summon a jury on such days and places as the Commissioners shall appoint.</p> | | <p>Sec. 11. In cases of inquiry and presentment Commissioners are authorised to summon sheriff, jurymen, witnesses, &c.</p> <p>Sec. 12. In case of difference a jury to be impanelled, which shall be composed half from the county at large and half from the minor jurisdiction.</p> <p>Sec. 13. A presentment of a jury not to be necessary upon each occasion to repair.</p> <p>Sec. 19. Inquiry by jury as to who is to repair works.</p> <p>Sec. 46. Several defaults may be included in one presentment.</p> <p>Sec. 17. Nothing in this Act to preclude Courts of Sewers from causing inquiry and presentment by jury as before.</p> |

PRESENTMENT.

| 4 & 5 Vic. c. 45. | 12 & 13 Vic. c. 50. | 24 & 25 Vic. c. 133. |
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| <p>Sec. 7. Courts of Sewers may recompense jury-men.</p> | <p>Sec. 6. Dyke-reeves may present for breach of the laws of Commissioners.</p> | <p>Sec. 33. Jury may be dispensed with under certain conditions. Sec. 47. If Commissioners act without presentment the person aggrieved may appeal to Quarter Sessions. Sec. 48. Quarter Sessions may refer the matter to arbitration. Sec. 49. C. L. P. Act, 1854, with reference to compulsory references incorporated.</p> |

| 23 Hen. VIII. c. 5. | 7 Anne c. 10. | 3 & 4 Will. IV. c. 22. |
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| <p>Sec. 3. Commissioners authorised to tax and assess persons contributory after the quantity of their lands and to distrain for arrearages.</p> | | <p>Sec. 14. Commissioners empowered to make rates. Sec. 18. Rates to be apportioned between outgoing and incoming tenants.</p> |

DISTRESS.

| 4 & 5 Vic. c. 45. | 12 & 13 Vic. c. 50. | 24 & 25 Vic. c. 133. |
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| <p>Sec. 1. Courts of Sewers empowered to raise money by tax in gross.</p> <p>Sec. 2. May order the apportionment and collection of the tax.</p> <p>Sec. 3. The tax and apportionment to be final if not complained against at the next Court.</p> <p>Sec. 8. Sewers rate may be amended or quashed by Court of Sewers on appeal.</p> | <p>Sec. 1. Commissioners empowered to partition districts into sub-districts.</p> <p>Sec. 2. And to make a separate rate for each district.</p> | <p>Sec. 38. Rates may be levied by Commissioners of Sewers for all costs, charges and expenses of the Commission. A special rate over £1,000, for improvements and new works to be deemed a tax on the owners, to be levied on the occupier where the owner is in default. Regulation as to rating.</p> <p>(1). As to purposes of the rate.</p> <p>(2). As to incidence.</p> <p>(3). As to the assessment of the rate.</p> |

| 23 Hen. VIII. c. 5. | 7 Anne c. 10. | 3 & 4 Will. IV. c. 22. |
|---|--|------------------------|
| <p>Sec. 8. Power to decree lands from the owner for non-payment of tax, &c.</p> | <p>Sec. 1. Power to decree copyhold lands from the owner for non-payment of tax, &c.</p> <p>Sec. 2. The buyers of such land to agree with the lord of whom holden for the accustomed fine and the lord to admit them tenants.</p> <p>Sec. 3. Six Commissioners may by warrant empower any person to levy the assessment by distress and sale of goods.</p> | |

DISTRESS—(continued).

| 4 & 5 Vic. c. 45. | 12 & 13 Vic. c. 50. | 24 & 25 Vic. c. 133. |
|-------------------|---|----------------------|
| | <p>Sec. 7. Procedure for recovery of sewers rates by distress.</p> <p>Sec. 8. One warrant for any number of ratepayers.</p> <p>Sec. 9. Warrants to be directed to the bailiff, dyke-reeve or other sewers officer and to other persons.</p> | |

| 23 Hen. VIII. c. 5. | 7 Anne c. 10. | 3 & 4 Will. IV. c. 22. |
|---|---------------|--|
| <p>Sec. 3. Commissioners authorised to fine, amerce, &c., those failing to pay "arrearages" of tax, and those neglecting the repairs for which they are liable.</p> | | <p>Sec. 27. Commissioners may impose a fine on sheriff, witnesses, &c., making default.</p> <p>Sec. 53. Fines, &c., may be levied by warrant of Commissioners of Sewers, and are receivable by them to be applied to the expenses of the Commission.</p> <p>Sec. 54. Form of warrant.</p> <p>Sec. 4. Penalty on persons acting as Commissioners of Sewers not being qualified.</p> |

LEGAL

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| <p>Sec. 3. Commissioners of Sewers authorised to hear suits and to direct writs and warrants to sheriffs and other persons.</p> <p>Sec. 11. Avowry or justification of a distress taken by reason of the Commission of Sewers.</p> | | <p>Sec. 47. Commissioners of Sewers may sue or indiet for injury to property vested in them.</p> <p>Sec. 57. They may sue or be sued in the name of their clerk.</p> <p>Sec. 58. Clerks and Commissioners may be reimbursed expenses of action, indictment, &c.</p> <p>Sec. 59. Clerk may be a witness.</p> |
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MENTS, PENALTIES.

| 4 & 5 Vic. c. 45. | 12 & 13 Vic. c. 50. | 24 & 25 Vic. c. 133. |
|-------------------|--|--|
| | <p>Sec. 5. Penalty on dyke-reeves refusing to serve.</p> <p>Sec. 6. Power to Commissioners to impose fines not exceeding 40s. for breach of laws, orders, &c.</p> <p>Sec. 7. Procedure for recovery of sewers fines by warrant of distress.</p> <p>Sec. 8-9, <i>Supra</i>, Rating.</p> | <p>Sec. 58. Penalty for draining into sewers without the consent of the Commissioners.</p> <p>Sec. 39. Penalty on overseers for not allowing inspection of the poor rates by the Commissioners of Sewers.</p> <p>Sec. 51. Recovery of penalties before justices.</p> |

PROCEEDINGS.

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| | | <p>Sec. 42. Notices by the Commissioners to be signed by their clerk.</p> <p>Sec. 43. Notices binding on assigns.</p> <p>Sec. 44. Notices on owners to be served personally, or left at their places of abode.</p> <p>Sec. 45. Notices to corporations to be left at their principal office.</p> <p>Sec. 46. Service of notice on occupiers.</p> <p>Secs. 47, 48, 49. Appeal to Quarter Sessions. (<i>See supra</i>, Rating.)</p> <p>Sec. 50. Decision of questions by justices or arbitration.</p> <p>Sec. 51. Recovery of penalties before justices.</p> <p>Sec. 53. Tender of amends.</p> |
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COSTS AND

| 23 Hen. VIII. c. 5. | 7 Anne c. 10. | 3 & 4 Will. IV. c. 22. |
|--|---------------|--|
| <p>Sec. 13. Fees of the Commissioners and payment of the officers to be paid out of the rates.</p> <p>Sec. 15. The Commission to be obtained free of charge.</p> | | <p>Sec. 16. Clerks, witnesses, surveyors, &c., and expenses of working the Commission, to be paid out of the rates.</p> <p>Secs. 29, 36. Costs and expenses of purchase of land. (<i>See supra</i>, Purchase of land.)</p> <p>Sec. 55. Commissioners may assess costs of their decrees and proceedings, and in default of distress of goods may raise the same upon the lands of the defaulters.</p> <p>Sec. 56. Appropriation of costs when levied.</p> <p>Sec. 58. Clerks and Commissioners to be reimbursed costs and expenses of action, indictment, &c.</p> |

SAVINGS AND

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| <p>Sec 6. Confirmation of other statutes.</p> <p>Sec. 20. Commissions in Wales and Counties Palatine.</p> | | <p>Sec. 15. Nothing in this statute to discharge persons from liability by tenure, &c.</p> <p>Sec. 17. Nothing to preclude Courts of Sewers from causing inquiry and presentment by jury as before.</p> <p>Sec. 20. This Act is not to interfere with the provisions of 16 Geo. III. c. 62, for preventing of prejudice to Sandwich Haven, in Kent.</p> <p>Sec. 61. This Act not to prejudice any local Act or any Commission of Sewers in the County of Middlesex within ten miles of the Royal Exchange, or affect the charters of Romney Marsh and the Bedford Level.</p> <p>Sec. 62. Saving the rights of the City of London.</p> |
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EXPENSES.

4 & 5 Vic. c. 5.

12 & 13 Vic. c. 50.

24 & 25 Vic. c. 133.

Sec. 12. Expenses of obtaining the issue of a Commission of Sewers under this Act to be a charge on the rates if the Commission is issued, but if not, to be paid by the promoters.

Sec. 27. Expenses of obtaining a provisional order for purchase of land to be paid by the Commissioners out of the rates.

Secs. 40, 41. Mortgage of the rates for costs and expenses.

Sec. 52. Costs and expenses incurred by Commissioners in legal proceedings may be defrayed out of the rates.

EXEMPTIONS.

Sec. 13. Saving powers of Courts of Sewers.

Sec. 14. Indemnities of 3 & 4 Will. IV. c. 22, extended to this Act.

Sec. 15. This Act not to prejudice any local Act [follows 3 & 4 Will. IV. c. 22, s. 61] adding Commissioners of the North Level and Portsand and of the Nene Outfall.

Secs. 16, 17. Saving the rights of the City of London and Westminster. [repealed.]

Sec. 18. Saving the rights of the Bedford Level Corporation.

Sec 2. Act to include any Commission of Sewers in force, but not to extend to Scotland or Ireland or to any part of the Metropolis.

Sec. 60. Powers given by this Act to be cumulative.

Sec. 54. Saving rights of canal owners and wharfingers.

Sec. 55. Commissioners not to divert rivers so as to injure harbours.

Sec. 57. Exemptions under local Acts preserved.

Sec. 61. Nothing in the Act to affect contracts between landlord and tenant entered into before the passing of the Act.

Sec. 62. Provision in case of alteration of local boundaries.

LIABILITY,

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| 23 Hen. VIII. c. 5. | 7 Anne c. 10. | 3 & 4 Will. IV. c. 22. |
| | | <p>Sec. 15. Nothing in the Act to discharge persons from liability to repair, &c., by reason of frontage, prescription, custom, covenant, or grant; after seven days' notice the Commissioners may do the necessary work, and charge the expenses to the party liable.</p> |

INTERPRE-

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| | | <p>Sec. 60. Court is to mean Court of Sewers. Words in the singular number or feminine gender to include several persons, males and corporations.</p> |
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RATONE TENURE, &c.

| 4 & 5 Vic. c. 45. | 12 & 13 Vic. c. 50. | 24 & 25 Vic. c. 133. |
|-------------------|---------------------|--|
| | | <p>Sec. 34. Power to commute liabilities to repair, &c., by reason of tenure, custom, prescription, or otherwise.</p> <p>Sec. 35. Commutation may be by way of rent-charge.</p> <p>Sec. 36. The record of such charge to be deposited with the Clerk of the Peace.</p> <p>Sec. 37. Saving of existing liabilities.</p> |

TATION.

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| | <p>Sec. 10. To the same effect as s. 60 of 3 & 4 Will. IV. c. 22, adding the words "lands," which are to include lands and hereditaments of any tenure whatsoever.</p> <p>"Oath" to include affirmation or declaration. "District and sub-district" to include any district or subdivision within the limits of the Commission.</p> | <p>Sec. 3. "Watercourse" to include all rivers, sewers, &c., through which water flows. "Persons" to include corporation. "Owner," unless otherwise defined, to have the same meaning as in the Lands Clauses Act, 1845.</p> <p>Sec. 38. Owner of land defined for the purposes of that section.</p> |
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S T A T U T E S .

23 HENRY VIII. c. 5.

Bill of Sewers.

A General Act concerning Commissioners of Sewers to be directed in all parts within this realm.

[A. D. 1531.]

See Stats. 6 H. VI. c. 5, 8 H. VI. c. 3, 1 H. VII. c. 1, 6 H. VIII. 10.

OUR Sovereign Lord the King, like a virtuous and most gracious prince, nothing earthly so highly weighing as the advancing of the common profit, wealth, and commodity of this his realm, considering the daily great damages and losses which have happened in many and divers parts of this his said realm, as well by the reason of the outrageous flowing, surges, and course of the sea in and upon marsh grounds, and other low places heretofore through politic wisdom won and made profitable for the great common wealth of this realm, as also by occasion of land-waters, and other outrageous springs, in and upon meadows, pastures, and other low grounds adjoining to rivers, floods, and other water-courses; and over that, by and through mills, mill-dams, weirs, fish-garths, kedels, gores, gotes, flood-gates, locks, and other impediments in and upon the same rivers and other water-courses, to the inestimable damages of the common wealth of this realm, which daily is likely more and more to increase, unless speedy redress and remedy be in this behalf shortly provided: Wherein albeit that divers and many provisions have been before this time made and ordained, yet none of them are sufficient remedy for reformation of the premises, hath therefore by deliberate advice and assent of his Lords Spiritual and Temporal, and also his loving Commons, in this present Parliament assembled, ordained, established, and enacted, that Commissions of Sewers, and other the premises, shall be directed in all parts within this realm from time to time, where and when need shall require, according to the manner, form, tenor, and effect, hereafter ensuing, to such substantial and indifferent persons as shall be named by the Lord Chancellor and Lord Treasurer of England, and the two Chief Justices for the time being, or by three of them, whereof the Lord Chancellor to be one.

By whom Commissions of Sewers shall be issued.

The form of the Commission.

2. " Henry the Eighth, &c. Know ye, that forasmuch as the walls, ditches, banks, gutters, sewers, gotes, calcies, bridges, streams, and other

defences, by the coasts of the sea, and marish ground, lying and being within the limits of *A.*, *B.* or *C.* in the county or counties of _____, or in the borders or confines of the same, by rage of the sea, flowing and reflowing, and by mean of the trenches of fresh water descending, and having course by divers ways to the sea, be so disrupt, lacerate, and broken; and also the common passages for ships, balangers, and boats, in the rivers, streams, and other floods, within the limits of *A.*, *B.* or *C.* in the county or counties of _____, or in the borders or confines of the same, by mean of setting up, erecting, and making of streams, mills, bridges, ponds, fish-garths, mill-dams, locks, hebbing-wears, hecks, and flood-gates, or other like lets, impediments, or annoyances, be letted and interrupted, so that great and inestimable damage, for default of reparation of the said walls, ditches, banks, fences, sewers, gotes, gutters, calcies, bridges, and streams, and also by mean of setting up, erecting, making, and enlarging of the said fish-garths, mill-dams, locks, hebbing-wears, hecks, flood-gates, and other like annoyances, in times past hath happened, and yet it is to be feared that far greater hurt, loss, or damage is like to ensue, unless that speedy remedy be provided in that behalf.

Preamble.

“ We, therefore, for that by reason of our dignity and prerogative royal, we be bound to provide for the safety and preservation of our realm of England, willing that speedy remedy be had in the premises, have assigned you, and six of you, of the which we will that *A.*, *B.* and *C.* shall be three, to be our justices, to survey the said walls, streams, ditches, banks, gutters, sewers, gotes, calcies, bridges, trenches, mills, mill-dams, flood-gates, ponds, locks, hebbing-wears, and other impediments, lets, and annoyances aforesaid, and the same cause to be made, corrected, repaired, amended, put down, or reformed, as case shall require, after your wisdoms and discretions; and therein as well to ordain and do after the form, tenor, and effect of all and singular the statutes and ordinances made before the 1st day of March, in three-and-twentieth year of our reign, touching the premises or any of them, as also to enquire by the oaths of the honest and lawful men of the said shire or shires, place or places where such defaults or annoyances be, as well within liberties as without (by whom the truth may the rather be known), through whose default the said hurts and damages have happened, and who hath or holdeth any lands or tenements, or common of pasture, or profit of fishing, or hath or may have any hurt, loss, or disadvantage by any manner of means in the said places, as well near to the said dangers, lets, and impediments, as inhabiting or dwelling thereabouts, by the said walls, ditches, banks, gutters, gotes, sewers, trenches, and other the said impediments and annoyances; and all those persons, and every of them, to tax, assess, charge, distrain, and punish, as well within the metes, limits and bounds of old time accustomed, or otherwise or elsewhere within our realm of England, after the quantity of their lands tenements, and rents, by the number of acres and perches, after the rate of every person's portion, tenure, or profit, or after the quantity of their common of pasture, or profit of fishing, or other commodities there, by such ways and means, and in such manner and form as to you, or six of you, whereof the said *A.*, *B.* and *C.* to be three, shall seem most

Power of Commissioners to survey and remedy annoyances.

To inquire by whose defaults the annoyances come, &c.

To assess the persons to be contributory to the charge.

To repair walls, convenient to be ordained and done for redress and reformation to be had in the premisses; and also to reform, repair, and amend the said walls, ditches, banks, gutters, sewers, gotes, calcies, bridges, streams, and other the premises, in all places needful; and the same as often, and where need shall be, to make new, and to cleanse and purge the trenches, sewers, and ditches in all places necessary; and further to reform, amend, prostrate, and overthrow all such mills, streams, ponds, locks, fish-garths, hebbing-wears, and other impediments and annoyances aforesaid, as shall be found by inquisition, or by your surveying and discretions to be excessive or hurtful; and also to depute and assign diligent, faithful, and true keepers, bailiffs, surveyors, collectors, expeditors, and other ministers, and officers, for the safety, conservation, reparation, reformation, and making of the premises, and every of them, and to hear the account of the collectors, and other ministers of and for the receipt, and laying out of the money that shall be levied and paid in and about the making, reforming, repairing, and amending of the said walls, ditches, banks, gutters, gotes, sewers, calcies, bridges, streams, trenches, mills, ponds, locks, fish-garths, flood-gates, and other impediments and annoyances aforesaid; and to distrain for the arrearages of every such collection, tax and assess, as often as shall be expedient, or otherwise to punish the debtors and detainers of the same, by fines, amerciements, pains, or other like means after your good discretions; and also to arrest and take as many carts, horses, oxen, beasts, and other instruments necessary, and as many workmen and labourers as for the said works and reparations shall suffice, paying for the same competent wages, salary, and stipend in that behalf; and also to take such and as many trees, woods, underwoods, and timber, and other necessaries, as for the same works and reparations shall be sufficient, at a reasonable price, by you, or six of you, of the which we will that *A.*, *B.* and *C.* shall be three, to be assessed or limited, as well within the limits and bounds aforesaid, as in any other place within the said county or counties near unto the said places; and to make and ordain statutes, ordinances and provisions from time to time, as the case shall require, for the safeguard, conservation, redress, correction, and reformation of the premises, and of every of them, and the parts lying to the same necessary and behovful, after the laws and customs of Romney Marsh, in the county of Kent, or otherwise by any ways or means after your own wisdoms and directions; and to hear and determine all and singular the premises, as well at our suit, as at the suit of any other whatsoever complaining before you or six of you, whereof *A.*, *B.* and *C.* shall be three, after the laws and customs aforesaid, or otherwise, by any other ways or means after your discretions; and also to make and direct all writs, precepts, warrants, or other commandments by virtue of these presents, to all sheriffs, bailiffs, and all other ministers, officers, and other persons, as well within liberties as without, before you, or six of you, whereof the said *A.*, *B.* and *C.* to be three, at certain days, terms, and places to be prefixed, to be returned and received; and further to continue the process of the same, and finally to do all and every thing and things as shall be requisite for the due execu-

To repair walls, &c.

To appoint bailiffs, collectors and officers who shall account.

To distrain for arrears of money assessed [See s. 9.]

To take workmen and carriages, timber, &c.

To make statutes and ordinances.

To award writs and precepts to sheriffs, &c.

tion of the premises, by all ways and means after your discretions: And therefore we command you, that at certain days and places, when and where ye, or six of you, whereof the said *A.*, *B.* and *C.* to be three, shall think expedient, ye do survey the said walls, fences, ditches, banks, gutters, goles, sewers, calcies, ponds, bridges, rivors, streams, water-courses, mills, locks, trenches, fish-garths, flood-gates, and other the lets, impediments, and annoyances aforesaid, and accomplish, fulfil, hear, and determine all and singular the premises in due form, and to the effect aforesaid, after your good discretions, and all such as ye shall find negligent, gainsaying, or rebelling in the said works, reparations, or reformations of the premises, or negligent in the due execution of this our Commission, that ye do compel them by distress, fines, and amerçiements, or by other punishments, ways, or means, which to you, or six of you, whereof the said *A.*, *B.* and *C.* shall be three, shall seem most expedient for the speedy remedy, redress, and reformation of the premises, and due execution of the same; and all such things as by you shall be made and ordained in this behalf, as well within liberties as without, ye do cause the same firmly to be observed, doing therein as to our justice appertaineth after the laws and statutes of this our realm, and according to your wisdoms and discretions.

Command to Commissioners so to do;

and to compel obedience to their orders.

4. "Saved always to us such fines and amerçiements as to us thereof shall belong: And we also command our sheriff or sheriffs of our said county or counties of _____ that they shall cause to come before you, or six of you, of which *A.*, *B.* and *C.* to be three, at such days and places as ye shall appoint to them, such and as many honest men of his or their bailiwick, as well within liberties as without, by whom the truth may best be known, to inquire of the premises; commanding also all other ministers and officers, as well within liberties as without, that they, and every of them, shall be attendant to you in and about the due execution of this our commission. In witness whereof we have caused these our letters-patent to be made. Witness ourself at Westminster, the _____ day of _____ in the _____ year of our reign."

Saving to the king.

Sheriffs shall return jurors, &c.

5. And it is also enacted, that every such person as shall be named Commissioner in the said Commission, after he hath knowledge thereof, shall effectually put his diligence and attendance in and about the execution of the said Commission. And before he shall take upon him the execution of the said Commission, he shall take a corporal oath before the Lord Chancellor, or before such to whom the said Lord Chancellor shall direct the King's Writ of *Dedimus Potestatem* to take the same, or before the Justices of the Peace in the Quarter Sessions holden in the shire where such Commissions shall be directed; the tenor of which oath hereafter ensueth:

The Commissioners shall take an oath. [Enforced by 25 H. VIII. c. 10, s. 2.]

"Ye shall swear, that you, to your cunning, wit and power, shall truly and indifferently execute the authority to you given by this Commission of Sewers, without any favour, affection, corruption, dread or malice to be borne to any manner of person or persons; and, as the case shall require, ye shall consent, and endeavour yourself for your part, to the best of

The form of oath.

your knowledge and power, to the making of such wholesome, just, equal, and indifferent laws and ordinances, as shall be made and devised by the most discreet and indifferent number of your fellows, being in Commission with you, for the due redress, reformation, and amendment of all and every such things as are contained and specified in the said Commission, and the same laws and ordinances to your cunning, wit and power, cause to be put in due execution, without favour, meed, dread, malice, or affection; as God you help and all Saints."

A confirmation of other statutes except as altered, &c.

6. And it is also enacted by the authority aforesaid, that all and every statute Act and ordinance heretofore made concerning the premises, or any of them, as well as in the time of our Sovereign Lord the King that now is, as in the time of any of his progenitors, kings of this realm of England, not being contrary to this present Act, nor heretofore repealed, from henceforth shall stand and be good and effectual for ever, and to be put in due execution according to the true meaning and purport of the same.

Commissioners may make orders, &c.

7. And over that be it enacted, that the Commissioners hereafter to be named in any of the said Commissions, according to the purport and effect of the same Commissions, have full power and authority to make, constitute and ordain laws, ordinances and decrees, and further to do all and everything mentioned in the said Commission, according to the purport, effect, words and true meaning of the same; and the same laws and ordinances so made, to reform, repeal and amend, and make new from time to time as the cases necessary shall require in that behalf.

Commissioners may make decree upon persons refusing to pay rates. [This and s. 9 extended to copyhold lands, 7 Anne, c. 10.]

8. Provided alway, and it is enacted, that if any person or persons, being assessed or taxed to any lot or charge for any lands, tenements or hereditaments, within the limits of any Commission hereafter to be directed, do not pay the said lot and charge according to the ordinance and assignment of the Commissioners having power of the execution of the said Commission, by reason whereof it shall happen the said Commissioners having power of the execution of such Commission, for lack of payment of such lot and charge, to decree and ordain the same lands, tenements and hereditaments from the owner or owners thereof, and their heirs, and the heirs of every of them, to any person or persons for term of years, term of life in fee-simple or in tail, for payment of the same lot and charge, that then every such decree and ordinance so by them made and ingrossed in parchment, and certified unto their seals into the King's Court of Chancery, with the king's royal assent had to the same, shall bind all and every person or persons, that at the making of the same decree had any interest in such lands, tenements, or hereditaments, in use, possession, reversion or remainder, their heirs and feoffees, and every of them, and not to be in anywise reformed, unless it be by authority of Parliament hereafter to be summoned and holden within this realm.

Such decree shall bind the land. [Rates made leviable by distress.]

9. And also it is provided by authority aforesaid, that the same laws, ordinances and decrees to be made and ordained by the said Commissioners, or six of them, by authority of the said Commission, shall bind as well the lands, tenements or hereditaments of the king our

Sovereign Lord, as all and every other person and persons, and their heirs, for such their interest as they shall fortune to have or may have, in any lands, tenements or hereditaments, or other casual profit, advantage, or commodity whatsoever they be whereunto the said laws, ordinances and decrees shall in anywise extend, according to the true purport, meaning, and intent of the same laws.

3 & 1 E. VI c. 8,
s. 2.
7 Anne, c. 10,
s. 3.]

10. And it is furthermore, by the authority aforesaid, established and enacted, that if any manner of person or persons of what estate or degree soever he or they be of, that from henceforth do take upon him or them to sit by virtue of any of the said Commissions, not being before sworn in form as is aforesaid, and according to the tenor of the oath before specified (a) [or if any person so named and sworn do sit as is aforesaid, not having lands and tenements or other hereditaments in fee-simple, fee-tail, or for term of life, to the clear yearly value of forty marks above all charges to his own use, except he be resident and free of any city, borough, or town corporate, and have moveable substance of the clear value of one hundred pounds, or else be learned in the laws of this realm in and concerning the same, that is to say, admitted in one of the four principal Inns of Court for an utter barrister], shall forfeit forty pounds for every time that he shall attempt so to do; the one half thereof to be to our Sovereign Lord the King, and the other half thereof to the use of him or them that will sue therefor by action of debt, bill, plaint, or information in any of the King's Courts; in which action or suit no wager of law shall be admitted, nor any essoin or protection shall be allowed.

Penalty on Commissioners not being sworn or qualified £10.
[See as to qualifications 25 Hen. VIII. c. 10, s. 1.
13 El. c. 9, s. 4.]

11. And if any action of trespass, or other suit, shall happen to be attempted against any person or persons for taking any distress, or any other act doing, by authority of the said Commission, or by authority of any laws or ordinances made by virtue of the said Commission, the defendant or defendants in any such action shall and may make avowry or justification for the taking of the same distress, or other act doing touching the premises, or any of them, alledging in such avowry or justification, that the said distress trespass or other act whereof the plaintiff complaineth, was done by the authority of the Commission of Sewers, for lot or tax assessed by the said Commission, or for such other act or cause as the said defendant did by authority of the same Commission, and according to the tenor, purport, and effect of this present Act, made the three and twentieth year of the reign of our Sovereign Lord King Henry the Eighth, without any expressing or rehearsal of any other matter or circumstance contained in this present Act, or any commission, laws, statutes, or ordinances thereupon to be made; whereupon the plaintiff shall be admitted to reply, that the defendant did take the said distress or did any other act or trespass supposed in his declaration of his own wrong, without any such cause alledged by the said defendant; whereupon the issue in every such action shall be joined, to be tried by verdict of twelve men, and not otherwise, as is accustomed in other personal

General avowry, issue, &c.

(a) Words within brackets repealed by Stat. Law. Rev. Act, 1863.

actions; and upon the trial of that issue the whole matter to be given on both parts in evidence according to the very truth of the same.

Treble damages,
costs.

12. And after such issue tried for the defendant, or nonsuit of the plaintiff after appearance, the same defendant to recover treble damages by reason of his wrongful vexation in that behalf, with his costs also in that part sustained, and that to be assessed by the same jury, or writ to inquire of damages, as the cause shall require.

Fees, &c. to
Commissioners
and clerk.

13. And it is also enacted, that every of the said Commissioners shall have and percieve four shillings for every day that they shall take pain in the execution of this Commission of Sewers, and one clerk, by them to be assigned, two shillings for every day, of the rates, taxes, lots, and wains that shall be assessed or lost by the authority of the said Commission, and to be levied and paid by their discretions. And that the said Commissioners, or six of them, shall have power and authority to limit and assign of the same rates, taxes, lots, and wains, by their discretions, such reasonable sums of money to the said clerk, for writing of books and process concerning the said premises, and to the collectors, expeditors, and such other as shall take pain in the due execution of the said Commission, as by the discretions of the said Commissioners, or six of them, shall be thought reasonable.

How commis-
sions shall be
issued within
the Duchy of
Lancaster.
[And see s. 18.]

14. Provided alway, that whensoever, and as often as such Commission as is afore limited shall be made and directed to any person or persons, for the reformation and amendment of or in any of the premises specified in the said Commission, within the fees, liberties, or possessions of the Duchy of Lancaster, that then such Commissioners, as shall execute any such Commission, shall be always named and appointed by the discretion of the Lord Chancellor and Lord Treasurer of England, and the said two Chief Justices of either Bench, and the Chancellor of the said Duchy for the time being, or three of them, whereof the said Lord Chancellor and the Chancellor of the Duchy to be two; and that in every such case two Commissions shall be awarded and made according to the tenor of the Commission above expressed, one thereof under the Great Seal of England and the other under the seal of the same Duchy, as beforetime hath been accustomed; anything afore rehearsed in this Act to the contrary hereof notwithstanding.

Fees on
obtaining the
Commissions.

15. And it is further enacted, that the said Commissions from time to time, as the case shall require, shall be had and obtained without any money, or other charge to be paid for the seals or writing of the same, unless it be to the king, two shillings sixpence for the seal of every Commission, as hath been accustomed, and for the writing and inrolling of, any one Commission, five shillings, and not above.

Commissions
shall endure
three years.

16. (a) [And it is further enacted, that every Commission to be made by authority of this Act shall endure and continue for the term of three years next after the teste of the Commission]; nevertheless after any

(a) Words within brackets repealed by Stat. Law. Rev. Act, 1863.

Commission made and delivered out of the King's Court of Chancery, the King's Highness shall always at his pleasure, by his writ of supersedeas out of his said Court of Chancery, at any time discharge as well every such Commission, as every Commissioner that shall be made or named by authority of this Act; after which discharge the said Commissioner shall have no power or authority to proceed in the execution of their Commission, nor in anything by authority of this Act.

5 years 3 & 4 E. VI, c. 8, s. 1. 10 years 13 Eliz. c. 9, s. 1. unless in case of supersedeas.

17. (a) [Provided alway, that such laws, Acts, decrees and ordinances as shall happen to be made by the said Commissioners, according to the tenor of their Commission, or by authority of this Act, shall stand good and effectual, and be put in due execution so long time as their Commission endureth, and no longer; except the said laws and ordinances be made and engrossed in parchment, and certified under the seals of the said Commissioners into the King's Court of Chancery, and then the king's royal assent be had to the same; anything contained in this present Act to the contrary hereof notwithstanding.]

Duration, &c., of Commissioners' decree. [But see 13 1. Eliz. c. 9 s. 1.]

18. Provided also, that whensoever and as often as such Commission as is afore limited shall be made and directed to any person or persons for the reformation and amendment of or in any of the premises specified in the said Commission, within the fees, liberties and possessions of the Principality of Wales, the County Palatine of Chester, or within the fees, liberties and possessions of any other place where there is liberty and jurisdiction of County Palatine, that in every such case two Commissions shall be awarded and made according to the tenor of the Commission above expressed, one thereof under the Great Seal of England, and the other under the usual seal of the County Palatine, in manner and form as is above provided for the Duchy of Lancaster; anything afore rehearsed in this present Act to the contrary notwithstanding.

Commissions into Wales, County Palatines, &c. [See ante s. 14, & post s. 20.]

“The King's royal assent (See s. 17) shall be certified into the Chancery (s. 19). [See now 13 Eliz. c. 9, s. 1].

20. Provided alway, That the Chancellors, and such other as shall have the custody of the seals of the said Principality of Wales, or the County Palatine of Chester, or within the fees, liberties, and possessions of any other place where there is liberty and jurisdiction of County Palatine, upon reasonable request, and upon the sight of the Commission under the King's Great Seal of his Chancery, shall without delay makeout another Commission under the seal of the said County Palatine, according to the tenor of the King's Commission to them shewed under his Great Seal; and to those Commissioners as shall be named by the Lord Chancellor, Lord Treasurer, and the two Chief Justices, or by three of them, whereof the Lord Chancellor to be one, except it be within the fees and liberties of the Duchy of Lancaster, within which fees and liberties the Commissioners shall be named, and Commissions made, as is afore ordained by this Act; anything

Commissions by Chancellors, &c., in Wales and Counties Palatine. [See s. 14, 18.]

(a) This section is repealed by Stat. Law, Rev. Act, 1863.

contained in the said Act, or in any proviso thereunto added and annexed, to the contrary thereof notwithstanding. This Act to endure for twenty years.

[*Made perpetual, 3 J. 4 E. 6, c. 8, s. 1.: Explained and amended, 25 Hen. VIII c. 10; 13 Eliz. c. 9: Extended to the sea-sands in Glamorganshire, 1 Mar. st. 3, c. 11.—to all water-courses falling into the Thames near London 3 Jac. 1 c. 14—to copyhold lands 7 Anne, c. 10.*]

7 ANNE, c. 10.

An Act for rendering more effectual the laws concerning Commissioners of Sewers. [A.D. 1708.]

Whereas by the laws now in force concerning Commissioners of Sewers, it is provided, that if any person or persons being assessed or taxed to any lot or charge for any lands, tenements, or hereditaments within the limits of any such Commission, do not pay the said lot and charge, according to the order and assignment of the Commissioners, having power of the execution of the said Commission, that then the said Commissioners, for lack of payment of such lot and charge, may decree and ordain the said lands and tenements, from the owner or owners thereof, and their heirs, and the heirs of every of them, to any person or persons, for term of years, term of life, fee-simple, or fee-tail, for payment of the same lot and charge, the said decrees and ordinances to be executed in such manner, as by the said laws now in force is directed and appointed; and it is thereby provided, that the same decrees and ordinances shall bind all and every person and persons that at the making of the same decree had any interest in such lands, tenements, and hereditaments, in use, possession, reversion, or remainder, their heirs and feoffees, and every of them; and shall also bind as well the lands, tenements, and hereditaments of the King of England, as all and every other person and persons, and their heirs, and such their interest, as they shall fortune to have in any lands, tenements, and hereditaments, or other casual profit, advantage, or commodity whatsoever they be, whereunto the said laws, ordinances, and decrees shall in anywise extend, according to the true purport, meaning, and intent of the said laws; but the said Laws of Sewers now in force have been found defective, in that sufficient power and authority is not thereby given to Commissioners of Sewers to make sale of copyhold or customary lands within the limits of their Commission for the causes aforesaid; for remedy whereof, be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the five and twentieth day of March, in the year of our Lord one thousand seven hundred and nine, it shall and may be lawful to and for the Commissioners

Decrees of Commissioners as to sale, &c., to bind every person, &c.

Commissioners may for non-payment of any lot assessed on copyhold lands decree the same from the owners.

authorised by commission from her Majesty, her heirs, and successors, or any six or more of them, to put in execution the laws now in force concerning sewers, for non-payment of any lot or charge assessed or charged upon any copyhold or customary lands within the limits of their Commission; and by the power and authority of the said Commission of Sewers, to decree and ordain the said copyhold or customary lands so charged, from the owner or owners, and their heirs, and the heirs of every of them, to any person or persons, for such estate and interest therein, as the said owner or owners thereof, or any claiming in remainder under them at the time of such decree made, had in the same copyhold lands, tenements, and hereditaments; the said decrees to be made and executed, as decrees concerning freehold lands are by the said laws now in force, to be made and executed.

2. Provided always, that all and every person or persons, to whom any such sale of copyhold or customary lands or tenements shall be made, shall before such time as they or any of them shall enter, or take any profit of the same lands or tenements, agree and compound with the lords of the manors, of whom the same shall be holden, for such fines or incomes, as heretofore hath been most usual and accustomed to be yielded or paid therefore; and that upon every such agreement or composition, the said Lords for the time being, at the next court to be holden at or for the said manors, shall not only grant to such vendee or vendees, upon request, the same copyhold or customary lands or tenements by copy of court-roll of the said manors, for such estate or interest as to them shall be so decreed or sold, and reserving the ancient rents, customs, and services, but also shall in the same court admit them tenants of the same copyhold or customary lands, as other copyholders of the same manors have been wont to be admitted, and to receive their fealty accordingly.

3. And be it further enacted and declared, that it shall and may be lawful to and for the Commissioners of Sewers, or any six or more of them, by warrant under their hands and seals, to give authority to any person or persons to levy the sums of money by them from time to time to be assessed or taxed upon the lands, meadows, marishes, or grounds, liable or chargeable with any sesses, taxes, impositions, or charges, by authority of their said Commission, by distress and sale of the goods of such person or persons that shall not pay, or refuse to pay the same; and the overplus of the money arising upon such sale, after deduction of the reasonable charges of making such distress and sale, shall be restored to the owner or owners of the goods so distrained.

The buyers of such copyhold lands to agree with the lords of whom holden for the accustomed fines, and the lords to admit them tenants.

Six Commissioners may by warrant empower any person to levy the assessments by distress and sale.

3 & 4 WILL. IV. c. 22.

An Act to amend the Laws relating to Sewers.

[28th June, 1833.]

Whereas an Act was passed in the twenty-third year of the reign of His Majesty King Henry the Eighth, concerning Commissions of Sewers to be

23 Hen. VIII.
c. 5.

directed into all parts within the then realm of England, including the Principality of Wales, in the manner and according to the form, tenor, and effect in the said Act set forth, and which said Act was made perpetual by an Act passed in the third and fourth years of the reign of His Majesty King Edward the Sixth, intituled an Act for the continuance of the statute of Sewers, and was amended and altered by an Act passed in the thirteenth year of the reign of Her Majesty Queen Elizabeth, intituled an Act for the Commission of Sewers: And whereas great difficulty, inconvenience, and expense are found to arise by reason that the laws relating to sewers are in many respects defective: And whereas doubts have arisen as to the extent of the powers given to the Commissioners of Sewers by the said recited Acts and the Commissions issued in pursuance thereof, and particularly as to the legal mode of conducting inquiries by means of juries impanelled and returned by sheriffs, bailiffs, and other returning officers under the authority of the said recited Acts, and also as to the legal power of Courts of Sewers to decree and order new works to be made and executed for the better defending, draining, sewing, and securing the lands within the limits of their respective Commissions, and to grant, impose, and levy rates, taxes, scots, or assessments for or in respect of such new works, and to decree and order the taking up and borrowing of money at interest to repay the costs and charges of such new or any extraordinary or other works, so as to charge and recover of and from the owners and occupiers for the time being of lands, tenements, and hereditaments the amount of money so borrowed or any part thereof, and thereby to distribute such costs and charges fairly and equitably among the parties who shall or may from time to time receive benefit or avoid damage by or from the same: And whereas it is expedient to increase the amount of qualification of Commissioners of Sewers, and that other provisions should be made for the better execution of the powers by law vested or to be vested in Commissioners of Sewers: May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that no person who has not already acted as a Commissioner under any Commission of Sewers already issued shall be qualified or capable of becoming or acting as a Commissioner in the execution of any Commission of Sewers unless such person shall be, in his own right, or in right of his wife, in the actual possession or receipt for life or for a larger estate of the rents and profits of lands, tenements or hereditaments situated in the county in which he shall act as a Commissioner, or in any adjoining county, of freehold or copyhold tenure, or held for a term of not less than sixty years absolute, or determinable with a life or lives, of the clear yearly value of one hundred pounds above reprises, or held for a term of years originally granted for not less than twenty-one years, and of which ten years at the least shall then be unexpired, of the clear yearly value of two hundred pounds above reprises, or shall be heir apparent of a person possessed of freehold or copyhold lands, tenements, or hereditaments situated in such county as aforesaid, or in any adjoining county, of

3 & 4 Edw. VI.
c. 8.

13 Eliz. c. 9.

Qualification of
Commissioners.

the clear yearly value of two hundred pounds above reprises, or unless such person shall be the agent duly appointed by writing under the seal of any body politic or corporate, or under the hand of any person not being himself present, and acting as a Commissioner in the execution of the Commission of Sewers, under or by virtue of which such agent shall act, and which body politic or corporate shall for the time being be in the receipt of the rents and profits of freehold or copyhold lands, tenements or hereditaments situated in such county as aforesaid, or in any adjoining county, and which person making such appointment shall for the time being be, in his own right or in right of his wife, in the actual possession or receipt of the rents and profits of freehold or copyhold lands, tenements or hereditaments, situated in such county as aforesaid, or in any adjoining county, and which lands, tenements or hereditaments, whether so belonging to such body politic or corporate, or to such other person, shall be actually taxed under or by virtue of the Commission of Sewers in respect whereof such agent shall act and shall be of the clear yearly value of three hundred pounds above reprises, or unless such agent shall, before he acts, deliver his written appointment to the clerk to such Commission of Sewers, or his deputy, to be filed by such clerk among the records or proceedings of the Commissioners acting in the execution of such Commission: Provided always, that in cases where Commissioners of Sewers run into more than one county, the qualification hereinbefore provided may be situated either partly in each of the counties into which such Commission shall run, or wholly in any one of such counties: Provided that nothing in this Act contained shall extend to give a qualification to any person as agent after he shall have ceased to be such agent.

2. And be it further enacted, that if any person being a Quaker shall have been or shall hereafter be appointed a Commissioner of Sewers, and shall be in other respects qualified according to the provisions of the said recited Acts and of this Act, it shall be lawful for such person, on making his solemn affirmation to the effect of the oath prescribed by the said recited Act of the twenty-third year of the reign of King Hen. VIII., before the person or persons who for the time being shall be empowered by law to administer such oath, and also upon his making and subscribing the affirmation directed by this Act, to act as a Commissioner of Sewers, without being subject or liable to any penalty or forfeiture imposed by the said last recited Act for acting without having taken the oath therein contained.

Quakers may act as Commissioners upon making an affirmation.

3. And be it further enacted, that every such Commissioner before he shall act in the execution of his office shall, in addition to the oath prescribed by the said recited Act of the twenty-third year of the reign of King Hen. VIII. (or the affirmation in lieu thereof substituted by this Act in respect of any Commissioner who shall be a Quaker), take and subscribe before the person or persons who for the time being shall be authorised to administer the oath prescribed by the said last-mentioned Act the following oath, or being a Quaker, the following affirmation; *videlicet*,

Oath to be taken by other Commissioners before acting.

“ I, _____ do swear [*or, being one of the people called Quakers,* do solemnly affirm], That I truly and *bonâ fide* am in my own right [*or in the right of my wife*] in the actual possession and enjoyment of [*or in the receipt for life, or for a larger estate,* of the rents and profits issuing out of] lands, tenements, or hereditaments situate in the county of _____ of freehold or copyhold tenure. *or* held for a term of not less than sixty years absolute, or determinable with a life or lives, of the clear yearly value of one hundred pounds above reprises; *or* held for the unexpired term of _____ years, originally granted for _____ years, of the clear yearly value of two hundred pounds above reprises; [*or am heir apparent of* _____, who, to the best of my knowledge, is seised of freehold or copyhold lands, tenements, or hereditaments situate in the county of _____, of the clear yearly value of two hundred pounds above reprises]; [*or am agent of* _____, who [*or which*], to the best of my knowledge, is seised or possessed in his *or* their own right] [*or in the right of his wife*] of freehold or copyhold lands, tenements, or hereditaments situate in the county of _____, of the clear yearly value of three hundred pounds above reprises.

“ So help me GOD.”

[*Or, being a Quaker, omit the words “ So help me God.”*]

Penalty on persons acting not qualified.

4. And be it further enacted, that if any person who has not already acted as a Commissioner of Sewers shall presume to act as a Commissioner of Sewers, not being qualified as aforesaid, or who shall have ceased to be qualified as aforesaid, or not having taken the oath or, being a Quaker, made the solemn affirmation prescribed by this Act., every person wilfully so offending shall, for every such offence, forfeit and pay the sum of one hundred pounds to any person or persons who shall sue for the same, to be recovered with full costs of suit, in any of His Majesty's Courts of Record at Westminster, by action of debt or on the case, or by bill, plaint, suit, or information, wherein no essoign, protection, wager of law, or more than one imparlance shall be allowed; and the person so sued or prosecuted shall prove that he is qualified, or otherwise shall pay the said penalty, without any other proof or evidence on the part of the prosecutor than that such person had acted as a Commissioner in the execution of any Commission of Sewers: Provided, nevertheless, that no act or proceeding touching the execution of any Commission of Sewers which shall be done or performed by any unqualified person previously to his being convicted of the offence of acting without being qualified as herein provided shall be thereby impeached or rendered nugatory, but all such acts and proceedings shall be as valid and effectual as if such person had been duly qualified.

Proceedings not to be impeached on account of disqualification.

Ex-officio Commissioners not required to qualify.

5. Provided always, that any mayor, bailiff, or other officer appointed or authorised to act as a Commissioner under any Commission of Sewers by virtue of his office shall and may, so long as he shall hold such office, act as a Commissioner in the execution of such Commission of Sewers by virtue of such office, without being qualified as hereinbefore directed with regard to Commissioners of Sewers in general, and without being required to take and subscribe the oath or affirmation hereinbefore prescribed to be taken

by Commissioners of Sewers in general with regard to their qualification, and without being liable to the forfeiture or penalty hereinbefore imposed upon Commissioners of Sewers in general for acting without being qualified as aforesaid, or without having taken such oath or affirmation, anything hereinbefore contained to the contrary thereof in anywise notwithstanding: Provided also that such mayor, bailiff, or other officer shall, before he acts, deliver a certificate, under the hand of the town clerk or other legal officer of the corporation, in respect of which such mayor, bailiff, or other officer shall or may act, to the clerk to the Commission under which he shall so act as aforesaid, certifying that he is the mayor, bailiff, or other officer authorised to act as a Commissioner under such Commission.

6. And be it further enacted, that from and after the passing of this Act all and every Commission and Commissions of Sewers then being in force, or that hereafter shall be granted and made, shall stand and continue in force for the term of ten years next ensuing the date of every such Commission, notwithstanding any demise of the Crown of these realms during the existence of any such Commission or Commissions, unless the same Commission or Commissions be or thereafter shall be repealed or determined by reason of any new Commission in that behalf made, or by writ of superseas delivered out of the King's Court of Chancery discharging any such Commission or Commissions.

Commission to continue for 10 years unless renewed or repealed by writ of superseas.

7. And be it further enacted, that all laws, acts, decrees, constitutions, and ordinances made or to be made by any Court of Sewers, and duly registered in the rolls or books of such court by the clerk to the Commission, shall continue in full force and effect, notwithstanding the expiration, repeal, or other determination of the Commission under which such laws, acts, decrees, constitutions and ordinances shall have been respectively made, and notwithstanding the same respectively shall not have been engrossed or written in parchment, and under the seals of the Commissioners or any six of them, and notwithstanding the one part thereof shall not remain with the clerk to the Commission, and the other part in such place as the said Commissioners, or six of them, shall order or appoint, and notwithstanding the same shall not be certified into the King's Court of Chancery, and the king's royal assent had thereto respectively, until the same laws, acts, decrees, constitutions, and ordinances shall be altered, repealed, or made void by any subsequent Court or Courts of Sewers in those parts or limits where the same laws, decrees, and ordinances were or shall be made and ordained, or by any six of them.

Laws, decrees and ordinances to continue in force notwithstanding expiration of Commission, and although not engrossed in parchment, or not certified into the Court of Chancery.

8. And be it further enacted, that it shall be lawful for the said Commissioners or any three or more of them, or for their clerk upon the direction in writing of any three or more of the said Commissioners (and which he is hereby required to do on such direction), to appoint the first meeting of the said Commissioners after the passing of this Act at such time and place as to them shall seem meet, and of which meeting ten clear days' previous notice shall be given by advertisement in some newspaper of the county, and generally circulated in that district thereof, and it shall be lawful for the said Commissioners from time to time to meet at such time

Regulations as to meetings of Commissioners

and place, and to adjourn to meet at any place or places and at such time or times as the said Commissioners or the major part of them present at any meeting shall appoint; and no order or determination shall be made unless the major part of the Commissioners present shall concur therein; and all acts, orders and proceedings which are directed or authorised to be made, done or exercised by or before the said Commissioners, and all the powers and authorities vested in them, shall and may be made, done and exercised by the major part of the Commissioners who shall be present at the said respective meetings, the whole number present not being less than six; and all acts, orders, or proceedings made, done, or executed by or before such six Commissioners shall have the same force and effect and be as binding and conclusive on all persons, to all intents and purposes whatsoever, as fully and effectually as if the same were made, done, or executed by or before the whole of the said Commissioners; and a chairman shall and may in the first place be appointed at every meeting by a majority of the votes of the persons present, who in case of an equal number of votes (including the chairman's vote) shall have the casting or decisive vote.

9. And be it further enacted, That if after any adjournment of any meeting of the said Commissioners it shall on any emergency be considered necessary or advisable that a special meeting should be appointed for an earlier day than the day for which any meeting shall stand by adjournment as aforesaid, then and in such case it shall be lawful for the said Commissioners or any three or more of them, or for their clerk upon the direction in writing of any three or more of the said Commissioners (and which he is hereby required to do on such direction), to appoint a special meeting for an earlier day, and of which meeting, and of the time and purpose thereof, ten clear days' previous notice shall be given by advertisement in some newspaper of the county, and generally circulated in that district thereof; and no other business shall be transacted on any such special meeting but that which shall have been specified in such notice as aforesaid: Provided nevertheless that in the event of any imminent danger being apprehended from unusually high tides or any other cause, and that in the judgment of two or more of the said Commissioners the exigency of the case will not admit of the delay of ten clear days' previous notice of a special meeting, it shall and may be lawful for any two or more of the said Commissioners, or for their clerk upon the direction in writing of any two or more of the said Commissioners (and which he is hereby required to do on such direction), to convene, by circular letter sent to each acting Commissioner, a special meeting for as early a day as the said two or more Commissioners shall think fit in their discretion to appoint, such letters to specify the particular object for which such meeting is convened; and no business shall be transacted thereat but that which strictly relates to such object.

10. And whereas doubts have arisen as to the extent of the jurisdiction of Commissioners of Sewers; be it therefore further enacted and declared, That all walls, banks, culverts, and other defences whatsoever, whether natural or artificial, situate or being by the coasts of the sea, and all rivers,

Special meetings on emergencies may be called on 10 days' notice.

On certain occasions special meetings may be called by order of two Commissioners on a shorter notice.

Description of sewers and other works under the jurisdiction of Commissioners of Sewers.

streams, sewers, and watercourses which now are, or hereafter shall or may be navigable, or in which the tide now does or hereafter shall, or may ebb and flow, or which now do or hereafter shall or may directly or indirectly communicate with any such navigable or tide river, stream or sewer, and all walls, banks, culverts, bridges, dams, flood-gates and other works erected or to be erected in, upon, over, or adjoining to any such rivers, streams, sewers, or water-courses, shall be from henceforth, to all intents, constructions and purposes, within and subject to the jurisdiction of Commissioners of Sewers: Provided always, that nothing herein contained shall authorise or empower any Commissioners of Sewers to exercise authority or jurisdiction upon or over any dams, flood-gates, or other works erected for the purpose of ornament, previous to the passing of this Act, in, upon, or over any rivers, streams, ditches, gutters, sewers, or water-courses near or contiguous to any house or building, or in any garden, yard, paddock, park, planted walk, or avenue to a house, without the consent in writing of the owner or proprietor thereof respectively first had and obtained.

11. And be it further enacted, that in all cases in which any Court of Sewers shall inquire by jury of or concerning all or any of the matters and things authorised and directed to be inquired into and presented under and by virtue of the said recited Acts, and the Laws of Sewers of old time accustomed, or of this Act, it shall and may be lawful for Commissioners of Sewers, or any six or more of them, to issue a warrant or precept under their hands and seals to the sheriff, bailiff, or other returning officer or officers of every county at large, cinque port, city, town, liberty, precinct, or place within the limits of such Commission, commanding such sheriff, bailiff, or other returning officer or officers to impanel, summon, and return, and he and they is and are hereby required, on receiving such warrant or precept, to impanel, summon, and return, at such time and place as in such warrant or precept shall be expressed, a jury of not exceeding forty-eight nor less than eighteen substantial and indifferent persons within his or their respective jurisdiction, qualified and usually summoned to serve on grand juries in Courts of Sessions of the Peace; and the persons so to be impaneled, summoned, and returned as aforesaid are hereby required to appear before the said Commissioners at such Court of Sewers to be holden within and for the limits of any and every such Commission of Sewers, or at some adjournment thereof, as in such warrant or precept shall be directed, and to attend such court, and at any and every adjournment thereof, until discharged by the said Court; and the said jury shall be sworn in open court, before the Commissioners, and shall be charged by them to take their inquisition, and to make and return their presentments of and concerning all matters and things authorised and directed to be inquired into and presented under and by virtue of the said recited Acts, and the Law of Sewers of old time accustomed, and of this Act; and the said jury, being so impaneled, sworn, and charged as aforesaid, shall proceed in their inquiry before and in the presence of the Court, upon the evidence of one or more credible witness or witnesses, delivered

Inquiry and
presentment by
jury.

upon oath or affirmation, in the same manner and form, and subject to the like rules of taking and receiving evidence, as is usual in His Majesty's Courts of Common Law; and the said Commissioners may cause to be summoned to appear before them at the time and place of holding their respective Courts of Sewers aforesaid, and at every adjournment of any court, all clerks, keepers, bailiffs, engineers, surveyors, collectors, expeditors, and other their ministers and officers of sewers, and such other persons as in the judgment of such Commissioners shall be competent to give proper evidence and information to the court and jury in the premises; and notice of the time and place of taking such inquisition shall be given by affixing to the principal door of each and every of the churches and chapels in the several parishes, townships, or places in which the rivers, streams, ditches, sewers, water-courses, walls, banks, culverts, and other works, lands, tenements, and hereditaments, common of pasture and profit of fishing, and other matters and things to be inquired into or that may be affected thereby, shall lie, be, or arise, or if there be no church, then to some conspicuous place within such parish, township, or place, a printed or written paper specifying such time and place of meeting, and signed by the clerk to the court before whom such inquisition is to be taken, at least seven days before the taking of such inquisition, and also by inserting, at least seven days before the taking thereof, such notice once at the least in one or more of the newspapers published or circulated in or near to the limits of the Commission of Sewers under authority whereof such inquisition shall be taken.

In certain cases of difference a jury to be impaneled, which shall be composed half from the county at large and half from the minor jurisdiction.

12. And forasmuch as there are in many counties at large cities and towns being counties of themselves, cinque ports, hundreds, liberties, and precincts, having jurisdiction exclusive of the sheriffs, bailiffs, or other returning officers of such counties at large; and it may happen that in the inquiries and presentments of and concerning any matters and things affecting or relating to lands or tenements lying partly in such county at large, and partly in such minor jurisdiction, authorised and directed to be inquired into and presented under or by virtue of the said recited Acts, and the Law of Sewers of old time accustomed, and of this Act, the jury returned by the sheriff or other returning officer of such county at large, and the jury returned by the sheriff or other returning officer of such minor jurisdiction, may come to opposite or different conclusions, or make opposite or different presentments of or concerning such matters and things as aforesaid, and in such case the powers of the Court of Sewers may thereby become ineffectual or difficult to be carried into effect; be it therefore enacted, that in any case in which a jury returned by the sheriff or other returning officer of a county at large, and the jury returned by the sheriff or other returning officer of any such minor jurisdiction, shall, in the judgment of the said court, come to opposite or different conclusions, or make opposite or different presentments of or concerning any matters or things affecting or relating to any lands or tenements lying partly in such county at large and partly in any such city or town and county of the same, cinque port, hundred, liberty, or precinct within such county at

large, it shall and may be lawful for such Court of Sewers thereupon, or at any time thereafter, to issue a warrant or precept, as well to the sheriff, bailiff, or other returning officer of such county at large, as to the sheriff, bailiff, or other returning officer of such city, or town and county of the same, cinque port, hundred, liberty, or precinct, commanding them respectively to impanel, summon, and return, and he and they is and are hereby required, on receiving such respective warrant or precept, to impanel, summon, and return, at such time and place (although out of the jurisdiction of such respective sheriff, bailiff, or other returning officer), as in such warrant or precept shall be expressed, a sufficient number, not exceeding eighteen nor less than nine substantial and indifferent persons within his jurisdiction, and not having composed part of the juries respectively which shall have previously differed in respect of the matters or things aforesaid, and out of each panel so to be returned the names of nine persons shall be drawn by the clerk of such Court of Sewers or his deputy, in such manner as juries for trials of issues joined in his Majesty's Courts of Record at Westminster are by law directed to be drawn; and the said eighteen jurymen shall thereupon be sworn and charged to take their inquisition, and to make and return their presentment of and concerning the aforesaid matters and things, and which presentment so taken and made shall be as conclusive in all respects as if the same matters and things had been inquired of as to lands or tenements lying within such county at large by a separate jury of such county at large, and as to lands or tenements lying within such city or town and county of the same, cinque port, hundred, liberty or precinct, by a separate jury thereof.

13. And whereas doubts have arisen whether a presentment of a jury is not necessary on each and every occasion to repair defences and works within the jurisdiction of Commissioners of Sewers; be it therefore enacted, that whenever, under any Commission now in force, or which shall hereafter issue, a jury shall have found and presented that any person, body politic or corporate, is or are liable to and ought to maintain and repair or contribute to the maintenance and repair of any defence, wall, bank, sewer, or other work within the jurisdiction of the Commission of Sewers, acting under or by virtue of such Commission, in respect of any lands, tenements, or hereditaments, or common of pasture, or profit of fishing, it shall not afterwards, during the continuance of such Commission, be necessary to inquire by jury and obtain a presentment upon any subsequent wants of amendment and reparation of the same defences, walls, banks, sewers or works, or any of them; but such person, body politic or corporate, so presented as aforesaid, and the owners and occupiers for the time being of such lands, tenements or hereditaments, or common of pasture, or profit of fishing, shall be liable from time to time to maintain and repair, or contribute to the maintenance and repair of such defences, walls, banks, sewers, and other works, according to such presentment; and it shall and may be lawful for the Commissioners of Sewers to decree, order and direct the same to be maintained and repaired by such person, body politic or corporate, from time to time during the continuance of such Commission accordingly.

A presentment of a jury not to be necessary upon each occasion to repair.

Rates to be made for every distinct level or district.

14. And be it further enacted and declared, that it shall be lawful for the said Commissioners to make separate and distinct rates, as occasion shall require, for every separate and distinct level, valley or district, or any part of such level, valley or district within their respective Commissions, and to fix and specify the limits of every such level, valley or district, or of any such part of a level, valley or district, and to appoint surveyors, collectors, treasurers, expeditors and other officers for every such level, valley or district, or any part thereof respectively, whenever the said Commissioners shall think fit so to do, and to cause separate and distinct accounts to be kept of all moneys collected and received by virtue of any rate or rates which shall be made under the authority of the said recited Acts relating to sewers, or of this Act, upon any lands or hereditaments within any such level, valley or district, or any part thereof respectively, and of all payments and disbursements in respect thereof; and the said Commissioners are hereby also authorised to apply the moneys to be collected and received from each distinct level, valley, or district, or any part thereof respectively, by virtue of any such rate or rates as aforesaid, to and for the several purposes to which the same may be lawfully applied under the authority of the said recited Acts or of this Act, but so, nevertheless, that each level, valley, or district, and every part of such level, valley or district, shall bear its own costs, charges and expenses; and in case any such costs, charges and expenses shall apply to or be incurred in respect of two or more levels, valleys or districts, or parts thereof respectively, the same shall be apportioned and divided between such levels, valleys and districts, or such parts thereof respectively, in such manner as the said Commissioners shall adjudge to be fair and equitable.

Nothing herein to discharge persons from liability by tenure, &c.

15. Provided always, and be it further enacted, that nothing in this Act contained shall extend or be construed to extend to release or discharge any person, body politic or corporate, from any liability to which such person, body politic or corporate, was or were before the passing of this Act subject by reason of tenure, frontage, prescription, custom, covenant or grant; but in case any such person, body politic or corporate, shall not keep in good and proper repair any walls, banks, sewers, guts, gotes, calcies, tunnels, culverts, sluices, flood-gates, tumbling bays, cuts and other works, aids and defences to which he, she, or they may be liable by reason of such tenure, frontage, prescription, covenant or grant, and shall not, after having had seven days' notice from the surveyor, dikereeve, or other officer to be appointed by the Court of Sewers for that purpose, proceed to put the same into good and proper repair with all reasonable and proper despatch, then and in that case it shall be lawful for such surveyor, dikereeve or officer to put the same into good and sufficient repair; and the expenses to be incurred thereby shall be paid by the person, body politic or corporate, liable to such repair as aforesaid.

Certain persons to be paid for expenses and loss of time in

16. And be it further enacted and declared, that any court shall and may, at its discretion, by and out of the taxes, rates and scots to be raised under and by virtue of the said recited Acts and this Act, or any or either of them, decree, order and appoint, pay and allow to clerks and other

persons employed by the court, and also to witnesses attending to give evidence before the said court, either in support of any presentment or order of the court, or in opposition to such presentment or order, such recompense, sum and sums of money, from time to time, for their several expenses and loss of time, as to the said court shall seem just; and also all such costs, charges and expenses as shall be incurred in surveying, measuring, planning, and valuing the lands and hereditaments, or otherwise preparatory to or in or about the making, collecting, and expending such taxes, rates or scots as aforesaid, or the hearing of objections to such taxes, rates or scots, or in or about the carrying on of any litigation or controversy arising out of the duties imposed on the Courts of Sewers by virtue of the recited Acts or of this Act, and for the payment of all other necessary allowances, charges, and expenses of putting the recited Acts and this Act into execution, and the contingent expenses of working the said Commissions of Sewers respectively.

executing
Commissioners
of Sewers.

17. Provided always, and be it enacted, that nothing herein contained shall prevent any Court of Sewers, from time to time and at any time during the continuance of the Commission of Sewers, from causing inquiry and presentments to be made by jury of and concerning the aforesaid matter and things, or any other matter, cause or thing to be inquired into and presented upon, by the ways and means hereinbefore provided, or by such other ways and means as they were authorised by ancient custom and usage, or otherwise to do before the passing of this Act, or to abridge or invalidate any powers or authorities usually heretofore exercised by any Commissioners of Sewers in their respective limits not herein expressly abrogated or altered.

Nothing in this
Act to preclude
Courts of
Sewers from
causing inquiry
and present-
ment by jury as
before.

18. And whereas persons frequently remove from and give up the possession of lands, tenements and hereditaments before deriving the full benefit of the outlay of the last scot or rate assessed or imposed upon them in respect thereof under or by virtue of the Law of Sewers, and it is just and reasonable that the persons who succeed them in the possession thereof should be subject to a proportion of such rate: Be it therefore enacted, that where any person shall come into or occupy any lands, tenements or hereditaments out of or from which any other person assessed as aforesaid shall be removed, and also when any lands, tenements, or hereditaments shall at the time of making such scot or rate be empty or unoccupied, then every person so rated or assessed and removing from, and every person so coming into or occupying the same, shall be liable to pay such scot or rate in proportion to the time that such persons respectively occupied the same lands, tenements, or hereditaments, in the same manner, and under the like penalty of distress, as if such person so removing had not removed, or such person so coming in or occupying had been originally rated and assessed in such scot or rate; and which said proportion, in case of dispute between the parties, shall be ascertained and settled by any Court of Sewers: Provided always, that no outgoing tenant shall be entitled to have or claim any larger amount of rate than shall have been actually paid by him, and not repaid by his landlord.

Rates to be
apportioned
between out-
going and
incoming
tenants.

Commissioners authorised to make and maintain new works.

19. And be it further enacted and declared, that it shall and may be lawful for any Court of Sewers to decree and ordain any new walls, banks, sewers, guts, gotes, calcies, bridges, tunnels, culverts, sluices, flood-gates, tumbling bays, cuts, or other works, aids, and defences, or any alteration in the gange, dimension, course, direction, or situation of any old or existing walls, banks, rivers, sewers, guts, gotes, calcies, bridges, tunnels, culverts, sluices, flood-gates, tumbling bays, cuts, and other works, aids, and defences to be constructed, made, and done for the more effectually defending and securing any lands, tenements, hereditaments, and premises within the jurisdiction of such Court against the irruption or overflowing of the sea, or for draining and carrying off the superfluous fresh waters, according to the wisdom and discretion of such Court, and also, in like manner and at their discretion, to decree and ordain any former walls or defences against the sea, or against any rivers, streams, sewers or water-courses within their Commission, to be abandoned and given up, and new defences and walls, banks, sluices, flood-gates, tumbling bays, cuts and other works to be made and continued in lieu thereof; and in every such case to direct by inquiry and presentment of a jury in what manner and proportions the same shall thereafter be repaired and maintained by the person, body politic or corporate, deriving advantage or avoiding damage thereby or therefrom, having regard to previous liabilities in respect of the walls and defences so to be abandoned and given up.

Not to interfere with provisions of 16 Geo. III. c. 62, for preventing of prejudice to Sandwich Haven in Kent.

20. Provided always, and be it further enacted, that nothing hereinbefore contained shall be construed to authorise or empower the Commissioners acting under any Commission of Sewers for the county of Kent, or any limits or district within the same, to decree or ordain any wall, bank, sewer, gut, cut, gote, calcey, sluice, flood-gate, tumbling bay, or other work, aid or defence to be constructed, made, or done for conveying the waters of the river Stour, above Sandwich Bridge, in the county of Kent, into the part of Sandwich Haven below the bridge, or into the sea at Pegwell Bay, not authorised by an Act passed in the sixteenth year of the reign of His late Majesty King George the Third, intituled "An Act to enable the Commissioners of Sewers for the several limits in the eastern parts of the county of Kent more effectually to drain and improve the lands and grounds within the general valleys, or so as in any manner to affect, alter, or interfere with the provisions of the said Act for the preventing of prejudice to Sandwich Haven."

No new works to be made without the consent of the owners and occupiers of three-fourth parts in value of the lands to be charged.

21. Provided always, and be it further enacted, that nothing in this Act contained shall extend or be construed to extend to authorise or empower any Court of Sewers to make any new walls, banks, sewers, guts, gotes, calcies, sluices, flood-gates, tumbling bays, cuts, or other works, aids, and defences, where none have or hath, or shall have theretofore been, without the consent in writing, certified to such Court of Sewers, of the owners and occupiers respectively, or their respective husbands, guardians, trustees, or feoffees, committees, executors, or administrators, of three-fourth parts at the least in value of the lands and hereditaments lying within the valley, level, or district proposed to be charged with the costs and expenses of making and executing such new works respectively.

22. And be it further enacted, that it shall and may be lawful for the occupier for the time being of land lying next and adjoining to any river, sewer, or watercourse within and subject to the jurisdiction of Commissioners of Sewers, at any time within six calendar months from and after any gravel, soil, mud, or earth shall have been cast or deposited upon the banks of such river, sewer, or water-course, by the order of any surveyor, bailiff, expeditor, or other officer of sewers, and at any time within six weeks from and after any rushes, flags, or other weeds shall have been cast or deposited upon such banks as aforesaid, to take and remove for his own use such gravel, soil, mud and earth, and such rushes, flags, and weeds respectively: Provided always that such gravel, soil, mud and earth, and such rushes, flags and weeds respectively, shall be removed at least ten feet from the land side of the banks of such river, sewer, or water-course.

Occupiers of land adjoining sewers may take away soil and weeds from banks for their own use.

23. And be it further enacted, that if any such occupier shall neglect to remove such gravel, soil, mud, or earth as aforesaid within such six calendar months as aforesaid, or such rushes, flags, or other weeds as aforesaid within such six weeks as aforesaid, for his own use, then and from thenceforth respectively it shall be lawful for any such surveyor, bailiff, expeditor, or other officer of sewers, with workmen, horses, carts, carriages, barrows, and other necessary tools and implements, at any time or times in the daytime to enter upon the land of such occupier, and to take away and remove therefrom such gravel, soil, mud and earth, and such rushes, flags and weeds respectively, and also for such purposes to pass and repass, at any time or times in the daytime, through and over any other lands lying between the nearest highway and the banks of such river, sewer, or water-course: Provided always, that if the owner or occupier of the land upon which any such gravel, soil, mud, earth, rushes, flags, or weeds shall have been deposited shall require the Commissioners of Sewers to remove the same, such Commissioners shall, within six weeks after such requisition as aforesaid, cause the same to be removed from and off the said land.

Upon neglect of occupiers to remove soil surveyors may remove it.

24. And be it further enacted, that it shall be lawful for any Court of Commissioners of Sewers to treat, contract and agree with the owners of and persons interested in any messuages, lands, tenements, hereditaments, and premises, with their appurtenances, for the purchase thereof or of any part thereof, for the purpose of widening, deepening, strengthening, maintaining, repairing, and amending any rivers, streams, water courses, walls, banks, and other works, aids, and defences within the jurisdiction of Commissioners of Sewers, and for the loss or damage which such owners or persons may sustain thereby respectively; and it shall be lawful for all bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, husbands, guardians, trustees, feoffees in trust, executors, administrators, and all other persons whomsoever, not only for or on behalf of themselves, their heirs and successors, but also for or on behalf of the person entitled in reversion, remainder, or expectancy after them, and for or on behalf of their cestuique trusts, whether femes covert,

Commissioners authorised to contract for the purchase of lands, &c.

infants, or issue unborn, lunatics, idiots, or other person whomsoever, and to and for all femes covert who are or shall be seised of or interested in their own right, and to and for every person whomsoever who is or shall be possessed of or interested in any such lands, tenements, hereditaments, or premises, or who shall sustain any damage as aforesaid, to contract with the said Commissioners for the sale thereof respectively, or for the satisfaction to be made for the same or for such damage as aforesaid, and by conveyance to convey unto the said Commissioners all or any of such messuages, lands, tenements, hereditaments, or premises, or any part thereof, for the purposes aforesaid, in manner hereinafter mentioned; and all contracts, sales and conveyances, which shall be so made shall be good, valid, and effectual to all intents and purposes without fine or recovery, and shall be a complete bar to all estates tail, and other estates, rights, titles, trusts, and interests whatsoever, any law, statute, usage, custom, or other matter to the contrary notwithstanding; and all such bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, husbands, guardians, trustees, feoffees, committees, executors, administrators, and all other persons shall be and are hereby indemnified for what they or any of them shall do by virtue or in pursuance of this Act.

Form of conveyance to Commissioners.

25. And be it further enacted, that all such conveyance of any lands, tenements, or hereditaments to be purchased by the said Commissioners of Sewers, shall be expressed in the following or some similar form of words, as the circumstances of the case may require:—

“ I, _____ of _____ in consideration of the
 “ sum of _____ to me paid by six or more of the
 “ Commissioners of Sewers acting in and for several limits [*here*
 “ *describe the limits as set forth in the Commission of Sewers*], do
 “ hereby grant and release to the Commissioners of Sewers acting in
 “ and for the said limits all [*describing the premises to be con-*
 “ *veyed*], and all my right, title, and interest in and to the same
 “ and every part thereof, to hold to the said Commissioners, their
 “ successors and assigns for ever, by virtue of the several Acts and
 “ Laws now in force concerning sewers. In witness whereof I have
 “ hereto set my hand and seal this _____ day of _____ in the
 “ year of our Lord _____ .”

Where persons shall neglect or refuse to treat, &c., Commissioners to issue their warrants to the sheriff to impanel a jury.

26. And be it further enacted, that if any such body politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, husbands, guardians, trustees, or feoffees, committees, executors, administrators, or any other person interested in any such lands, tenements, hereditaments, or premises, or sustaining any damage as aforesaid, upon notice to him or them given or left in writing at the dwelling-house or place of abode of such person, or of the principal officer, of any such bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, or at the house of the tenant in possession of any such lands, tenements, hereditaments, or premises, shall, for the space of

thirty days next after such notice given or left as aforesaid, neglect or refuse to treat, or shall not agree in the premises, or by reason of absence shall be prevented from treating, then and in every such case the said Commissioners of Sewers, or any six or more of them, are hereby empowered from time to time to issue out their warrant or warrants under their hands and seals to the sheriff, bailiff, or other returning officer of the county or place wherein the matter in question shall lie, or if such sheriff, bailiff, or other returning officer shall be immediately interested in such matter, then to one of the coroners of such county or place, commanding such sheriff, bailiff, or other returning officer, or coroner, to impanel, summon, and return a jury; and the said sheriff, bailiff, or other returning officer, or coroner, is hereby required accordingly to impanel, summon, and return twenty-four men qualified according to the laws of this realm to be returned for trials of issues joined in His Majesty's Courts at Westminster; and the persons so to be impaneled, summoned and returned are hereby required to come and appear before the justices of the peace for the county or place in which such lands, tenements, hereditaments or premises shall lie, or the matter in question or dispute shall arise, at some Court of General or Quarter Sessions of the peace to be holden in and for the same county and place, or at some adjournment thereof, as in such warrant or warrants shall be appointed, in order that out of them a jury of twelve may be sworn to inquire touching the matters in question; and in case a sufficient number of jurymen shall not appear at such time and place the said sheriff, bailiff, or other returning officer or coroner shall return other honest and indifferent men that can speedily be procured to attend that service, to make up the said jury to the number of twelve; and all parties concerned may have their lawful challenges against any of the said jurymen; and the clerk of the peace for the said county or place, or his deputy, is hereby empowered and required to summon before the said justices all such persons as shall be thought necessary to be examined as witnesses touching the matters in question, and may order and authorise the said jury, or any six or more of them, to view the place or places or matters in controversy; which jury (upon their oaths, to be administered by the said justices, which oaths, as also the oath to such person as shall be called upon to give evidence, the said justices are hereby empowered to administer) shall inquire of, assess, and ascertain the sum or sums of money to be paid for the purchase of such lands, tenements, or hereditaments, or the recompense to be made for damages that may or shall be sustained as aforesaid, and to settle and ascertain in what proportions the sum or sums of money so assessed shall be paid to the several persons interested in the premises; and the said justices shall give judgment for such purchase moneys or recompense so to be assessed by such juries; which said verdict, and the judgment thereupon pronounced as aforesaid, shall be binding and conclusive to all intents and purposes against all parties, bodies politic, corporate and collegiate, and all persons whomsoever.

Jury may be challenged.

Witnesses to be summoned and examined upon oath.

Jury to assess damages.

Verdict of the jury to be binding.

Commissioners may impose a

27. Provided always, and be it further enacted, that if any such sheriff, bailiff, or other returning officer, or coroner, or his deputy or agent, shall

line on sheriff,
witnesses, &c.,
making default.

make default in the premises, every such person shall for every offence forfeit the sum of twenty pounds; and if any person so summoned and returned as aforesaid on such jury shall not appear, or appearing refuse to be sworn, or being sworn refuse to give his verdict, or in any other manner wilfully neglect his duty, contrary to the true intent of this Act, or if any person so summoned to give evidence shall not appear, or appearing refuse to be sworn or examined or to give evidence, every person so offending, having no reasonable excuse, to be allowed by the said justices, shall for every such offence forfeit and pay such sum as the said justices shall appoint, not exceeding the sum of five pounds for any one offence.

Agreements
to be filed with
the clerk of
sewers.

28. And be it further enacted, that all the agreements, contracts, sales, and conveyances, and also all verdicts and judgments, which shall be made and given in relation to any such lands, tenements and hereditaments as aforesaid (such verdicts and judgments being certified by the clerk of the peace of the county or place in which such verdict and judgment shall have been given), shall be delivered to and deposited with the clerk of the sewers for the county, limits, or district wherein such lands, tenements, or hereditaments are situate, and shall be filed with the rolls of the Court or Commissioners of Sewers of such county, limits, or district; and the same, or a true copy thereof, shall be admitted as evidence in all courts whatsoever; and all persons shall have liberty to inspect the same, and take copies thereof, upon paying for every such inspection the sum of one shilling, and for every such copy not exceeding seventy-two words the sum of fourpence, and so in proportion for any greater number of words.

By whom
costs of jury
and witnesses
to be paid.

29. And be it further enacted, that in case any such jury or juries shall deliver a verdict for more money as a satisfaction for such lands, tenements, or property, or for any such loss or damage, than that which shall have been offered by such Commissioners for the same before the summoning or returning the said jury or juries, then and in such case the costs and expenses of summoning and returning the said jury and witnesses, and all other expenses attending the hearing and determining of such difference, shall be borne and paid by the said Commissioners out of the same fund as the said purchase or compensation money is hereby directed to be paid, and such costs and expenses shall be ascertained and settled by an officer of one of His Majesty's superior Courts of Record at Westminster, to be nominated, in case of dispute, in the County of Middlesex by the Lord Chief Justice of the Court of King's Bench, and in every other county by the senior judge of the gaol delivery for the time being; but if any such jury or juries shall deliver a verdict for no more or for less money than shall have been offered by the said Commissioners before the summoning such jury or juries, then such costs and expenses (to be ascertained and settled in like manner) shall be borne and paid by the person with whom such Commissioners shall have such controversy or dispute, and shall and may be levied by distress and sale of the goods and chattels of the person liable to pay the same, by warrant under the hands and seals of two justices of the peace for the county or place within which such verdict and judgment

shall have been given; and the overplus (if any), after such costs and expenses, and the charges of such distress and sale, are deducted, shall be returned, upon demand, unto the owner of such goods and chattels.

From what fund purchase and compensation moneys are to be paid.

30. And be it further enacted, that every sum of money and recompense to be agreed for or assessed as aforesaid shall be paid for out of any moneys in the hands of the said Commissioners which may be levied on the messuages, tenements, lands, and hereditaments which shall receive benefit or avoid damage by or from such widening, straightening, deepening, repairing, and amending as aforesaid, or by or from making and maintaining any new walls, banks, sewers, guts, gotes, calcies, sluices, flood-gates, cuts, and other works, aids, and defences; and upon payment to such parties or persons, or their agents, or left at their respective usual places of abode, or with the tenant in possession of such lands, tenements, hereditaments, and premises, or into the Bank of England in manner directed by this Act (as the case may be), then such lands, tenements, hereditaments, and premises respectively shall be vested in such Commissioners, and shall and may be taken and used for straightening, widening, deepening, repairing, and amending such rivers, streams, ditches, gutters, sewers, and water courses, or for making and maintaining any new walls, banks, sewers, guts, gotes, calcies, sluices, flood-gates, cuts, and other works, aids, and defences; and all parties and persons whomsoever shall be divested of all right and title to such lands, tenements, and hereditaments.

31. And be it further enacted, that if any money shall be agreed or assessed to be paid for the purchase of any lands, tenements or hereditaments purchased, taken or used by virtue of the powers of this Act, by any Commissioners of Sewers, which shall belong to any body politic, corporate or collegiate, or to any feoffee in trust, executor, administrator, husband, guardian, committee or other trustee, or for or on behalf of any infant, imatic, idiot, feme covert, cestuigne trust, or to any other person whose lands, tenements or hereditaments are or may be limited in strict or other settlement, or to any person under any other disability or incapacity whatsoever, such money shall, in case the same shall amount to or exceed the sum of two hundred pounds, with all convenient speed be paid into the Bank of England in the name and with the privity of the Accountant-General of the Court of Exchequer, to be placed to his account there *ex parte* the Commissioners of Sewers for whom such lands, tenements or hereditaments shall be taken, pursuant to the method prescribed by an Act passed in the first year of the reign of his late Majesty King George the Fourth, intituled "An Act for the better securing moneys and effects paid into the court of Exchequer at Westminster on account of the suitors of the said court, and for the appointment of an Accountant-General and two masters of the said court, and for other purposes" and the general orders of the said court, and without fee or reward: to the intent that such money shall be applied, under the direction and with the approbation of the said court, to be signified by an order made upon a petition to be preferred in a summary way by the person who would have been entitled

Application of compensation money exceeding £200.

to the rents and profits of the said lands, tenements and other hereditaments in the purchase or redemption of the land tax, or in the discharge of any debt or debts, or such other incumbrances, or part thereof, as the said court shall authorise to be paid, affecting the same lands, tenements, or hereditaments, or affecting other lands, tenements, or hereditaments standing settled therewith to the same or the like uses, trusts, intents, or purposes; or where such money shall not be so applied, then the same shall be laid out and invested, under the like direction and approbation of the said court, in the purchase of other lands, tenements, or hereditaments, which shall be conveyed and settled to, for, and upon such and the like uses, trusts, intents and purposes, and in the same manner, as the lands, tenements, or hereditaments which shall be so purchased, taken, or used as aforesaid stood settled or limited, or such of them as at the time of making such conveyance or settlement shall be existing undetermined and capable of taking effect; and in the meantime and until such purchase shall be made the said money shall, by order of the said court, upon application thereto, be invested by the said Accountant-General in his name in the purchase of Three Pounds per centum Consolidated or Three Pounds per centum Reduced Bank Annuities; and in the meantime and until the said Bank Annuities shall be ordered by the said court to be sold for the purposes aforesaid the dividends and annual produce of the said Consolidated or Reduced Bank Annuities shall from time to time be paid, by the order of the said court, to the person who would for the time being have been entitled to the rents and profits of the lands, tenements, or hereditaments to be purchased as aforesaid, in case such settlement or purchase were made.

Application of compensation money when less than £200 and not less than £20.

32. Provided always, and be it further enacted, that if any money so agreed or assessed to be paid for any lands, tenements or hereditaments purchased, taken or used for the purposes aforesaid, belonging to any corporation, or to any person under any disability or incapacity as aforesaid, shall be less than the sum of two hundred pounds, and shall amount to or exceed the sum of twenty pounds, then and in all such cases the same shall, at the option of the person for the time being entitled to the rents and profits of the lands, tenements or hereditaments so purchased, taken or used, or of his guardian or committee in cases of infancy, idiocy or lunacy, to be signified in writing under their respective hands, be paid into the Bank of England in the name and with the privity of the said Accountant-General, and be placed to his account as aforesaid, in order to be applied in manner hereinbefore directed; or otherwise the same shall be paid, at the like option, to two or more trustees, to be nominated by the person making such option and approved by six or more of the Commissioners taking such lands, tenements or hereditaments, such nomination and approbation to be signified in writing under the hands of the nominating and approving parties, in order that such principal money and the dividends and interest arising therefrom may be applied in manner hereinbefore directed, so far as the case be applicable, without obtaining or being required to obtain the direction or approbation of the said Court of Exchequer.

33. Provided also, and be it further enacted, that when such money so agreed or assessed to be paid as before mentioned shall be less than the sum of twenty pounds, then and in every such case the same shall be applied to the use of the person who would for the time being have been entitled to the rents and profits of the lands, tenements, or hereditaments so purchased, taken, or used as aforesaid, in such manner as the said Commissioners, or any six or more of them, shall think fit; or in case of lunacy, idiotey, or infancy, then to his guardian or committee, to and for the use and benefit of such person so entitled.

34. And be it further enacted, that where any question shall arise touching the title of any person to any money to be paid into the Bank of England in the name and with the privity of the Accountant-General of the said Court of Exchequer, in pursuance of this Act, for the purchase of any lands, tenements, or hereditaments to be purchased in pursuance of this Act, or to any bank annuities to be purchased with any such money, or to the dividends or interest of any such bank annuities, the person who shall have been in possession of such lands, tenements, or hereditaments at the time of such purchase, and all persons claiming under such person, or under the possession of such person, shall be deemed and taken to have been lawfully entitled to such lands, tenements, or hereditaments according to such possession, until the contrary shall be shown to the satisfaction of the said Court of Exchequer; and the dividends or interest of the bank annuities to be purchased with such money, and also the capital of such bank annuities, shall be applied and disposed of accordingly, unless it shall be made to appear to the said court that such possession was a wrongful possession, and that some other person was lawfully entitled to such lands, tenements, or hereditaments, or to some estate or interest therein.

35. And be it further enacted, that in case the person to whom any sum or sums of money shall be assessed or agreed for the purchase of any lands, tenements, or hereditaments to be purchased by virtue of this Act shall refuse to accept the same, or shall not be able to make a good title to the premises to the satisfaction of the said Commissioners or any six or more of them, or in case such person to whom such sum or sums of money shall be so assessed or agreed to be paid as aforesaid cannot be found, or if the person entitled to such lands, tenements, or hereditaments be not known or discovered, then and in every such case it shall and may be lawful to and for the said Commissioners, or any six or more of them, to order the said sum or sums of money so assessed or agreed to be paid as aforesaid to be paid into the Bank of England in the name and with the privity of the Accountant-General of the Court of Exchequer, to be placed to his account to the credit of the parties interested in the said lands, tenements, or hereditaments (describing them), subject to the order, control, and disposition of the said Court of Exchequer; which said Court of Exchequer, on the application of any person making claim to such sum or sums of money or any part thereof, by motion or petition, shall be and is hereby empowered, in a summary way of proceeding, or otherwise, as to the said court shall seem meet, to

Application of compensation money when less than £20.

Persons in possession to be deemed lawfully entitled to the premises until the contrary shall be shown to the Court of Exchequer.

If compensation money is refused, or titles not made, or if persons to whom money assessed cannot be found money to be paid into the bank, subject to order of Court of Exchequer.

order the same to be laid out and invested in the public funds, and to order distribution thereof, or payment of the dividends thereof, according to the estate, title, or interest of the person making claim thereunto, and to make such other order in the premises as to the said court shall seem just and and reasonable; and the cashier of the Bank of England who shall receive such sum or sums of money, is hereby required to give a receipt for the same (mentioning and specifying for what and for whose use the same is received) to such person as shall pay any sum or sums of money into the Bank of England as aforesaid.

Court of Exchequer may direct payment of expenses in cases where purchases of other lands are made.

36. Provided always, and be it further enacted, that where by reason of any disability or incapacity of the person or corporation entitled to any lands, tenements, or hereditaments to be purchased under the authority of this Act, the purchase-money for the same shall be required to be paid into the Court of Exchequer, and to be applied in the purchase of other lands, tenements, or hereditaments, to be settled to the like uses, in pursuance of this Act, it shall and may be lawful to and for the said Court of Exchequer to order the expenses of all purchases from time to time to be made in pursuance of this Act, or so much of the expenses as the said court shall deem reasonable, together with the necessary costs and expenses of obtaining such order, to be paid by the said Commissioners, or any six or more of them, who shall from time to time pay such sum or sums of money for such purposes as the said court shall direct; and the said Commissioners shall and may reimburse themselves all such payments as shall be so made by them as aforesaid in the manner directed, and out of the rates to be raised, levied, and collected for such purposes respectively, under the powers and provisions of the said recited Acts and of this Act.

Houses and buildings, &c., to be taken without consent.

37. And be it further enacted, that it shall not be lawful for any Court of Sewers, in making any new walls, banks, sewers, cuts, gotes, calcies, sluices, flood-gates, tumbling bays, and other works, reparations, amendments, aids, and defences authorised to be made and executed by the said recited Acts and this Act, or any or either of them, to take down, remove, or make use of any house or building, or any garden, yard, or paddock, or any park, planted walk, or avenue to a house, or any inclosed ground planted as an ornament or shelter to a house, or planted and set apart as a nursery for trees, or any part thereof respectively, without the consent in writing of the owner or proprietor thereof respectively, or of the person, body politic or corporate, hereby authorised to sell and convey as aforesaid, first had and obtained.

Vesting land in Commissioners of Sewers on payment of purchase-money.

38. And be it further enacted, that upon payment or legal tender of such sums or sums of money as shall have been contracted or agreed for between the parties, or assessed by such juries in the manner aforesaid, for the purchase of any such messuages, lands, tenements, hereditaments, and premises, or as a compensation for losses or damages as herein mentioned, to the proprietor or proprietors of such messuages, lands, tenements, hereditaments, and premises, or to such other person or persons,

bodies politic or corporate or collegiate, as shall be interested therein or entitled to receive such money or compensation respectively within thirty days next after the same shall be so agreed for or assessed, or upon payment of such sum or sums of money, within the said thirty days, into the Bank of England, in manner herein directed and required, for the use of the persons entitled thereto, it shall be lawful for the said Commissioners, and their agents, servants and workmen, to enter upon such messuages, lands, tenements, hereditaments and premises respectively, and thenceforth such messuages, lands, tenements, hereditaments and premises, together with the yearly profits thereof, and all the estate, use, trust and interest of any person, bodies politic, corporate or collegiate, therein, shall become and be vested in the said Commissioners for ever; and such payment or tender shall not only bar all right, title, claim, interest and demand of the person, bodies politic, corporate or collegiate, to whom the same shall or ought to have been made, but also shall extend to and be deemed and construed to bar the dower of the wife of every such person, and all estates tail, and all other estates in reversion and remainder of his or their issue, and of every other person, bodies politic, corporate or collegiate whomsoever therein.

39. And be it further enacted, that it shall and may be lawful for Commissioners of Sewers, or any six of them, in whom any lands and hereditaments shall be vested by virtue of this Act, to sell and dispose of the same or any part thereof, either together or in parcels, as they shall find most convenient and advantageous, to such person as shall be willing to contract for and purchase the same; and the money to arise and be produced by the sale or sales which may be made by the said Commissioners of Sewers of any land or hereditaments as aforesaid shall be applied to the purposes of making and maintaining sewers works in the limits, valley, level or district in which such land or hereditaments so sold as aforesaid shall lie or be, but the purchaser thereof shall not be answerable or accountable for any misapplication or nonapplication of such money; provided always, that the said Commissioners of Sewers, before they shall sell and dispose of any such lands or hereditaments, shall first offer to sell the same to the owner of the adjoining land or ground; and an affidavit made and sworn before a Master or Master Extraordinary in the High Court of Chancery, or before one of His Majesty's justices of the peace for the county, riding, or division in which such land and hereditaments shall lie, by some person not interested in the premises, stating that such offer was made by or on behalf of the said Commissioners, and that such offer was not then and thereupon agreed to or was refused by the person to whom the same was so offered, shall in all courts whatever be sufficient evidence and proof that such offer was made, and was not agreed to or was refused by the person to whom such offer was made (as the case may be); and in case such person shall be desirous of purchasing the same, and he and the said Commissioners shall differ and not agree with respect to the price thereof, in such case the price thereof shall be ascertained by a jury in manner hereinbefore directed with respect to the disputed value of premises to be purchased by Commissioners

Enabling Commissioners to sell lands, &c., not wanted.

First offer to be given to owners of adjoining ground.

of Sewers in pursuance of this Act; and the expense of hearing and determining such difference shall be borne and paid in like manner as hereinbefore directed with respect to purchases made by the said Commissioners of Sewers, *mutatis mutandis*.

Form of Con-
veyance from
Commissioners.

40. And be it further enacted, that all such conveyances of any lands, tenements or hereditaments to be sold and disposed of by the said Commissioners of Sewers shall be expressed in the following or some similar form of words, as the circumstances of the case may require:—

“We, six
of the Commissioners of Sewers acting in and for several limits
[*here describe the limits as set forth in the Commission of Sewers*],
in consideration of the sum of to us paid
by of do hereby grant
and release to the said all [*describing the*
premises to be conveyed], and all right, title and interest of the
Commissioners of Sewers in and to the same and every part
thereof, to hold unto the said his heirs, executors,
administrators and assigns for ever. In witness whereof we have
hereto set our hands and seals this day of
in the year of our Lord ”

Power to
borrow and
take up money
at interest for
making and
maintaining
works.

41. And be it further enacted, that it shall and may be lawful for Courts of Sewers, from time to time as occasion shall require, to borrow and take up at interest any sum or sums of money for the purchase of messuages, lands, tenements or hereditaments, or for defraying the costs, charges and expenses of any work or works required to be done within the respective limits of their Commission, for making, repairing and maintaining any sea-bank, wall or other defence or defences against any violent eruption or encroachment or apprehended encroachment of the sea or rivers, or for the making and maintaining any new cut, or for the more effectual and better draining and carrying off the floods and superfluous fresh waters, or for the building, constructing, repairing, amending, renewing and maintaining any flood-gates, sluices, bridges, dams, or other necessary works, or for any other construction, work, matter or thing which the said court shall judge necessary or expedient for the more effectual defence, security and improvement of the lands, grounds, tenements and hereditaments within the jurisdiction of such Court of Sewers; and the repayment of such sum and sums of money, with interest, shall, and may from time to time, be secured to the party lending the same upon or by virtue of a decree or ordinance under the hands and seals of the Commissioners, or any six of them (which decree and ordinance they are hereby authorised to make), charging the lands, tenements and hereditaments receiving benefit or avoiding damage from the several works, and the owners or occupiers, or owners and occupiers for the time being thereof, with the payment of such sum and sums of money, with interest, according to the proportions and in the manner returned in and by any presentment touching or concerning the costs and charges of such last-mentioned works,

or the lands, grounds, tenements and hereditaments receiving benefit or avoiding damage thereby; provided always nevertheless, that no such money shall be borrowed or taken up at interest as aforesaid without the consent in writing certified to the said Commissioners or any six of them, of the owners and occupiers respectively, or their respective husbands, guardians, trustees, or feoffees, committees, executors, or administrators, of three-fourth parts at the least in value of the lands and hereditaments lying within the valley, level, or district proposed to be charged with the repayment thereof: Provided also, that no person being the owner for the time being of any lands, tenements, or hereditaments shall be chargeable or liable, in respect of such lands, tenements, or hereditaments, for or towards any principal money borrowed or taken up as aforesaid, with or to the payment of any greater sum of money than one-fifth part of the value of such lands, tenements, or hereditaments at the time of borrowing or taking up the same: Provided also, that it shall be provided, expressed, and declared in and by the said decree and ordinance, that the sum or sums of money so borrowed and taken up thereon shall be repaid within a time to be named in such decree and ordinance, not being for a longer period than fourteen years from the making thereof, by equal annual or shorter instalments, together with interest on the sum or sums so borrowed or taken up, or on such part thereof as shall from time to time remain due and unpaid; and the said last-mentioned decree and ordinance shall be and remain in full force and effect until such sum or sums of money, and all interest thereon, shall have been fully paid and satisfied; anything in the said recited Acts or this Act contained, or any custom or usage, to the contrary notwithstanding.

42. And for facilitating the raising, securing, and paying off from time to time, of the moneys which it may be necessary so to raise and borrow as aforesaid, be it further enacted, that it shall and may be lawful for any Court of Sewers from time to time to grant securities, in the form of a certificate, under the hands and seals of six of the said Commissioners, to each person who shall so advance any sum of money as aforesaid, setting forth the amount of the sum borrowed, the rate of interest payable for the same, the periods at which the said principal money shall be decreed to be paid off by instalments, and a general description of the particular lands, or, if by assessment, the district, limit, or level in which the lands are situate, which are to be charged with the repayment thereof; and that every such security or certificate shall be made in the following words, or by any other words to the same purport and effect:—

Courts of Sewers may grant securities to persons advancing money.

“By virtue of an Act passed in the third year of the reign of His Majesty King William the Fourth, intituled [*here insert the title of this Act*], we, the undersigned, being six of the Commissioners [*here insert the general description of the Commission under which they act*], in consideration of the sum of _____ of lawful money of Great Britain to [*here insert the name of the receiver of the district*] lent and paid by

Form of security.

do hereby certify that [*here describe the particular lands, or, if by assessment, the valley, level, or limit in which the lands are*

situate, which are to be charged], are become charged with the repayment of the said sum, in instalments of one _____ part on the day of _____ in every year, together with interest on such part of the said principal money as shall remain unpaid from time to time, at and after the rate of _____ pounds per centum per annum, until the whole thereof shall be repaid; which sum so lent and advanced by the said _____ is part of a capital sum of _____ which at a Court of Sewers holden at _____ on the _____ day of _____ last was decreed and ordered to be taken up and borrowed for the purpose of [here briefly state the general cause or object of borrowing the money]. In witness whereof we have hereunto set our hands and seals, the _____ day of _____.”

Securities may be transferred.

43. And be it further enacted, that every person, body politic, corporate, collegiate, aggregate, or sole, who shall be entitled to the money thereby secured, and his, her, or their executors, administrators and successors, may from time to time, personally or by attorney thereunto lawfully authorised, assign or transfer his or their right, title, interest, or benefit to the said principal and interest money thereby secured, to any person whatsoever, by endorsing on the back of such security, in the presence of one credible witness, who shall subscribe his name thereto, the following words, or words to the like effect:—

Form of transfer.

“ I [or We], [A. B. of, &c.], in consideration of the sum of _____ to me this day paid by [C. D. of, &c.], do hereby transfer the within certificate of charge, with all my right and title to the principal money thereby secured and now remaining due thereon, and to all the interest money now due or hereafter to become due, unto [his or their] executors, administrators, successors, and assigns [as the case may be]. Given under my hand and seal, this _____ day of _____ .
“ Witness _____ .”

Transfers to be produced to clerk to Commissioners, and to be registered by him.

which transfer shall be produced and notified to the clerk for the time being of the said Commissioners, before the party holding the same transfer shall be entitled to receive any principal or interest due or owing as aforesaid; and every such clerk shall make an entry amongst the records of the said Commissioners of the particulars of every such transfer, and endorse a minute of such entry upon the back of every such transfer, signed by such clerk, and for which entry and minute he shall be entitled to a fee of five shillings, and no more.

Courts of Sewers may be held out of the limits of the commission.

44. [And whereas it has been found in some instances difficult or inconvenient to hold Courts of Sewers within the limits or districts of the Commission under or by virtue whereof such courts have been held, by reason that no house or other sufficient building could be procured within such limits or districts: Be it therefore further enacted, that it shall and may be lawful for Commissioners acting under any Commission of Sewers to hold Courts of Sewers at any place not being at a greater distance than five miles from the limits or districts of such Commission.] (a)

(a) This section is repealed by Stat. Law Revision Act, 1863.

45. And be it further enacted, that all laws, acts, decrees, constitutions and ordinances heretofore made, done, decreed and ordained at or by any Court of Sewers holden without the limits or district of the Commission under or by virtue whereof such court has been holden, but within five miles of the limits or district of such Commission, shall be and they are hereby declared to be as valid and legal, and shall henceforth be and remain in as full force and virtue, as if the same laws, acts, decrees, constitutions and ordinances had been made, done, decreed and ordained at a Court of Sewers holden within the limits or district of the Commission under or by virtue whereof such court was holden, any statute, law, usage or custom to the contrary notwithstanding.

All acts of Commissioners done without the district of the Commission, but within five miles thereof, to be valid.

46. And whereas in many cases the burden of supporting, repairing and maintaining a common sea-wall, bank, sewer or other work may be divided among divers persons, each of whom may be liable to the repair of a certain portion thereof; and in order to avoid the necessity of presenting each such person separately in respect of the non-repair of such common sea-wall, bank, sewer, or other work: Be it further enacted, that it shall be lawful for any sewers jury, bailiff, surveyor, expeditor, or other person to present the whole of such sea-wall, bank, sewer, or other work respectively, or such part thereof respectively as shall at any time be out of repair, or require cleansing, and to allege in such presentment what persons or bodies politic or corporate are liable to the repair thereof, and also to specify what part or portion of such sea-wall, bank, sewer, or other works each such person, body politic or corporate, is bound or liable to repair, without making a separate and distinct presentment against each such person or body politic or corporate; and upon twenty-eight days' notice of such presentment to be left with or at the last or usual place of abode or office of such person, body politic or corporate, each such person, body politic or corporate, shall be at liberty to traverse the allegation contained in such presentment as to his liability to the repair of such part of such sea-wall, bank, sewer, or other work as in such presentment is alleged against him; and trial of such traverse shall be thereupon had as if such presentment had been solely and exclusively made against such person, body politic or corporate, so traversing the same as aforesaid.

Several defaults may be included in one presentment, and separately traversed.

47. And be it further enacted, that the property of and in all lands, tenements, hereditaments, buildings, erections, works, and other things which shall have been or shall hereafter be purchased, obtained, erected, constructed, and made by or by the order of or which are or shall be within or under the view, cognizance, or management of any Commissioners of Sewers, with the several conveniences and appurtenances thereunto respectively belonging, and also all and singular the goods, tools, utensils, materials, and things whatsoever had and to be had, bought, procured, or provided by or by the order of or which are or shall be within or under the view, cognizance, or management of such Commissioners, shall be and the same are hereby vested in the Commissioners of Sewers, within or under whose view, cognizance, or management such lands, tenements, hereditaments, buildings, erections, works, goods, tools, utensils, materials, and

Property in lands, buildings, goods, &c., vested in Commissioners.

things shall respectively be, who are hereby empowered to bring or cause to be brought any action or actions, or to prefer or order the preferring of any bill or bills of indictment, against any person who shall dig up, break or pull down, damage, destroy, injure, spoil, steal, take or carry away or wilfully and wrongfully buy or receive, any such lands, tenements, hereditaments, buildings, erections, works, goods, tools, utensils, materials and things whatsoever as aforesaid, or any part thereof; and in every such action and indictment the said lands, tenements, hereditaments, buildings, erections, works, goods, tools, utensils, materials and things shall be laid or described to be the property of the said Commissioners, without stating or specifying the name or names of all or any of such Commissioners.

Officers to
account when
required.

48. And be it further enacted, that every clerk, treasurer, collector, receiver, and other officer appointed and to be appointed by any Court of Sewers shall, as often as required by such court, render and give to the said court, or to such person as it shall for that purpose appoint, a true, exact and perfect account in writing under their respective hands, and produce and deliver unto the said court, or to such person as aforesaid, proper vouchers of and for all moneys which they shall respectively before the time of rendering such accounts have received, paid and disbursed for or on account or by reason of their respective offices; and in case any money so received by any such officer shall remain in his hands the same shall be paid by him to such person as the said court shall authorise and empower to receive the same; and if any such officer shall refuse or wilfully neglect to render and give such account, or to produce and deliver up such vouchers, or shall for the space of fourteen days after being thereunto required by the said court refuse or neglect to render, give, produce, and deliver up to them, or to such person as they shall direct or appoint, such true and perfect account, and all or any such vouchers as aforesaid, and all or any books, papers, writings, matters, and things in his hands, custody or power, it shall and may be lawful for the said court, in a summary way, to cause such money as shall appear to be due and unpaid from such officer to be levied by distress and sale of the goods and chattels of such officer, rendering to such officer the overplus (if any) on demand, after payment of the money remaining due, and deducting the charges and expenses of making such distress and sale; and if sufficient distress cannot be found, or if any such officer shall refuse or wilfully neglect to render such account, or to deliver up all or any vouchers, books, papers, writings, matters, or things in his custody or power relating to the execution of his office, the said court shall or may commit him to any house of correction or common gaol of the county, city, or liberty in which such Court of Sewers shall have jurisdiction, there to remain, without bail or mainprise, until he shall have made and given a true and perfect account, and shall have delivered up the vouchers relating thereto, and shall have paid the money (if any) remaining in his hands as aforesaid, according to the directions of the said court, or shall have compounded with the said court for such money, and paid such composition according to their direction (which composition the said court is hereby empowered to make and receive),

or until he shall have delivered up all such books, papers, and writings, matters and things as aforesaid, or have given satisfaction to the said court concerning the same; but no such officer who shall be committed on account of his not having sufficient goods and chattels as aforesaid shall be detained in prison by virtue of this Act for any longer time than six calendar months.

49. And be it further enacted, that if any officer or servant of any Court of Sewers who shall be by such court discharged from his office shall be in possession of any houses, buildings, lands, flood-gates, sluices, dams, works, materials, tools, or implements so belonging to or vested in any such Commissioners of Sewers as aforesaid, and shall refuse to deliver up the possession thereof within two days after notice of his being discharged and of his being required to deliver up the same shall be given to him, or left at his last or most usual place of abode, or if the wife, widow, family, or representatives of any such officer or servant who shall happen to die, shall, after like notice given to her, them, any or either of them, refuse to deliver possession of the same within the like term, after she, they, or either of them shall be required so to do, then and in either of the said cases it shall and may be lawful for any such Court of Sewers for the county, limits, or district wherein the same property, matter, or thing refused to be delivered up may be, by warrant under the hands and seals of six Commissioners of Sewers for the county, limits, or district, to order a constable or other peace officer, with such assistance as shall be deemed necessary, to enter any such houses, buildings, lands, flood-gates, sluices, dams, or other works, so refused to be delivered up in the daytime, and to remove the persons who shall be found therein, together with their goods out of such premises, and also to take possession of the same, and of all such other property, matters, and things belonging to or vested in the said Commissioners of Sewers as shall be so refused to be delivered up as aforesaid, and to put the said Commissioners, or their officer or servant, in possession thereof.

Removing officer from the possession of the property of Courts of Sewers

50. And be it further enacted, that it shall be lawful for any Court of Sewers to take such security from every treasurer, receiver, collector, expeditor, and other ministers and officers, as to such court shall seem meet, for the just and faithful execution of such office or trust, and such security shall be given by bond or bonds to the clerk for the time being to the said Commissioners of Sewers; and in case of forfeiture it shall be lawful for the said Court of Sewers to sue upon such bond or bonds in the name of the clerk to the said Commissioners of Sewers for the time being, and to carry on such suit, at the costs and charges and for the use and benefit of the fund for the security of which such bond or bonds shall have been taken, fully indemnifying and saving harmless such clerk from all costs and charges in respect of such suit, from and out of such fund; and no action or suit to be brought or commenced in the name of the clerk in the manner aforesaid shall abate or be discontinued by the death, resignation, or removal of such clerk, or by the expiration of any Commission of Sewers or other authority under which the said clerk may act as aforesaid.

Courts of Sewers may take security from officers and sue for forfeitures.

Treasurer and clerk not to be the same person

51. And be it further enacted, that it shall not be lawful for any Court of Sewer (*sic*) to continue or appoint the person who hath been or who may be appointed their clerk in the execution of any Commission of Sewers, or the partner of any such clerk, or the clerk or other person in the service or employ of any such clerk, or the clerk or other person in the service or employ of the partner of such clerk, the treasurer for the purposes of the said recited Acts or of this Act, or to continue or appoint any person who hath been or who may be appointed treasurer, or the partner of any such treasurer, or the clerk or other person in the service or employ of any such treasurer, or the clerk or other person in the service or employ of the partner of such treasurer, the clerk of the said Commissioners; and if any person shall continue in or accept both the offices of clerk and treasurer in the execution of any Commission of Sewers, or if any person being the partner of any such clerk, or the clerk or other person in the service or employ of any such clerk, or of his partner, shall continue in or accept the office of treasurer, or shall act as deputy of such treasurer, or shall in any manner officiate for such treasurer, or being the partner of any such treasurer, or the clerk or other person in the service or employ of any such treasurer or of his partner, shall continue in or accept the office of clerk in the execution of any Commission of Sewers, or shall act as deputy of such clerk, or shall in any manner officiate for such clerk, or if any such treasurer shall hold any place of profit or trust under such Court of Sewers other than that of treasurer, every such person so offending shall for every such offence forfeit and pay the sum of one hundred pounds to any person who shall sue for the same, to be recovered, together with full costs of suit, in any of His Majesty's Courts of Record at Westminster, by action of debt, or on the case, or by bill, suit, or information, wherein no essoign, protection, or wager of law, nor more than one imparlance, shall be allowed.

Constables to obey orders of Commissioners.

52. And for the better carrying into execution the powers and authorities of the said Commissioners of Sewers, be it further enacted, that all and every chief and petty constables, headboroughs and tithingmen, or by whatsoever other name or names such chief or petty constables may be called or known, and other peace officers, of or within the respective hundreds, parishes, townships, liberties, districts, or places within the jurisdiction of the said respective courts, shall and they are hereby authorised and required to obey and execute all and every the orders, warrants, precepts, or other process which may be to them directed by the said Commissioners; which said Commissioners respectively are hereby authorised to direct such their orders, warrants, precepts, or other process to such chief or petty constables, headboroughs, tithingmen, and other peace officers accordingly.

Fines, &c., may be levied by warrant of Commissioners of Sewers.

53. And be it further enacted, that no fine, amercement, penalty, or forfeiture, which from and after the passing of this Act shall be set or imposed by any Commissioners of Sewers upon any person, body politic or corporate, for not cleansing, scouring, repairing, or maintaining, or for

obstructing or injuring any of the walls, ditches, banks, gutters, sewers, gotes, bridges, and streams, or for any other cause, matter or thing within the jurisdiction of the said Commissioners respectively, shall hereafter be returned or estreated into the Court of Exchequer; but that the same fines, amercements, penalties and forfeitures, and all penalties and forfeitures imposed by this Act, except as herein otherwise provided, shall and may be demanded and received by the treasurer, clerk, expeditor, or other person appointed by the said Commissioners to receive the same, and if not paid, upon demand, shall and may be levied by distress and sale of the goods and chattels of the person, body politic or corporate, upon whom such fines, amercements, penalties or forfeitures shall or may be so set or imposed, by warrant under the hands and seals of the said Commissioners, or any six or more of them, together with the costs and charges of such distress and sale, rendering the overplus (if any) to the party or parties entitled thereto; which warrant the said Commissioners are hereby authorised to issue; and the said fines, amercements, penalties, and forfeitures, when so received or levied, shall and may be applied by the said Commissioners to such and the same uses and purposes as the moneys raised, levied, or set apart by the said Commissioners for defraying and reimbursing the general expenses of executing the Commission of Sewers under which they shall or may act or may be applicable.

54. And be it further enacted, that the warrant authorising the levying of any such fine, amercement, penalty or forfeiture payable by virtue of this Act may be in the words or to the effect following:—

Form of
warrant for
levying fines,
&c.

“ To _____, our bailiff of sewers, and to _____, our collectors, and to each and every of them, and to all constables and other peace officers.

“ WHEREAS at the Court [or Session] of Sewers holden for the limits [here state the name of the Commission] on the day of _____ last, A. B., of _____, in the county of _____, carpenter, was fined [amerced or otherwise, as the case may be] in the sum of _____ which sum it hath this day been proved to us, the undersigned, being six or more of the Justices and Commissioners of Sewers for the aforesaid limits, by the oath of _____, duly appointed to receive the same fine [amercement, penalty or forfeiture, as the case may be] that the said _____ hath neglected or omitted to pay when demanded of him. These are therefore to authorise and command you, any or either of you, to levy the said sum of _____ by distress and sale of the goods and chattels of the said _____, together with the costs and charges of such distress and sale, rendering the overplus, if any, to the said _____. Given under our hands and seals the _____ day of _____ in the year of Our Lord one thousand eight hundred and _____.”

55. And be it further enacted, that in all and singular the orders, decrees and other proceedings hereafter to be made touching or concerning _____, Commissioners may decree and assess costs.

any matter or thing within the jurisdiction of any Court of Sewers, it shall and may be lawful to and for any such Court of Sewers to order and decree that the costs, charges, and expenses of and incidental to the making and putting in force such order or decree, orders or decrees, shall be paid and borne by the person, body politic or corporate, upon or against whom, or by reason of whose default or for whose benefit such order or decree, orders or decrees, shall respectively be made, which costs, charges and expenses shall and may be ascertained and settled by or by the authority of any such Court of Sewers; and when any such costs, charges and expenses shall be ordered and decreed to be paid as aforesaid, and such order or decree, orders or decrees, shall not be previously altered, reversed, or quashed by or at any subsequent Court of Sewers, or by any other court or courts, upon removal of the same by *certiorari* or otherwise, the same costs, charges and expenses shall and may, at any time after the Court of Sewers immediately following the granting or passing of such orders or decrees respectively, such court being at the distance of twenty-one days at the least from the service of such orders or decrees respectively, be levied and raised, together with the costs and charges of raising and levying the same, by distress and sale of the goods and chattels of the person, body politic or corporate, by whom the same shall or may respectively be ordered or decreed to be paid as aforesaid by the bailiff, expeditor, surveyor or other known officers of the said Commissioners of Sewers for the time being, or by any constable or peace officer or any other person to be named in and by such orders or decrees respectively, without any further order or decree of the said Court of Sewers: Provided always, that if no such distress or distresses as aforesaid can be found, the same costs, charges and expenses, together with the costs and charges of raising and levying the same, shall and may be raised and levied upon and out of the lands, tenements and hereditaments within the limits of the Commission under and by virtue of which the same orders and decrees shall respectively be made of, or belonging to the person, body politic or corporate, upon or against whom such orders and decrees shall respectively be made, in such and the same manner as the same would have been leviable if the same lands, tenements or hereditaments had been lawfully assessed in the amount or respective amounts of the same costs, charges and expenses to or for a lawful scot, rate or assessment for the purposes of the same Commission, and the same lands, tenements and hereditaments shall be subject to all such and the same orders and decrees as the same would have been subject to, and such orders and decrees shall be of the same force and authority as if the same costs, charges and expenses were a lawful scot, rate or assessment as aforesaid and unpaid.

56. Provided also, and be it further enacted, that all and every sum and sums of money which shall or may be raised or levied by or for the costs, charges and expenses of any officer of sewers as aforesaid shall be paid into the hands of the treasurer or expeditor of the said Commissioners acting for the district in or for which the orders or decrees shall respectively be made, and shall be paid, applied and disposed of, so far as the same

And in default of distress may raise the same upon the lands of the defaulters.

Appropriation of costs when levied.

will extend, in defraying and reimbursing the costs, charges and expenses which shall have been so incurred as aforesaid, subject to such order and disposition of the said Commissioners as they or any six or more of them shall deem to be just and reasonable.

57. And be it further enacted, that Commissioners of Sewers may sue and be sued at law, or in equity for or concerning any matter or thing whatever, or for or relating to the lands and hereditaments or other property vested or to become so vested in them as aforesaid, or to any river, stream, sewer, wall, bank, or other work or matter within or under the view, cognizance, management or jurisdiction of such Commissioners, in the name of any one Commissioner, or in the name of their clerk for the time being; and in any action or actions of ejectment which shall or may be brought or prosecuted by the said Commissioners for recovering the possession of such houses, buildings, or other property so vested in them as aforesaid, it shall be sufficient to lay the demise in such action or actions in the names of six Commissioners, or in the name of such clerk; and no action or suit to be brought or commenced by or against the said Commissioners or the said clerk in manner aforesaid shall abate or be discontinued by the death, resignation or removal of such Commissioners or of such clerk, or by the expiration of any Commission of Sewers or other authority under which the said Commissioners or clerk may act as aforesaid, provided that no execution shall issue or be had in any such action or suit against such Commissioners or clerk until six months shall have elapsed after final judgment in such action or suit shall have been obtained.

58. Provided always, and be it further enacted, that every such clerk in whose name any such action or suit shall be brought, commenced or sued, and every such Commissioner of Sewers whose name shall be used in any bill, information, prosecution or indictment in pursuance of this Act, and that every such Commissioner of Sewers in whose name the said Commissioners shall so sue or be sued as aforesaid, shall be fully reimbursed and paid all such costs, charges, damages and expenses as by the event or in consequence of any such action, suit, bill, information, indictment, or prosecution he shall pay, sustain, or be put unto or become chargeable with or liable to by reason of his being plaintiff or defendant as aforesaid, or his name being used as aforesaid, by and out of the moneys that shall be in or come to the hands of the said clerk or of the treasurer or expeditor for the time being, as such clerk, treasurer or expeditor, or by and out of the moneys to arise and be collected by a scot, rate, or tax to be granted, raised, and levied, under the authority and direction of the said Commissioners of Sewers having authority to raise and levy such scot, rate or tax, or such of them as shall be authorised to act on behalf of themselves and the others, as the case may be, on the scotable, rateable, or taxable lands, tenements and hereditaments, the district for which he or they so acts or act, or hath or have acted as clerk as aforesaid, or for which he is so authorised to act as aforesaid, and which said scot, rate or tax may be levied and raised under and by virtue of this Act for the purposes aforesaid.

Clerk, being plaintiff, may be a witness.

59. Provided always, and be it further enacted, that the clerk being the plaintiff, prosecutor or defendant in any such actions, suits, proceedings prosecutions or indictments as aforesaid, shall not affect the competency of such clerk to be a witness in any such actions, suits prosecutions and indictments in the same manner as he might have been if his name had not been made use of as the plaintiff, prosecutor or defendant in any such actions, suits, proceedings, prosecutions or indictments.

Rule for the interpretation of certain words and terms of this Act.

60. And be it further enacted, that the words "Court" and "Court of Sewers" in this Act shall respectively be deemed to mean every court, sessions, assemblage, or meeting of any six or more Commissioners of Sewers (three whereof being of the quorum) named in any Commission of Sewers, and acting in the execution thereof; and wherever in this Act any word or words is or are used or employed importing the singular number or the masculine gender only, such word or words shall extend to and shall be construed to include several persons as well as one person, and females as well as males, and a body or bodies politic, corporate or collegiate, corporation or corporations aggregate or sole, as well as individuals, unless it be otherwise specially directed or provided for.

This Act not to prejudice any local Act.

61. And be it further enacted, that nothing in this Act contained shall extend or be construed to extend to affect, alter, abridge, or interfere with any local or private Act of Parliament for Sewers concerning any county, city, town, district, lands, or limits, or any Commission of Sewers in the County of Middlesex, within the distance of ten miles from the Royal Exchange in the City of London, except such parts of the said county as may lie within any Commission of Sewers of the county of Essex; or to affect, alter, abridge, or interfere with any navigable river, canal, port, or harbour under the management or power of any Commissioners, trustees or proprietors by virtue of any local or private Act of Parliament; or to affect, alter, abridge or interfere with any charter, law, usage or custom in or concerning Romney Marsh in Kent, or the Great Level of the Fens called Bedford Level.

Saving rights of the City of London.

62. And be it further enacted, that nothing in this Act contained shall extend or be construed to extend to repeal or in anywise affect, alter, abridge, or interfere with the Commissioners of Sewers of the City of London and liberties thereof, or the rights, powers or privileges of the Mayor and commonalty and citizens of the City of London, in relation to the sewers, drains, vaults and bridges within the said city or liberties, or any Act or Acts of Parliament heretofore made for making, amending, defending, widening, altering or cleansing the said sewers, drains, vaults and bridges within the said city and liberties.

4 & 5 VIC. c. 45.

An Act to amend an Act passed in the third and fourth years of the reign of His late Majesty King William the Fourth, intituled, an Act to amend the Laws relating to Sewers.

[21st June, 1811.]

Whereas an Act was passed in the twenty-third year of the reign of His Majesty King Henry the Eighth, concerning Commissions of Sewers, to be directed into all parts within the then realm of England, including the Principality of Wales, in the manner and according to the form, tenor, and effect in the said Act set forth, and which said Act was made perpetual by an Act passed in the third and fourth years of the reign of His Majesty King Edward the Sixth, intituled, an Act for the continuance of the Statute of Sewers, and was amended and altered by an Act passed in the thirteenth year of the reign of Her Majesty Queen Elizabeth, intituled, an Act for the Commission of Sewers, and was also amended by an Act passed in the third and fourth years of His late Majesty King William the Fourth, intituled, an Act to amend the laws relating to sewers: And whereas by the last-recited Act, certain payments and recompenses to clerks and other persons employed by the court, and also to witnesses, and also certain costs, charges, and expenses to be incurred in surveying, measuring, planning, and valuing any lands or hereditaments, or otherwise preparatory to, or in, or about the making, collecting, and expending certain taxes, rates, and scots to be raised under or by virtue of the said recited Acts, or any or either of them, or the hearing of objections to such taxes, rates, or scots, or in or about the carrying on of any litigation or controversy arising out of the duties imposed on the Courts of Sewers by virtue of the said recited Acts, and for the payment of all other necessary allowances, charges, and expenses of putting the said several recited Acts into execution, and the contingent expenses of working the Commission of Sewers, are authorised and directed to be paid and allowed out of the said taxes, rates, and scots, but the powers in some cases are not found sufficient to make, assess, or levy any taxes, rates, or scots which could or might be applied to the several purposes aforesaid or any of them; and it is expedient that sufficient power should be given to the Courts of Sewers for that purpose; may it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, that it shall be lawful for any Court of Sewers, for all or any of the purposes aforesaid, but for no other purpose whatsoever, from time to time, as often as occasion shall require, to tax in the gross, in each parish, township, or place, such lands and hereditaments which heretofore have been or hereafter shall be within, or partly within, the jurisdiction of such court; but so that such lands and hereditaments shall contribute thereto in proportion to the benefit and advantage received, or capable to be received

23 H. VIII. c. 5

3 & Ed. VI. c.

8.

13 Eliz. c. 9.

3 & 4 W. IV. c.

22.

Courts of
Sewers em-
powered to
raise money by
tax.

from the said court, as compared with the lands and hereditaments of the other parishes, townships, or places within such jurisdiction, which said tax shall be denominated the General Sewers Tax, and shall be recovered and recoverable by distress and sale in like manner and by all such ways and means as any fine or amercement imposed on a parish or township by a Court of Sewers is now by law recoverable; but no distress for such General Sewers Tax shall be replevied by any sheriff, under-sheriff, judge or court of law or equity whatsoever.

Courts of Sewers may order the apportionment and collection of the tax.

2. And be it enacted, that it may and shall be lawful for any Court of Sewers to direct and authorise any surveyor or other person to apportion such general tax among the occupiers of the lands and hereditaments in each such parish, township, or place which heretofore have been or hereafter shall be within, or partly within, the jurisdiction of such Court of Sewers, in such proportions and upon such individuals as of right ought to pay the same; and such tax, when so apportioned, shall be collected by some person as shall be appointed by the court for that purpose, and shall be by such person paid over to the treasurer of, or other officer appointed by the Commissioners of Sewers, at such time as the Court of Sewers shall direct; provided that every occupier upon whom such General Sewers Rate shall be apportioned shall have notice in writing of such apportionment on days at the least before the next Court of Sewers to be held within the limits in which the lands and hereditaments to be taxed shall be.

General Sewers Tax and apportionment to be final, if not complained against at the next court.

3. And be it enacted, that in case no complaint shall be made against such general or apportioned Sewers Tax at the Court of Sewers held next after the expiration of ten days after such notice of apportionment shall be made as aforesaid, such General Sewers Rate, and such apportionment thereof, shall respectively be final and conclusive on all parties whomsoever; but in case of any complaint of inequality or non-liability to pay the said General Sewers Rate, or such apportionment thereof respectively, the Commissioners shall at such court, or at some adjournment thereof, or at some subsequent court, proceed to investigate the same, by the examination of such witnesses as the parties interested therein shall produce, or by the examination of such other witnesses as to the said court shall seem right; and the decision of such court as regards such General Sewers Rate and such apportionment thereof respectively shall be final: and such apportioned rate shall be recoverable by distress and sale of the effects of the persons respectively rated, by warrant under the hands and seals of six of the Commissioners of Sewers, but no distress for such apportioned rate shall be replevied by any sheriff, under-sheriff, judge, or court of law or equity whatever; nevertheless the Court of Sewers shall be empowered to direct any feigned issue, appeal, or action at law, to try any dispute which may arise as to the inequality or non-liability of any person to pay the said General Sewers Tax, or the said apportionment thereof, the person so objecting to the payment thereof having first given security to the said court for the payment of all costs and charges attendant thereon.

Power to borrow and take up money at

4. And whereas certain payments, allowances, and expenses authorised by the said recited Act of his late Majesty King William the Fourth may

have been and may be made and incurred before any General Sewers Rate can be recovered; be it therefore enacted, that it shall and may be lawful for Courts of Sewers from time to time to borrow and take up at interest any sum or sums of money for the several purposes aforesaid, or any of them; and the repayment of such sum and sums of money, with interest, shall from time to time be secured to the parties or party lending the same, their, his, or her executors, administrators, and assigns, upon or by virtue of a decree or ordinance under the hands and seals of the Commissioners of Sewers, or any six of them (which decree and ordinance the said court is hereby required to make), charging the General Sewers Rates, or any of them, to be raised under and by virtue of this Act, with the payment of such sum and sums of money, with interest: provided always, that it shall be provided, expressed, and declared in and by the said decree and ordinance that the sum or sums of money so borrowed and taken up as aforesaid shall be repaid within a time to be named in such decree or ordinance, not being a longer period than seven years from the making thereof, by equal annual or shorter instalments, together with the interest on the sum or sums so borrowed or taken up, or on such part thereof as shall from time to time remain due and unpaid; and the said last-mentioned decree or ordinance shall be and remain in full force and effect until such sum and sums of money, and all interest thereon, shall have been fully paid and satisfied; any thing in the said recited Acts or this Act contained, or any custom or usage, to the contrary notwithstanding.

interest for
general pur-
poses.

Provision for
repayment.

5. And for facilitating the raising, securing and paying off from time to time of the moneys which it may be necessary so to raise and borrow as aforesaid, be it enacted, that it shall and may be lawful for any Court of Sewers from time to time to grant securities, in the form of a certificate, under the hands and seals of six of the Commissioners, to each person who shall so advance any sum of money as aforesaid, setting forth the amount of the sum borrowed, the rate of interest payable for the same, the periods at which the said principal money shall be decreed to be paid off by instalments, and the particular General Sewers Rate which is to be charged with the repayment thereof; and that every such security or certificate shall be made in the following words, or by any other words to the same purport and effect:—

Courts of
Sewers may
grant securities
to persons ad-
vancing money.

“ By virtue of an Act passed in the year of the reign of Her Majesty Queen Victoria, intituled [*here insert the title of this Act*], we, the undersigned, being six of the Commissioners [*here insert the general description of the Commission under which they act*], in consideration of the sum of of lawful money of Great Britain to [*here insert the name of the treasurer*] lent and paid by , do hereby certify, that the several General Sewers Rates to be made and levied within [*here insert the name of the district or level*], under and by virtue of the said Act are become charged with the repayment of the said sum, in instalments of one part on the day of in every year, together with interest on such part of the said principal

Form of
security.

money as shall remain unpaid from time to time, at and after the rate of _____ pounds per centum per annum, until the whole thereof shall be repaid; which sum so lent and advanced by the said _____ is part of a capital sum of _____ which, at a Court of Sewers holden at _____ on the day of _____ last, was decreed and ordered to be taken up and borrowed. In witness whereof we have herenuto set our hands and seals the _____ day of _____ .”

Securities may be transferred.

6. And be it enacted, that every person, body politic, corporate, collegiate, aggregate, or sole, who shall be entitled to the money thereby secured, and his, her, or their executors, administrators, and successors, may from time to time, personally, or by attorney thereunto lawfully authorised, assign or transfer his, her, or their right, title, interest, or benefit to the said principal and interest money thereby secured to any person whatsoever, by endorsing on the back of such security, in the presence of one credible witness, who shall subscribe his name thereto, the following words, or words to the like effect :

Form of transfer.

“ I [*or We*] *A. B.*, of *S^c.*, in consideration of the sum of _____ to me this day paid by *C. D.* of *S^c.*, do hereby transfer the within certificate of charge, with all my right and title to the principal money thereby secured, and now remaining due thereon, and to all the interest money now due or hereinafter to become due, unto _____ [*his, her, or their*] executors, administrators, successors, and assigns [*as the case may be*]. Given under my hand and seal this _____ day of _____ .
Witness, _____ .”

Transfers to be produced to the clerk to Commissioners, and to be registered by him.

Which transfer shall be produced and notified to the clerk for the time being of the said Commissioners, before the party holding the same transfer shall be entitled to receive any principal or interest due or owing as aforesaid; and every such clerk shall make an entry amongst the records of the said Commissioners of the particulars of every such transfer, and endorse a minute of such entry upon the back of every such transfer, signed by such clerk, and for which entry and minute he shall be entitled to a fee of five shillings and no more.

Courts of Sewers may recompense juryman.

7. And be it enacted, that it shall be lawful for any Court of Sewers, by and out of the rates and scots raised and to be raised under or by virtue of any Commission of Sewers, to decree, order, appoint, allow, and pay to any juryman summoned to attend and attending any Court of Sewers, such allowance and recompense for his expenses and loss of time as to such court shall seem just.

Courts of Sewers may amend or quash rate on appeal.

8. And be it enacted, that on all appeals from any rate made under the authority of any Commission of Sewers, it shall be lawful for the court before which such appeal shall be made to amend such rate, either by inserting therein or striking out therefrom the name of any person, or by altering the sum therein charged on any person, or in any other manner

which the said court shall think just, without quashing such rate : provided, nevertheless, that if the court shall be of opinion that the rate should be quashed, then the said court may quash the same.

9. [And be it enacted, that no person rated or liable to be rated to any tax, rate or scot under or by virtue of any Commission of Sewers, or any Commissioner of Sewers, shall be deemed an incompetent witness before any Court of Sewers] (a).

Rated persons not incompetent witnesses.

10. And be it enacted, that if any difference shall arise upon the choice of a chairman at any court or meeting of Commissioners of Sewers, such chairman shall be chosen by the majority of Commissioners present thereat ; and in case there shall be an equal number of votes upon such choice, then such one of the persons proposed whose name shall stand first in the Commission under which such court or meeting is holden shall be the chairman thereof ; and the chairman of every such court or meeting, in all cases of an equal number of votes upon any question or matter (including his own vote), shall have a casting or decisive vote.

How chairman shall be chosen.

11. And be it enacted, that it shall be lawful for the Commissioners acting under any Commission of Sewers to hold courts and meetings of Commissioners of Sewers at any place not being a greater distance than ten miles from any part of the limits or district within their jurisdiction under such Commission.

Commissioners of Sewers to hold meetings.

12. And be it enacted and declared, that in all cases when it hath happened or may hereafter happen that a sufficient number of Commissioners of Sewers to constitute a court or meeting shall not have met or shall not meet on the day appointed for holding any such court or meeting, and in all cases where any such court or meeting shall not have been or shall not be duly adjourned by the majority of Commissioners present thereat, it shall be lawful for any one or more of the Commissioners named in such Commission, by some writing under his or their hands, to appoint a court or meeting of such Commissioners to be holden at such time and place as he or they may think fit, of which court or meeting ten clear days notice shall be given by advertisement inserted in some newspaper circulated in the county into which such Commission shall run, and when the same shall run into more than one county, then in some newspaper circulated in each of such counties, and that the majority of Commissioners present at any court or meeting (notwithstanding the whole number present be less than six) may adjourn and are hereby authorised and empowered to adjourn the same respectively to any future day and to such place as to them may seem fit, and that the Commissioners present at any court or meeting so appointed as aforesaid, or at any such adjourned court or meeting as aforesaid (the whole number present not being less than six), or the majority of them, shall and may exercise and perform all the powers, authorities and duties vested in such Commissioners under or by virtue of any Commission of Sewers.

Regulating meetings of Commissioners of Sewers.

(a) This section is repealed by the Statute Law Rev. Act, 1874 (No 2), incompetency to give evidence on the ground of interest having been generally abolished, 6 & 7 Vic. c. 85 ; 16 & 17 Vic. c. 83.

Saving powers of Courts of Sewers under recited Acts.

13. And be it enacted, that nothing in this Act contained shall prevent any Court of Sewers from executing all or any of the powers and provisions usually heretofore exercised under or by virtue of the said recited Acts, or any or either of them, or the law of Sewers of old time accustomed.

Indemnities &c. of 3 & 4 W. IV. c. 22, extended to this Act.

14. And be it enacted, that all indemnities, immunities and liabilities given to or imposed upon Commissioners of Sewers and other persons in and by the said recited Act passed in the third and fourth years of his said late Majesty King William the Fourth shall be deemed and construed to extend to all persons acting in the execution of this Act.

This Act not to prejudice any local Act.

15. And be it enacted, that nothing in this Act contained shall extend or be construed to extend to affect, alter, abridge or interfere with any local or private Act of Parliament for sewers concerning any county, city, town, district, lands or limit, or any Commission of Sewers in the county of Middlesex, within the distance of ten miles from the Royal Exchange, in the City of London, except such parts of the said county as may lie within any Commission of Sewers for the county of Essex; or to affect, alter, abridge or interfere with any navigable river, canal, port or harbour under the management or power of any Commissioners, trustees or proprietors by virtue of any local or private Act of Parliament; or to affect, alter, abridge or interfere with any charter, law, usage or custom in or concerning Romney Marsh in Kent, or the Great Level of the Fens, called Bedford level, or any lands, banks, waters, water-courses, sluices, bridges, drains or works belonging to or under the jurisdiction, power or control of the Commissioners of the North Level and Portsand, in the counties of Cambridge, Northampton and Lincoln, or of the Commissioners of the Nene outfall, in the counties of Cambridge, Lincoln and Norfolk, or of their Committees respectively.

Saving rights of the City of London.

16. [And be it enacted, that nothing in this Act contained shall extend or be construed to extend to repeal or in anywise affect, alter, abridge, or interfere with the Commissioners of Sewers of the City of London and liberties thereof, or the rights, powers, or privileges of the Mayor and Commonalty and citizens of the City of London, in relation to the sewers, drains, vaults and bridges within the said city or liberties, or any Act or Acts heretofore passed for making, amending, defending, widening, altering or cleansing the said sewers, drains, vaults and bridges within the said city and liberties (a)].

Guarding the powers of the Commissioners of Sewers for Westminster, &c.

17. [Provided always, and be it enacted, that nothing in this Act contained shall prejudice, diminish, alter, limit, interfere with, take away, control or suspend, or be held or construed to prejudice, diminish, alter, limit, interfere with, take away, control or suspend any of the rights, privileges, jurisdictions, powers and authorities vested in or belonging to the Commissioners of Sewers for the City and liberty of Westminster, and part of the county of Middlesex, but that all such rights, privileges, juris-

(a) Repealed by Stat. Law, Rev. Act, 1874 (No. 2).

dictions, powers and authorities shall be as good, valid and effectual as if this Act had not been passed (a).]

18. Provided always, and be it enacted, that nothing in this Act contained shall extend or be construed to extend to abridge, invalidate, lessen or diminish, alter or take away any of the rights, powers, privileges and authorities vested in the governor, bailiffs, and commonalty of the Company of Conservators of the Great Level of the Fens called Bedford Level, or in the governor, bailiffs and conservators of the Bedford Level Corporation, by virtue of an Act passed in the fifteenth year of the reign of King Charles the Second, intituled, "An Act for Settling the Drainage of the Great Level of the Fens called Bedford Levels, or by any other Act, statute or charter, law of sewers, or otherwise howsoever; but that all rights, powers, and authorities which are now vested in the said governor, bailiffs and commonalty, or in the said governor, bailiffs and conservators, and in every or any of them, shall for ever hereafter remain, continue and be in the said governor, bailiffs and commonalty, and in the said governor, bailiffs and conservators, and every of them, as fully and amply to all intents and purposes as if this Act had not been passed.

Saving rights of Bedford Level Corporation.

8 VIC. c. 18.

An Act for consolidating in one Act certain provisions usually inserted in Acts authorising the taking of lands for undertakings of a public nature.

[8th May, 1845.]

WHEREAS it is expedient to comprise in one general Act sundry provisions usually introduced into Acts of Parliament relative to the acquisition of lands required for undertakings or works of a public nature, and to the compensation to be made for the same, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: May it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most excellent Majesty, by and with the advice of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that this Act shall apply to every undertaking authorised by any Act which shall hereafter be passed, and which shall authorise the purchase or taking of lands for such undertaking, and this Act shall be incorporated with such Act; and all clauses and provisions of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other Act, which shall be incorporated with such Act, form part of such Act, and be construed together therewith as forming one Act.

Act to apply to all undertakings authorised by Acts hereafter to be passed.

(a) Repealed by Stat. Law. Rev. Act, 1874 (No. 2).

- Interpretations in this Act: And with respect to the construction of this Act and of Acts to be incorporated therewith, be it enacted as follows :
- “Special Act:” 2. The expression “the special Act,” used in this Act, shall be construed to mean any Act which shall hereafter be passed which shall authorise the taking of lands for the undertaking to which the same relates, and with which this Act shall be so incorporated as aforesaid; and the
- “prescribed:” word “prescribed” used in this Act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word shall occur shall be construed as if, instead of the word “prescribed,” the expression “prescribed for that purpose in the special Act”
- “the Works:” had been used; and the expression “the works” or “the undertaking” shall mean the works or undertaking, of whatever nature, which shall by the special Act be authorised to be executed; and the expression
- “Promoters of the Undertaking.” “the promoters of the undertaking” shall mean the parties, whether company, undertakers, Commissioners, trustees, corporations, or private persons, by the special Act empowered to execute such works or undertaking.
- Interpretations in this and the Special Act: 3. The following words and expressions, both in this and the special Act, shall have the several meanings hereby assigned to them, unless there be something either in the subject or context repugnant to such construction; that is to say,
- Number: Words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number:
- Gender: Words importing the masculine gender only shall include females:
- “Lands:” The word “lands” shall extend to messuages, lands, tenements and hereditaments of any tenure:
- “Lease:” The word “lease” shall include an agreement for a lease:
- “Month:” The word “month” shall mean calendar month:
- “Superior Courts:” The expression “superior Courts” shall mean Her Majesty’s superior Courts of Record at Westminster or Dublin, as the case may require:
- “Oath:” The word “oath” shall include affirmation in the case of quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath:
- “County:” The word “county” shall include any riding or other like division of a county, and shall also include county of a city or county of a town:
- “the Sheriff” The word “sheriff” shall include under sheriff, or other legally competent deputy; and where any matter in relation to any lands is required to be done by any sheriff, or by any clerk of the peace, the expression “the sheriff,” or the expression “the clerk of the peace,” shall in such case be construed to mean
- the Clerk of the Peace

the sheriff or the clerk of the peace of the county, city, borough, liberty, cinque port, or place where such lands shall be situate; and if the lands in question, being the property of one and the same party, be situate not wholly in one county, city, borough, liberty, cinque port, or place, the same expression shall be construed to mean the sheriff or clerk of the peace of any county, city, borough, liberty, cinque port or place where any part of such lands shall be situate.

The word "justices" shall mean justices of the peace acting for the county, city, liberty, cinque port, or place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter; and where such matter shall arise in respect of lands being the property of one and the same party, situate not only in any one county, city, borough, liberty, cinque port or place, the same shall mean a justice acting for the county, city, borough, liberty, cinque port or place where any part of such lands shall be situate, and who shall not be interested in such matter; and where any matter shall be authorised or required to be done by two justices, the expression "two justices" shall be understood to mean two justices assembled and acting together:

"Two justices:"

Where under the provisions of this or the special Act or any Act incorporated therewith, any notice shall be required to be given to the owner of any lands, or where any Act shall be authorised or required to be done with the consent of any such owner, the word "owner" shall be understood to mean any person or corporation, who, under the provisions of this or the special Act, would be enabled to sell and convey lands to the promoters of the undertaking:

"Owner:"

The expression "the Bank" shall mean the Bank of England where the same shall relate to moneys to be paid or deposited in respect of lands situate in England, and shall mean the Bank of Ireland, where the same shall relate to moneys to be paid or deposited in respect of lands situate in Ireland.

"the Bank:"

4. And be it enacted that in citing this Act in other Acts of Parliament and in legal instruments, it shall be sufficient to use the expression "The Lands Clauses Consolidation Act, 1845."

Short Title of the Act.

5. And whereas it may be convenient in some cases to incorporate with Acts of Parliament hereafter to be passed some portion only of the provisions of this Act: Be it therefore enacted that, for the purpose of making any such incorporation, it shall be sufficient in any such Act to enact that the clauses of this Act with respect to the matter so proposed to be incorporated (describing such matter as it is described in this Act in the words introductory to the enactment with respect to such matter) shall be incorporated with such Act, and thereupon all the clauses and provisions of this Act with respect to the matter so incorporated

Form in which portions of this Act may be incorporated with other Acts.

shall, save as so far as they shall be expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such Act shall relate.

And with respect to the purchase of lands by agreement, be it enacted as follows :

Power to purchase lands by agreement.

6. Subject to the provisions of this and the special Act it shall be lawful for the promoters of the undertaking to agree with the owners of any lands by the special Act authorised to be taken, and which shall be required for the purposes of such Act, and with all parties having any estate or interest in such lands or by this or the special Act enabled to sell and convey the same, for the absolute purchase, for a consideration in money, of any such lands, or such parts thereof as they shall think proper, and of all estates and interests in such lands of what kind soever.

Parties under disability enabled to sell and convey.

7. It shall be lawful for all parties, being seised, possessed of, or entitled to any such lands, or any estate or interest therein, to sell and convey or release the same to the promoters of the undertaking, and to enter into all necessary agreements for that purpose ; and particularly it shall be lawful for all or any of the following parties so seised, possessed or entitled as aforesaid, so to sell, convey or release (that is to say), all corporations, tenants in tail or for life, married women seised in their own right or entitled to dower, guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower, or to any lease for life, or for lives and years, or for years or any less interest ; and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties, other than married women entitled to dower, or lessees for life, or for lives and years, or for years, or for any less interest, not only on behalf of themselves and their respective heirs, executors, administrators and successors, but also for and on behalf of every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such married women, whether they be of full age or not, as if they were sole and of full age, and as to such guardians, on behalf of their wards, and as to such committees, on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics and idiots respectively could have exercised the same power under the authority of this or the special Act if they had respectively been under no disability, and as to such trustees, executors and administrators, on behalf of their cestuique trusts, whether infants, issue unborn, lunatics, femmes covert, or other persons, and that to the same extent as such cestuique trusts respectively could have exercised the same powers under the authority of this and the special Act if they had respectively been under no disability.

8. The power hereinafter given to enfranchise copyhold lands, as well as every other power required to be exercised by the lord of any manor pursuant to the provisions of this or the special Act, or any Act incorporated therewith, and the power to release lands from any rent, charge, or incumbrance, and to agree for the apportionment of any such rent, charge, or incumbrance, shall extend to and may lawfully be exercised by every party hereinbefore enabled to sell and convey or release lands to the promoters of the undertaking.

Partie under disability to exercise other powers.

9. The purchase-money or compensation to be paid for any lauds to be purchased or taken from any party under any disability or incapacity, and not having power to sell or convey such lands except under the provisions of this or the special Act, and the compensation to be paid for any permanent damage or injury to any such lands, shall not, except where the same shall have been determined by the verdict of a jury, or by arbitration, or by the valuation of a surveyor appointed by two justices under the provision hereinafter contained, be less than shall be determined by the valuation of two able practical surveyors, one of whom shall be nominated by the promoters of the undertaking, and the other by the other party, and if such two surveyors cannot agree in the valuation, then by such third surveyor as any two justices shall, upon application of either party, after notice to the other party, for that purpose nominate; and each of such two surveyors if they agree, or if not then the surveyor nominated by the said justices, shall annex to the valuation a declaration in writing, subscribed by them or him, of the correctness thereof; and all such purchase-money or compensation shall be deposited in the bank for the benefit of the parties interested, in manner hereinafter mentioned.

Amount of compensation in case of parties under disability to be ascertained by valuation, and paid into the bank.

10. It shall be lawful for any person seised in fee of, or entitled to dispose of absolutely for his own benefit, any lands authorised to be purchased for the purposes of the special Act to sell and convey such lands or any part thereof unto the promoters of the undertaking, in consideration of an annual rent-charge payable by the promoters of the undertaking; but, except as aforesaid, the consideration to be paid for the purchase of any such lands, or for any damage done thereto shall be in a gross sum (a).

Where vendor absolutely entitled, lands may be sold on chief rents.

11. The yearly rents reserved by any such conveyance shall be charged on the tolls or rates, if any, payable under the special Act, and shall be otherwise secured in such manner as shall be agreed between the parties, and shall be paid by the promoters of the undertaking as such rents become payable; and if at any time any such rents be not paid within thirty days after they so become payable, and after demand thereof in writing, the person to whom any such rent shall be payable may either recover the same from the promoters of the undertaking, with costs of suit, by action of debt in any of the Superior Courts, or it shall be lawful for him to levy the same by distress of the goods and chattels of the promoters of the undertaking.

Payment of rents to be charged on tolls.

(a) So much of this section as provides that, save in the case of lands of which any person is seised in fee or entitled to dispose absolutely for his own benefit, the consideration to be paid for any lands or for any damage done thereto shall be in a gross sum, is repealed by 23 & 24 Vic. c. 106, s. 1. And the 2nd section of the same Act extends sections 10 and 11 of 8 Vic. c. 18, as to power to sell, &c., lands for an annual rent-charge and to recover the same, to all sales, &c., where parties are under disability.

Power to purchase lands required for additional accommodation.

12. In case the promoters of the undertaking shall be empowered by the special Act to purchase lands for extraordinary purposes, it shall be lawful for all parties who, under the provisions hereinbefore contained, would be enabled to sell and convey lands, to sell and convey the lands so authorised to be purchased for extraordinary purposes.

Authority to sell and re-purchase such lands.

13. It shall be lawful for the promoters of the undertaking to sell the lands which they shall have so acquired for extraordinary purposes, or any part thereof, in such manner, and for such considerations, and to such persons as the promoters of the undertaking may think fit, and again to purchase other lands for the like purposes, and afterwards sell the same, and so from time to time; but the total quantity of land to be held at any one time by the promoters of the undertaking, for the purposes aforesaid, shall not exceed the prescribed quantity.

Restraint on purchase from incapacitated persons.

14. The promoters of the undertaking shall not, by virtue of the power to purchase land for extraordinary purposes, purchase more than the prescribed quantity from any party under legal disability, or who would not be able to sell and convey such lands except under the powers of this and the special Act; and if the promoters of the undertaking purchase the said quantity of land from any party under such legal disability, and afterwards sell the whole or any part of the land so purchased, it shall not be lawful for any party being under legal disability to sell to the promoters of the undertaking any other lands in lieu of the land so sold or disposed of by them.

Municipal corporations not to sell without the approbation of the treasury.

15. Nothing in this or the special Act contained shall enable any municipal corporation to sell for the purposes of the special Act, without the approbation of the Commissioners of Her Majesty's Treasury of the United Kingdom of Great Britain and Ireland, or any three of them, any lands which they could not have sold without such approbation before the passing of the special Act, other than such lands as the Company are by the powers of this or the special Act empowered to purchase or take compulsorily.

Capital to be subscribed before compulsory powers of purchase put in force.

And with respect to the purchase and taking of lands otherwise than by agreement, be it enacted as follows:

16. (a) Where the undertaking is intended to be carried into effect by means of a capital to be subscribed by the promoters of the undertaking, the whole of the capital or estimated sum for defraying the expenses of the undertaking shall be subscribed under contract binding the parties thereto, their heirs, executors and administrators, for the payment of the several sums by them respectively subscribed, before it shall be lawful to put in force any of the powers of this or the special Act, or any Act incorporated therewith, in relation to the compulsory taking of land for the purposes of the undertaking.

A certificate of two justices to be evidence that the capital has been subscribed.

17. (a) A certificate under the hands of two justices, certifying that the whole of the prescribed sum has been subscribed, shall be sufficient

(a) These sections are not incorporated in the Land Drainage Act, 1861 (24 & 25 Vic. c. 133), *see s. 28*.

evidence thereof, and on the application of the promoters of the undertaking, and the production of such evidence as such justices think proper and sufficient, such justices shall grant such certificate accordingly.

18. When the promoters of the undertaking shall require to purchase or take any of the lands which by this or the special Act, or any Act incorporated therewith, they are authorised to purchase or take, they shall give notice thereof to all the parties interested in such lands, or to the parties enabled by this Act to sell and convey or release the same, or such of the said parties as shall, after diligent inquiry, be known to the promoters of the undertaking, and by such notice shall demand from such parties the particulars of their estate and interest in such lands, and of the claims made by them in respect thereof; and every such notice shall state the particulars of the land so required, and that the promoters of the undertaking are willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the works.

Notice intention take lands.

19. All notices required to be served by the promoters of the undertaking upon the parties interested in or entitled to sell any such lands shall either be served personally on such parties or left at their last usual place of abode, if any such can after diligent inquiry be found, and in case any such parties shall be absent from the United Kingdom, or cannot be found after diligent inquiry, shall also be left with the occupier of such lands, or if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

Service of notices on owners and occupiers of lands. (a)

20. If any such party be a corporation aggregate such notice shall be left at the principal office of business of such corporation, or, if no such office can after diligent inquiry be found, shall be served on some principal member, if any, of such corporation, and such notice shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

Service of (a) notice on a corporation aggregate.

21. If for twenty-one days after the service of such notice, any such party shall fail to state the particulars of his claim in respect of any such land, or to treat with the promoters of the undertaking in respect thereof, or if such party and the promoters of the undertaking shall not agree as to the amount of the compensation to be paid by the promoters of the undertaking for the interest in such lands belonging to such party, or which he is by this or the special Act enabled to sell, or for any damage that may be sustained by him reason of the execution of the works, the amount of such compensation shall be settled in the manner hereinafter provided for settling cases of disputed compensation.

If parties fail to treat, or in case of dispute, question to be settled as after mentioned.

22. If no agreement be come to between the promoters of the undertaking and the owners of or parties by this Act enabled to sell and convey or release any lands taken or required for or injuriously affected by the

Disputes as to compensation where the amount claimed does not exceed £50 to be settled by two justices.

(a) Provisions relating to the manner of serving notices are excluded from the Land Drainage Act, 1861 (24 & 25 Vic. c. 133), see s. 28.

execution of the undertaking, or any interest in such lands as to the value of such lands or of any interest therein, or as to the compensation to be made in respect thereof, and if in any such case the compensation claimed shall not exceed fifty pounds, the same shall be settled by two justices.

Compensation exceeding £50 to be settled by arbitration or jury, at the option of the party claiming compensation.

23. If the compensation claimed or offered in any such case shall exceed fifty pounds, and if the party claiming compensation desire to have the same settled by arbitration, and signify such desire by notice in writing to the promoters of the undertaking, before they have issued their warrant to the sheriff to summon a jury in respect of such lands, under the provisions hereinafter contained, stating in such notice the nature of the interest in respect of which such party claims compensation, and the amount of the compensation so claimed, the same shall be so settled accordingly; but unless the party claiming compensation shall as aforesaid signify his desire to have the question of such compensation settled by arbitration, or if when the matter shall have been referred to arbitration the arbitrators or their umpire shall for three months have failed to make their or his award, or if no final award shall be made, the question of such compensation shall be settled by the verdict of a jury, as hereinafter provided.

Method of proceeding for settling disputes as to compensation by justices.

24. It shall be lawful for any justice, upon the application of either party with respect to any question of disputed compensation by this or the special Act, or any Act incorporated therewith, authorised to be settled by two justices, to summon the other party to appear before two justices, at a time and place to be named in the summons, and upon the appearance of such parties, or, in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such justices to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, upon oath, and the costs of every such inquiry shall be in the discretion of such justices, and they shall settle the amount thereof.

Appointment of arbitrator when questions are to be determined by arbitration.

25. When any question of disputed compensation by this or the special Act, or any Act incorporated therewith, authorised or required to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall nominate and appoint an arbitrator, to whom such dispute shall be referred; and every appointment of an arbitrator shall be made on the part of the promoters of the undertaking under the hands of the said promoters, or any two of them, or of their secretary or clerk, and on the part of any other party under the hand of such party, or if such party be a corporation aggregate under the common seal of such corporation; and such appointment shall be delivered to the arbitrator, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revo-

cation: and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing, in which shall be stated the matter so required to be referred to arbitration, shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine matters which shall be in dispute, and in such case the award or determination of such single arbitrator shall be final.

26. If before the matters so referred shall be determined, any arbitrator appointed by either party die, or become incapable, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place, and if, for the space of seven days after notice in writing from the other party for that purpose, he fail to do so, the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death or disability as aforesaid.

Vacancy of arbitrator to be supplied.

27. Where more than one arbitrator shall have been appointed such arbitrators shall, before they enter upon the matters referred to them, nominate, and appoint by writing under their hands, an umpire to decide on any such matters on which they shall differ, or which shall be referred to him under the provisions of this or the special Act, and if such umpire shall die, or become incapable to act, they shall forthwith after such death or incapacity appoint another umpire in his place, and the decision of every such umpire on the matters so referred to him shall be final.

Appointment umpire

28. If in either of the cases aforesaid the said arbitrators shall refuse, or shall, for seven days after request of either party to such arbitration, neglect to appoint an umpire, the Board of Trade, in any case in which a railway company shall be one party to the arbitration, and two justices in any other case, shall, on the application of either party to such arbitration, appoint an umpire, and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special Act, shall be final.

Board of Trade empowered to appoint an umpire on neglect of the arbitrators, in case of railway companies.

29. If, when a single arbitrator shall have been appointed, such arbitrator shall die or become incapable to act before he shall have made his award, the matters referred to him shall be determined by arbitration under the provisions of this or the special Act in the same manner as if such arbitrator had not been appointed.

In case of death of single arbitrator the matter to begin *de novo*.

30. If, where more than one arbitrator shall have been appointed, either of the arbitrators refuse or for seven days neglect to act, the other arbitrator may proceed *ex parte*, and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

If either arbitrator refuse to act the other to proceed *ex parte*.

If arbitrators fail to make their award within twenty-one days the matter to go to the umpire.

31. If where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time (if any) as shall have been appointed for that purpose by both such arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid.

Power of arbitrators to call for books, &c.

32. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

Arbitrator or umpire to make a declaration.

33. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him, he shall in the presence of a justice make and subscribe the following declaration; that is to say,

“I, *A. B.*, do solemnly and sincerely declare that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the Act [naming the special Act].
A. B.”

“Made and subscribed in the presence of _____”

And such declaration shall be annexed to the award when made; and if any arbitrator or umpire having made such declaration shall wilfully act contrary thereto he shall be guilty of a misdemeanour.

Costs of arbitration how to be borne.

34. All the costs of any such arbitration, and incident thereto, to be settled by the arbitrators, shall be borne by the promoters of the undertaking, unless the arbitrators shall award the same or a less sum than shall have been offered by the promoters of the undertaking, in which case each party shall bear his own costs incident to the arbitration, and the costs of the arbitrators shall be borne by the parties in equal proportions.

Award to be delivered to the promoters of the undertaking.

35. The arbitrators shall deliver their award in writing to the promoters of the undertaking, and the said promoters shall retain the same and shall forthwith, on demand, at their own expense, furnish a copy thereof to the other party to the arbitration, and shall at all times, on demand, produce the said award, and allow the same to be inspected or examined by such party or any person appointed by him for that purpose.

Submission may be made a rule of court.

36. The submission to any such arbitration may be made a rule of any of the Superior Courts, on the application of either of the parties.

Award not void through error in form.

37. No award made with respect to any question referred to arbitration under the provisions of this or the special Act shall be set aside for irregularity or error in matter of form.

Promoters of the undertaking to give notice before

38. Before the promoters of the undertaking shall issue their warrant for summoning a jury for settling any case of disputed compensation they shall give not less than ten days' notice to the other party of their intention

to cause such jury to be summoned, and in such notice the promoters of the undertaking shall state what sum of money they are willing to give for the interest in such lands sought to be purchased by them from such party, and for the damage to be sustained by him for the execution of such works.

39. In every case in which any such question of disputed compensation shall be required to be determined by the verdict of a jury, the promoters of the undertaking shall issue their warrant to the sheriff, requiring him to summon a jury for that purpose, and such warrant shall be under the common seal of the promoters of the undertaking if they be a corporation, or if they be not a corporation under the hands and seals of such promoters or any two of them; and if such sheriff be interested in the matter in dispute such application shall be made to some coroner of the county in which the lands in question, or some part thereof, shall be situate, and if all the coroners of such county be so interested, such application may be made to some person having filled the office of sheriff or coroner in such county, and who shall be then living there, and who shall not be interested in the matter in dispute; and with respect to the persons last mentioned preference shall be given to one who shall have most recently served either of the said offices; and every ex-sheriff, coroner, or ex-caroner shall have power, if he think fit, to appoint a deputy or assessor.

40. Throughout the enactments contained in this Act relating to the reference to a jury, where the term "sheriff" is used, the provisions applicable thereto shall be held to apply to every coroner or other person lawfully acting in his place, and in every case in which any such warrant shall have been directed to any other person than the sheriff, such sheriff shall, immediately on receiving notice of the delivery of the warrant, deliver over, on application for that purpose, to the person to whom the same shall have been directed, or to any person appointed by him to receive the same, the jurors' book and special jurors' list belonging to the county where the lands in question shall be situate.

41. Upon the receipt of such warrant the sheriff shall summon a jury of twenty-four indifferent persons, duly qualified to act as common jurymen in the Superior Courts, to meet at a convenient time and place to be appointed by him for that purpose, such time not being less than fourteen nor more than twenty-one days after the receipt of such warrant, and such place not being more than eight miles distant from the lands in question, unless by consent of the parties interested, and he shall forthwith give notice to the promoters of the works of the time and place so appointed by him.

42. Out of the jurors appearing upon such summons a jury of twelve persons shall be drawn by the sheriff, in such manner as juries for trials of issues joined in the Superior Courts are by law required to be drawn, and if a sufficient number of jurymen do not appear in obedience to such summons the sheriff shall return other indifferent men duly qualified as

aforesaid, of the bystanders, or others that can speedily be procured, to make up the jury to the number aforesaid; and all parties concerned may have their lawful challenges against any of the jurymen, but no such party shall challenge the array.

Sheriff to
preside,
witnesses to be
summoned.

43. The sheriff shall preside on the said inquiry, and the party claiming compensation shall be deemed the plaintiff, and shall have all such rights and privileges as the plaintiff is entitled to in the trial of actions at laws, and if either party so request in writing, the sheriff shall summon before him any person considered necessary to be examined as a witness touching the matters in question, and on the like request the sheriff shall order the jury or any six or more of them, to view the place or matter in controversy, in like manner as views may be had in the trial of actions in the Superior Courts.

Penalty on
sheriff and jury
for default.

44. If the sheriff make default in any of the matters hereinbefore required to be done by him in relation to any such trial or inquiry, he shall forfeit fifty pounds for every such offence, and such penalty shall be recoverable by the promoters of the undertaking by action in any of the Superior Courts; and if any person summoned and returned upon any jury under this or the special Act, whether common or special, do not appear, or if appearing, he refuse to make oath, or in any other manner unlawfully neglect his duty, he shall, unless he show reasonable excuse to the satisfaction of the sheriff, forfeit a sum not exceeding ten pounds, and every such penalty payable by a sheriff or jurymen shall be applied in satisfaction of the costs of the inquiry, so far as the same will extend; and, in addition to the penalty hereby imposed, every such jurymen shall be subject to the same regulations, pains, and penalties as if such jury had been returned for the trial of an issue joined in any of the Superior Courts.

Penalty on
witnesses
making default.

45. If any person duly summoned to give evidence upon any such inquiry, and to whom a tender of his reasonable expenses shall have been made, fail to appear at the time and place specified in the summons without sufficient cause, or if any person, whether summoned or not, who shall appear as a witness refuse to be examined on oath touching the subject matter in question, every person so offending shall forfeit to the party aggrieved a sum not exceeding ten pounds.

Notice of
inquiry.

46. Not less than ten days' notice of the time and place of the inquiry shall be given in writing by the promoters of the undertaking to the other party.

If the party
make default
the inquiry not
to proceed.

47. If the party claiming compensation shall not appear at the time appointed for the inquiry, such inquiry shall not be further proceeded in, but the compensation to be paid shall be such as shall be ascertained by a surveyor appointed by two justices in manner hereinafter provided.

Jury to be
sworn.

48. Before the jury proceed to inquire of and assess the compensation or damage in respect of which their verdict is to be given, they shall make

oath that they will truly and faithfully inquire of and assess such compensation or damage, and the sheriff shall administer such oaths, as well as the oaths of all persons called upon to give evidence.

49. Where such inquiry shall relate to the value of lands to be purchased, and also to compensation claimed for injury done or to be done to the lands held therewith, the jury shall deliver their verdict separately for the sum of money to be paid for the purchase of the lands required for the works, or of any interest therein belonging to the party with whom the question of disputed compensation shall have arisen, or which, under the provisions herein contained, he is enabled to sell or convey, and for the sum of money to be paid by way of compensation for the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such lands by the exercise of the powers of this or the special Act, or any Act incorporated therewith.

Sums to be paid for purchase of lands and for damage to be assessed separately.

50. The sheriff before whom such inquiry shall be held, shall give judgment for the purchase-money or compensation assessed by such jury, and the verdict and judgment shall be signed by the sheriff, and being so signed shall be kept by the clerk of the peace among the records of the General or Quarter Sessions of the county in which the lands or any part thereof shall be situate in respect of which such purchase-money or compensation shall have been awarded; and such verdicts and judgments shall be deemed records, and the same or true copies thereof shall be good evidence in all courts and elsewhere, and all persons may inspect the said verdicts and judgments, and may have copies thereof or extracts therefrom, on paying for each inspection thereof one shilling, and for every one hundred words copied or extracted therefrom sixpence, which copies or extracts the clerk of the peace is hereby required to make out, and to sign and certify the same to be true copies.

Verdict and judgment to be recorded.

51. On every such inquiry before a jury, where the verdict of the jury shall be given for a greater sum than the sum previously offered by the promoters of the undertaking; all the costs of such inquiry shall be borne by the promoters of the undertaking,*but if the verdict of the jury be given for the same or a less sum than the sum previously offered by the promoters of the undertaking, or if the owner of the lands shall have failed to appear at the time and place appointed for the inquiry, having received due notice thereof, one-half of the costs of summoning, impanelling, and returning the jury, and of taking the inquiry and recording the verdict and judgment thereon, in case such verdict shall be taken, shall be defrayed by the owner of the lands, and the other half by the promoters of the undertaking, and each party shall bear his own costs, other than as aforesaid, incident to such inquiry.

Costs of the inquiry how to be borne.

52. The costs of any such inquiry shall, in case of difference, be settled by one of the Masters of the Court of Queen's Bench of England or Ireland, according as the lands are situate, on the application of either party,

Particulars of the costs.

and such costs shall include all reasonable costs, charges, and expenses incurred in summoning, impanelling, and returning the jury, taking the inquiry, the attendance of witnesses, the employment of counsel and attorneys, recording the verdict and judgment thereon, and otherwise incident to such inquiry.

Payment of costs.

53. If any such costs shall be payable by the promoters of the undertaking, and if within seven days after demand such costs be not paid to the party entitled to receive the same, they shall be recoverable by distress, and on any application to any justice he shall issue his warrant accordingly; and if any such costs shall be payable by the owner of the lands or any interest therein, the same may be deducted and retained by the promoters of the undertaking, out of any money awarded by the jury to such owner, or determined by the valuation of a surveyor under provision hereinafter contained; and the payment or deposit of the remainder, if any, of such money shall be deemed payment and satisfaction of the whole thereof, or if such costs shall exceed the amount of the money so awarded or determined, the excess shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly.

Special jury to be summoned at the request of either party.

54. If either party desire any such question of disputed compensation as aforesaid to be tried before a special jury, such question shall be so tried, provided that notice of such desire, if coming from the other party, be given to the promoters of the undertaking before they have issued their warrant to the sheriff; and for that purpose the promoters of the undertaking shall by their warrant to the sheriff require him to nominate a special jury for such trial; and thereupon the sheriff shall, as soon as conveniently may be after the receipt by him of such warrant, summon both the parties to appear before him, by themselves or their attorneys, at some convenient time and place appointed by him for the purpose of nominating a special jury (not being less than five nor more than eight days from the service of such summons); and at the place and time so appointed the sheriff shall proceed to nominate and strike a special jury, in the manner in which such juries shall be required by the laws for the time being in force to be nominated or struck by the proper officers of the Superior Courts, and the sheriff shall appoint a day, not later than the eighth day after striking such jury for the parties or their agents to appear before him to reduce the number of such jury, and thereof shall give four days' notice to the parties; and on the day so appointed the sheriff shall proceed to reduce the said special jury to the number of twenty, in the manner used and accustomed by the proper officers of the Superior Courts.

Deficiency of special jurymen.

55. The special jury on such inquiry shall consist of twelve of the said twenty who shall first appear on the names being called over, the parties having their lawful challenges against any of the said jurymen; and if a full jury do not appear, or if after such challenges a full jury do not remain, then, upon the application of either party, the sheriff shall add to the list of such jury the names of any other disinterested persons qualified to act as special or common jurymen, who shall not

have been previously struck off the aforesaid list, and who may then be attending the court, or can speedily be procured, so as to complete such jury, all parties having their lawful challenges against such persons; and the sheriff shall proceed to the trial and adjudication of the matters in question by such jury, and such trial shall be attended in all respects with the like incidents and consequences, and the like penalties shall be applicable, as hereinbefore provided in the case of a trial by common jury.

56. Any other inquiry than that for the trial of which such special jury may have been struck and reduced as aforesaid may be tried by such jury, provided the parties thereto respectively shall give their consent to such trial.

Other inquiries to absent parties to be determined by a surveyor appointed by two justices.

57. No juryman shall, without his consent, be summoned or required to attend any such proceeding as aforesaid more than once in any year.

Juryman not to attend more than once a year.

58. The purchase-money or compensation to be paid for any lands to be purchased or taken by the promoters of the undertaking from any party who, by reason of absence from the kingdom, is prevented from treating, or who cannot after diligent inquiry be found, or who shall not appear at the time appointed for the inquiry before the jury as hereinbefore provided for, after due notice thereof, and the compensation to be paid for any permanent injury to such lands, shall be such as shall be determined by the valuation of such able practical surveyor as two justices shall nominate for that purpose as hereinafter mentioned.

Compensation to absent parties to be determined by a surveyor appointed by two justices.

59. Upon application by the promoters of the undertaking to two justices, and upon such proof as shall be satisfactory to them that any such party is, by reason of absence from the kingdom, prevented from treating, or cannot after diligent inquiry be found, or that any such party failed to appear on such inquiry before a jury as aforesaid, after due notice to him for that purpose, such justices shall, by writing under their hands, nominate an able practical surveyor for determining such compensation as aforesaid, and such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof.

Two justices to nominate a surveyor.

60. Before such surveyor shall enter upon the duty of making such valuation as aforesaid he shall, in the presence of such justices, or one of them, make and subscribe the declaration following at the foot of such nomination; that is to say,

Declaration to be made by the surveyor.

“I, *A. B.*, do solemnly and sincerely declare, that I will faithfully, impartially and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me.

“*A. B.*

“Made and subscribed in the presence of _____.”
And if any surveyor shall corruptly make such declaration, or having made such declaration, shall wilfully act contrary thereto, he shall be guilty of a misdemeanour.

Valuation, &c. to be produced to the owner of the lands on demand.

61. The said nomination and declaration shall be annexed to the valuation to be made by such surveyor, and shall be preserved, together therewith by the promoters of the undertaking, and they shall at all times produce the said valuation and other documents, on demand, to the owner of the lands comprised in such valuation, and to all other parties interested therein.

Expenses to be borne by promoters.

62. All the expenses of and incident to every such valuation shall be borne by the promoters of the undertaking.

Purchase-money and compensation, how to be estimated.

63. In estimating the purchase-money or compensation to be paid by the promoters of the undertaking in any of the cases aforesaid, regard shall be had by the justices, arbitrators, or surveyors, as the case may be, not only to the value of the land to be purchased or taken by the promoters of the undertaking, but also to the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of the powers of this or the special Act, or any Act incorporated therewith.

Where compensation to absent party has been determined by a surveyor, the party may have the same submitted to arbitration.

64. When the compensation payable in respect of any lands, or any interest therein, shall have been ascertained by the valuation of a surveyor, and deposited in the bank under the provisions herein contained, by reason that the owner of or party entitled to convey such lands or such interest therein as aforesaid could not be found, or was absent from the kingdom, if such owner or party shall be dissatisfied with such valuation, it shall be lawful for him, before he shall have applied to the Court of Chancery for payment or investment of the moneys so deposited under the provisions herein contained by notice in writing to the promoters of the undertaking, to require the question of such compensation to be submitted to arbitration, and thereupon the same shall be so submitted accordingly, in the same manner as in other cases of disputed compensation hereinbefore authorised or required to be submitted to arbitration.

Question to be submitted to the arbitrators.

65. The question to be submitted to the arbitrators in the case last aforesaid shall be, whether the said sum so deposited as aforesaid by the promoters of the undertaking was a sufficient sum, or whether any and what further sum ought to be paid or deposited by them.

If further sum awarded, promoters to pay or deposit same within 14 days.

66. If the arbitrators shall award that a further sum ought to be paid or deposited by the promoters of the undertaking, they shall pay or deposit, as the case may require, such further sum within fourteen days after the making of such award, or in default thereof the same may be enforced by attachment, or recovered with costs by action or suit in any of the Superior Courts.

Costs of the arbitration.

67. If the arbitrators shall determine that the sum so deposited was sufficient, the costs of and incident to such arbitration, to be determined by the arbitrators, shall be in the discretion of the arbitrators, but if the arbitrators shall determine that a further sum ought to be paid or

deposited by the promoters of the undertaking, all the costs of and incident to the arbitration shall be borne by the promoters of the undertaking.

68. If any party shall be entitled to any compensation in respect of any lands, or of any interest therein, which shall have been taken for or injuriously affected by the execution of the works, and for which the promoters of the undertaking shall not have made satisfaction under the provisions of this or the special Act or any Act incorporated therewith, and if the compensation claimed in such case shall exceed the sum of fifty pounds, such party may have the same settled either by arbitration or by the verdict of a jury, as he shall think fit; and if such party desire to have the same settled by arbitration, it shall be lawful for him to give notice in writing to the promoters of the undertaking of such his desire, stating in such notice the nature of the interest in such lands in respect of which he claims compensation, and the amount of the compensation so claimed therein; and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and shall enter into a written agreement for that purpose within twenty-one days after the receipt of any such notice from any party so entitled, the same shall be settled by arbitration in the manner herein provided; or if the party so entitled as aforesaid desire to have such question of compensation settled by jury, it shall be lawful for him to give notice in writing of such his desire to the promoters of the undertaking, stating such particulars as aforesaid, and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and enter into a written agreement for that purpose, they shall, within twenty-one days after the receipt of such notice, issue their warrant to the sheriff to summon a jury for settling the same in the manner herein provided, and in default thereof they shall be liable to pay to the party so entitled as aforesaid the amount of compensation so claimed, and the same may be recovered by him, with costs, by action in any of the Superior Courts.

To be settled by arbitration or jury, at the option of the party claiming compensation.

And with respect to the purchase-money or compensation coming to parties having limited interests, or prevented from treating, or not making title, be it enacted as follows:—

Application of compensation.

69. If the purchase-money or compensation which shall be payable in respect of any lands, or any interest therein, purchased or taken by the promoters of the undertaking from any corporation, tenant for life or in tail, married woman seised in her own right or entitled to dower, guardian, committee of lunatic or idiot, trustee, executor or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same except under the provisions of this or the special Act, or the compensation to be paid for any permanent damage to any such lands, amount to or exceed the sum of two hundred pounds, the same shall be paid into the bank in the name and with the privity of the Accountant-General of the Court of Chancery in England if the same relate to lands

Purchase-money payable to parties under disability amounting to £200 to be deposited in the bank.

in England or Wales, or the Accountant-General of the Court of Exchequer in Ireland if the same relate to lands in Ireland, to be placed to the account there of such Accountant-General, *ex parte* the promoters of the undertaking (describing them by their proper name), in the matter of the special Act (citing it), pursuant to the method prescribed by any Act for the time being in force for regulating moneys paid into the said Courts; and such moneys shall be so deposited until the same shall be applied to some one or more of the following purposes; that it to say,

Application of moneys deposited.

In the purchase or redemption of the land tax, or the discharge of any debt or incumbrance affecting the land in respect of which such money shall have been paid, or affecting other lands settled therewith to the same or the like uses, trusts or purposes; or

In the purchase of other lands to be conveyed, limited and settled upon the like uses, trusts, and purposes, and in the same manner as the lands in respect of which such money shall have been paid stood settled; or

If such money shall be paid in respect of any buildings taken under the authority of this or the special Act, or injured by the proximity of the works, in removing or replacing such buildings or substituting others in their stead, in such manner as the Court of Chancery shall direct; or

In payment to any party becoming absolutely entitled to such money.

Order for application and investment meanwhile.

70. Such money may be so applied as aforesaid upon an order of the Court of Chancery in England or the Court of Exchequer in Ireland, made on the petition of the party who would have been entitled to the rents and profits of the lands in respect of which such money shall have been deposited; and until the money can be so applied it may, upon the like order, be invested by the said Accountant-General in the purchase of three per centum Consolidated or three per centum Reduced Bank Annuities, or in Government or real securities, and the interest, dividends, and annual proceeds thereof paid to the party who would for the time being have been entitled to the rents and profits of the lands.

Sums from £20 to £200 to be deposited or paid to trustees.

71. If such purchase-money or compensation shall not amount to the sum of two hundred pounds, and shall exceed the sum of twenty pounds, the same shall either be paid into the bank, and applied in the manner hereinbefore directed with respect to sums amounting to or exceeding two hundred pounds, or the same may lawfully be paid to two trustees, to be nominated by the parties entitled to the rents or profits of the lands in respect whereof the same shall be payable, such nomination to be signified by writing under the hands of the party so entitled; and in case of the coverture, infancy, lunacy, or other incapacity of the parties entitled to such moneys, such nomination may lawfully be made by their respective husbands, guardians, committees, or trustees; but such last-mentioned

application of the moneys shall not be made unless the promoters of the undertaking approve thereof and of the trustees named for the purpose; and the money so paid to such trustees, and the produce arising therefrom, shall be by such trustees applied in the manner hereinbefore directed with respect to money paid into the bank, but it shall not be necessary to obtain any order of the court for that purpose.

72. If such money shall not exceed the sum of twenty pounds, the same shall be paid to the parties entitled to the rents and profits of the lands in respect whereof the same shall be payable for their own use and benefit, or in case of the coverture, infancy, idiocy, lunacy, or other incapacity of any such parties, then such money shall be paid, for their use, to the respective husbands, guardians, committees, or trustees of such persons.

Sums not exceeding £20 to be paid to parties.

73. All sums of money exceeding twenty pounds, which may be payable by the promoters of the undertaking in respect of the taking, using, or interfering with any lands under a contract or agreement with any person who shall not be entitled to dispose of such lands, or of the interest therein contracted to be sold by him absolutely for his own benefit, shall be paid into the bank or to trustees in manner aforesaid; and it shall not be lawful for any contracting party not entitled as aforesaid to retain to his own use any portion of the sums so agreed or contracted to be paid for or in respect of the taking, using, or interfering with any such lands, or in lieu of bridges, tunnels, or other accommodation works, or for assenting to or not opposing the passing of the Bill authorising the taking of such lands; but all such moneys shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession as in remainder, reversion, or expectancy: provided always, that it shall be in the discretion of the Court of Chancery in England, or the Court of Exchequer in Ireland, or the said trustees, as the case may be, to allot to any tenant for life, or for any other partial or qualified estate, for his own use, a portion of the sum so paid into the bank, or to such trustees as aforesaid, as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works.

All sums payable under contract with persons not absolutely entitled, to be paid into bank.

74. Where any purchase-money or compensation paid into the bank under the provisions of this or the special Act shall have been paid in respect of any lease for a life or lives of years, or for a life or lives and years, or for any estate in lands less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, it shall be lawful for the Court of Chancery in England, or the Court of Exchequer in Ireland, on the petition of any party interested in such money, to order that the same be laid out, invested, accumulated, and paid in such manner as the said court may consider will give to the parties interested in such

Court of Chancery may direct application of money in respect of leases or reversions as they may think just.

money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be.

Upon deposit being made, the owners of the lands to convey, or in default the lands to vest in the promoters of the undertaking upon a deed poll being executed.

75. Upon deposit in the bank in manner hereinbefore provided of the purchase-money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the promoters of the undertaking, under the provisions of this or the special Act or any Act incorporated therewith, the owner of such lands, including in such term all parties by this Act enabled to sell or convey lands, shall, when required so to do by the promoters of the undertaking, duly convey such lands to the promoters of the undertaking, or as they shall direct; and in default thereof; or if he fail to adduce a good title to such lands to their satisfaction, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal, if they be a corporation, or if they be not a corporation under the hands and seals of the promoters, or any two of them, containing a description of the lands in respect of which such default shall be made, and reciting the purchase or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring the fact of such default having been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party between whom and the promoters of the undertaking such agreement shall have been come to, or as between whom and the promoters of the undertaking such purchase-money or compensation shall have been determined by a jury, or by arbitrators, or by a surveyor appointed by two justices as herein provided, and shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking, and as against such parties, and all parties on behalf of whom they are hereinbefore enabled to sell and convey, the promoters of the undertaking shall be entitled to immediate possession of such lands.

Where parties refuse to convey, or do not show title, or cannot be found, the purchase-money to be deposited.

76. If the owner of any such lands purchased or taken by the promoters of the undertaking, or of any interest therein, on the tender of the purchase-money or compensation either agreed or awarded to be paid in respect thereof, refuse to accept the same, or neglect or fail to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the promoters of the undertaking, or if he refuse to convey or release such lands as directed by the promoters of the undertaking, or if any such owner be absent from the kingdom, or cannot after diligent inquiry be found or fail to appear on the inquiry before a jury as herein provided for, it shall be lawful for the promoters of the undertaking to deposit the purchase-money or compensation payable in respect of such lands or any interest therein, in the bank in the name and with the privity of the Accountant-General of the Court of Chancery in England or the

Court of Exchequer in Ireland, to be placed, except in the cases herein otherwise provided for, to his account there, to the credit of the parties interested in such lands (describing them so far as the promoters of the undertaking can do), subject to the control and disposition of the said Court.

77. Upon any such deposit of money as last aforesaid being made the cashier of the bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what and for whose use (described as aforesaid) the same shall have been received, and in respect of what purchase the same shall have been paid in; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters, or any two of them, containing a description of the lands in respect whereof such deposit shall have been made, and declaring the circumstances under which and the names of the parties to whose credit such deposit shall have been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of the parties for whose use and in respect whereof such purchase-money or compensation shall have been deposited shall vest absolutely in the promoters of the undertaking, and as against such parties they shall be entitled to immediate possession of such lands.

Upon deposit being made a receipt to be given, and the lands to vest upon a deed poll being executed.

78. Upon the application by petition of any party making claim to the money so deposited as last aforesaid, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the said Court of Chancery in England or the Court of Exchequer in Ireland may, in a summary way, as to such court shall seem fit, order such money to be laid out or invested in the public funds, or may order distribution thereof, or payment of the dividends thereof, according to the respective estates, titles or interests of the parties making claim to such money or lands, or any part thereof, and may make such other order in the premises as to such court shall seem fit.

Application of moneys so deposited.

79. If any question arise respecting the title to the lands in respect whereof such moneys shall have been so paid or deposited as aforesaid, the parties respectively in possession of such lands, as being the owners thereof, or in receipt of the rents of such lands, as being entitled thereto at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands until the contrary be shown to the satisfaction of the court; and unless the contrary be shown as aforesaid, the parties so in possession and all parties claiming under them or consistently with their possession, shall be deemed entitled to the money so deposited, and to the dividends or interest of the annuities or

Party in possession to be deemed the owner.

securities purchased therewith, and the same shall be paid and applied accordingly.

Costs in cases
of money
deposited.

80. In all cases of moneys deposited in the bank under the provisions of this or the special Act, or an Act incorporated therewith, except where such moneys shall have been so deposited by reason of the wilful refusal of any party entitled thereto to receive the same, or to convey or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out a good title to the land required, it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking (that is to say), the costs of the purchase or taking of the lands, or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for, and the costs of the investment of such moneys in Government or real securities, and of the re-investment thereof in the purchase of other lands, and also the costs of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such moneys shall be invested, and for the payment out of the court of the principal of such moneys or of the securities whereon the same shall be invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants: provided always that the costs of one application only for re-investment in land shall be allowed, unless it shall appear to the Court of Chancery in England or the Court of Exchequer in Ireland that it is for the benefit of the parties interested in the said moneys that the same should be invested in the purchase of lands, in different sums and at different times, in which case it shall be lawful for the court, if it think fit, to order the costs of any such investments to be paid by the promoters of the undertaking.

And with respect to the conveyances of lands, be it enacted as follows :

Form of
conveyances.

81. Conveyances of lands to be purchased under the provisions of this or the special Act, or any Act incorporated therewith, may be according to the forms in the Schedules A and B respectively to this Act annexed, or as near thereto as the circumstances of the case will admit, or by deed in any other form which the promoters of the undertaking may think fit and all conveyances made according to the forms in the said schedules or as near thereto as the circumstances of the case will admit shall be effectual to vest the lands thereby conveyed in the promoters of the undertaking, and shall operate to merge all terms of years attended by express declaration, or by construction of law, on the estate of interest so thereby conveyed, and to bar and to destroy all such estates tail, and all other estates, rights, titles, remainders, reversions, limitations, trusts and interests whatsoever, of and in the lands comprised in such conveyances which shall have been purchased or compensated for by the consideration therein

mentioned; but although terms of years be thereby merged, they shall in equity afford the same protection as if they had been kept on foot, and assigned to a trustee for the promoters of the undertaking to attend the reversion and inheritance.

82. The costs of all such conveyances shall be borne by the promoters of the undertaking, and such costs shall include all charges and expenses incurred, on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands, and of any outstanding terms or interests therein, and of deducing, evidencing, and verifying the title to such lands, terms or interests, and of making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation, deduction and verification of such title. Costs of conveyances.

83. If the promoters of the undertaking and the party entitled to any such costs shall not agree as to the amount thereof such costs shall be taxed by one of the Taxing Masters of the Court of Chancery or by a Master in Chancery in Ireland, or upon an order of the same court, to be obtained upon petition in a summary way by either of the parties; and the promoters of the undertaking shall pay what the said Master shall certify to be due in respect of such costs to the party entitled thereto, or in default thereof the same may be recovered in the same way as any other costs payable under an order of the said court, or the same may be recovered by distress in the manner hereinbefore provided in other cases of costs; and the expense of taxing such costs shall be borne by the promoters of the undertaking, unless upon such taxation one-sixth part of the amount of such costs shall be disallowed, in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed, and the amount thereof shall be ascertained by the said Master, and deducted by him accordingly in his certificate of such taxation. Taxation of costs of conveyances.

And with respect to the entry upon lands by the promoters of the undertaking, be it enacted as follows:

84. (a) The promoters of the undertaking shall not, except by the consent of the owners and occupiers, enter upon any lands which shall be required to be purchased or permanently used for the purposes and under the powers of this or the special Act, until they shall either have paid to every party having any interest in such lands, or deposited in the bank, in the manner herein mentioned, the purchase-money or compensation agreed or awarded to be paid to such parties respectively for their respective interests therein: provided always, that for the purpose merely of surveying and taking levels of such lands, and of probing or boring to ascertain the nature of the soil, and of setting out the line of works, it shall be lawful for the promoters of the undertaking, after giving not less than three nor more than fourteen days' notice to the owners or occupiers thereof, to enter upon such lands Payment of price to be made previous to entry, except to survey, &c.

(a) This and the sections following to section 91 inclusive are not incorporated in the Land Drainage Act, 1861, 24 & 25 Vic. c. 133. See s. 2s.

without previous consent, making compensation for any damage thereby occasioned to the owners or occupiers thereof.

Promoters to be allowed to enter on lands before purchase, on making deposit by way of security and giving bond.

85. Provided also, that if the promoters of the undertaking shall be desirous of entering upon and using any such lands before an agreement shall have been come to or an award made, or verdict given for the purchase-money or compensation to be paid by them in respect to such lands, it shall be lawful for the promoters of the undertaking to deposit in the bank by way of security, as hereinafter mentioned, either the amount of purchase-money or compensation claimed by any party interested in or entitled to sell or convey such lands, and who shall not consent to such entry, or such a sum as shall, by a surveyor appointed by two justices in the manner hereinbefore provided in the case of parties who cannot be found, be determined to be the value of such lands, or of the interest therein which such party is entitled to or enabled to sell and convey, and also to give to such party a bond, under the common seal of the promoters if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters, or any two of them, with two sufficient sureties to be approved of by two justices in case the parties differ, in a penal sum equal to the sum to be deposited, conditioned for payment to such party, or for deposit in the bank for the benefit of the parties interested in such lands, as the case may require, under the provisions herein contained, or all such purchase-money or compensation, as may in manner hereinbefore provided be determined to be payable by the promoters of the undertaking in respect of the lands so entered upon, together with interest thereon, at the rate of five pounds per centum per annum, from the time of entering on such lands, until such purchase-money or compensation shall be paid to such party, or deposited in the bank for the benefit of the parties interested in such lands, under the provisions herein contained; and upon such deposit by way of security being made as aforesaid, and such bond being delivered or tendered to such nonconsenting party as aforesaid, it shall be lawful for the promoters of the undertaking to enter upon and use such lands, without having first paid or deposited the purchase-money or compensation in other cases required to be paid or deposited by them before entering upon any lands to be taken by them under the provisions of this or the special Act.

Upon deposit being made cashier to give receipt.

86. (a) The money so to be deposited as last aforesaid shall be paid into the bank in the name and with the privity of the Accountant-General of the Court of Chancery in England or the Court of Exchequer in Ireland, to be placed to his account there to the credit of the parties interested in or entitled to sell and convey the lands so to be entered upon, and who shall not have consented to such entry, subject to the control and disposition of the said court; and upon such deposit being made, the cashier of the bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money,

(a) See *supra*, s. 81.

specifying therein for what purpose and to whose credit the same shall have been paid in.

87. (a) The money so deposited as last aforesaid shall remain in the bank, by way of security to the parties whose lands shall so have been entered upon for the performance of the condition of the bond to be given by the promoters of the undertaking, as hereinbefore mentioned, and the same may, on the application by petition of the promoters of the undertaking, be ordered to be invested in bank annuities or Government securities, and accumulated; and upon the condition of such bond being fully performed, it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland, upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the promoters of the undertaking, or if such condition shall not be fully performed, it shall be lawful for the said court to order the same to be applied in such manner as it shall think fit for the benefit of the parties for whose security the same shall so have been deposited.

Deposit to remain as a security, and to be applied under the direction of the Court.

88. (a) If at any time the Company be unable, by reason of the closing of the office of the Accountant-General of the Court of Chancery in England or the Court of Exchequer in Ireland, to obtain his authority in respect of the payment of any sum of money so authorised to be deposited in the bank by way of security as aforesaid, it shall be lawful for the Company to pay into the bank, to the credit of such party or matter as the case may require (subject nevertheless to being dealt with as hereinafter provided, and not otherwise), such sum of money as the promoters of the undertaking shall, by some writing signed by their secretary or solicitors for the time being, addressed to the Governor and Company of the bank in that behalf, request, and upon any such payment thereof being made the cashier of the bank shall give a certificate thereof; and in every such case within ten days after the re-opening of the said Accountant-General's office, the solicitor for the promoters of the undertaking shall there bespeak the direction for the payment of such sum into the name of the Accountant-General, and upon production of such direction at the Bank of England the money so previously paid in shall be placed to the credit of the said Accountant-General accordingly, and the receipt for the said payment be given to the party making the same in the usual way for the purpose of being filed at the Report office.

The Company may pay the deposit-money into the bank by way of security during the time that the office of the Accountant-General is closed.

89. (a) If the promoters of the undertaking or any of their contractors shall, except as aforesaid, wilfully enter upon and take possession of any lands which shall be required to be purchased or permanently used for the purposes of the special Act, without such consent as aforesaid, or without having made such payment for the benefit of the parties interested in the lands, or such deposit by way of security as aforesaid, the promoters of the undertaking shall forfeit to the party in possession of such lands the

Penalty on the promoters of the undertaking entering upon lands without consent before payment of the purchase-money.

sum of ten pounds over and above the amount of any damage done to such lands by reason of such entry and taking possession as aforesaid, such penalty and damage respectively to be recovered before two justices; and if the promoters of the undertaking or their contractors shall, after conviction in such penalty as aforesaid, continue in unlawful possession of any such lands, the promoters of the undertaking shall be liable to forfeit the sum of twenty-five pounds for every day they or their contractors shall so remain in possession as aforesaid, such penalty to be recoverable by the party in possession of such lands, with costs, by action in any of the superior Courts: provided always, that nothing herein contained shall be held to subject the promoters of the undertaking to the payment of any such penalties as aforesaid if they shall *bonâ fide* and without collusion have paid the compensation agreed or awarded to be paid in respect of the said lands to any person whom the promoters of the undertaking may have reasonably believed to be entitled thereto, or shall have deposited the same in the bank for the benefit of the parties interested in the lands, or made such deposit by way of security in respect thereof as hereinbefore mentioned, although such person may not have been legally entitled thereto.

Decision of justices not conclusive as to the right of the promoters.

90. (a) On the trial of any action for any such penalty as aforesaid, the decision of the justices under the provision hereinbefore contained shall not be held conclusive as to the right of entry on any such lands by the promoters of the undertaking.

Proceedings in case of refusal to deliver possession of lands.

91. (a) In any case in which, according to the provisions of this or the special Act, or any Act incorporated therewith, the promoters of the undertaking are authorised to enter upon and take possession of any lands required for the purposes of the undertaking, the owner or occupier of any such lands or any other person refuse to give up the possession thereof, or hinder the promoters of the undertaking from entering upon or taking possession of the same, it shall be lawful for the promoters of the undertaking to issue their warrant to the sheriff to deliver possession of the same to the person appointed in such warrant to receive the same, and upon the receipt of such warrant the sheriff shall deliver possession of any such lands accordingly, and the costs accruing by reason of the issuing and execution of such warrant, to be settled by the sheriff, shall be paid by the person refusing to give possession, and the amount of such costs shall be deducted and retained by the promoters of the undertaking from the compensation, if any, then payable by them to such party, or if no such compensation be payable to such party, or if the same be less than the amount of such costs, then such costs, or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress, and upon application to any justice for that purpose he shall issue his warrant accordingly.

Parties not to be required to

92. (a) And be it enacted, that no party shall at any time be required to sell or convey to the promoters of the undertaking a part only of any

house or other building or manufactory, if such party be willing and able to sell and convey the whole thereof. sell part of a house.

And with respect to small portions of intersected land, be it enacted as follows :

93. If any lands not being situate in a town or built upon shall be so cut through and divided by the works as to leave, either on both sides or on one side thereof, a less quantity of land than half a statute acre, and if the owner of such small parcel of land require the promoters of the undertaking to purchase the same along with the other land required for the purposes of the special Act, the promoters of the undertaking shall purchase the same accordingly, unless the owner thereof have other land adjoining to that so left into which the same can be thrown, so as to be conveniently occupied therewith; and if such owner have any other land so adjoining, the promoters of the undertaking shall, if so required by the owner, at their own expense, throw the piece of land so left into such adjoining land, by removing the fences and levelling the sites thereof, and by soiling the same in a sufficient and workmanlike manner. Owners of intersected lands may insist on sale.

94. If any such land shall be so cut through and divided as to leave on either side of the works a piece of land of less extent than half a statute acre, or of less value than the expense of making a bridge, culvert, or such other communication between the land so divided as the promoters of the undertaking are, under the provisions of this or the special Act, or any Act incorporated therewith, compellable to make; and if the owner of such lands have not other lands adjoining such piece of land, and require the promoters of the undertaking to make such communication, then the promoters of the undertaking may require such owner to sell to them such piece of land, and any dispute as to the value of such piece of land, or as to what would be the expense of making such communication, shall be ascertained as herein provided for cases of disputed compensation; and on the occasion of ascertaining the value of the land required to be taken for the purposes of the works, the jury or the arbitrators, as the case may be, shall, if required by either party, ascertain by their verdict or award the value of any such severed piece of land, and also what would be the expense of making such communication. Promoters of the undertaking may insist on purchase where expense of bridges, &c., exceeds the value.

And with respect to copyhold lands, be it enacted as follows :

95. Every conveyance to the promoters of the undertaking of any lands which shall be of copyhold or customary tenure, or of the nature thereof, shall be entered on the rolls of the manor of which the same shall be held or parcel; and on payment to the steward of such manor of such fees as would be due to him on the surrender of the same lands to the use of a purchaser thereof he shall make such enrolment; and every such conveyance, when so enrolled, shall have the like effect in respect of such copyhold or customary lands, as if the same had been of freehold tenure, nevertheless, until such lands shall have been enfranchised by virtue of the Conveyance of copyhold lands to be enrolled.

powers hereinafter contained, they shall continue subject to the same fines, rents, heriots and services as were theretofore payable and of right accustomed.

Copyhold lands
to be
enfranchised.

96. Within three months after the enrolment of the conveyance of any such copyhold or customary lands, or within one month after the promoters of the undertaking shall enter upon and make use of the same for the purposes of the works, whichever shall first happen, or if more than one parcel of such lands holden of the same manor shall have been taken by them, then within one month after the last of such parcels shall have been so taken or entered on by them, the promoters of the undertaking shall procure the whole of the lands holden of such manor so taken by them to be enfranchised, and for that purpose shall apply to the lord of the manor whereof such lands are holden to enfranchise the same, and shall pay to him such compensation in respect thereof as shall be agreed upon between them and him, and if the parties fail to agree respecting the amount of the compensation to be paid for such enfranchisement, the same shall be determined as in other cases of disputed compensation; and in estimating such compensation the loss in respect of the fines, heriots and other services payable on death, descent, or alienation, or any other matters which would be lost by the vesting of such copyhold or customary lands in the promoters of the undertaking, or by the enfranchisement of the same, shall be allowed for.

Lord of the
manor to
enfranchise
on payment of
compensation.

97. Upon payment or tender of the compensation so agreed upon or determined, or on deposit thereof in the bank in any of the cases hereinbefore in that behalf provided, the lord of the manor whereof such copyhold or customary lands shall be holden shall enfranchise such lands, and the lands so enfranchised shall for ever thereafter be held in free and common soccage; and in default of such enfranchisement by the lord of the manor, or if he fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of the enfranchisement whereof such compensation shall have been deposited as aforesaid shall be deemed to be enfranchised, and shall be for ever thereafter held in free and common soccage.

Apportionment
of copyhold
rents.

98. If any such copyhold or customary lands be subject to any customary or other rent, and part only of the land subject to any such rent be required to be taken for the purposes of the special Act, the apportionment of such rent may be settled by agreement between the owner of the lands and the lord of the manor on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement, then the same shall be settled by two justices; and the enfranchisement of any copyhold or customary lands taken by virtue of this or the special Act, or the apportionment of such rents, shall not affect in other respects any custom by or under

which any such copyhold or customary lands not taken for such purposes shall be held ; and if any of the lands so required be released from any portion of the rents to which they were subject jointly with any other lands, such last-mentioned lands shall be charged with the remainder only of such rents ; and with reference to any such apportioned rents the lord of the manor shall have all the same rights and remedies over the lands to which such apportioned rent shall have been assigned or attributed as he had previously over the whole of the lands subject to such rents for the whole of such rents.

And with respect to any such lauds being common or waste lands, be it enacted as follows :

99. The compensation in respect of the right in the soil of any lands subject to any rights of common shall be paid to the lord of the manor, in case he shall be entitled to the same, or to such party, other than the Commoners, as shall be entitled to such right in the soil ; and the compensation in respect of all other commonable and other rights in or over such lands, including therein any commonable or other rights to which the lord of the manor may be entitled other than his right in the soil of such lands, shall be determined and paid and applied in manner hereinafter provided with respect to common lands the right in the soil of which shall belong to the Commoners ; and upon payment or deposit in the bank of the compensation so determined all such commonable and other rights shall cease and be extinguished.

Compensation for common lands, where held of a manor, &c., how to be paid.

100. Upon payment or tender to the lord of the manor, or such other party as aforesaid, of the compensation which shall have been agreed upon or determined in respect of the right in the soil of any such lands, or on deposit thereof in the bank in any of the cases hereinbefore in that behalf provided, such lord of the manor, or such other party as aforesaid, shall convey such lands to the promoters of the undertaking, and such conveyance shall have the effect of vesting such lands in the promoters of the undertaking, in like manner as if such lord of the manor, or such other party as aforesaid, had been seised in fee simple of such lands at the time of executing such conveyance ; and in default of such conveyance it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of purchase of lands by them, and thereupon the lands in respect whereof such last-mentioned compensation shall have been deposited as aforesaid shall vest absolutely in the promoters of the undertaking, and they shall be entitled to immediate possession thereof, subject nevertheless to the commonable and other rights theretofore affecting the same, until such rights shall have been extinguished by payment or deposit of the compensation for the same in manner hereinafter provided.

Lord of the manor, &c. to convey to the promoters of undertaking on receiving compensation for his interest.

101. The compensation to be paid with respect to any such lands being common lands, or in the nature thereof, the right to the soil of which shall belong to the Commoners, as well as the compensation to be paid for the

Compensation for common lands where not held of a manor

how to be
ascertained.

commonable and other rights in or over common lands the right in the soil whereof shall not belong to the Commoners, other than the compensation to the lord of the manor, or other party entitled to the soil thereof, in respect of his right in the soil thereof, shall be determined by agreement between the promoters of the undertaking and a committee of the parties entitled to commonable or other rights in such lands, to be appointed as next hereinafter mentioned.

A meeting of
the parties
interested to be
convened.

102. It shall be lawful for the promoters of the undertaking to convene a meeting of the parties entitled to commonable or other rights over or in such lands to be held in some convenient place in the neighbourhood of the lands for the purpose of their appointing a committee to treat with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable or other rights; and every such meeting shall be called by public advertisement, to be inserted once at least in two consecutive weeks in some newspaper circulating in the county or in the respective counties and in the neighbourhood in which such lands shall be situate, the last of such insertions being not more than fourteen nor less than seven days prior to any such meeting; and notice of such meeting shall also, not less than seven days previous to the holding thereof, be affixed upon the door of the parish church where such meeting is intended to be held, or if there be no such church some other place in the neighbourhood to which notices are usually affixed; and if such lands be parcel or holden of a manor, a like notice shall be given to the lord of such manor.

Meeting to
appoint a
committee.

103. It shall be lawful for the meeting so called to appoint a committee, not exceeding five in number, of the parties entitled to any such rights; and at such meeting the decision of the majority of the persons entitled to commonable rights present shall bind the minority and all absent parties.

Committee to
agree with the
promoters of
the under-
taking.

104. It shall be lawful for the committee so chosen to enter into an agreement with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable and other rights and all matters relating thereto, for and on behalf of themselves and all other parties interested therein; and all such parties shall be bound by such agreement; and it shall be lawful for such committee to receive the compensation so agreed to be paid, and the receipt of such committee, or any three of them, for such compensation, shall be an effectual discharge for the same; and such compensation, when received, shall be apportioned by the committee among the several persons interested therein, according to their respective interest, but the promoters of the undertaking shall not be bound to see to the apportionment or to the application of such compensation, nor shall they be liable for the mis-application or non-application thereof.

Disputes to be
settled as in
other cases.

105. If upon such committee being appointed they shall fail to agree with the promoters of the undertaking as to the amount of the compensa-

tion to be paid as aforesaid, the same shall be determined as in other cases of disputed compensation.

106. If, upon being duly convened by the promoters of the undertaking, no effectual meeting of the parties entitled to such commonable or other rights shall take place, or if, taking place, such meeting fail to appoint a committee, the amount of such compensation shall be determined by a surveyor, to be appointed by two justices, as hereinbefore provided in the case of parties who cannot be found.

If no committee be appointed, the amount to be determined by a surveyor.

107. Upon payment or tender to such committee or any three of them, or if there shall be no such committee then upon deposit in the bank in the manner provided in the like case of the compensation which shall have been agreed upon or determined in respect of such commonable or other rights, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of which such compensation shall have been so paid or deposited shall vest in the promoters of the undertaking, freed and discharged from all such commonable or other rights, and they shall be entitled to immediate possession thereof; and it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland, by an order to be made upon petition, to order payment of the money so deposited to a committee to be appointed as aforesaid, or to make such other order in respect thereto for the benefit of the parties interested as it shall think fit.

Upon payment of compensation payable to Commoners the lands to vest.

And with respect to lands subject to mortgage, be it enacted as follows:

108. It shall be lawful for the promoters of the undertaking to purchase or redeem the interest of the mortgagee of any such lands which may be required for the purposes of the special Act, and that whether they shall previously purchased the equity of redemption of such lands or not, and whether the mortgagee thereof be entitled thereto in his own right or in trust for any other party, and whether he be in possession of such lands by virtue of such mortgage or not, and whether such mortgage affects such lands solely, or jointly with any other lands not required for the purposes of the special Act, and in order thereto the promoters of the undertaking may pay or tender to such mortgagee the principal and interest due on such mortgage, together with his costs and charges (if any) and also six months' additional interest, and thereupon such mortgagee shall immediately convey his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct, or the promoters of the undertaking may give notice in writing to such mortgagee that they will pay off the principal and interest due on such mortgage at the end of six months, computed from the day of giving such notice; and if they shall have given any such notice or if the party entitled to the equity of redemption of any such lands shall have given six months' notice of his intention to redeem

Power to redeem mortgages.

the same, then at the expiration of either of such notices, or at any intermediate period, upon payment of tender by the promoters of the undertaking to the mortgagee of the principal money due on such mortgage, and the interest which would become due at the end of six months from the time of giving either of such notices, together with his costs and expenses, if any, such mortgagee shall convey or release his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct.

Deposit of mortgage money on refusal to accept.

109. If in either of the cases aforesaid, upon such payment or tender, any mortgagee shall fail to convey or release his interest in such mortgage as directed by the promoters of the undertaking, or if he fail to adduce a good title thereto to their satisfaction, then it shall be lawful for the promoters of the undertaking to deposit in the bank, in the manner provided by this Act in like cases, the principal and interest, together with the costs, if any, due on such mortgage, and also, if such payment be made before the expiration of six months' notice as aforesaid, such further interest as would at that time become due; and it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon as well as upon such conveyance by the mortgagee, if any such be made, all the estate and interest of such mortgagee, and of all persons in trust for him, or for whom he may be a trustee, in such lands, shall vest in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession.

Sum to be paid when mortgage exceeds the value of the lands.

110. If any such mortgaged lands shall be of less value than the principal, interest and costs secured thereon, the value of such lands, or the compensation to be made by the promoters of the undertaking in respect thereof shall be settled by agreement between the mortgagee of such lands and the party entitled to the equity of redemption thereof on the one part, and the promoters of the undertaking on the other part, and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to the mortgagee in satisfaction of his mortgage debt so far as the same will extend, and upon payment or tender thereof the mortgagee shall convey or release all his interest in such mortgaged lands to the promoters of the undertaking, or as they shall direct.

Deposit of money when refused on tender.

111. If, upon such payment or tender as aforesaid being made, any such mortgagee fail so to convey his interest in such mortgage or to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such value or compensation in the bank, in the manner provided by this Act in like cases, and every such payment or deposit shall be accepted by the mortgagee in

satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of such mortgaged lands from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands, as to all such estate and interest as were then vested in the mortgagee or any person in trust for him, shall become absolutely vested in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession; nevertheless, all rights and remedies possessed by the mortgagee against the mortgagor, by virtue of any bond or covenant or other obligation, other than the right to such lands, shall remain in force in respect of so much of the mortgage debt as shall not have been satisfied by such payment or deposit.

112. If a part only of any such mortgaged lands be required for the purposes of the special Act, and if the part so required be of less value than the principal money, interest and costs secured on such lands, and the mortgagee shall not consider the remaining part of such lands a sufficient security for the money charged thereon, or be not willing to release the part so required, then the value of such part, and also the compensation (if any) to be paid in respect of the severance thereof or otherwise, shall be settled by agreement between the mortgagee and the party entitled to the equity of redemption of such land on the one part, and the promoters of the undertaking on the other, and if the parties aforesaid fail to agree respecting the amount of such value or compensation the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation being so agreed upon or determined, shall be paid by the promoters of the undertaking to such mortgagee in satisfaction of his mortgage debt, so far as the same will extend; and thereupon such mortgagee shall convey or release to them, or as they shall direct, all his interest in such mortgaged lands the value whereof shall have been so paid; and a memorandum of what shall have been so paid shall be endorsed on the deed creating such mortgage, and shall be signed by the mortgagee; and a copy of such memorandum shall at the same time (if required) be furnished by the promoters of the undertaking at their expense, to the party entitled to the equity of redemption of the lands comprised in such mortgage deed.

Sum to be paid where part only of mortgage lands taken.

113. If, upon payment or tender to any such mortgagee of the amount of the value or compensation so agreed upon or determined, such mortgagee shall fail to convey or release to the promoters of the undertaking, or as they shall direct, his interest in the lands in respect of which such compensation shall so have been paid or tendered, or if he shall fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for the promoters of the undertaking to pay the amount of such value or compensation into the bank, in the manner provided by this Act in the case of moneys required to be deposited in such bank, and such payment or deposit

Deposit of money when refused on tender.

shall be accepted by such mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of the portion of the mortgaged lands so required from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands shall become absolutely vested in the promoters of the undertaking, as to all such estate and interest as were then vested in the mortgagee or any person in trust for him, and in case such mortgagee were himself entitled to such possession they shall be entitled to immediate possession thereof; nevertheless, every such mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage money or the residue thereof (as the case may be), and the interest thereof respectively upon and out of the residue of such mortgaged lands or the portion thereof not required for the purposes of the special Act, as he would otherwise have had or been entitled to for recovering or compelling payment thereof upon or out of the whole of the lands originally comprised in such mortgage.

Compensation to be made in certain cases if mortgage paid off before the stipulated time.

114. Provided always, that in any of the cases hereinbefore provided with respect to lands subject to mortgage, if in the mortgage deed a time shall have been limited for payment of the principal money thereby secured, and under the provisions hereinbefore contained the mortgagee shall have been required to accept payment of his mortgage money or of part thereof at a time earlier than the time so limited, the promoters of the undertaking shall pay to such mortgagee, in addition to the sum which shall have been so paid off, all such costs and expenses as shall be incurred by such mortgagee in respect of or which shall be incidental to the re-investment of the sum so paid off, such costs in case of difference to be taxed and payment thereof enforced in the manner herein provided with respect to the costs of conveyances; and if the rate of interest secured by such mortgage be higher than at the time of the same being so paid off can reasonably be expected to be obtained on re-investing the same, regard being had to the then current rate of interest, such mortgagee shall be entitled to receive from the promoters of the undertaking, in addition to the principal and interest hereinbefore provided for, compensation in respect of the loss to be sustained by him by reason of his mortgage money being so prematurely paid off the amount of such compensation to be ascertained, in case of difference, as in other cases of disputed compensation; and until payment or tender of such compensation as aforesaid the promoters of the undertaking shall not be entitled, as against such mortgagee, to possession of the mortgaged lands under the provision hereinbefore contained.

And with respect to lands charged with any rent-service, rent-charge, or chief or other rent, or other payment or incumbrance not hereinbefore provided for, be it enacted as follows:

Release of

115. If any difference shall arise between the promoters of the under-

taking and the party entitled to any such charge upon any lands required to be taken for the purposes of the special Act, respecting the consideration to be paid for the release of such lands therefrom, or from the portion thereof affecting the lands required for the purposes of the special Act, the same shall be determined as in other cases of disputed compensation.

lands from rent charge.

116. If part only of the lands charged with any such rent-service, rent-charge, chief or other rent, payment or incumbrance, be required to be taken for the purposes of the special Act, the apportionment of any such charge may be settled by agreement between the party entitled to such charge, and the owners owner of the lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement the same shall be settled by two justices ; but if the remaining parts of the lands so jointly subject be a sufficient security for such charge, then, with consent of the owner of the lands so jointly subject, it shall be lawful for the party entitled to such charge to release therefrom the lands required, on condition or in consideration of such other lands remaining exclusively subject to the whole thereof.

Release of part of lands from charge.

117. Upon payment or tender of the compensation so agreed upon or determined to the party entitled to any such charge as aforesaid, such party shall execute to the promoters of the undertaking a release of such charge : and if he fail so to do, or if he fail to adduce good title to such charge, to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such compensation in the bank in the manner hereinbefore provided in like cases, and also, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the rent-service, rent-charge, chief or other rent, payment, or incumbrance, or the portion thereof in respect whereof such compensation shall so have been paid, shall cease and be extinguished.

Deposit in case of refusal to release.

118. If any such lands be so released from any such charge or incumbrance, or portion thereof, to which they were subject jointly with other lands, such last-mentioned lands shall alone be charged with the whole of such charge, or with the remainder thereof, as the case may be, and the party entitled to the charge shall have all the rights and remedies over such last-mentioned lands, for the whole or the remainder of the charge, as the case may be, as he had previously over the whole of the lands subject to such charge ; and if upon any such charge or portion of charge being so released the deed or instrument creating or transferring such charge be tendered to the promoters of the undertaking for the purpose, they, or two of them, shall subscribe, or if they be a corporation shall affix their common seal to a memorandum of such release endorsed on such deed or instrument, declaring what part of the lands originally subject to such charge shall have been purchased by virtue of the special Act, and if the lands be released from part of such charge, what proportion of such

Charge to continue on lands not taken

charge shall have been released, and how much thereof continues payable, or if the lands so required shall have been released from the whole of such charge, then that the remaining lands are thenceforward to remain exclusively charged therewith; and such memorandum shall be made and executed at the expense of the promoters of the undertaking, and shall be evidence in all courts and elsewhere of the facts therein stated, but not so as to exclude any other evidence of the same facts.

And with respect to lauds subject to leases, be it enacted as follows :

Where part only of lands under lease taken, the rent to be apportioned.

119. If any lands shall be comprised in a lease, for a term of years unexpired, part only of which lands shall be required for the purposes of the special Act, the rent payable in respect of the lands comprised in such lease shall be apportioned between the lands so required and the residue of such lands; and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement between the parties, such apportionment shall be settled by two justices; and after such apportionment the lessee of such lands shall, as to all future accruing rent, be liable only to so much of the rent as shall be so apportioned in respect of the lands not required for the purposes of the special Act; and as to the lands not so required, and as against the lessee, the lessor shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease; and all the covenants, conditions, and agreements of such lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of the land which shall not be required for the purposes of the special Act, in the same manner as they would have done in case such part only of the land had been included in the lease.

Tenants to be compensated.

120. Every such lessee as last aforesaid shall be entitled to receive from the promoters of the undertaking compensation for the damage done to him in his tenancy by reason of the severance of the lands required from those not required, or otherwise by reason of the execution of the works.

Compensation to be made to tenants at will, &c.

121. If any such lands shall be in the possession of any person having no greater interest therein than as tenant for a year, or from year to year, and if such person be required to give up possession of any lands so occupied by him before the expiration of his term or interest therein, he shall be entitled to compensation for the value of his unexpired term or interest in such lands, and for any just allowance which ought to be made to him by an in-coming tenant, and for any loss or injury he may sustain, or if a part only of such lands be required, compensation for the damage done to him in his tenancy by severing the lands held by him, or otherwise injuriously affecting the same; and the amount of such compensation shall be determined by two justices, in case the parties differ about the same; and upon payment or tender of the amount of such compensation all such

persons shall respectively deliver up to the promoters of the undertaking or to the person appointed by them to take possession thereof, any such lands in their possession required for the purposes of the special Act.

122. If any party, having a greater interest than as tenant at will, claim compensation in respect of any unexpired term or interest under any lease or grant of any such lands, the promoters of the undertaking may require such party to produce the lease or grant in respect of which such claim shall be made, or the best evidence thereof in his power; and if, after demand made in writing by the promoters of the undertaking, such lease or grant, or such best evidence thereof, be not produced within twenty-one days, the party so claiming compensation shall be considered as a tenant holding only from year to year, and be entitled to compensation accordingly.

Where greater interest claimed than from year to year, lease to be produced.

123. (a) And be it enacted, that the powers of the promoters of the undertaking for the compulsory purchase or taking of lands for the purposes of the special Act shall not be exercised after the expiration of the prescribed period, and if no period be prescribed, not after the expiration of three years from the passing of the special Act.

Limit of time for compulsory purchase.

And with respect to interests in lands which have by mistake been omitted to be purchased, be it enacted as follows :

124. If, at any time after the promoters of the undertaking shall have entered upon any lands which under the provisions of this or the special Act, or any Act incorporated therewith, they were authorised to purchase, and which shall be permanently required for the purposes of the special Act, any party shall appear to be entitled to any estate, right, or interest in or charge affecting such lands which the promoters of the undertaking shall through mistake or inadvertence have failed or omitted duly to purchase or to pay compensation for, then, whether the period allowed for the purchase of lands shall have expired or not, the promoters of the undertaking shall remain in the undisturbed possession of such lands, provided within six months after notice of such estate, right, interest, or charge, in case the same shall not be disputed by the promoters of the undertaking, or in case the same shall be disputed, then within six months after the right thereto shall have been finally established by law in favour of the party claiming the same, the promoters of the undertaking shall purchase or pay compensation for the same, and shall also pay to such party, or to any other party who may establish a right thereto, full compensation for the mesne profits or interest which would have accrued to such parties respectively in respect thereof during the interval between the entry of the promoters of the undertaking thereon and the time of the payment of such purchase-money or compensation by the promoters of the undertaking, so far as such mesne profits or interest may be recoverable in law or equity; and such purchase-money or compensation shall be agreed on or awarded

Promoters of the undertaking empowered to purchase interests in lands the purchase whereof may have been omitted by mistake.

(a) This section is not incorporated in the Land Drainage Act, 1861, 24 & 25 Vic. c. 133. See s. 23.

and paid in like manner as according to the provisions of this Act the same respectively would have been agreed on or awarded and paid in case the promoters of the undertaking had purchased such estate, right, interest, or charge before their entering upon such land, or as near thereto as circumstances will admit.

How value of such lands to be estimated.

125. In estimating the compensation to be given for any such last-mentioned lands, or any estate or interest in the same, or for any mesne profits thereof, the jury, or arbitrators, or justices, as the case may be, shall assess the same according to what they shall find to have been the value of such lands, estate, or interest, and profits, at the time such lands were entered upon by the promoters of the undertaking, and without regard to any improvements or works made in the said lands by the promoters of the undertaking, and as though the works had not been constructed.

Promoters of the undertaking to pay the costs of litigation as to such lands.

126. In addition to the said purchase-money, compensation, or satisfaction, and before the promoters of the undertaking shall become absolutely entitled to any such estate, interest or charge, or to have the same merged or extinguished for their benefit, they shall, when the right to any such estate, interest, or charge shall have been disputed by the Company, and determined in favour of the party claiming the same, pay the full costs and expenses of any proceedings at law or in equity for the determination or recovery of the same to the parties with whom any such litigation in respect thereof shall have taken place; and such costs and expenses shall, in case the same shall be disputed, be settled by the proper officer of the court in which such litigation took place.

And with respect to lands acquired by the promoters of the undertaking under the provisions of this or the special Act, or any Act incorporated therewith, but which shall not be required for the purposes thereof, be it enacted as follows :

Lands not wanted to be sold, or in default to vest in owners of adjoining lands.

127. Within the prescribed period, or if no period be prescribed within ten years after the expiration of the time limited by the special Act for the completion of the works, the promoters of the undertaking shall absolutely sell and dispose of all such superfluous lands, and apply the purchase-money arising from such sales to the purposes of the special Act; and in default thereof all such superfluous lands remaining unsold at the expiration of such period shall thereupon vest in and become the property of the owners of the lands adjoining thereto, in proportion to the extent of their lands respectively adjoining the same.

Lands to be offered to owner of lands from which they were originally taken, or to adjoining owners.

128. Before the promoters of the undertaking dispose of any such superfluous lands they shall, unless such lands be situate within a town, or be lands built upon or used for building purposes, first offer to sell the same to the person then entitled to the lands (if any) from which the same were originally severed; or if such person refuse to purchase the same, or cannot after diligent inquiry be found, then the like offer shall be made to the person or to the several persons whose lands shall immediately adjoin the lands so proposed to be sold, such persons being capable of entering into a

contract for the purchase of such lands; and where more than one such person shall be entitled to such right of pre-emption such offer shall be made to such persons in succession, one after another, in such order as the promoters of the undertaking shall think fit.

129. If any such persons be desirous of purchasing such lands, then within six weeks after such offer of sale they shall signify their desire in that behalf to the promoters of the undertaking, or if they decline such offer, or if for six weeks they neglect to signify their desire to purchase such lands, the right of pre-emption of every such person so declining or neglecting in respect of the lands included in such offer shall cease; and a declaration in writing made before a justice by some person not interested in the matter in question, stating that such offer was made and was refused, or not accepted within six weeks from the time of making the same, or that the person or all the persons entitled to the right of pre-emption were out of the country, or could not after diligent inquiry be found, or were not capable of entering into a contract for the purchase of such lands shall in all Courts be sufficient evidence of the facts therein stated.

Right of pre-emption to be claimed within six weeks.

130. If any person entitled to such pre-emption be desirous of purchasing any such lands, and such person and the promoters of the undertaking do not agree as to the price thereof, then such price shall be ascertained by arbitration, and the costs of such arbitration shall be in the discretion of the arbitrators.

Differences as to price to be settled by arbitration.

131. Upon payment or tender to the promoters of the undertaking of the purchase-money so agreed upon or determined as aforesaid they shall convey such lands to the purchasers thereof by deed under the common seal of the promoters of the undertaking, if they be a corporation, or if not a corporation under the hands and seals of the promoters of the undertaking, or any two of the directors or managers thereof acting by the authority of the body; and a deed so executed shall be effectual to vest the lands comprised therein in the purchaser of such lands for the estate which shall so have been purchased by him; and a receipt under such common seal, or under the hands of two of the directors or managers of the undertaking as aforesaid, shall be a sufficient discharge to the purchaser of any such lands for the purchase-money in such receipt expressed to be received.

Lands to be conveyed to the purchasers.

132. In every conveyance of lands to be made by the promoters of the undertaking under this or the special Act the word "grant" shall operate as express covenants by the promoters of the undertaking, for themselves and their successors, or for themselves, their heirs, executors, administrators, and assigns, as the case may be, with the respective grantees therein named, and the successors, heirs, executors, administrators, and assigns of such grantees, according to the quality or nature of such grants, and of the estate or interest therein expressed to be thereby conveyed, as follows, except so far as the same shall be restrained or limited by express words contained in any such conveyance; that is to say,

Effect of the word "grant" in conveyances.

A covenant that, notwithstanding any act or default done by the

promoters of the undertaking, they were at the time of the execution of such conveyance seised or possessed of the lands or premises thereby granted for an indefeasible estate of inheritance in fee simple, free from all incumbrances done or occasioned by them, or otherwise for such estate or interest as therein expressed to be thereby granted, free from incumbrances done or occasioned by them;

A covenant that the grantee of such lands, his heirs, successors, executors, administrators, and assigns (as the case may be) shall quietly enjoy the same against the promoters of the undertaking, and their successors, and all other persons claiming under them, and be indemnified and saved harmless by the promoters of the undertaking and their successors from all incumbrances created by the promoters of the undertaking;

A covenant for further assurance of such lands, at the expense of such grantee, his heirs, successors, executors, administrators, or assigns (as the case may be) by the promoters of the undertaking, or their successors, and all other persons claiming under them;

And all such grantees, and their several successors, heirs, executors, administrators and assigns respectively, according to their respective quality or nature, and the estate or interest in such conveyance expressed to be conveyed, may, in all actions brought by them, assign breaches of covenants, as they might do if such covenants were expressly inserted in such conveyances.

Land tax and
poor's rate to
be made good.

133. And be it enacted, that if the promoters of the undertaking become possessed by virtue of this or the special Act, or any Act incorporated therewith, of any lands charged with the Land Tax, or liable to be assessed to the poor's rate, they shall, from time to time, until the works shall be completed and assessed to such land tax or poor rate, be liable to make good the deficiency in the several assessments for land tax and poor's rate by reason of such lands having been taken or used for the purposes of the works, and such deficiency shall be computed according to the rental at which such lands, with any building thereon, were valued or rated at the time of the passing of the special Act; and on demand of such deficiency the promoters of the undertaking, or their treasurer, shall pay all such deficiencies to the collector of the said assessments respectively; nevertheless, if at any time the promoters of the undertaking think fit to redeem such land tax, they may do so in accordance with the powers in that behalf given by the Acts for the redemption of the land tax.

Service of
notices upon
Company.

134. (a) And be it enacted, that any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the promoters of the undertaking may be served by the same being left at or transmitted through the post directed to the principal office of the promoters of the undertaking, or one of the principal offices where there shall

(a) See note to ss. 19 and 20.

more than one, or being given or transmitted through the post directed to the secretary, or in case there be no secretary the solicitor of the said promoters.

135. And be it enacted, that if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special Act, or any Act incorporated therewith, or by virtue of any power or authority thereby given; and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender shall have been made, it shall be lawful for the defendant, by leave of the court where such action shall be pending, at any time before issue joined, to pay into court such sum of money as he shall think fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court.

Tender of amends.

And with respect to the recovery of forfeitures, penalties, and costs, be it enacted as follows:

136. Every penalty or forfeiture imposed by this or the special Act, or by any by-law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices; and on complaint being made to any justice he shall issue a summons requiring [the party complained against to appear before two justices at a time and place to be named in such summons; and every such summons shall be served on the party offending either in person or by leaving the same with some inmate at his usual place of abode; and upon the appearance of the party complained against, or in his absence, after proof of the due service of such summons, it shall be lawful for any two justices to proceed to the hearing of the complaint, and that although no information in writing or in print shall have been exhibited before them; and upon proof of the offence, either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such justices to convict the offender, and upon such conviction to adjudge the offender to pay the penalty of forfeiture incurred, as well as such costs attending the conviction as such justices shall think fit.

Penalties to be summarily recovered before two justices.

137. If, forthwith upon any such adjudication as aforesaid, the amount of the penalty or forfeiture and of such costs as aforesaid, be not paid, the amount of such penalty and costs shall be levied by distress, and such justices or either of them shall issue their or his warrant of distress accordingly.

Penalties to be levied by distress.

138. Where in this or the special Act, or any act incorporated therewith, any sum of money, whether in the nature of penalty, costs or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money and the expenses

Distress, how to be levied.

of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

Application of penalties.

139. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, to be applied in aid of the poor's rate of such parish, or if the place wherein the offence shall have been committed shall be extra-parochial, then such justices shall direct such remainder to be applied in aid of the poor's rate of such extra-parochial place, or if there shall not be any poor's rate therein, in aid of the poor's rate of any adjoining parish or district.

Distress against the treasurer.

140. If any such sum shall be payable by the promoters of the undertaking and if sufficient goods of the said promoters cannot be found whereon to levy the same, it may, if the amount thereof do not exceed twenty pounds be recovered by distress of the goods of the treasurer of the said promoters and the justices aforesaid, or either of them on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days' previous notice in writing, stating the amount due, and demanding payment thereof, have been given to such treasurer or left at his residence; and if such treasurer pay any money under such distress as aforesaid he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the promoters of the undertaking coming into his custody or control, or he may sue them for the same.

Distress not unlawful for want of form.

141. No distress levied by virtue of this or the special Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed 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 such party be deemed 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 for the special damage in an action upon the case.

Penalties to be sued for within six months.

142. No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this or the special Act, or any Act incorporated therewith, for any offence made cognizable before a justice, unless the complaint respecting such offence shall have been made before such justice within six months next after the commission of such offence.

Penalty on witnesses making default

143. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction under the provisions of this or the special Act at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned

shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence.

144. The justices before whom any person shall be convicted of any offence against this or the special Act, or any Act incorporated therewith, may cause the conviction to be drawn up according to the form in the schedule C to this Act annexed. Form of conviction.

145. No proceeding in pursuance of this or the special Act, or any Act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by *certiorari* or otherwise into any of the Superior Courts. Proceedings not to be quashed for want of form.

146. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special Act, or any Act incorporated therewith, such party may appeal to the General Quarter Sessions for the county or place in which the cause of appeal shall have arisen; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognizances, with two sufficient sureties, before a justice, conditioned duly to prosecute such appeal, and to abide the order of the Court thereon. Parties allowed to appeal to Quarter Sessions on giving security.

147. At the Quarter Sessions for which such notice shall be given, the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable: and they may make such order concerning the costs, both of the adjudication and of the appeal as they may think reasonable. Court to make such order as they think reasonable.

148. Provided always, and be it enacted, that notwithstanding anything herein or in the special Act, or any Act incorporated therewith, contained, every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any bye-law in pursuance thereof, in respect of any offence which shall take place within the Metropolitan Police District, shall be recovered, enforced, accounted for and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the Metropolitan Police District, and shall be applied in the Receiver of the Metropolitan Police District to receive penalties incurred within his district.

same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid and applied by an Act passed in the third year of the reign of Her present Majesty, intituled an Act for regulating the Police Courts of the Metropolis, and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal, and upon the same terms as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses as he or they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act.

2 & 3 Vic. c. 71.

Persons giving false evidence liable to penalties of perjury.

149. And be it enacted, that any person who upon any examination upon oath under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

(a) And with respect to the provision to be made for affording access to the special Act by all parties interested, be it enacted as follows :

Copies of special Act to be kept and deposited, and allowed to be inspected.

150. The Company shall, at all times after the expiration of six months after the passing of the special Act, keep in their principal office of business a copy of the special Act, printed by the printers to Her Majesty, or some of them; and where the undertaking shall be a railway, canal, or other like undertaking, the works of which shall not be confined to one town or place, shall also within the space of such six months deposit in the office of each of the clerks of the peace of the several counties into which the works shall extend a copy of such special Act so printed as aforesaid; and the said clerks of the peace shall receive, and they and the Company respectively shall retain, the said copies of the special Act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an Act passed in the fifth year of the reign of Her present Majesty, intituled an Act to compel clerks of the peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament.

7 Will. IV. and 1 Vic. c. 83.

Penalty on Company failing to keep or deposit.

151. If the Company shall fail to keep or deposit, as hereinbefore mentioned, any of the said copies of the special Act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

(a) The provisions relating to access to the special Act are excluded from the Land Drainage Act, 1861, 24 & 25 Vic. c. 133. See s. 28.

SCHEDULE C.

Form of Conviction.

to wit.

BE it remembered, that on the _____ day of _____ in the year of our Lord _____ A. B. is convicted before us C., D., two of Her Majesty's Justices of the Peace for the County of [here describe the offence generally, and the time and place when and where committed], contrary to the [here name the special Act]. Given under our hands and Seals, the day and year above written.

C., D.

This Act is amended by 23 & 24 Vic. c. 106, and 32 & 33 Vic. c. 18.

10 VIC. c. 16 (a).

An Act for consolidating in one Act certain provisions usually contained in Acts with respect to the Constitution and Regulation of Bodies of Commissioners appointed for carrying on undertakings of a public nature.

[23rd April 1847.]

Whereas it is expedient to comprise in one Act sundry provisions usually contained in Acts of Parliament authorising the execution of undertakings of a public nature by bodies of Commissioners, trustees, or other persons, not being Joint Stock Companies, and that as well for avoiding the necessity of the repeating such provisions in each of the several Acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that this Act shall extend only to such undertakings or Commissioners as shall be authorised or constituted by any Act of Parliament hereafter to be passed, which shall declare that this Act shall be incorporated therewith; and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the Commissioners constituted by such Act and to the undertaking for carrying on which such Commissioners shall be constituted, so far as the same shall be applicable thereto respectively; and such clauses, with the clauses of every other Act which shall be incorporated therewith, shall, save as aforesaid, form part of such Act, and be construed therewith, as forming one Act.

And with respect to the construction of this Act, and any Act incorporated therewith, be it enacted as follows:—

2. The expression "the Special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed, constituting a body of Commissioners as hereinafter defined for the purpose of carrying on any

Interpretations
in this Act :
"The special
Act."

(a) The following sections of this Act are those incorporated by the Land Drainage Act, 1861. 24 & 25 Vic. c. 133, ss. 41 & 71.

undertaking, and with which this Act shall be incorporated; and the word "prescribed" used in this Act, in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act; and the sentence in which such word occurs shall be construed as if, instead of the word "prescribed" the expression "prescribed for that purpose in the special Act" had been used; and the expression "the undertaking" shall mean the undertaking or works of whatever nature, which shall by the special Act be authorised to be executed or carried on; and the expression "the Commissioners" shall mean the Commissioners, trustees, undertakers, or other persons or body corporate constituted by the special Act, or thereby entrusted with powers for executing the undertaking.

3. The following words and expressions, both in this and the special Act and any Act incorporated therewith, shall have the several meanings hereby assigned to them, unless there be something in the subject or the context repugnant to such construction; (that is to say,)

Words importing the singular number only shall include the plural number; and words importing the plural number only shall include the singular number.

Words importing the masculine gender only shall include females. The word "person" shall include a corporation, whether aggregate or sole.

The word "lands" shall extend to messuages, lands, tenements, and hereditaments or heritages of any tenure.

The word "month" shall mean calendar month.

The expression "superior courts," where the matter submitted to the cognizance of the court arises in England or Ireland, shall mean Her Majesty's Superior Courts of Record at Westminster or Dublin, as the case may require, and shall include the Court of Common Pleas of the County Palatine of Lancaster and the Court of Pleas of the county of Durham, and where such matter arises in Scotland shall mean the Court of Session.

The word "oath" shall include affirmation in the case of quakers and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath.

The word "county" shall include riding or other division of a county having a separate commission of the peace, and in Scotland stewardry, and any ward or other division of a county or stewardry having a separate sheriff, and it shall also include county of a city or county of a town.

The word "justice" shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises; and where any matter is authorised or required to be done by two justices, the expression "two justices" shall be understood to mean two or more justices met and acting together.

The word "sheriff" shall mean the sheriff depute of the county or

"The undertaking."

"The Commissioners."

Interpretations in this and the Special Act:

Number.

Gender.

"Person."

"Lands."

"Month."

"Superior Courts."

"Oath."

County."

"Justice."

"Two justices."

"Sheriff."

ward of a county in Scotland and the steward depute of the stewardry in Scotland in which any matter submitted to the cognisance of the sheriff arises, and shall include the substitutes of such sheriff depute and steward depute respectively.

"Quarter Sessions."

The expression "quarter sessions" shall mean quarter sessions as defined in the special Act; and if such expression be not these defined, it shall mean the General or Quarter Sessions of the peace which shall be held at the place nearest to the undertaking for the county or place in which the undertaking, or the principal office thereof, is situate, or for some division of such county having a separate commission of the peace.

"Clerk."

The expression "the clerk" shall mean the clerk of the Commissioners, and shall include the word "secretary."

"The town."

The expression "the town" shall mean the town or district named in the special Act within which the powers of the Commissioners are to be exercised.

And with respect to citing this Act or any part thereof, be it enacted as follows:—

Short title of this Act.

4. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression, "The Commissioners Clauses Act, 1847."

Form in which portions of this Act may be incorporated with other Acts.

5. For the purpose of incorporating part only of this Act with any Act of Parliament hereafter to be passed, it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act, with the exception of the clauses so described, shall be incorporated with such Act; and thereupon all the clauses of this Act so incorporated shall, save so far as they are expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.

Contracts.

And with respect to the contracts to be entered into and the deeds to be executed by the Commissioners, be it enacted as follows:—

Power to Commissioners to enter into contracts.

56. The Commissioners may enter into contracts with any persons for the execution of any works directed or authorised by this and the Special Act to be done by the Commissioners, or for furnishing materials, or for any other things necessary for the purposes of this or the special Act, and every such contract for the execution of any work shall be in writing, and shall specify the work to be done, and the materials to be furnished and the price to be paid for the same, and the time or times within which the work is to be completed, and the penalties to be suffered in case of non-performance thereof, and the power hereby granted to the Commissioners to enter into contracts may lawfully be exercised as follows; (that is to say,)

Any contract which if made between private persons would be by law required to be in writing and under seal, or in Scotland by a

probative deed, the Commissioners may make in writing and under their common seal, if they be incorporated, or if not incorporated under the hands and seals, or in Scotland, under the hands of the Commissioners or any two of them, acting by the direction and on behalf of the Commissioners, and in the same manner may vary or discharge the same :

Any contract which, if made between private persons would be by law required to be in writing and signed by the parties to be charged therewith, the Commissioners may make in writing, signed by the Commissioners or any two of their number, acting by the direction and on behalf of the Commissioners, and in the same manner may vary or discharge the same :

Any contract which, if made between private persons would by law be valid, although made by parol only and not reduced into writing, the Commissioners, or any two of them acting by the direction and on behalf of the Commissioners, may make by parol only, without writing, and in the same manner may vary or discharge the same :

And all contracts made according to the provisions herein contained, being duly executed by the persons contracting to perform the works therein comprised respectively, shall be effectual in law, and shall be binding on the Commissioners and all other parties thereto, their successors, heirs, executors or administrators as the case may be, and in case of default in the execution of any such contract, either by the Commissioners or by any other party thereto, such actions or suits may be maintained thereon, and damages and costs recovered by or against the Commissioners or the other parties failing in the execution thereof, as might have been maintained and recovered had the same contracts been made between private persons only.

57. Before any contract to the amount of £100 or upwards shall be entered into by the Commissioners, ten days' notice at the least shall be given in some one of the newspapers circulating within the limits of the special Act, expressing the purpose of such contract, and inviting any person willing to undertake the same to make proposals for that purpose to the Commissioners, and the Commissioners shall accept the proposal which, upon a view of all the circumstances, shall appear to them to be most advantageous, and shall take security for the due and faithful performance of every such contract.

Notice to be given of contracts to the amount of £100 or upwards.

58. The Commissioners may compound with any party who has entered into any such contract, or against whom any action or suit has been brought for any penalty contained in any such contract, or in any bond or other security for the performance thereof, or on account of any breach or non-performance of any such contract, bond or security for such sums of money or other recompense as the Commissioners may think proper.

Commissioners may compound for breach of contract.

59. Where by the special Act or any Act incorporated therewith the Commissioners are authorised or required to sell or convey any lands vested in them, and no other mode of conveyance is provided, they may

As to the conveyance of lands by the Commissioners.

convey such lands, or such interest as the Commissioners have therein by deed under the common seal of the Commissioners if they be a corporation, or if not a corporation by deed executed by the Commissioners, or any two of them acting by the authority of and on behalf of the Commissioners; and a deed so executed, followed as to lands in Scotland by infeftment duly recorded, shall be effectual to vest the lands comprised therein or such interest as the Commissioners have therein in the grantee or other person to whom the same shall be so conveyed; and a receipt under such Common Seal, or under the hands of two of the Commissioners acting as aforesaid shall be a sufficient discharge to the purchaser of any such lands for the purchase-money in such receipt expressed to be received.

Receipt under Seal to be a sufficient discharge.

Legal proceedings.

And with respect to the liabilities of the Commissioners, and to legal proceedings by or against the Commissioners, be it enacted as follows:—

Commissioners not to be personally liable for acts done in the capacity of a Commissioner.

60. No Commissioner, by being party to or executing in his capacity of Commissioner any contract or other instrument on behalf of the Commissioners, or otherwise lawfully executing any of the powers given to the Commissioners, shall be subject to be sued or prosecuted, either individually or collectively, by any person whomsoever: and the bodies or goods or lands of the several Commissioners shall not be liable to execution of any legal process by reason of any contract or other instrument so entered into, signed, or executed by them, or by reason of any other lawful Act done by them, in the execution of any of their powers as Commissioners; and the Commissioners respectively, their heirs, executors, and administrators, shall be indemnified out of the rates and other moneys coming to the hands of the Commissioners by virtue of this and the special Act for all payments made or liability incurred in respect of any acts done by them, and for all losses, costs, and damages which they may incur in the execution of the powers granted to them.

Commissioners to be indemnified for Acts done in the execution of their office.

Actions or suits to be brought in the name of any two Commissioners or their clerk.

61. In all actions and suits in respect of any matter or thing relating to the execution of this or the special Act, to be brought by or against the Commissioners, it shall be sufficient, where such Commissioners are not a body corporate, to state the names of any two of the Commissioners, or the name of their clerk, as the party, plaintiff or defendant, representing the Commissioners in any such action or suit, and no such action or suit shall abate or be discontinued, or required to be transferred, by reason of the death of any such Commissioner, or by his ceasing to be a Commissioner, or by the death, suspension, or removal of such clerk.

Executions to be levied on the goods belonging to Commissioners by virtue of their office only.

62. Execution upon every judgment or decree against the Commissioners in any such action or suit shall be levied on the goods, chattels, or personal effects belonging to the Commissioners by virtue of their office, and shall not in any manner extend to charge or make liable the persons or private lands or goods of any of the Commissioners, or the heirs, executors, or administrators of any of them.

63. Every Commissioner or clerk in whose name any such legal proceeding shall be carried on, either as plaintiff or defendant, on behalf of the Commissioners, shall be reimbursed out of the moneys which shall come into the hands of the treasurer of the Commissioners by virtue of his office, all damages, costs, charges and expenses to which any such Commissioner or clerk may be put, or with which he may become chargeable, by reason of being so made plaintiff or defendant.

Commissioners and clerk to be reimbursed all damages, &c.

64. The Commissioners may prefer a bill of indictment against any person who shall steal or wilfully injure any property or thing belonging to the Commissioners or under their management, or institute any other proceeding which may appear to them necessary for the protection of such property, and in every such case it shall be sufficient to state generally the property or thing in respect of which such proceeding shall have been taken to be the property of the Commissioners as they shall be described in the special Act, without naming the individual Commissioners.

How indictments to be preferred.

And with respect to the appointment and accountability of the officers of the Commissioners, be it enacted as follows:—

Officers.

65. The Commissioners may from time to time appoint and employ a treasurer, clerk, collector, assessor and all such other officers to assist in the execution of this and the special Act as they shall think necessary and proper, and from time to time remove any of such officers, and appoint others in the room of such as shall be so removed, or as may die, resign, or discontinue their offices, and may, out of the moneys to be raised for the purposes of this and the special Act, pay such salaries and allowances to the said officers respectively as the Commissioners shall think reasonable.

Power to Commissioners to appoint clerk and other officers, and remove them from time to time.

66. The same person shall not be appointed to the office both of clerk and treasurer; and if any person being the clerk, or the partner of such clerk, or in the service of such clerk or of his partner, accept the office of treasurer, or if any person being the treasurer, or the partner of such treasurer, or in the service of such treasurer or of his partner, accept the office of clerk, he shall forfeit the sum of one hundred pounds, and any person may sue for such penalty by action of debt or on the case in any of the superior courts, and shall on recovery thereof be entitled to full costs of suit.

Offices of clerk and treasurer not to be held by the same person.

67. Every officer employed by the Commissioners who shall exact or accept on account of anything done by virtue of his office, or in relation to the matters to be done under this or the special Act, any fee or reward whatsoever other than the salary or allowances allowed by the Commissioners, or who shall be in anywise concerned or interested in any bargain or contract made by the Commissioners, shall be incapable of being afterwards employed by the Commissioners and shall forfeit the sum of fifty pounds, and any person may sue for such penalty by action of debt or on the case in any of the Superior Courts, and shall on recovery thereof be entitled to full costs of suit.

Officer taking fees other than those allowed to lose his office, and forfeit £50.

68. Before any person, whether treasurer, collector or other officer, Security to be

taken from all officers entrusted with money.

intrusted by the Commissioners with the custody or control of moneys by virtue of his office, shall enter upon such office, the Commissioners shall take sufficient security from him for the faithful execution thereof.

Collectors to pay over moneys within seven days to the treasurer.

69. Every collector appointed or employed by the Commissioners by virtue of this or the special Act to collect any rates shall, within seven days after he shall have received any moneys on account of any such rates, pay over the same to the treasurer of the Commissioners to their account, and the receipt of such treasurer for the moneys so paid shall be a sufficient discharge to the collector, and every such collector shall, in such time and in such manner as the Commissioners direct, deliver to them true and perfect accounts in writing under his hand of all moneys received by him and of all moneys paid by him to the said treasurer by virtue of this or the special Act, and also a list of the names of all persons who have neglected or refused to pay any rate or money owing by them, with a statement of the moneys due from them respectively.

Officers to account.

70. Every collector and other officer appointed or employed by the Commissioners by virtue of this or the special Act, shall from time to time, when required by the Commissioners, make out and deliver to them, or to any person appointed by them for that purpose, a true and perfect account in writing under his hand of all moneys received by him on behalf of the Commissioners, and such account shall state how and to whom and for what purpose such moneys have been disposed of, and together with such account such officer shall deliver the vouchers and receipts for such payments; and every such officer shall pay to the Commissioners, or to any person appointed by them to receive the same, all moneys which shall appear to be owing from him upon the balance of such accounts.

Summary recovery against parties failing to account.

71. If any such collector or other officer fail to render such accounts as aforesaid, or to produce and deliver up all the vouchers and receipts relating to the same in his possession or power, or to pay the balance thereof when thereunto required, or if for five days after being thereunto required he fail to deliver up to the Commissioners, or to any person appointed by them to receive the same, all papers and writings, property, effects, matters and things, in his possession or power, relating to the execution of this or the special Act, or any Act incorporated therewith, or belonging to the Commissioners, then, on complaint thereof being made to a justice or to the sheriff, such justice or sheriff shall summon such officer to appear before two or more justices, or before such sheriff, according as the summons may have been issued by a justice or by the sheriff, at a time and place to be set forth in such summons, to answer such charge; and upon the appearance of such officer, or upon proof that such summons was personally served upon him, or left at his last known place of abode, such justice or sheriff may hear and determine the matter in a summary way, and may adjust and declare the balance owing by such officer; and if it appear, either upon confession of such officer, or upon evidence, or upon inspection of the account, that any moneys of the Commissioners are in the hands of such officer, or owing by him to the Commissioners, such justices

or sheriff may order such officer to pay the same, and if he fail to pay the amount it shall be lawful for such justices or sheriff to grant a warrant to levy the same by distress, or by pouding and sale, or in default thereof to commit the offender to gaol, there to remain without bail for a period not exceeding three months, unless the same be sooner paid.

72. If any such officer summoned as aforesaid refuse to make such account in writing, or to produce and deliver to the justices or sheriff the several vouchers and receipts relating thereto, or to deliver up any books, papers, or writings, property, effects, matters, or things, in his possession or power, belonging to the Commissioners, such justice or sheriff may commit such offender to gaol, there to arrange until he shall have delivered up all the vouchers and receipts in his possession or power relating to such accounts, and all the books, papers, writings, property, effects, matters, and things, in his possession or power, belonging to the Commissioners.

Officers refusing to make out account and deliver up documents, &c. may be committed to prison.

73. Provided always, that if any Commissioner, or other person acting on behalf of the Commissioners, shall make oath that he has good reason to believe, upon grounds to be stated in his deposition, and that he does believe that it is the intention of such officer as aforesaid to abscond, the justice or the sheriff before whom the complaint is made may, instead of issuing his summons, issue his warrant for bringing such officer before such two justices as aforesaid if the warrant be issued by a justice, or before such sheriff if the warrant be issued by him; but no person executing such warrant shall keep such officer in custody longer than twenty-four hours without bringing him before some justice or the sheriff, according as he may be summoned before the one or the other; and the justice or sheriff before whom such officer may be brought may either discharge such officer, if he think there is no sufficient ground for his detention, or order such officer to be detained in custody so as to be brought before two justices at a time and place to be named in such order, unless such officer give bail to the satisfaction of such justice for his appearance before such justices to answer the complaint of the Commissioners.

Where officer about to abscond, a warrant may be issued in the first instance.

74. No such proceeding against or dealing with any such officer as aforesaid shall deprive the Commissioners of any remedy which they might otherwise have against any surety of such officer.

Proceedings against officers not to discharge sureties.

And with respect to the mortgages to be executed by the Commissioners, be it enacted as follows :—

75. Every mortgage or assignation in security of rates or other property authorised to be made under the provisions of this or the special Act shall be by deed duly stamped, in which the consideration shall be duly stated; and every such deed shall be under the common seal of the Commissioners if they be a body corporate, or if they be not a body corporate, shall be executed by the Commissioners or any five of them, and may be according to the form in the schedule (B) to this Act annexed or to the like effect; and the respective mortgagees or assignees in security shall be entitled one with another to their respective proportions of the rates and

Mortgages.
Form of mortgages.

assessments or other property comprised in such mortgages or assignments respectively, according to the respective sums in such mortgages or assignments mentioned to be advanced by such mortgagees or assignees respectively, and to be repaid the sums so advanced, with interest, without any preference one above another by reason of the priority of advancing such moneys, or of the dates of any such mortgages or assignments respectively.

Register of mortgages to be kept and to be open to inspection.

76. A register of mortgages or assignments in security shall be kept by the clerk to the Commissioners, and where by the special Act the Commissioners are authorised or required to raise separate sums on separate rates or other property, a separate register shall be kept for each class of mortgages or assignments in security, and within fourteen days after the date of any mortgage or assignment in security an entry or memorial of the number and date thereof, and of the names of the parties thereto, with their proper additions, shall be made in the proper register, and every such register may be perused at all reasonable times by any person interested in any such mortgage or assignment in security without fee or reward.

Transfers of mortgages.

77. Any person entitled to any such mortgage and assignment, may transfer his right and interest therein to any other person; and every such transfer shall be by deed duly stamped, wherein the consideration shall be truly stated; and every such transfer may be according to the form in the schedule (C) to this Act annexed, or to the like effect.

Register of transfers to be kept.

78. Within thirty days after the date of every such transfer, if executed within the United Kingdom, or otherwise within thirty days after the arrival thereof in the United Kingdom, it shall be produced to the Clerk to the Commissioners, and thereupon such clerk shall cause an entry or memorial thereof to be made, in the same manner as in the case of the original mortgage or assignment in security, and for such entry the clerk may demand a sum not exceeding five shillings; and after such entry, every such transfer shall entitle the transferee, his executors, administrators or assigns, to the full benefit of the original mortgage or assignment in security, and the principal and interest thereby secured; and such transferee may in like manner assign or transfer the same again, *toties quoties*; and it shall not be in the power of any person, except the person to whom the same shall have been last transferred, his executors, administrators or assigns, to make void, release or discharge the mortgage or assignment so transferred, or any money thereby secured.

Interest on mortgages to be paid half-yearly.

79. Unless otherwise provided by any mortgage or assignment in security the interest of the money borrowed thereupon, shall be paid half-yearly to the several parties entitled thereto.

Power to borrow money at a lower rate of interest to pay off securities at a higher rate.

80. If the Commissioners can at any time borrow or take up any sum of money at a lower rate of interest than any securities given by them and then be in force shall bear, they may borrow such sum at such lower rate as aforesaid, in order to pay off and discharge the securities bearing such higher rate of interest, and may charge the rates and other property which they may be authorised to mortgage or assign in security under this

or the special Act, or any part thereof, with payment of such sum and such lower rate of interest, in such manner and subject to such regulations as are herein contained, with respect to other moneys borrowed on mortgage or assignation in security.

81. The Commissioners may, if they think proper, fix a period for the repayment of all principal moneys borrowed under the provisions of this or the special Act, with the interest thereof, and in such case the Commissioners shall cause such period to be inserted in the mortgage deed or assignation in security; and upon the expiration of such period, the principal sum, together with the arrears of interest thereon, shall, on demand, be paid to the party entitled to receive such principal money and interest, and if no other place of payment be inserted in such deed, such principal and interest shall be payable at the office of the Commissioners.

Repayment of money borrowed at a time and place agreed upon.

82. If no time be fixed in the mortgage deed or assignation in security for the repayment of the money so borrowed, the party entitled to receive such money may, at the expiration, or at any time after the expiration, of twelve months from the date of such deed, demand payment of the principal money thereby secured with all arrears of interest, upon giving six months previous notice for that purpose, and in the like case the Commissioners may at any time pay off the money borrowed, on giving the like notice; and every such notice shall be in writing or print, or both, and if given by a mortgagee or creditor, shall be delivered to the clerk, or left at the office of the Commissioners, and if given by the Commissioners, shall be given either personally to such mortgagee or creditor, or left at his residence, or if such mortgagee or creditor be unknown to the Commissioners, or cannot be found after diligent inquiry, such notice shall be given by advertisement in the London Gazette if the office of the Commissioners is in England, the Edinburgh Gazette if it is in Scotland, or in the Dublin Gazette if it is in Ireland.

Repayment of money borrowed when no time or place has been agreed upon.

83. If the Commissioners shall have given notice of their intention to pay off any such mortgage or assignation in security at a time when the same may lawfully be paid off by them, then at the expiration of such notice, all further interest shall cease to be payable thereon, unless, on demand of payment made pursuant to such notice, or at any time thereafter, the Commissioners fail to pay the principal and interest due at the expiration of such notice on such mortgage or assignation in security.

Interest to cease on expiration of notice to pay off a mortgage debt.

84. In order to discharge the principal money borrowed as aforesaid on security of any of the rates, the Commissioners shall every year appropriate and set apart out of such rates respectively, a sum equal to the prescribed part, and if no part be prescribed, one-twentieth part of the sums so borrowed respectively, as a sinking fund to be applied in paying off the respective principal moneys so borrowed, and shall, from time to time, cause such sinking fund to be invested in the purchase of Exchequer bills or other Government securities, or, in Scotland, deposited in one of the banks there, incorporated by Act of Parliament or Royal Charter, and to be

Moneys borrowed on security of rates to be paid off in a limited period.

increased by accumulation in the way of compound interest or otherwise, until the same respectively shall be of sufficient amount to pay off the principal debts respectively to which such sinking fund shall be applicable, or some part thereof which the Commissioners shall think ought then to be paid off, at which time the same shall be so applied in paying off the same in manner hereinafter mentioned.

Mode of
paying off
mortgages.

55. Whenever the Commissioners shall be enabled to pay off one or more of the mortgages or assignations in security which shall be then payable, and shall not be able to pay off the whole of the same class, they shall decide the order in which they shall be paid off by lot among the class to which such one or more of the mortgages or assignations in security belong, and shall cause a notice, signed by their clerk, to be given to the persons entitled to the money to be paid off, pursuant to such lot, and such notice shall express the principal sum proposed to be paid off, and that the same will be paid, together with the interest due thereon, at a place to be specified, at the expiration of six months from the date of giving such notice.

Arrears of
interest, when
to be enforced
by appointment
of a receiver.

56. Where by the special Act the mortgagees or assignees in security of the Commissioners are empowered to enforce the payment of the arrears of interest, or the arrears of principal and interest, due to them, by the appointment of a receiver, then, if within thirty days after the interest accruing upon any such mortgage or assignation in security has become payable, and after demand thereof in writing, the same be not paid, the mortgagee or assignee in security may, without prejudice to his right to sue for the interest so in arrear in any of the Superior Courts, require the appointment of a receiver, by an application to be made as hereinafter provided; and if within six months after the principal money owing upon any such mortgage or assignation in security has become payable, and after demand thereof in writing, the same be not paid, together with all interest due in respect thereof, the mortgagee or assignee in security, without prejudice to his right to sue for such principal money, together with all arrears of interest, in any of the Superior Courts, may, if his debt amount to the prescribed sum alone, or, if his debt do not amount to the prescribed sum, he may, in conjunction with other mortgagees or assignees in security whose debts being so in arrear, after demand as aforesaid, together with his, amount to the prescribed sum, require the appointment of a receiver, by an application to be made as hereinafter provided.

Arrears of
principal and
interest.

As to the
appointment
of a receiver.

57. Every application for a receiver in the cases aforesaid shall in England or Ireland be made to two justices, and in Scotland to the sheriff, and on any such application such justices or sheriff may, by order in writing, after hearing the parties, appoint some person to receive the whole or a competent part of the rates or sums liable to the payment of such interest, or such principal and interest, as the case may be, until such interest, or until such principal and interest, as the case may be, together with all costs, including the charges of receiving the rates or sums aforesaid, be fully paid; and upon such appointment being made all such rates

and sums of money as aforesaid, or such part thereof as may be ordered by the said justices or sheriff, shall be paid to the person so to be appointed, and the money so paid shall be so much money received by or to the use of the party to whom such interest, or such principal and interest, as the case may be, shall be then due, and on whose behalf such receiver shall have been appointed, and after such interest and costs, or such principal, interest and costs, have been so received, the power of such receiver shall cease.

88. The books of account of the Commissioners shall be open at all reasonable times to the inspection of the respective mortgagees or assignees in security of the Commissioners, with liberty to take extracts therefrom, without fee or reward.

Account books to be open to the inspection of mortgagees.

And with respect to the accounts to be kept by the Commissioners, be it enacted as follows:

Accounts.

89. The Commissioners shall cause books to be provided and kept, and true and regular accounts to be entered therein of all sums of money received and paid for and on account of this and the special Act, and of the several purposes for which such sums of money shall have been received and paid, which books shall at all reasonable times be open to the inspection of any of the Commissioners, and any mortgagee, assignee, in security or other creditor of the Commissioners, without fee or reward, and the Commissioners and persons aforesaid, or any of them, may take copies or extracts from the said books, without paying anything for the same; and any clerk or other person having the custody of the said books who shall not, on any reasonable demand of any Commissioner, mortgagee or creditor as aforesaid, permit him to inspect the said books, or to take such copies or extracts as aforesaid, shall be liable to a penalty of twenty pounds for every such offence.

Accounts to be kept of receipts and disbursements, which shall be open for inspection.

Penalty for refusal.

90. The Commissioners shall cause their accounts to be balanced in each year to a period not less than one month before the annual general meeting at which they are to be produced, as after mentioned; and fourteen days at the least before such meeting the Commissioners shall cause a full and true statement and account to be drawn out of the amount of all rates or assessments made, and of all contracts entered into, and of all moneys received and expended by virtue of this or the special Act during the preceding year, and also of all debts then owing by the Commissioners, and they shall cause such statement and account to be printed, and shall allow the same to remain for inspection at the office of the Commissioners; and every creditor on the rates and assessments by this or the special Act, or any Act incorporated therewith, authorised to be made, and every person paying any such rate or assessment, or any person acting on behalf of any such creditor or ratepayer, may at all reasonable times inspect such statement and account, and compare the same with the books and documents relating thereto in the possession of the Commissioners; and the clerk shall on demand furnish a printed copy of the said statement and account to every such creditor and ratepayer, without fee; and fourteen days

Statement of accounts to be prepared, and to be open for inspection.

Copies of such statement to be furnished.

* *Sic.* at the least before * to the meeting for examining and settling such account the Commissioners shall give public notice of such intended meeting, stating in such notice that the said statement and account are printed, and lie at the office of the Commissioners ready for the inspection of the creditors and ratepayers or other parties interested.

Accounts to be examined and settled at the annual meeting. 91. The accounts of the Commissioners, so balanced as aforesaid, together with the said statement and account, shall be produced at the annual meeting of the Commissioners, or at some adjournment thereof, at which meeting all creditors and ratepayers and other persons interested may be present, and the accounts shall be then finally examined and settled by the Commissioners, and if the same be found just and true they shall be allowed by the Commissioners and certified accordingly under the hand of the chairman of such meeting; and after such accounts have been so allowed and signed by such chairman and also by the auditors, as hereinafter provided, the same shall be final in regard to all persons whomsoever, unless an appeal be prosecuted against such accounts as hereinafter provided.

Auditors to be appointed. 92. Except in the cases where by the special Act provision is made for the appointment of a permanent auditor, and such auditor shall have been appointed accordingly, the ratepayers present at the said annual meeting may appoint two or more persons, not being Commissioners, to be auditors of the accounts of the Commissioners; and if no other person present at such meeting propose the names of two persons to be appointed auditors by such meeting, it shall be the duty of the chairman of the meeting to propose the names of two persons to be so appointed, and the persons so to be appointed auditors shall have the like qualification and shall be subject to the like disqualification or disability as the Commissioners, and before entering on their office they shall make and sign before a justice or the sheriff a solemn declaration of the like purport and effect to that hereby required to be signed by the Commissioners; and the auditors so appointed shall receive a reasonable remuneration for their time and trouble, not exceeding two guineas each for every day they shall be fully employed on such audit, and all such expenses as they shall be put unto * attending the auditing of the said accounts, and if any dispute arise as to the amount of the remuneration and expenses to be paid to such auditors, it shall in England or Ireland be settled by two justices, and in Scotland by the sheriff.

Qualification of auditors.

* *Sic.*

Auditors to inspect accounts, and may appeal against part of the same if they think fit. 93. The auditors so nominated, or the said permanent auditor, if any shall have been appointed as aforesaid, shall attend as soon as conveniently may be after the said annual meeting at the office of the Commissioners, or at some other convenient place to be appointed by the Commissioners, and from time to time shall, in the presence of the clerk to the Commissioners, if he desire to be present, proceed to audit the accounts of the Commissioners for the year preceding the said annual meeting; and the Commissioners shall by their clerk produce and lay before such auditors the accounts so allowed and certified as aforesaid, together with the statement

and account hereinbefore mentioned, accompanied with proper vouchers in support of the same, and all books, papers, and writings in their custody or power relating thereto; and any person interested in the said account, either as a creditor of the Commissioners or as a ratepayer, may be present at the audit of the said account, by himself or his agent, and may make any objection to any part of such account; and if the said accounts be found correct such auditors shall sign the same in token of their allowance thereof, but if such auditors think there is just cause to disapprove of any part of the said accounts, they or any other person interested in the said accounts as aforesaid may appeal against any such parts of the said accounts as shall be so disapproved of to one of the two next Quarter Sessions in England or Ireland, and to the sheriff in Scotland, notice in writing of such appeal being given to the clerk of the Commissioners fourteen days at the least before the hearing of such appeal.

94. Upon the hearing of any such appeal the justices or the sheriff may make such order as they or he think fit respecting the payment of the costs of the appellant out of the moneys coming to the hands of the Commissioners under the special Act or otherwise, as they or he think fit, and such order shall be final.

The Court may order payment of the costs of the appeal.

95. The Commissioners shall every year cause an annual account in abstract to be prepared, showing the total receipt and expenditure of all funds levied by virtue of this and the special Act, and any Act incorporated therewith for the year ending on the day down to which their accounts shall have been made up for the said annual meeting, or some other convenient day in each year, under the several distinct heads of receipt and expenditure, with a statement of the balance of such account, duly audited and certified by the chairman of the Commissioners, and also by the auditors thereof, and shall, if the undertaking is situated in England or Ireland, send a copy of the said account free of charge to the clerk of the peace for the county where the undertaking is situate, and if the undertaking is situated in Scotland, shall send such copy to the sheriff clerk of such county on or before the Thirty-first day of January then next or within one month after the same has been duly audited, which account shall be open to the inspection of the public at all reasonable hours, on payment of the sum of one shilling for every such inspection; and if the Commissioners shall omit to prepare and transmit such account as aforesaid, they shall be liable for every such omission to a penalty of twenty pounds.

Annual account to be made up and transmitted to the clerk of the peace in England or Ireland, or to the sheriff clerk in Scotland, and to be open to inspection.

And with respect to giving notices and orders, be it enacted as follows: Notices.

96. Any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the Commissioners, may be served by the same being left at or sent through the post-office, directed to the Commissioners, at their principal office, or one of their principal offices where there shall be more than one, or by being given personally to the clerk, or in case there be no clerk, then by being given to any one Commissioner.

Service of notices upon Commissioners.

Notices by advertisement.

100. All notices required by this or the special Act, or any Act incorporated therewith, to be given by advertisement, shall be advertised in the prescribed newspaper, or if no newspaper be prescribed, or if the prescribed newspaper cease to be published, in a newspaper circulating in the district within which the undertaking shall be situated.

Authentication of notices and orders.

101. Every order, summons, notice or other such document requiring authentication by the Commissioners shall be sufficiently authenticated if signed by two Commissioners, or by the clerk of the Commissioners, and it need not be under the common seal of the Commissioners, although they be incorporated, and the same may be in writing or in print, or partly in writing and partly in print.

SCHEDULE (B.) s. 75.

Form of Mortgage.

BY virtue of [here name the Special Act], we [here name the corporation if the Commissioners be incorporated, or if not incorporated, five of the Commissioners], appointed in pursuance of the said Act, in consideration of the sum of _____ paid to the treasurer to the said Commissioners by *A. B.*, of _____ for the purposes of the said Act, do grant and assign unto the said *A. B.*, his executors, administrators and assigns, such proportion of the rates, rents, profits and other moneys arising or accruing by virtue of the said Act from [here describe the rates or other property proposed to be 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, rents, profits, or moneys to hold to the said *A. B.*, his executors, administrators and assigns, from this day until the said sum of _____ with interest at _____ per centum per annum for the same, shall be fully paid and satisfied (the principal sum to be repaid at the end of _____ years from the date hereof [in case any period be agreed upon for that purpose]). Given under our corporate seal [or in witness whereof we have hereunto set our hands and seals, or, if the deed be granted in Scotland, insert the testing clause required by the law of Scotland, as the case may be], this _____ day of _____ One thousand eight hundred and _____.

SCHEDULE (C.) s. 77.

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 [or, if

the deed be granted in Scotland, a certain assignation in security], number made by "The Commissioners for executing the [here name the special Act] to bearing date the day of for securing the sum of and interest [or, if such transfer be by indorsement, the within security], and all my right, estate and interest in and to the money thereby secured, and in and to the rates, rents, profits or other moneys thereby assigned. In witness whereof I have hereunto set my hand and seal [or, if the deed be granted in Scotland, insert the testing clause required by the law of Scotland], this day of One thousand eight hundred and .

12 & 13 VIC. c. 50.

An Act for further amending the laws relating to Sewers.

[28th July, 1849]

WHEREAS considerable inconvenience and expense are found to arise from the inefficient state of the laws relating to sewers, and it is expedient that the same should be amended, and that further provision should be made for the execution of the powers vested in Commissioners of Sewers: And whereas it is expedient that certain duties with respect to the superintendence, maintenance and repairs of the sewers within the respective Commissions of Sewers in England should be discharged by the occupiers of sewable lands within each Commission respectively without fee or reward: And whereas it is also expedient that further provision should be made for the making and enforcing the due payment of sewers rates duly assessed: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that it shall be lawful for the Commissioners acting in the execution of any Commission of Sewers in England, at a Court specially to be holden for such purpose, and whereof notice shall be given in the manner prescribed by the ninth section of an Act passed in the third and fourth years of the reign of his late Majesty King William the Fourth, intituled, an Act to amend the laws relating to Sewers, from time to time to partition the several districts within their respective Commissions into such sub-districts as may appear to them most convenient for the purposes of this Act, and to fix and specify the boundaries of such sub-divisions respectively, and also to unite any separate districts or sub-districts within their respective Commissions into one or more districts, and also from time to time as to them shall seem expedient, to re-arrange, adjust and partition such districts and sub-districts respectively.

Power to Commissions of Sewers to partition districts into sub-districts.

3 & 4 Will. IV. c. 22.

2. And be it enacted, that it shall be lawful for the said Commissioners, after every such partition, union or rearrangement of districts or sub-districts as aforessid, from time to time as to the said Commissioners shall

Power to Commissioners to make a separate rate for each district.

seem most expedient, to make a separate and distinct rate for each and every district or sub-district now existing or which shall be hereafter constituted under the provisions of this present Act, such rate, when collected, to be applied within each such district or sub-district to and for the several purposes to which the same may be lawfully applied under the authority of any of the Acts relating to sewers or of this Act.

Power to Commissioners to appoint dyke-reeves for districts and sub-districts.

3. And be it enacted, that it shall be lawful for the said Commissioners from time to time to appoint one or more competent person or persons, being an occupier of sewable lands within their respective Commissions, and qualified as hereinafter mentioned, to act as dyke-reeve within each of such sub-districts as aforesaid, and also within each of such districts as are now existing or shall be hereafter constituted under the provisions of this present Act or the hereinbefore mentioned Act, and which shall not be partitioned in manner aforesaid, and to assign and prescribe the duties and authorities of such dyke-reeve, and the time, not exceeding five years, during which he shall perform and exercise the same respectively.

Qualification of dyke-reeves.

4. And be it enacted, that every occupier of not less than ten acres of sewable lands, and being of full age and sound mind, shall be qualified and liable to be appointed a dyke-reeve for the district or sub-district in which such lands shall be situate; and the said Commissioners shall from time to time cause a full and true list to be prepared and kept of all the persons so qualified and liable to serve the office of dyke-reeve for the several districts and sub-districts within their respective Commissions.

Persons appointed dyke-reeves compelled to serve office without fee or reward. Penalty on dyke-reeves refusing to serve.

5. And be it enacted, that it shall be compulsory upon every such person who shall be appointed by the Commissioners to serve the office of dyke-reeve for any such district or sub-district as aforesaid, either personally or by a deputy (approved by the Commissioners), to accept such office, and to perform and discharge the duties thereof, without fee or reward; and if any person who shall be appointed by the Commissioners to serve the office of dyke-reeve shall, after due notice thereof in writing, refuse or neglect to take upon himself the office of dyke-reeve, or to provide a deputy to be approved as aforesaid, he shall on conviction before the said Commissioners forfeit any sum not exceeding twenty pounds, unless he can show good and sufficient cause to the said Commissioners why he should not be called upon to serve the said office: Provided always, that every deputy so approved of and appointed shall have the same powers and authorities, and be subject to the discharge of the same duty as any dyke-reeve appointed under the authority of this Act.

Power to Commissioners to impose fines not exceeding 40s.

6. And be it enacted, that it shall be lawful for the said Commissioners to impose any fine not exceeding forty shillings, upon the presentment on oath of any dyke-reeve acting within any such district or sub-district as aforesaid, for any breach of the law, acts, decrees, orders, constitutions, and ordinances of the Commissioners within such district or sub-district, in the same manner as they have now the power to impose any such fine upon the presentment of any sewers jury, bailiff, surveyor, expeditor, or other

person, which presentment shall be heard and determined by the said Commissioners, and to proceed for the recovery of every such fine, either in the manner specified in the hereinbefore mentioned Act, or in the manner specified in the section next hereinafter contained, as to the said Commissioners shall seem most expedient; and no such fine shall be liable to be traversed, any law or custom to the contrary notwithstanding.

7. And be it enacted, that for the purpose of better collecting and recovering the fines, ameracements, penalties, or forfeitures imposed by any Commissioners of Sewers, and also the sewers rates duly assessed on any sewable lands lying within the limits of any Commission of Sewers, it shall and may be lawful for any one Commissioner acting within and for such limits, upon complaint of any expeditor, dyke-reeve, collector, or other officer of sewers, that any person liable to the payment of any such fine, ameracement, penalty, or forfeiture hath not paid the same, but hath refused to do so, or that any person duly rated and assessed in one or more such sewers rates hath not paid the sum or sums thereby charged on such person, but hath refused so to do, to issue his summons to such person to appear, at a time and place to be therein specified, before any two Commissioners acting within and for such limits, to show cause why such person refuses to pay the said sum or sums; and upon the appearance of such person at the time and place appointed as aforesaid, or otherwise upon proof on oath or affirmation to the said Commissioners that such summons was served on the person to whom it was so directed, by delivery to the party personally, or by leaving the same with some person for him at his last place of abode, and also upon like proof of the imposition of such fine, ameracement, penalty, or forfeiture, or of the making of the said rate, and of the refusal of such person to pay the same respectively, it shall be lawful for the said two or other Commissioners to issue their warrant to levy the said sum or sums, and also the costs and expenses incurred in obtaining such warrant (to be specified therein) and in executing the same, by distress and sale of the goods and chattels of such person; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money and costs, and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained: Provided always, that if no such distress or distresses as aforesaid can be found, the same rates or fines, costs, charges, and expenses, together with the costs and charges of raising and levying the same, shall and may be raised and levied upon and out of the lands, tenements, and hereditaments, within the limits of the Commission under and by virtue of which the distress warrant shall be issued, of or belonging to the person, body politic or corporate, upon or against whom the distress warrant shall be issued, in such and the same manner as the same would have been leviable if the same lands, tenements, or hereditaments had been lawfully assessed in the amount or respective amounts of the same rates or fines, costs, charges, and expenses, to or for a lawful scot, rate, or assessment for the purposes of the same Commission; and the same lands, tenements, and hereditaments shall be subject to all such and the same

For recovery of
sewers rates
and fines.

orders and decrees as the same would have been subject to, and such orders and decrees as shall be of the same force and authority, as if the same rates or fines, costs, charges, and expenses were a lawful scot, rate, or assessment as aforesaid and unpaid.

One warrant may issue against several ratepayers. 8. And be it enacted, that for the saving of expense in the levying of any sum or sums as aforesaid, it shall be lawful to make and issue one summons and one warrant of distress against any number of persons refusing to pay the same.

To whom warrants to be directed. 9. And be it enacted, that the warrant aforesaid may be directed to the bailiff, expeditor, dyke-reeve, collector, or other sewers officer within such limits, and to any other person or persons, or to any one or more of them, as by the two Commissioners of Sewers granting the same shall be deemed fit.

Interpretation of certain terms. 10. And be it enacted, that for the purposes of this Act the following words and expressions shall have the several meanings hereby assigned to them, unless there shall be something in the subject matter or context repugnant to such construction: (that is to say,) Words importing the singular number shall extend to the plural, and words importing the plural only shall include the singular; the word "person" shall extend to bodies politic, corporate, or collegiate; the word "lands" shall include lands and hereditaments of any tenure whatsoever; the word "oath" shall include affirmation in case of a quaker, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath; the expression "district" shall extend to any level, valley, district, or limit within the Commission of any Court of Commissioners, and the expression "sub-district" to any partition or subdivision of any such level, valley, district or limit.

24 & 25 VIC. c. 133.

An Act to amend the Law relating to the Drainage of Land for Agricultural Purposes.

[6th August, 1861.]

WHEREAS it is expedient to amend the Law relating to the Drainage of Land for Agricultural Purposes: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Preliminary.

Short Title. 1. This Act may be cited for all purposes as "The Land Drainage Act, 1861."

Act to apply to England only. 2. This Act, in so far as the same relates to Commissioners of Sewers, shall include any Commission of Sewers granted by Her Majesty, and for the time being in force, whether such Commission is or is not granted in

pursuance of this Act, or has or has not been granted previously to this Act, and in so far as the same relates to Commissioners of Sewers shall include Commissioners acting under any such Commission as aforesaid, but it shall not extend to Scotland or Ireland, or to any part of the Metropolis as defined by the Act passed in the session holden in the eighteenth and nineteenth years of the reign of Her present Majesty, chapter one hundred and twenty, intituled "An Act for the better Local Management of the Metropolis."

3. "Watercourse" shall include all rivers, streams, drains, sewers, and passages through which water flows: Definition of terms.

"Person" shall include any body of persons, corporate or unincorporate, unless there is something in the context inconsistent therewith:

"Owner" as used throughout this Act, except where otherwise defined in the provisions relating to rating, shall have the same meaning as it has in "The Lands Clauses Consolidation Act, 1845."

PART I.

COMMISSIONS OF SEWERS.

Assignment of New Limits.

4. It shall be lawful for Her Majesty, upon the recommendation of the Inclosure Commissioners, to be obtained on such application and subject to such conditions as hereinafter mentioned, to direct Commissions of Sewers into all parts of England, inland as well as maritime, and to assign as the limits for the jurisdiction of such Commissions any areas that may be thought most expedient, having regard to the levels and other facilities for drainage within such areas, with power for Her Majesty to include within the limits of any Commission of Sewers any area to which a Commission of Sewers may not hitherto have been assigned, or any area either wholly or partially within the limits of an existing Commission of Sewers; subject to this proviso, that no alteration shall be made affecting the jurisdiction of any Commissioners of Sewers without the consent of a Special Meeting of such Commissioners. Commissions of Sewers may be issued for new areas on recommendation of Inclosure Commissioners.

5. The following proceedings shall be taken for the purpose of obtaining the recommendation of the Inclosure Commissioners, to the grant of a Commission of Sewers: Recommendation of Inclosure Commissioners to be obtained on petition of proprietors after investigation by an inspector.

(1) A petition shall be presented to the Inclosure Commissioners, stating the proposed boundaries of the area to be comprised within the limits of the Commission, by reference to a map, or in such other manner as the Commissioners think expedient, and signed by the proprietors of one-tenth part of the land within such boundaries:

(2) The petition shall be supported by such evidence as the Inclosure Commissioners require; but the matter thereof shall not

be entertained until the petitioners have given such security as the Inclosure Commissioners may require for the payment of costs in the event of the petition being unsuccessful :

- (3) Upon the receipt of such petition the Inclosure Commissioners may, if they think fit, send an inspector to the place for the purpose of making inquiries as to the genuineness of the petition, and as to the propriety of the proposed boundaries, and as to the number of proprietors assenting to or dissenting from the prayer of the petition :
- (4) Before commencing such inquiry the inspector shall give such notice as the Inclosure Commissioners direct of his intention to make the same, and of a time and place at which he will be prepared to hear all proprietors desirous of being heard before him on the subject of such inquiry, and of a further time, being not less than fourteen days, within which all proprietors intending to dissent from the prayer of the petition must express such dissent :
- (5) The Inclosure Commissioners shall dismiss the petition if the proprietors of one-third part of the land within the proposed boundaries express their dissent from the prayer thereof, in writing addressed to the Inclosure Commissioners, and sent to their office in London within such time as aforesaid ; but if no such dissent be expressed, and if the Commissioners, after hearing the report of their inspector, approve of the proposed boundaries, either with or without modification, one of Her Majesty's principal Secretaries of State shall convey an intimation of such approval to Her Majesty ; and a Commission of Sewers for the area as proposed by the petitioners, or as modified by the Inclosure Commissioners, shall thereupon be issued.

Definition
proprietors.

6. The following persons shall be deemed to be proprietors for the purposes of this Act ; that is to say :

- (1) Any person entitled for his own benefit, at law or in equity, for an estate in fee, to the possession or receipt of the rents and profits of any freehold or copyhold land, whether such land is or not subject to incumbrances :
- (2) Any person absolutely entitled in possession, at law or in equity, for his own benefit, to a beneficial lease of land of which not less than twenty-five years are unexpired, whether such land is or not subject to incumbrances ; but no lease shall be deemed to be a beneficial lease, within the meaning of this Act, if the rent reserved thereon exceeds one-third part of the full annual value of the land demised by such lease :
- (3) Any person entitled under any existing or future settlement, at law or in equity, for his own benefit, and for the term of his own life, or the life of any other person, to the possession or

receipt of the rents and profits of land of any tenure, whether subject or not to incumbrances, in which the estate for the time being subject to the trusts of the settlement is an estate for lives or years renewable for ever, or is an estate renewable for a term of not less than sixty years, or is an estate for a term of years of which not less than sixty are unexpired, or is a greater estate than any of the foregoing estates.

- (4) The word "settlement," as herein used, shall include any Act of Parliament, will, deed, or other assurance whereby particular estates or particular interests in land are created, with remainders or interests expectant thereon.
- (5) Any body corporate, any corporation sole, any trustees for charities, and any Commissioners, or trustees for ecclesiastical, collegiate, or other public purposes, entitled at law or in equity, in the case of freehold estates or copyhold estates in fee, and in the case of leasehold estates to a lease for an unexpired term of not less than sixty years.

7. Where any proprietor as hereinbefore defined is a minor, or of unsound mind, or a married woman, the guardian, committee, or husband as the case may be, of such proprietor, shall be the proprietor within the meaning of this Act; subject to this proviso, that a married woman entitled for her separate use, and not restrained from anticipation, shall, for the purposes of this act, be treated as if she were not married.

Trustees to be deemed proprietors in certain cases.

8. Where a corporation, aggregate, a joint stock or other company, or any body of proprietors or undertakers, is proprietor of any land, such corporation, company, body of proprietors or undertakers respectively, shall be deemed to be one proprietor for the purpose of giving an assent or dissent under this Act, and may express their assent or dissent in writing under their common seal in the case of a corporation, and in any other case under the hands of three Directors or other persons in the direction or management of the company or concern; but no member of such corporation, nor proprietor or person interested in such company or concern, shall be entitled to dissent individually as a proprietor in respect of such land.

Provision as to proprietorship by corporations and companies.

9. Where several persons are proprietors of land as joint tenants, coparceners, or tenants in common in undivided moieties, they shall in respect of such land be accounted as one proprietor, but the concurrence of the proprietors of two-third parts of such land shall be deemed to be the concurrence of the whole.

Provision as to joint proprietors

10. When any portion of land comprised within the boundaries referred to in any such petition as is hereinbefore mentioned appears to have no proprietor within the meaning of this Act, or the proprietor cannot be found, the land so circumstance dshall be altogether excluded in any computation that may be made of the proportion borne by the dissenting

Provision in case of no proprietor.

proprietors of any area of land as hereinbefore provided to the aggregate number of the proprietors of such land.

Powers of
inspector.

11. Any inspector sent by the Inclosure Commissioners in pursuance of this Act may, by summons under his hand, require to appear before him any persons whomsoever, and 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 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, to be recovered in a summary manner; but no person shall be required to attend in obedience to any summons unless the reasonable charges of his attendance have been paid or tendered to him.

Expenses
incurred in
obtaining the
issue of a Com-
mission of
Sewers under
this Act.

12. All costs, charges, and expenses incurred by the petitioners or the Inclosure Commissioners in obtaining the issue of a Commission of Sewers in pursuance of this Act shall be a charge on the rates leviable by the Commissioners of Sewers acting under such Commission, but if no Commission is issued all such costs, charges, and expenses as aforesaid shall be defrayed by the petitioners.

Evidence of
issue of Com-
mission.

13. The issue of a Commission of Sewers for any area shall be conclusive evidence that all the requirements of this Act in respect of the issue of such Commission have been complied with.

Duration of Commission.

Duration of
Commissions
of Sewers.

14. A Commission of Sewers once issued shall be deemed to continue until such time as it may be superseded by Her Majesty; and Her Majesty may from time to time, by writing under her sign manual, fill up any vacancies that may arise in the body of Commissioners assigned by any Commission of Sewers.

Quorum.

Quorum of
Commissioners.

15. Three Commissioners shall constitute a quorum at any meeting or Court of Commissioners of Sewers, except in cases where improvements in existing works, or the construction of new works, as hereinafter defined, are in question, in which case the quorum now required by law shall be necessary.

General Powers of Commissioners.

16. The powers of Commissioners of Sewers acting within their jurisdiction shall extend to the following acts:—

Declaration of powers of Commissioners.

- (1) To cleansing, repairing, or otherwise maintaining in a due state of efficiency any existing watercourse or outfall for water, or any existing wall or other defence against water, hereinafter referred to under the expression "Maintenance of existing Works:"
- (2) To deepening, widening, straightening, or otherwise improving any existing watercourse or outfall of water, or removing mill-dams, weirs, or other obstructions to watercourses or outfalls for water, or raising, widening, or otherwise altering any existing wall or other defence against water, hereinafter referred to under the expression "Improvement of existing Works:"
- (3) To making any new watercourse or new outfall for water, or erecting any new defence against water, or erecting any machinery, or doing any other act not hereinbefore referred to, required for the drainage, necessary supply of water for cattle, warping or irrigation of the area comprised within the limits of their jurisdiction, hereinafter referred to under the expression "the Construction of new Works:"

Provided—

- (1) That no person shall by virtue of this Act be compelled to execute at his own expense any works which he would not have been compelled to execute if this Act had not passed:
- (2) That no works shall be deemed to be a new work that is in substitution for an old one, in case where such old work is so much out of repair or so inefficient as to make it expedient to construct a new work in place thereof:
- (3) That full compensation shall be made for all injury sustained by any person by reason of the exercise by the Commissioners of the above powers:
- (4) That the exercise of the foregoing powers shall be subject to the restrictions hereinafter mentioned.

17. The Commissioners shall not be entitled to remove or otherwise interfere with any mill-dam, weir, or other like obstruction, whereby the level of the water is raised for any milling or other purpose of profit, so as to injuriously affect the supply of water, otherwise than with the consent of the owner of such mill-dam, weir, or other like obstruction, until the following things have been done, that is to say:

Restrictions as to obstructions.

- (1) Their right to do so has been determined in manner hereinafter mentioned;
- (2) Compensation has been made to all parties entitled for the injury which may be caused by such removal or interference.

Questions as to
right to remove
any obstruc-
tions.

18. For the purpose of determining the right of the Commissioners to remove or otherwise interfere with any such dam, weir, or other like obstruction, there shall be decided, if the owner consent, by two or more justices assembled in petty sessions, but if he do not consent, by arbitration, the questions following; that is to say:

- (1) Whether the proposed removal or interference is necessary for the effectual drainage of land within the jurisdiction of the Commissioners:
- (2) Whether the proposed removal or interference will cause any injury to the owner:
- (3) Whether any injury that may be caused by the removal or interference is or is not of a nature to admit of being fully compensated for by money.

Consequences
of determina-
tion of question.

19. The consequence of any such decision shall be as follows; that is to say:

- (1) If the decision is that such a removal or interference is not necessary for the effectual drainage of the lands by the Commissioners, the Commissioners shall not be entitled to make the same:
- (2) If the decision is that such removal or interference is necessary for the purpose aforesaid, but that the injury to be caused thereby is not of a nature to be fully compensated for by money, the Commissioners shall not be entitled to make the same:
- (3) If the decision is that such removal or interference is necessary, and that any injury that may be caused can be fully compensated by money, the Commissioners shall be at liberty to make the same, upon making compensation as hereinafter mentioned.

Amount of com-
pensation how
ascertained.

20. Where the decision is that the Commissioners are entitled to remove or interfere with any such mill-dam, weir, or other obstruction, the Commissioners shall take the same steps with respect to compensating the parties interested as are required to be taken by the said Lands Clauses Consolidation Act by purchasers in cases where they are authorised to purchase or take lands by special Act.

Restrictions as
to purchase of
land.

21. The Commissioners shall not by virtue of this Act purchase any land for new works, otherwise than by agreement with the owner thereof, until they have obtained the sanction of Parliament in manner hereinafter mentioned.

Publication of
notices.

22. The Commissioners, before applying for the sanction of Parliament, shall do as follows; that is to say:

- (1) Publish once at least in the London Gazette, and once at least in each of three consecutive weeks in some newspaper circulating

within the limits of their Commission, an advertisement describing shortly the nature of the undertaking in respect of which the land is proposed to be taken, naming a place where a plan of the proposed undertaking may be seen at all reasonable hours, and stating the quantity of land that they require :

- (2) Serve a notice in manner hereinafter mentioned on every owner or reputed owner, lessee or reputed lessee, and occupier of such lands, defining in each case the particular lands intended to be taken, and requiring an answer stating whether the person so served assents, dissents, or is neuter in respect of taking such lands ; such notice to be served

By delivery of the same personally on the party required to be served, or if such party is absent abroad to his agent ; or

By leaving the same at the usual or last known place of abode of such party as aforesaid ; or

By forwarding the same by post in a prepaid letter addressed to the usual or last known place of abode of such party.

23. Upon compliance with the provisions hereinbefore contained with respect to advertisements and notices, the Commissioners may present a petition to the Inclosure Commissioners. The petition shall state the land intended to be taken, and the purposes for which it is required. It shall pray that the Commissioners may, with reference to such land, be allowed to put in force the powers of the said Lands Clauses Consolidation Act in relation to the compulsory taking of land, and such prayer shall be supported by such evidence as the Inclosure Commissioners require.

24. Upon the receipt of such petition, and upon proof to their satisfaction of the proper advertisements having been published and notices served, the Inclosure Commissioners shall take such petition into their consideration, and they may either dismiss the same or they may, if they think fit, send an inspector to the district in which the land is situate, for the purpose of making inquiry as to the propriety of assenting to the prayer of such petition.

25. Before commencing his inquiry the inspector shall give such notice as the Inclosure Commissioners direct 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 on the subject-matter of such inquiry.

26. Upon the completion of such inquiry the Inclosure Commissioners may, by provisional order, empower the Commissioners to put in force with reference to the land mentioned or referred to in such order the powers of the said Lands Clauses Consolidation Act in relation to the compulsory taking of land ; and it shall be the duty of the Inclosure Commissioners as soon as conveniently may be to take all proper steps for the confirmation

of such provisional order by Act of Parliament, and when so confirmed it shall be deemed to be a public general Act of Parliament, and to take effect accordingly; but previous to such confirmation it shall not be of any validity whatever.

Expenses of obtaining provisional order.

27. All costs, charges and expenses incurred by the Inclosure Commissioners in relation to the obtaining any such Act as aforesaid shall be paid by the Commissioners out of the rates leviable by them in pursuance of this Act, and applicable to the works with a view to which the provisional order was obtained.

Provisions of 8 & 9 Vic. c. 18, and 23 & 24 Vic. c. 106, incorporated with this Act.

28. Subject to the restrictions herein contained, the Commissioners may purchase such lands or easements relating to lands as they may require for the purposes of this Act; and "The Lands Clauses Consolidation Act, 1845," and the Act amending the same, passed in the session of the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter one hundred and six, shall be incorporated with this part of this Act, with the exceptions and subject to the conditions hereinafter contained; that is to say,

(1) There shall not be incorporated with this part of this Act the sections and provisions of "The Lands Clauses Consolidation Act, 1845," hereinafter mentioned; that is to say, section sixteen, whereby it is provided that the capital is to be subscribed before the compulsory powers are to be put in force; section seventeen, whereby it is provided that the certificate of the justices should be evidence that the capital has been subscribed; the provisions relating to the entry upon lands by the promoters of the undertaking, contained in sections eighty-four to ninety-one, both inclusive; section one hundred and twenty-three, whereby a limit of time for the compulsory purchase of land is imposed, the provisions relating to the manner of serving notices, and the provisions relating to access to the special Act:

(2) In the construction of this part of this Act and the said incorporated Acts this part of this Act shall be deemed to be the special Act, and the Commissioners shall be deemed to be the promoters of the undertaking, and the word "land" or "lands" shall include any easement in or out of lands.

Notice to be given of certain works.

29. Previously to commencing any improvements in existing works or any new works where such improvements or new works involve an expenditure of more than one thousand pounds, the Commissioners shall cause plans of the proposed work and an estimate of the expense thereof, and of the area within which a rate will be required to be levied to meet such expense to be made, together with a list of the names and addresses of the persons reputed to be proprietors of the land within such last-mentioned area, with the addition of the number of acres of which each person is reputed to be the proprietor, and shall publish their intention to execute such works two months before commencing the same in manner following; that is to say:

By inserting in some newspaper circulating within the limits of their Commission once in every week during such period of two months, a notice explaining briefly the nature of the work, the amount of expense to be incurred and the area of land within which a rate is proposed to be levied for meeting such expense, describing such area by reference to a deposited plan, or by boundaries, or in such other manner as the Commissioners may think best calculated to give information of their intention, and stating a place within the limits of their Commission at which the plan and estimate of the works and the list of reputed proprietors may be inspected at all reasonable hours :

By placing a copy of such notice for three successive Sundays on the church door of the principal church, or some one of the churches of the parish or parishes in which such works are to be done, or in the case of any extra-parochial place, of some parish immediately adjoining thereto.

30. Any person interested may, at any time before the expiration of such two months as aforesaid, apply to the Commissioners to correct the list of reputed proprietors by inserting or expunging the name of any person, or by altering the number of acres appropriated by such list to any proprietor, and the Commissioners shall hear any application so made, and shall amend the list accordingly, and the decision of the Commissioners in respect of such list shall be final ; and at the expiration of the period of two months, or of such further period as the Commissioners may fix for the purpose of hearing any application made within such period of two months the list as settled by the Commissioners shall be conclusive evidence of proprietorship for the purpose of ascertaining the proportion of dissenting proprietors as hereinafter mentioned.

Correction of list of proprietors

31. If within such period of two months the proprietors of one-half of the area of land within which a rate is according to the notice proposed to be levied declare in writing to the Commissioners, by notice left at their office, that they are unwilling that such work should be executed, the Commissioners shall take no further steps therein : but if no such declaration of dissent is made, the Commissioners may, at the expiration of such period of two months, commence the proposed work, and repay out of the rates to be levied by them within the area all expenses incurred, not exceeding the estimate published in the notice.

Dissent of proprietors of one-half of area conclusive against new works.

32. If the Commissioners are unable to discover the proprietor of any lands they shall give notice to that effect in the list of reputed proprietors made by them, and such land shall, in the event of no proprietor proving his title to have his name inserted in the list before the period hereinbefore named for the completion of the list, be altogether excluded in any computation that may be made of the proportion borne by the dissenting proprietors of any area of land as hereinbefore provided to the aggregate number of the proprietors of such land.

Provision in case of no proprietor.

Jury may be dispensed with under certain conditions.

33. Commissioners of Sewers, acting within their jurisdiction, may, without the presentment of a jury, make any order in respect of the execution of any work, the levying of any rate, or doing any act which they might but for this section have made with such presentment; subject to this proviso, that any person aggrieved by any such order made by the Commissioners without the presentment of a jury may appeal therefrom in manner hereinafter mentioned.

Liability by reason of Tenure.

Power to commute liabilities to repair by reason of tenure.

34. The Commissioners may, with the consent of the Inclosure Commissioners, testified in writing under their common seal, commute, for such sums of money as they think expedient, the obligation imposed on any person, by reason of tenure, custom, prescription or otherwise, to repair any walls, maintain any sewer, or do any other work within their jurisdiction.

Nature of commutation.

35. Any commutation so made may be by way of gross or annual charge on the lands of the person in respect of which the original obligation arose and any charge so created shall be recoverable by the Commissioners in the same manner in which the rent-charge is recoverable, and shall have priority over all incumbrances created or to be created by any proprietor of the lands on which the same is charged.

Deposit of Record of commutation.

36. The record of any such charge as aforesaid shall be deposited in the office of the clerk of the peace of the county in which the district or the greater part of the district within the jurisdiction of the Commissioners is situate; and such record, or any certified copy thereof, shall be receivable in evidence in all legal proceedings.

Saving of existing liabilities to repair.

37. Subject to the provisions hereinbefore contained as to commutation of liability, the liability of any person whomsoever to defray or contribute towards the expense of making, completing, altering, amending or maintaining any sewer or drain, or any walls or works for protecting the land against the force or encroachments of the sea or of any river, or doing any other work within the jurisdiction of the Commissioners, shall continue, and the same may be enforced as if this Act had not passed, and the rates to be levied under this Act shall be made only for purposes to which such liability does not extend.

Rating Powers.

Regulations as to rating.

38. The following regulations shall be observed with respect to rates leviable by Commissioners of Sewers: that is to say,
First—As to the purposes of the rate:

Rates may be levied by Commissioners of Sewers for defraying all costs, charges, and expenses incurred or to be incurred by them under the authority of any Act of Parliament, law, or custom.

Second—As to the incidence of the rates :

- (1) A rate levied by the Commissioners for the purposes of defraying the expense of any improvements in existing works or any new works, where such improvements or new works involve an expenditure of more than one thousand pounds, shall be deemed to be a special rate, and shall be deemed to be a tax on the owners of property ; but except such special rate, rates leviable by the Commissioners shall be payable by the same persons, in respect of the same property, and in the same manner as they are now by law payable :
- (2) Where the owner of any land makes default in paying the amount of any rate due from him, such amount may be levied upon and payment thereof enforced against the occupier of such land, and his goods and chattels in like manner as if the same were a rate due from such occupier, with this limitation, that no occupier shall be liable to pay on account of any owner any sum exceeding the the rent due or that may accrue due to such owner during the period of his occupancy ; and subject to this proviso, that any occupier may, in the absence of any agreement to the contrary, deduct the sum so paid by him from any rent due or to accrue due to such owner ; and the receipt of the Commissioners for any rate paid by the occupier under the circumstances mentioned in this section shall, to the extent of the moneys therein expressed to be paid, be a discharge as against such owner of an equivalent amount of rent :
- (3) "Owner of land" for the purposes of this section shall mean the person for the time being entitled to receive the rack-rent of the land in respect of which the rate is made on his own account, or who would be entitled to receive the same if such land were let at a rack-rent, including under the term "rack-rent" any rent which is not less than two-thirds of the net annual value of the land out of which the rent issues.

Third—As to the assessment of the rate :

- (1) Whenever the name of any owner or occupier liable to be rated to the sewers rate is not known to the Commissioners, it shall be sufficient to assess and designate him in the rate as "the owner or occupier," as the case may be, of the land in respect of which the assessment is made, without further description ;

Subject as aforesaid, and without the presentment of a jury, but with such right of appeal as hereinafter mentioned, sewers rates may be assessed, levied, and enforced in the same manner in which they have heretofore been assessed, levied, and enforced ; but nothing in this section contained shall affect any agreement between landlord and tenant.

39. For the purpose of assessing the sewers rate, any person appointed by the Commissioners may inspect, take copies of, or make extracts from any Overseers to allow

inspection of
Poor Rates.

rate for the relief of the poor within the district; and if any officer having the custody of such last-mentioned rate refuses to permit any such inspection, or the taking of any such copies or extracts, he shall for each offence incur a penalty not exceeding five pounds, to be recovered in a summary manner.

Mortgage of Rates.

Mortgage of
rates.

40. The Commissioners may, for the purposes of defraying any costs charges, and expenses incurred or to be incurred by them under the authority of any Act of Parliament, law or custom, borrow and take up at interest on the credit of the rates authorised to be levied by them any sums of money necessary for defraying such costs, charges and expenses: and for the purpose of securing the repayment of any sums of money so borrowed, together with such interest as aforesaid, the Commissioners may mortgage and assign over to the persons by or on behalf of whom such sums are advanced the rates or any of them; but the exercise of the above power shall be subject to the following regulations:

- (1) The borrowing such money shall be sanctioned by an order of the Inclosure Commissioners:
- (2) Any money so borrowed may, by agreement with the mortgagee, be paid off by equal annual instalments of principal and interest, and such borrowing may be for such time, not exceeding thirty years, as the Commissioners, with the sanction of the Inclosure Commissioners, determine in each case:

And in cases where the Commissioners borrow any money for the purpose of defraying the expenses in respect of which they have determined, a part only of the district within their jurisdiction to be liable, it shall be the duty of the Commissioners, as between the ratepayers of the district, to repay the money so borrowed, with interest thereon, out of the rates to be levied on such part of the district only.

Certain clauses
of 10 & 11 Vic.
c. 16, incor-
porated.

41. The clauses of the Commissioners Clauses Act, 1817, with respect to mortgages to be created by the Commissioners, shall form part of and be incorporated with this part of this Act, and any mortgagee or assignee may enforce payment of his principal and interest by appointment of a receiver.

Legal Proceedings.

Notices by
Commissioners
how to be
signed.
Notices to be
binding on
assigns.

42. Where any notice is required to be given by the Commissioners such notice shall in all cases be sufficiently executed if signed by the clerk to the Commissioners; and every notice purporting to be signed by such clerk shall be receivable in evidence before all legal tribunals, and in all legal proceedings, without any other proof.

43. All notices served by the Commissioners on any proprietor or owner shall, if due service thereof has been made, be binding on all persons

claiming by, from, or under such proprietor or owner, to the same extent as if such notice had been served on such last-mentioned persons respectively.

44. Except where a special mode of service is provided by this Act, all notices required to be served by the Commissioners upon any proprietor or owner of lands shall either be served personally on such parties, or be left at their last usual place of abode, if any such can after diligent inquiry be found, but in case any such parties are absent from the United Kingdom, and their last usual place of abode cannot be found, after diligent inquiry, such notices shall be left with the occupier of such lands, or if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

Notices on owners to be served either personally, or left at their places of abode.

45. If any proprietor or owner on whom notice is to be served is a corporate aggregate, or a joint-stock or other company or body of proprietors or undertakers, such notice shall be left at the principal office of such corporation, company or body, or if no such office can after diligent inquiry be found, shall be served on some agent, if any, of such corporation, company, or body, but if no such officer or agent can be found, it shall be left with the occupier of the lands, or if there be no such occupier shall be affixed on some conspicuous part of such lands.

Notices to corporations to be left at their principal office.

46. Except where a special mode of service is provided by this Act all notices required to be served by the Commissioners upon the occupier of any land shall either be served personally on him or be left at his last usual place of abode, if any such can, after diligent inquiry, be found, and in case he is absent from the United Kingdom, and his last usual place of abode cannot be found after diligent inquiry, it shall be affixed on some conspicuous part of such premises.

Service of notice on occupiers.

47. Where any order, requisition, or rate has been made by the Commissioners, or any act done by them without the presentment of a jury in pursuance of the powers of this Act, any person aggrieved by such order, requisition, or rate, may appeal to the Court of Quarter Sessions against any such order, requisition, rate, or act, and the court may confirm, annul, or modify the same accordingly; but no such appeal shall be entertained unless it is made within four months next after the making of such order or requisition, or the making such rate, or the doing of such Act, nor unless ten days' notice in writing of such appeal, previously to the Quarter Sessions, stating the nature and grounds thereof, is served on the Commissioners, nor unless the appellant, within four days after the service of such notice, enter into recognizances with two sufficient sureties before a justice of the peace, conditioned duly to prosecute such appeal, and to abide the order of the court thereon.

Appeal to Quarter Sessions.

48. If at any time after such notice of appeal has been given, and such recognisance has been entered into as aforesaid, it appears to the Court of Quarter Sessions, on the application of either party, that the matter in question in such appeal consists wholly or in part of matters of mere

Power to refer case to arbitration.

account, or of engineering or other scientific questions, which cannot be satisfactorily tried by the court, it shall be lawful for such court to order that such matters, either wholly or in part, be referred to the arbitration of one or more persons, to be appointed by the parties, or, in case of disagreement, by the court; and the award made on such arbitration shall be enforceable by the same process as the order of the Court of Quarter Sessions.

17 & 18 Vic. c.
125 incorpo-
rated.

49. The provisions of the Common Law Procedure Act, 1854, relating to compulsory references, shall be deemed to extend to arbitrations directed by the Court of Quarter Sessions; and the word "court" in the said Act shall be deemed to include the Court of Quarter Sessions.

Decision of
questions by
justices or
arbitration.

50. Where any questions are declared by this part of this Act to be determinable, at the option of the owner, by justices or by arbitration, the owner shall be deemed to have declared his assent to the determination thereof by justices, unless he require the Commissioners to refer the same to arbitration, by notice under his hand, served on the Commissioners within ten days after he has received notice from them of their intention to have such questions determined; and where the justices have cognizance of the case, the same proceedings shall be had as are required under the Lands Clauses Consolidation Act, 1854, (a) in case of a question of disputed compensation authorised to be settled by two justices; and where such questions are referred to arbitration, the same proceedings shall be had as required by the said Act where any question of disputed compensation authorised to be settled by arbitration has arisen; subject to this proviso, that the costs of such arbitration shall be in the discretion of the arbitrators.

Recovery of
penalties.

51. All penalties and sums of money directed to be recovered in a summary manner shall be recovered before two justices in manner directed by the Act passed in the session holden in the eleventh and twelfth years of the reign of her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of duties of justices of the peace out of sessions within England and Wales, with respect to summary convictions and orders," and of any Act amending the same.

Costs of legal
proceedings on
part of
Commissioners.

52. All costs, charges, and expenses incurred by the Commissioners in instituting or defending any legal proceedings instituted or defended by them in their character of Commissioners may be defrayed out of the rates leviable by them, and no Commissioner shall be personally liable in respect or any such costs, charges or expenses.

Tender of Amends.

Tender of
amends.

53. If any party has committed any irregularity, trespass, or other wrongful proceeding in the execution of this Act, or any Act relating to Commissioners of Sewers, or by virtue of any power or authority thereby

(a) So printed in the original Act, evidently a mistake for 1845.

given, and if before action brought in respect thereof such party makes tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender has been made it shall be lawful for the defendant, by leave of the court where such action is pending, at any time before issue joined, to pay into court such sum of money as he thinks fit, and thereupon such proceeding shall be had as in other cases where defendants are allowed to pay money into court.

Saving Clauses and Miscellaneous.

54. Nothing in this Act shall authorise the Commissioners or any Drainage Board or owner—

Saving rights of canal owners and wharfingers.

- (1) To interfere with any sewers or other works already or hereafter made and used for the purpose of draining, preserving, irrigating, or improving land under any local or private Act of Parliament, so as to injuriously affect the same:
- (2) To interfere with any river, canal, dock, harbour, lock, reservoir, or basin, or the supply of water to any river, canal, dock, harbour, lock, reservoir, or basin, so as to injuriously affect the navigation on such river, canal, dock, harbour, lock, reservoir, or basin, or the use or maintenance thereof, or to interfere with any towing-path so as to interrupt the traffic thereof, in cases where any corporation, company, undertakers, Commissioners, conservators, trustees, or individuals are by virtue of any Act of Parliament entitled to navigate on or use such river, canal, dock, harbour, lock, reservoir, or basin, or in respect of the navigation on or use of which river, canal, dock, harbour, lock, reservoir, or basin any corporation, company, undertakers, Commissioners, conservators, and trustees, or individuals are entitled by virtue of any Act of Parliament to the receipt of any tolls or other dues:
- (3) To interfere with the works or supply of water of any body or persons, corporate or unincorporate, supplying water to any town or place, so as to injuriously affect the same:
- (4) To execute any works in, through, or under any wharves, quays, docks, harbours, or basins, belonging to the proprietor or proprietors of any inland navigation constituted by Act of Parliament, or for the use of which they are entitled by virtue of any Act of Parliament to demand any tolls or dues:

Without the consent of such corporation, company, undertakers, Commissioners, conservators, trustees, or individuals as are hereinbefore in that behalf respectively mentioned, such consent to be expressed in writing, in the case of individuals under their hands, in the case of a corporation under their common seal, and in the case of a company, undertakers,

Commissioners, conservators, or trustees, under the hand of their clerk or other duly authorised officer or agent.

Commissioners not to divert rivers so as to injure harbours
 55. Nothing in this Act shall authorise the Commissioners to divert any river in such manner as to injure or to diminish the supply of water to any harbour without the consent of the conservators or other authority having the management of such harbour.

Power for Canal Commissioners to alter Sewers.
 56. Any corporation, company, undertakers, Commissioners, conservators, trustees, or individuals authorised by virtue of any Act of Parliament to navigate on or use any river, canal, dock, harbour, or basin, or to demand any tolls or dues in respect of the navigation on such river or canal, or the use of such dock, harbour, or basin, may, at their own expense, and on substituting other sewers, drains, culverts, and pipes equally effectual and certified as such by the surveyor of the Commissioners or Drainage Board, take up, divert, or alter the level of sewers, drains, culverts, or pipes constructed by the Commissioners or Drainage Board, and passing under or interfering with or with the improvement or alteration of such river, canal, dock, harbour, or basin, or the towing-path of such river, canal, dock, harbour, or basin, and do all such matters and things as may be necessary for carrying into effect such taking up, diversion, or alteration.

Exemptions under local Acts preserved.
 57. Nothing in this Act shall be construed to make liable to the control of the Commissioners any river, canal, or inland navigation, or the cuts, reservoirs, feeders, or other works belonging thereto, in cases where such river, canal, or inland navigation is now under the provisions of any local or private Act of Parliament exempt from such control.

Penalty for draining into sewers without consent of Commissioners.
 58. No person shall, without the consent of the Commissioners, cause any filthy or unwholesome water or washings of manufactories or mines, or other foul or poisonous liquid, to flow into any watercourse within the jurisdiction of the Commissioners of Sewers; and any person offending against this enactment shall incur a penalty not exceeding five pounds, and a further penalty of forty shillings for every day during which the offence is continued; but this section shall not apply to any person having a legal right to cause such water, washing, or liquid as aforesaid to flow into any existing watercourse.

Powers of Commissioners of sewers and Drainage Boards to enter into arrangement.
 59. Commissioners of Sewers having jurisdiction within any area may, with the consent of the Commissioners of Sewers having jurisdiction within any adjoining area, do and execute in such adjoining area any works that such first-mentioned Commissioners might do and execute within their own area, upon such terms as to payment or otherwise as may be agreed upon between the said bodies of Commissioners; and any sums agreed to be paid by any body of Commissioners in pursuance of this section, shall be payable out of the rates leviable by such Commissioners, in the same manner as if the expenses had been incurred within their own area; and the powers hereby given to one body of Commissioners in relation to

another body of Commissioners may be exercised by them in relation to any Drainage Board constituted under this Act, or by any such Drainage Board in relation to any other Drainage Board.

60. All powers given by this part of this Act shall be deemed to be in addition to and not in derogation of any other powers conferred on Commissioners of Sewers by Act of Parliament, law, or custom; and Commissioners of Sewers may exercise such other powers in the same manner as if this Act had not passed; and notwithstanding anything in this Act contained, Commissions of Sewers may be issued by Her Majesty in manner in which the same have been issued previously to the passing of this Act.

Power of Act cumulative.

61. Nothing in this Act shall alter, interfere with, or affect any lease, contract, or agreement that may have been entered into between landlord and tenant before the passing of this Act.

Not to affect contracts between landlord and tenant.

62. Where in exercise of any powers given by this Act any watercourse forming a boundary line between two or more counties, hundreds, parishes, or other areas defined by law, is straightened, widened, or otherwise altered so as to affect its character as a boundary line, the Commissioners, Board, persons or person under whose authority such alteration is made shall forthwith report the same to the Inclosure Commissioners, and the Inclosure Commissioners, if satisfied that a new boundary line may be adopted with convenience, shall, by notice to be published in the London Gazette, and in such other manner as they may direct, declare that the watercourse, as altered, shall either wholly or partially be substituted for the former boundary line, and the limits of the areas of which the watercourse, when unaltered, was the boundary shall be deemed to be varied accordingly; but if the Inclosure Commissioners are of opinion that a new boundary cannot wholly or partially be adopted with convenience, they shall require the Commissioners, Board, persons or person under whose authority the alteration in the watercourse was made to set out a boundary upon the line of the watercourse as it existed before its alteration, or in a new course in lieu thereof, in such manner as the Inclosure Commissioners approve; and a copy of the London Gazette containing the advertisement in respect of any alteration of boundary made in pursuance of this section shall be admitted as evidence in all Courts of Justice of the fact of such alteration having been made.

Provision in case of alteration of local boundaries.

PART II.

Elective Drainage Districts.

63. Any persons or body of persons, corporate or unincorporate, being proprietors of not less than one-tenth part in acreage of any bog, moor, or other area of land that requires a combined system of drainage, warping or irrigation, may, with the consent of the Inclosure Commissioners, and subject to the confirmation of Parliament as hereinafter mentioned, constitute such bog, moor or other area a separate drainage district; subject to

Constitution of elective drainage districts.

this proviso, that no place within the limits of any Commission of Sewers, or of any borough, or of any district under the management of a local board of health, or of Improvement Commissioners, shall form a separate drainage district or any part thereof, without the consent of the Commissioners of Sewers, council, local board of health, or Improvement Commissioners having jurisdiction in such place.

Mode of constituting elective drainage district.

64. The following proceedings shall be taken for the purpose of obtaining the sanction of the Inclosure Commissioners:—

- (1.) A petition shall be presented to them, stating the proposed boundaries of the district, by reference to a map, or in such other manner as the Inclosure Commissioners think expedient. It shall be signed by such proprietors as aforesaid, and be supported by such evidence as the Inclosure Commissioners require:
- (2.) Upon the receipt of such petition, the Inclosure Commissioners shall send an inspector to the district, for the purpose of making inquiries as to the propriety of constituting the proposed district, and as to the assent of the proprietors thereto:
- (3.) The inspector shall proceed to the district, and shall ascertain the opinion of the proprietors in respect to the constitution of the district:
- (4.) The inspector shall report the result of his inquiries to the Inclosure Commissioners, and they may, if satisfied with the propriety of constituting the district, and that the proprietors of two-third parts of such bog, moor, or other area are in favour thereof, make a provisional order declaring the area in such order mentioned to be a drainage district:
- (5.) Notice of the provisional order shall be published in the London Gazette and in some other newspaper circulating in the district to which it relates, and copies thereof shall be served in such manner and upon such persons as the Inclosure Commissioners may require:
- (6.) Upon the receipt of the report of the inspector of* Inclosure Commissioners may, by provisional order under their seal, constitute the area mentioned in the petition, with such alterations of boundaries, if any, as they think fit, a separate drainage district; and it shall be the duty of the Inclosure Commissioners, as soon as conveniently may be, to take all proper steps for the confirmation of such provisional order by Act of Parliament, and when so confirmed it shall be deemed to be a public general Act of Parliament, and take effect accordingly; but previous to such confirmation it shall not be of any validity whatever:
- (7.) No petition for constituting an elective drainage district under this Act shall be entertained until the petitioners have given

* Sic.

such security for costs as the Inclosure Commissioners require; and in the event of a drainage district not being constituted in pursuance of a petition, the petitioners shall pay all costs, charges and expenses, including the expense incurred by the Inclosure Commissioners and their inspector; but in the event of the drainage district being constituted, such costs, charges and expenses shall be a first charge on the rates leviable in the district in pursuance of this Act.

65. The making of a provisional order shall be conclusive evidence that all the requirements of this Act in respect of proceedings required to be taken previously to the making of such provisional order have been complied with.

Evidence of constitution of district.

Drainage Boards.

66. The superintendence of matters relating to drainage within a drainage district shall be vested in a board hereinafter called a Drainage Board, and such board shall be a body corporate, with perpetual succession and a common seal, having a capacity to hold lands for all the purposes of their constitution.

Constitution of Drainage Boards.

67. All powers by this Act or by any other Act of Parliament law or custom vested in or exercisable by Commissioners of Sewers within the limits of their jurisdiction may, upon the constitution of a drainage district, be exercised by the Drainage Board of such district within its limits, and all powers hitherto exercisable by Commissioners of Sewers within such district shall cease, subject to this proviso, that any person aggrieved by any order, requisition or rate made by the Drainage Board, or any act done by them, may appeal therefrom in the same manner in which he is by this Act authorised to appeal against any order, requisition or rate made by the Commissioners or any act done by them.

Powers of Drainage Board.

68. Subject to any provisions to the contrary that may be made by the Provisional Order constituting the district, the following regulations shall be made with respect to Drainage Boards:

Regulations as to Drainage Boards.

- (1) The members of the first Drainage Board shall be named in the Provisional Order, and such order shall fix the number of which the Board is to consist, the mode of summoning the first meeting of the Board, the qualification of subsequent members of the Board, and the time at which the first members of the Board are to vacate their offices, such time not being later than the end of the month of September in the year following that in which the Provisional Order is confirmed by Parliament;
- (2) The members of every Board succeeding the first Board shall vacate their offices on the first Thursday in September in each succeeding year, or on such other day in September as may be proscribed by the Board;

- (3) The offices of vacating members shall be filled up by an equal number of qualified persons to be elected as hereinafter mentioned :
- (4) Every member of a Drainage Board going out of office shall be re-eligible, and if at any time when an election of members ought to take the places of any retiring members are not filled up, the retiring members whose places are not filled up shall continue in office until the succeeding year :
- (5) Any casual vacancy occurring in the Board may be filled up by the Board ; but any person so chosen shall retain his office so long only as the vacating member would have retained the same if no vacancy had occurred :
- (6) During any vacancy in the Board the continuing members shall act as if such vacancy had not occurred :
- (7) If a member of a Drainage Board is adjudged bankrupt, or applies to take the benefit of any Act for the relief or protection of insolvent debtors, or compounds with his creditors, such person shall cease to be a member of the Board, and his office shall thereupon be vacant :
- (8) Any person who acts as member of a Drainage Board without being duly qualified, or after he has become disqualified, shall incur a penalty not exceeding fifty pounds ; and in any proceeding for the recovery of such penalty the burden of proving qualification shall be upon the person against whom such proceeding is taken :
- (9) All acts done by any meeting of a Drainage Board or of any committee of a Drainage Board, or by any person acting as a member of a Drainage Board, shall, notwithstanding it may be afterwards discovered that there was some defect in the appointment of any such Board or persons acting as aforesaid, or that they or any of them were or was disqualified, be as valid as if every such person had been duly appointed and was qualified to be a member.

Rules to be observed with respect to electors of Drainage Board.

69. Subject to any provisions to the contrary that may be made by the Provisional Order constituting the district, the following Rules shall be observed with respect to the electors of Drainage Boards :

- (1) The electors for members of a Drainage Board for any district shall be the persons who have during the year immediately preceding such election been rated to the sewers rate of the district, and have paid all sewers rates due from them at the time of their election :
- (2) Each elector shall vote according to the following scale ; that is to say :

If the property in respect of which he is entitled to vote be rated

upon a rateable value of less than fifty pounds he shall have one vote ;

If such rateable value amount to fifty pounds and be less than one hundred pounds he shall have two votes ;

If it amount to one hundred pounds and be less than one hundred and fifty pounds he shall have three votes ;

If it amount to one hundred and fifty pounds and be less than two hundred pounds he shall have four votes ;

If it amount to two hundred pounds and be less than two hundred and fifty pounds he shall have five votes ;

If it amount to two hundred and fifty pounds he shall have six votes ;

If it amount to five hundred pounds and be less than one thousand pounds he shall have eight votes ;

If it amount or exceed one thousand pounds he shall have ten votes.

70. Subject to any provisions to the contrary that may be made by the Provisional Order constituting the district, the mode of electing members of Drainage Boards, and the proceedings of Drainage Boards, shall be conducted in manner directed by the schedule annexed hereto.

Mode of election of Drainage Boards, and proceedings thereof.

71. The provisions of the Commissioners Clauses Act, 1847, with respect to—

Certain provisions of 10 & 11 Vic. c. 16, incorporated.

- (1) The contracts to be entered into and deeds to be executed by the Commissioners ;
- (2) The liabilities of the Commissioners, and to legal proceedings by or against the Commissioners ;
- (3) The appointment and accountability of officers of the Commissioners ;
- (4) The accounts to be kept by the Commissioners ;
- (5) The giving notices and orders ;

shall be incorporated with this part of this Act ; and in the construction of this part of this Act and the said incorporated provisions, Part II. of this Act, and the Act of Parliament confirming the Provisional Order, shall together constitute “ the Special Act.”

PART III.

Power of Private Owners to procure Outfalls.

72. Any person interested in land, who is desirous to drain the same, and in order thereto deems it necessary that new drains should be opened through lands belonging to another owner, or that existing drains in lands belonging to another owner should be cleansed, widened, straightened, or

Application for outfall to adjoining owner.

otherwise improved, may apply to such owner, who is hereinafter referred to as the adjoining owner, for leave to make such drains or improvements in drains through or on the lands of such owner.

Mode of making application.

73. Any such application as aforesaid shall be by notice in writing, under the hand of the applicant, and shall be served on the owner, and also on the occupier, if the owner be not the occupier, in manner in which notices are required to be served on owners and occupiers under the first part of this Act. The notice shall state the nature of such drains or improvements in drains, be accompanied by a map, on which the length, width, and depth of the proposed drains or improvements in drains shall be delineated, and shall further state the compensation, if any, which the applicant proposes to pay.

Assent of adjoining owner.

74. The adjoining owner may, by deed under his hand and seal, assent to such application, upon such terms and on payment of such compensation as he may require, and any assent so given shall be binding upon all parties having any estate or interest in the land, subject to the following provisions:—

1stly. That any arrangement entered into by any adjoining owner under any disability or incapacity, or not having power to assent to such application, except under the provisions of this Act, shall not be valid unless the same is approved by two surveyors, one of whom is to be nominated by the applicant, and the other by the adjoining owner; and each of such surveyors, if they approve of the arrangement, shall annex to the document containing the same a declaration to that effect, subscribed by them.

2ndly. That any compensation to be paid by the applicant to the adjoining owner in cases where such owner is under any disability or incapacity, or has not power to assent to such application, except under the provisions of this Act, shall be applied in manner in which the compensation coming to parties having limited interests, or prevented from treating, and not making title, is applicable, under "The Lands Clauses Consolidation Act, 1845."

3rdly. That any occupier or person other than the owner interested in the lands shall be entitled to compensation for any injury he may sustain by the making of the proposed drains or improvements in drains, so that the claim therefor be made within twelve months after completion of such drains or improvements in drains, the amount of such compensation to be determined in case of dispute, in the manner in which disputed compensation for land is required to be determined by the said "Lands Clauses Consolidation Act, 1845."

Record of assent of

75. The applicant shall forward to the clerk of the peace of the county, riding, or division of the county wherein the land is situate, the

deed containing the assent of the adjoining owner to the proposed drains, or improvements in drains, who shall keep the same in his office as a record of the proceedings between the parties.

76. The adjoining owner shall be deemed to have dissented from the application made to him if he fail to express his assent thereto within one month after the service of the notice of application on him; and in the event of such dissent there shall be decided, by two or more justices in petty sessions assembled, unless the adjoining owner require the same within such period of one month to be decided by arbitration, the questions following; that is to say:

- (1) Whether the proposed drains or improvements in drains will cause any injury to the adjoining owner, or to the occupier or other person interested in the lands:
- (2) Whether any injury that may be caused is or is not of a nature to admit of being fully compensated for by money:

And the provisions of the first part of this Act relating to the decision of the questions therein mentioned shall apply to the decision of the questions mentioned in this section.

The result of any such decision shall be as follows; that is to say:

- (1) If the decision is that no injury will be caused to the adjoining owner, to the occupier or other parties interested in the lands, the applicant may proceed forthwith to make the proposed drains or improvements in drains:
- (2) If the decision is that injury will be caused to the adjoining owner, occupier, or other parties interested in the lands, but that such injury is of a nature to admit of being fully compensated by money, the justices or arbitrators shall proceed to assess such compensation, and to apportion the same amongst the parties in their judgment entitled thereto; and on payment of the sum so assessed the applicant may proceed to make the proposed drains or improvements in drains:
- (3) If the decision is that injury will be caused to the adjoining owner, occupier, or other parties interested in the lands, and that such injury is not of a nature to admit of being fully compensated by money, the applicant shall not be entitled to make the proposed drains or improvements in drains.

77. Where the compensation assessed by the justices or arbitrators under the last preceding section is payable to any owner or other person who is under any disability or incapacity, or is not entitled to receive the same for his own benefit, such compensation shall be applied in the manner in which the compensation coming to parties having limited interests or prevented from treating and not making title is applicable under "The Lands Clauses Consolidation Act. 1845."

Duty of
arbitrators.

78. The justices or arbitrators, as the case may be, in the event of their approving of a scheme of drainage as proposed by the applicant, or as modified by themselves, shall cause a map thereof to be prepared, and shall certify under their hands the correctness of such map; and it shall be the duty of the applicant to forward the same to the clerk of the peace of the county, riding, or division of the county wherein the land is situate, who shall keep the same in his office as a record of the proceedings between the parties.

Power of
applicant to
clear drains.

79. After drains have been opened or improvements in drains made, in pursuance of part iii of this Act, it shall be lawful for the applicant, his heirs and assigns, for ever thereafter, from time to time as it becomes necessary, to enter upon the lands through which such drains have been opened or improvements made for the purpose of clearing out, scouring, and otherwise maintaining the same in a due state of efficiency, and if such drains or improvements in drains are not kept so cleared out, scoured, and maintained in a due state of efficiency, the owner or occupier for the time being of the lands through or on which such drains or improvements in drains are made may clear out, scour, and otherwise maintain the same in a due state of efficiency, and recover the expenses incurred in such clearing out, scouring, or maintenance, in a summary manner, from the applicant, his heirs or assigns.

Power of
adjoining
owner to divert
drains.

80. The owner for the time being of the land through or in which any drain may be opened, or improvements in drains made, in pursuance of Part iii of this Act, may fill up, divert, or otherwise deal with such drains, or improvements in drains, on condition of first making and laying down in lieu thereof drains equally efficient; and any dispute as to the efficiency of drains so laid down shall be decided by two or more justices assembled in petty sessions.

Penalty for
obstructing or
injuring drains.

81. Any person who wilfully obstructs any person making any drains or improvements in drains in pursuance of Part iii of this Act, and any person who wilfully dams up, obstructs, or in any way injures any drains or improvements in drains so opened or made, shall for each offence incur a penalty not exceeding ten pounds, to be recovered in a summary manner.

Costs of
application.

82. All costs, charges and expenses reasonably incurred by the adjoining owner in respect of any application made in pursuance of this part of this Act shall be defrayed by the applicant.

Provision in
case of change
of natural
outfall.

83. Where any person is desirous in pursuance of this part of this Act, of constructing any drain by means whereof any brook, river, or other natural watercourse will be diverted from its ordinary channel into any brook, river, or natural watercourse, he shall cause a copy of the notice hereby required to be served on the adjoining owner to be published by advertisement once at least in each of three successive weeks in some local newspaper circulating in the district in which the drain proposed to be con-

structed is situate, and to be served in manner in which notices are required to be served under the first part of this Act (where no special mode of service is prescribed) on all owners of land abutting upon the brook, river or other natural watercourse into which the diversion is made, and situate within four miles of the point of junction, and shall deposit a copy of the map hereby required to accompany the notice served on the adjoining owner with the clerk of the peace of the county, riding, or division of the county wherein the proposed drain is situate; and it shall be lawful for any person being the owner of land capable of being injured by the proposed drain, within eight weeks after the first notice of the proposed drain appears in the newspaper, to serve notice that he apprehends injury from such drain on the person proposing to make the same, and thereupon such owner shall be deemed to have dissented, and shall be entitled to the same rights and privileges under this part of this Act as if he were the adjoining owner.

SCHEDULE REFERRED TO IN THE FOREGOING ACT.

PART I.

Rules as to election of Members of Drainage Boards.

The Chairman of the Board of the previous year, or some person appointed by him, shall be the returning officer.

If at any time, from any default of such Chairman as aforesaid, or from any reason, there is no returning officer, or such returning officer is unwilling or unable to act, the Inclosure Commissioners may, on the application of the Board, appoint a returning officer.

The election of new members shall take place on the first Thursday, or on such other day as may be appointed by the Board, in September in every year, excepting the year in which the Provisional Order is confirmed by Parliament.

On every occasion of the election of new members of the Board the returning officer shall convene a meeting of the electors for the purpose of such election, and shall give notice of such meeting, and of the time and place at which it is to be held—

By advertisement in some one or more of the newspapers circulating in the district;

By causing a copy of such notice to be affixed to the outer door of the principal office of the Board.

The returning officer shall preside and regulate the proceedings at such meeting.

At such meeting as aforesaid any person or persons may, if he or they consent thereto, be nominated by any elector, and seconded by any other elector, as a member or members of the Board.

If more candidates are proposed than the number to be elected, a poll may be demanded, and shall be taken in manner hereinafter mentioned, but if not, or if no poll is demanded, a declaration by the returning officer that the candidates are elected members of the Board shall be evidence of the fact.

When a poll is demanded the returning officer shall direct the same be taken at such place or places within the district on such day not exceeding one clear day from the day appointed for the election as he may determine.

Votes may be given either personally or by proxy; a proxy shall be appointed under the hand of the appointor, but he shall not be entitled to vote unless the instrument appointing him was deposited at the office of the Board seven days before the day of election at which such proxy proposes to vote; but no person shall be appointed a proxy unless he is a qualified elector.

The poll shall be opened at nine o'clock of the forenoon of the appointed day, and shall close at four o'clock in the afternoon of the same day, except in the case of disturbance, when the closing of the same may be fixed to take place at such time as the returning officer directs.

The poll at any place of voting may be closed at any time before four of the clock if one hour has elapsed during which no vote has been tendered at such place of voting.

The returning officer shall cause to be entered in the polling books the name and address of every voter and the manner in which he votes.

At the close of the poll the returning officer shall sum up the votes, and as soon as possible publish the names of the candidates elected as herein mentioned -

- (1) By advertisement in some one or more newspaper or newspapers circulating in the district;
- (2) By affixing a list of such candidates to the outer door of the principal office of the Board.

Whenever any day hereby appointed for any purpose happens to be a Sunday, the business so appointed to be done shall take place on the Monday following.

PART II.

Rules as to Proceedings of Drainage Boards.

1. A Drainage Board shall meet together for the despatch of business, and shall from time to time make such regulations with respect to the summoning, notice, place, management and adjournment of such meetings, and generally with respect to the transaction and management of business, as they think fit, subject to the following conditions:—That

- (a) No business shall be transacted at any meeting unless at least

three members are present at the commencement and close such business:

- (b) No order involving an expenditure of more than one hundred pounds shall be made by the Board unless at the least one month's previous notice, specifying the work to be undertaken or the other matter to which such order relates, and naming a day on which a meeting of the Board is to be held for considering the matter to be ordered, has been sent by circular to each member of the Board:
- (c) All questions shall be decided by a majority of votes of the members present:
- (d) The names of the members present, as well as of those voting upon each question, shall be recorded.

2. The Board shall, at their first meeting, and afterwards from time to time at their first meeting after each annual election, appoint one of their number to be chairman for the year following such choice.

3. If any casual vacancy occurs in the office of chairman, the Board shall, as soon as they conveniently can after the occurrence of such vacancy, choose some member of their number to fill such vacancy; and every such chairman so elected as last aforesaid shall continue in office so long only as the person in whose place he may be so elected would have been entitled to continue if such vacancy had not happened.

4. If at any meeting the chairman is not present at the time appointed for holding the same, the members present shall choose some one of their number to be chairman of such meeting.

5. In case of an equality of votes at any meeting, the chairman for the time being of such meeting shall have a second or casting vote.

6. The Board may delegate any of their powers to committees, consisting of such member or members of their body as they think fit. Any committee so formed shall, in the exercise of the powers delegated, conform to any regulations that may be imposed on them by the Board.

7. A committee may elect a chairman of their meetings. If no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

8. A committee may meet and adjourn as they think proper. Questions at any meeting shall be determined by a majority of votes of the members present, and in case of an equal division of votes, the chairman shall have a second or casting vote.

9. The Board shall cause minutes to be made in books provided for that purpose,—

- (1) Of all the appointments of officers made by the Board;

- (2) Of the names of the members present at each meeting of the Board and committees of the Board ;
- (3) Of all orders made by the Board, and committees of the Board ;
and,
- (4) Of all resolutions and proceedings of meetings of the Board, and of committees of the Board.

And any such minutes as aforesaid, if signed by any person purporting to be the chairman of any meeting of the Board, or committee of the Board, shall be receivable in evidence, without any further proof.

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(a) In some cases these forms have been obtained by comparing original documents at the Crown Office of the House of Lords, and at the office of the Inclosure Commissioners for England and Wales. Some are taken from the "Laws of Sewers," and Mr. Thring's work on the Land Drainage Act, 1861, while considerable assistance has been gained from an examination of documents and memoranda to which access has been had through the kindness of the officials of various local bodies throughout the country.

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TABLE OF FORMS, NOTICES, ORDERS, &c.

Writ of "Dedimus Potestatem." (a)

VICTORIA, by the grace of God of the United kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to our trusty and well-beloved . . . greeting. Whereas a Commission of Sewers issued and granted by us on the _____ day of _____ in the _____ year of our reign for the limits of _____, and whereas by an Act passed in the 25th year of our reign entitled a law for _____, it is amongst other things enacted that the said Act shall include any Commission of Sewers for the time being in force, whether such Commission is or is not granted in pursuance of the said Act; and whereas it is also by the said Act enacted that a Commission of Sewers once issued shall be deemed to continue until such time as it may be suspended by us, and that we may from time to time, by writing under our sign manual, fill up any vacancies that may arise in the body of Commissioners assigned by any Commission of Sewers; and whereas since the date of the said Commission several vacancies have occurred, by death or otherwise, in the body of Commissioners thereby appointed; and whereas a petition has been presented to our Secretary of State for the Home Department by certain members of the said Commission praying that we would be graciously pleased to appoint you to fill up the vacancies in the said body of Commissioners of Sewers; now know ye that we being satisfied of your fitness and ability have appointed by these presents, in pursuance of the powers vested in us by the said recited Act, and do appoint you respectively to execute the office of Commissioner for the several places in the above recited Commission of Sewers for the _____ (limits).

Given at our Court of _____ the _____ day of _____ 188 _____, in the _____ year of our reign, by her Majesty's command.
(W. V. HARCOURT.)

Writ for taking the Declaration for Sewers.

(In accordance with 23 Hen. VIII. c. 5, s. 5.)

VICTORIA, &c. To our beloved and faithful [the mayor, recorder, aldermen, steward, town clerk and sheriff of the city of _____; and the chairman and clerk of sewers for the time being of the Court of Sewers] greeting. Know ye that we have given you jointly and severally power and authority to take the declaration of the Commissioners nominated and appointed for sewers in certain limits in our county and city of _____, according to the form of a certain schedule to this our writ annexed. And, moreover, we give to you and every of you power and authority to take the declaration of every of you according to the form of the aforesaid schedule. And therefore we command you that you take the

(a) This is granted on application to Crown Office of House of Lords.

said declaration, and when you have so taken them that you certify us thereon in our Chancery under your seals, or the seal of one of you, distinctly and openly, without delay, remitting to us this writ.

Witness ourself at Westminster, the _____ day of
18 _____ (Signed)

To our beloved and faithful _____ and others, or any one of them. A writ for taking the declaration of Commissioners for Sewers.

Declaration for Commissioner of Sewers (a).

YE shall declare that you to your cunning, wit and power shall truly and indifferently execute the authority to you given by this Commission of Sewers for which you are nominated a Commissioner, without any favour, affection, corruption, dread or malice to be borne to any manner of person or persons, and as the case shall require ye shall consent and endeavour yourself for your part, to the best of your knowledge and power, to the making of such wholesome, just, equal and indifferent laws and ordinances as shall be made and devised by the most discreet and indifferent number of your fellow Commissioners for the due redress and reformation and amendment of all and every such things as are contained and specified in the said Commission, and the same laws and ordinances to your cunning, wit and power, cause to be put in due execution without favour, meed, dread, malice or affection.

*Oath of Commissioners of Sewers, under 23 Hen. VIII.
c. 5, s. 5 (of office).*

YE shall swear, that you to your cunning, wit and power, shall freely and indifferently execute the authority to you given by this Commission of Sewers, without any favour, affection, corruption, dread or malice, to be borne to any manner of person or persons; and as the case shall require, ye shall consent and endeavour yourself for your part to the best of your knowledge and power, to the making of such wholesome, just, equal and indifferent laws and ordinances as shall be made and devised by the most discreet and indifferent number of your fellows being in commission with you, for the due redress, reformation and amendment of all and every such things as are contained and specified in the said Commission; and the same laws and ordinances, to your cunning, wit and power, cause to be put in due execution, without favour, meed, dread, malice or affection, as God help you and all saints.

*Oath of Commissioners of Sewers, under 3 & 4 Will. IV.
c. 22, s. 3 (of qualification) (b).*

I, _____ do swear [or, being one of the people called Quakers, do solemnly affirm], that I truly and *bonâ fide* am in my own right [or in the

(a) This form slightly varies from the original in 23 Hen. VIII. c. 5, s. 5.

(b) A declaration to the like effect of this oath may be substituted (31 & 32 Vic. c. 72, s. 12).

right of my wife] in the actual possession and enjoyment of [or in the receipt for life, or for a larger estate, of the rents and profits issuing out of] lands, tenements or hereditaments, situate in the county of _____ of freehold or copyhold tenure, or held for a term of not less than sixty years absolute, or determinable with a life or lives, of the clear yearly value of one hundred pounds above reprises; or held for the unexpired term of _____ years, originally granted for _____ years, of the clear yearly value of two hundred pounds above reprises; [or an heir apparent of _____, who, to the best of my knowledge, is seised of freehold or copyhold lands, tenements or hereditaments, situate in the county of _____, of the clear yearly value of two hundred pounds above reprises]; [or an agent of _____, who, [or which], to the best of my knowledge is seised or possessed in his or their own right] [or in the right of his wife] of freehold or copyhold lands, tenements or hereditaments, situate in the county of _____, of the clear yearly value of three hundred pounds above reprises. So help me God. . .
 [Or, being a Quaker, omit the words, So help me God.]

Writ of Attendance at Sewers.

VICTORIA, &c.—To the sheriff of the county of _____ greeting. Whereas, we, by our letters-patent, have assigned our beloved and faithful _____ and others in our same letters-patent, specified our justices to supervise and look into the sewers, bridges, calcies and ditches in certain limits in the said county, and to do and execute all other things in the same letters-patent contained and specified as in the same letters more fully is contained. We command you that at certain days and places, which the same our justices in the form aforesaid shall make known to you, you cause to come before them so many and such good and lawful men of your bailiwick, as well within liberties as without, by whom the truth of the matter in the premises may be the better known and inquired into and have you there this writ.

Witness, &c.

To the sheriff of the county of _____ . Writ of attendance at sewers.

Notice convening a General Court.

SEWERS, LEVELS, OF, &c.—We, whose hands are hereunto set and seals affixed, Commissioners of Sewers, and all of us the quorum acting in and for the levels within the limits of the several parishes of [here describe], in the county of _____, with all other marshes, meadows and oozy grounds within the limits aforesaid, in the said county, or on the borders or confines of the same named and appointed in and by a certain Commission of Sewers, duly issued under the Great Seal

of Great Britain to us and others therein named directed, bearing date at Westminster the day of , in the year of the reign of her present Majesty Queen Victoria, do hereby, in exercise of the powers and authorities to us given, or in us vested, under and by virtue of the said Commission, and of the laws now in force relating to sewers, appoint a meeting of the said Commissioners, to be holden at on , the day of , at o'clock precisely, for the purpose of receiving the report [here insert the officer's report, presentment of jury, or other business, as the case may be] touching any wants of reparation and amendment required to be done to any of the works or defences under the jurisdiction of the said Commissioners, by reason of [here state if special circumstances require], and of transacting the general business of the Commission, and of making, enacting, decreeing, constituting, and decreeing constitutions and ordinances, matters, and things touching all or any part of the said levels, as may be necessary in and about the said premises. Given under our hands and seals this day of , 188 .

| | |
|-------|--------|
| A. B. | (L.S.) |
| C. D. | (L.S.) |
| E. F. | (L.S.) |
| G. H. | (L.S.) |
| I. J. | (L.S.) |
| K. L. | (L.S.) |

Notice convening Special Court.

[This should be sent in duplicate to each acting Commissioner.]

SEWERS, LEVELS OF .—We, A. B. and C. D., two of the Commissioners of Sewers for the levels within the limits of the several parishes of , in the county of , do hereby, in pursuance of the 3 & 4 Will. IV. c. 22, convene a special meeting of the said Commissioners, to be holden at the , in the said county of , on , the day of , instant, at o'clock, for the purpose of considering whether any and what orders shall be made upon any person or persons relative to the state of the sea-walls (insert the description of work or defence) situate upon and other places adjoining or adjacent thereto within the said levels, which are reported to us to be in a very dangerous and alarming state, the same having been recently in part much reduced and broken through by force of an unusually high wind and tide (describe specially), and imminent danger being apprehended to the said levels by reason thereof, and also generally to take such proceedings as shall be deemed most expedient and proper in and about the premises. Given under our hands and seals this day of , 188 .

| | |
|-------|--------|
| A. B. | (L.S.) |
| C. D. | (L.S.) |

Assignment of a Surveyor of Sewers.

WE, *A., B., C., D., E., F., &c.*, esquires, Her Majesty's Commissioners of Sewers for the county of, &c., do, by virtue of the statutes of sewers, and of the power to us thereby given, by this our order under our hands and seals, assign and appoint *L. A.*, of, &c., surveyor of the walls, banks and sewers within the level of, &c., in the said county, to oversee, survey, inspect into, and take care of the reparations of the same from time to time, according to the orders and directions of us, or any of us, or any other Commissioners of Sewers for the said county; and also to present the defects and decays thereof, during our will and pleasure, or for and during the space of, &c.

Given, &c.

Appointment of a Bailiff of Sewers.

WE, *A., B., C., D., E., F., &c.*, esquires (six), Commissioners of Sewers within the county of, &c., aforesaid, do hereby depute, assign and appoint *T. D.*, of, &c., to be our bailiff of sewers for the level or limits of, &c., to execute all warrants, precepts and summonses to him directed by us, or any of us, or any other Her Majesty's Commissioners of Sewers for the said county, relating to the reparation, amendment and reformation of the walls, banks and sewers there, pursuant to the laws and statutes in that case made.

Given, &c.

Appointment of a Collector of Sewers.

WE, *A., B., C., D., E., F., &c.*, esquires, Commissioners of Sewers, &c., do hereby assign and appoint *A. T.*, of, &c., our collector and receiver, during our will and pleasure, to collect and receive all money, by us or by any other of Her Majesty's Commissioners of Sewers for the said county, from time to time ordered and directed to be levied, by rate and assessment, or otherwise, on all owners and occupiers of lands within the level of, &c., and to pay over the same to *B. M.*, our expeditor appointed; he, the said *A. T.*, rendering to us, or some of us, a just, true and perfect account of all such money by him collected and received within the said level, when thereunto required by us, or any of us, or yearly, &c.

Given, &c.

Assignment of an Expeditor of Sewers.

WE, *A., B., C., D., E., F.*, esquires, Commissioners, &c., do, by virtue of the authority to us given by the laws of sewers, nominate, assign and appoint *B. M.*, of, &c., gent., expeditor, to pay, disburse and expend all money raised and levied by our rate and assessment, within the level of, &c., on all owners and occupiers of lands, &c., chargeable towards the

repairs and amendments of sewers, and by him had and received of and from our collector appointed; so as he, the said *B. M.* do and shall from time to time, when thereunto required, yield, render and deliver unto us a true and perfect account and accounts of all money by him thus paid for and towards the reparations above mentioned.

Given, &c.

A Warrant or Order for a Collector to account.

To *T. D.*, Bailiff of Sewers for the Level of, &c.

WHEREAS we have appointed *A. T.*, of, &c., our collector of sewers within the level of, &c., to collect and receive all money rated and to be levied on the owners of lands, &c., towards the repairs of the banks, walls and sewers therein, he, the said *A. T.*, from time to time accounting with us for the same when thereunto required: These are therefore to command you forthwith to give notice to the said *A. T.* personally to be and appear before us at, &c., on, &c., next, to give and render unto us a true and perfect account in writing of all money by him received, of all and every person and persons, for and towards the reparations aforesaid, and of all other things relating to his office of collector; which he, the said *A. T.*, is hereby ordered to do at his peril.

Given, &c.

Bond of a Collector or other officer for the due execution of his office.

WHEREAS at a Session of Sewers for, &c., on the above bounden, *J. Hutchins* was duly appointed by Her Majesty's Commissioners of Sewers, acting for aforesaid, to the office of one of the collectors to the said Commissioners, by virtue of which said office, he the said *J. Hutchins* will be entrusted to receive several of the rates and assessments made by virtue of the Commissioners of Sewers, for the limits aforesaid, for and in respect of divers common sewers within the limits of the said Commissioners; now the condition of the above-written obligation is such that if the above-bounden *J. Hutchins* do, and shall, from time to time, and at all time hereafter, during the time he shall continue as such collector as aforesaid, in all things faithfully and diligently use his best and utmost endeavours to collect, get in and receive all and every such rate and rates, sum and sums of money as shall from time to time be given him in charge by the said Commissioners of Sewers to collect, get in, and receive; and also if the said *John Hutchins* do, and shall from time to time, and at all time hereafter, render a just and faithful account to the said Commissioners of Sewers, or to their clerk, of all such sums of money as have been

already collected, got in and received, or which shall at any time hereafter be collected, got in and received by him, the said J. Hutchins, upon or by virtue of any rates or assessments, or otherwise howsoever, for or on account of such Commissioners of Sewers; and also do and shall from time to time, and at all times hereafter, well and truly pay or cause to be paid unto the said Commissioners of Sewers for the time being, for the limits aforesaid, or unto their treasurer or treasurers for the time being, or unto such other person or persons as the said Commissioners shall from time to time order or appoint, all such sums of money, rates, and assessments already got in and received, or which shall at any time or times hereafter be collected, got in, and received by the said J. Hutchins; and also do and shall well, truly, justly, and honestly in every respect behave himself in the said office of collector, then the above-written obligation to be void and of none effect, otherwise to be and remain in full force and virtue.

Bond of Sureties for a Collector and others.

KNOW all men by these presents, that we, *C. D. (a)*, of _____, in the county of _____, and *E. F. (a)*, of _____, in the county of _____, are held and firmly bound to *G. H.*, of _____, in the county of _____, Clerk of Sewers for the Commission, for the limits of _____ in the sum of £ _____ of lawful money of Great Britain, to be paid to the said *G. H.*, his executors, administrators, or assigns, for which payment to be well and truly made we bind ourselves, and each of us binds himself for and in the whole, our, and each, and every of our heirs, executors and administrators firmly by these presents. Sealed with our seals. Dated this _____ day of _____, in the year of our Lord, one thousand _____.

Oath of the Collectors and Defrayers.

YOU shall swear that you will truly levy, collect and dispose, and also account for all assessments imposed by the lords, bailiff, and twenty-four jurors, or the greater part of them; and in like manner, of all watergages within the precinct of the said marsh, and before the lords of the said towns, if they will be present.

Oath of the Bailiff.

YOU shall swear that you will make true execution of the judgments and awards of the twenty-four jurors, of those things which appertain to

(a) Sureties.

them to judge and award; and that you will charge all the collectors and defrayers the general and several assessments faithfully to levy, collect and account for; and that you will in proper person oversee all the walls, lands, water gages, sewers, gutters and bridges, when it shall be needful, at least twice in the year, once in the month of December and the second time in the month of June; and that you shall deliver to your successor all the evidences which are in your custody, as well as all charters concerning liberties and customs of the said marsh, as rolls of judgments and awards by the aforesaid twenty-four jurors, with all the proceedings of accounts, collections and expenses whatsoever, in your time had and made.

A Precept to the Bailiff to summon a Court of Sewers.

TO T. D., bailiff of sewers for the level of, &c., this is to require you to summon and give notice to all the owners and occupiers of land within the level of, &c. aforesaid, chargeable to the reparations of the sewers there, that a Court of Sewers will be holden for the said level and county of, &c., at the house of, &c., on &c., next, when and where they are personally to be and appear before the Commissioners, and be ordered in all things touching the reparations of the said sewers, according to the laws in that case made.

Given, &c.

A Precept or Warrant for a Sheriff to summon and return a Jury.

TO A. M., Esq., sheriff of the county of, &c. We, whose names and seals are hereto put and affixed, Commissioners of Sewers for the county aforesaid, do hereby require you or your sufficient deputy to summon and return such and as many honest and substantial men of your bailiwick qualified to serve on juries, by whom the truth may be best known, to be and appear before us and other Commissioners of Sewers for the said county, on &c., next, at &c., then and there to inquire into all defects, defaults and wants of reparations of and in the walls, banks and sewers within the level of, &c. in the county aforesaid, pursuant to the statute in that case made and provided.

Given, &c.

Appointment by Sheriff of Clerk of Sewers as his Deputy.

KNOW all men by these presents, that I, _____, in the county of _____, high sheriff of the said county, do by these presents make, ordain, constitute and appoint [A. B. clerk of sewers], my

lawful deputy for me, and in my name to make out warrants upon all such writs, precepts and mandates as shall be directed to me from any six or more of Her Majesty's Commissioners of Sewers for the said county of _____ whereof three of them to be of the quorum, as shall come to the hands of the said _____ during such time as I shall continue sheriff of the said county, and do make true returns of the said writs, precepts and mandates, and generally to do and execute for me and in my name all other things appertaining to my office by virtue of any writs, precepts or mandates to me directed from six or more of her Majesty's Commissioners of the Sewers for the said county, whereof three to be of the quorum, during such time as I shall continue sheriff of the said county, hereby ratifying and confirming all and whatsoever the said _____ shall lawfully do in the premises by these presents. In witness whereof, I, the said sheriff, have hereunto set my hand and seal of office this day of _____ in the year of our Lord, one thousand eight hundred and eighty-one.

Signed, sealed and delivered by the above-named

Form of holding a Court of Sewers.

AFTER three proclamations made by the bailiff or crier, the Commissioner, who is Chairman and acts as Steward of the Court, says:— All manner of persons who were warned to be and appear at this Court of Sewers, now to be holden in and for this level of, &c., draw near and give your attendance. Then a list of the names of persons residing within the level, being owners of land, is read; and the sheriff called upon for his return of the jury, the names of whom are also called over, and then they are sworn thus:—

Oath of the Jury summoned to a Court of Sewers.

YOU shall inquire and make true presentments and judgments of all such things as shall be given you in charge, and which are inquirable and punishable within this level relating to the repairs of the walls, banks and sewers. You shall do nothing out of malice or hatred, nor conceal anything through fear, favour or affection; but in all things shall impartially do your duty herein according to the best of your knowledge. So help you God.

Affirmation in lieu of Oath, under 30 § 31 Vic. c. 35, s. 8, to be taken by a Juror objecting from conscientious motives to be sworn.

I, A. B., do solemnly, sincerely and truly affirm and declare that the taking of any oath is, according to my religious belief, unlawful; and I do also solemnly, sincerely and truly affirm and declare. &c.

Oath of Foreman of Sewers Jury.

YOU, as foreman of this Jury of Sewers, shall swear that you, together with your jury, shall diligently inquire, and true presentment make, of all impediments, defaults and annoyances of or by water found within your view, as also of all other matters and things which you, as foreman of the said jury, ought to present according to the best of your knowledge and judgment without any concealment.

Inquisition of Jurors of annoyances and defects.

LINCOLNSHIRE TO WIT.—The inquisition taken at, &c., in the county aforesaid, the day and year, &c., by the oaths of *G. H., J. K., L. M., N. P., &c.* (the jury), good and lawful men of the said county, before *A. B., C. D., E. F., &c.*, esquires, her Majesty's Commissioners of Sewers for the county aforesaid, which said jurors upon their oath say, that *A. L.,* of, &c., hath lately, within two months last past, erected a flood-gate in and upon the river, called, &c., to the great impediment and hindrance of the current of the said river, which sometimes overflows its banks thereby; and that the lands and ground of and belonging to, &c., damaged and injured by the same. And they also say upon their oaths that the wall or bank called, &c., in the said county, is very ruinous and defective, so as to let in the water upon the lands of, &c. And that the said defects have proceeded from the negligence and default of, &c., and that the said, &c., of right ought to make good the repairs thereof. [Or that, &c., who holds lands and grounds within the parish and county aforesaid, are fit persons to be chargeable to and with the reparations aforesaid.]

Presentment by Jury of liability by custom to Repair.

SOMERSETSHIRE TO WIT.—And the jurors aforesaid, upon their view and oath aforesaid, do present that a certain wall [here specify the particular work or defence] situate and being in the parish of _____ and fronting _____ on certain lands called _____ in _____ aforesaid, the property of one *A. B.,* of _____, in _____ the county of _____, there running from _____ to _____ for the space of _____ or thereabouts, and particularly _____ on the _____ day of _____, in the year of _____ was, and continually thenceforth hitherto hath been and still is, in a ruinous and defective state and condition for want of due reparation and amendment thereof, insomuch that there is immediate danger of the waters flowing in upon the lands within the said levels. And the jurors aforesaid, upon their oath aforesaid, do further present that such ruinous and defective state and condition of the same wall [here describe the work in question] hath arisen and proceeded from the negligence and

default of the said *A. B.*, in not repairing and amending the same from time to time as he ought to have done. And the jurors, &c., do further present that all persons having lands within the levels aforesaid might have hurt, loss and disadvantage by reason and in consequence of the ruinous and defective state and condition of the said [here describe], and that there is imminent and immediate danger of the waters flowing in upon the lands within the said levels unless the said [here describe] be forthwith repaired; and the jurors, &c., do further present that the owners for the time being of _____ called _____, situate, lying and being at _____, in the said county, containing by estimation or thereabouts, by reason of an ancient custom from time whereof the memory of man is not to the contrary, the said [here describe the work] have been accustomed to repair and amend, and of right ought to have repaired and amended, and still of right ought to repair and amend when and as often as occasion hath required and shall require, so as to prevent the waters from flowing in upon the lands within the levels aforesaid, and that the said *A. B.*, on the day and year last aforesaid, and from thence continually hitherto hath been and still is owner of _____, and by reason thereof, and of ancient custom aforesaid, during all that time of right ought to have repaired and amended, and still of right ought to repair and amend when and as often as occasion hath required, and shall require the said [here describe the work, giving, if possible, the numbers on the level survey] so as to prevent the waters flowing in upon the lands within the levels aforesaid, and that the said *A. B.* of right ought forthwith to make good the repairs thereof. [Where the Commissioners, in consequence of owner's neglect, are going to do repairs themselves, continue.] And the jurors aforesaid, upon their oath, &c., do further present that the cost and charges of making good the repairs, &c., in such manner as they ought to be made good, would amount to the sum of £ _____.

[Here follow signatures of jury presenting.]

Presentment [under s. 13, 3 § 4 Will. IV. c. 22] by Jury of liability, "Ratione tenure" (a).

AND the jurors aforesaid, upon their oath, &c., do further say and present that the several persons and bodies corporate, mentioned and described in the _____ schedule herunto written, being the owners of the several lands and hereditaments set opposite to such their respective names and descriptions in such schedule, and their ancestors and predecessors, owners of the same lands and hereditaments, have, from time

(a) This presentment is similar in form to that in *R. v. Warton*, 31 L. J. Q. B. 265, and in *R. v. Fobbing Sewers*, 53 L. J. Q. B. (to be reported). The latter case questions the validity of the presentment, but it has not been thought advisable to withdraw it, pending the decision of the Court of Appeal.

immemorial, been used and accustomed to support, maintain, and repair, and of right ought to have supported, maintained, and repaired, at their respective costs and charges, the several and respective quantities of [insert here description of work to be done], within the limits and jurisdiction aforesaid mentioned and set forth in the _____ schedule opposite the respective names and descriptions of the said several persons and bodies corporate, by reason of the tenure of their said respective lands and hereditaments, and that the said several persons and bodies corporate named and mentioned in the several schedules respectively, are now the owners of the land and hereditaments therein set opposite to such their respective names and descriptions, and by the reason of the tenure of the same lands and hereditaments respectively are now liable, and ought, of right, to support, maintain, and repair, and keep in good and sufficient repair at their own respective costs and charges the several and respective quantities of [here insert description of work to be done] within the limits and jurisdiction aforesaid mentioned, and set forth in the several schedules respectively opposite to their respective names and descriptions, and at the respective parts and places therein also mentioned and described, so as to prevent, &c., &c.

SCHEDULE.

| Owners. | Occupiers. | Description of Lands. | Quantity of Lands. | Description of Work. |
|---------|------------|-----------------------|--------------------|----------------------|
| | | | | |

Notice to be given of Liabilities.

THE said presentments [of jury as to such liabilities] being read and considered by this court, it is ordered that the clerk to this court do cause due notice to be given to the several parties interested of the liabilities with which they respectively stand charged in and by the said presentments, and that if they think themselves aggrieved, they may traverse the same at the next adjourned court, to be holden for the levels aforesaid on
the _____ day of _____ next, at _____ o'clock at the _____
and that no traverse will be afterwards received.

Traverse of a Presentment.

TO the Commissioners of _____, and all others whom it may concern. A presentment made to you on the _____ day of _____ by a jury therein named, amongst other averments, states that the [here describe property] either avoids damage or is benefited by a [here describe work] designated in such presentment as [here describe], and that *A. B.* and his tenants and others, their lands and tenements ought to be rated to _____ level according to a schedule or valuation set forth in such presentment. I, *A. B.*, hereby give you notice that I traverse such presentment, and say that such presentment is illegal and unjust in the whole and in every part of it, and I say I derive no benefit, nor avoid damage, from the [here describe work], and I further say that the rate is unequal, and therefore I put myself on a jury of my country and demand to be heard myself by my tenants, and also by *C. D. E. &c.*, named in such presentment.

Orders of the Court of Sewers.

ORDERED by this Court that *L. E., &c.*, do well and sufficiently repair and amend the wall of, &c., on or before, &c., next, under the penalty of twenty shillings.

Ordered, that *T. E.* of, &c., do well and sufficiently repair, or caused to be repaired, the banks of the river of, &c., on or before &c., next, or shall be amerced, &c.

Ordered, that *A. D.* do, on or before, &c., pay unto *A. T.*, our collector, the sum of, &c., which he said *A. D.* is in arrear of rent on lease, towards the repairs of sewers.

Ordered, that *W. E.*, of, &c., do remove and take down the mill-dam and flood-gate by him lately erected on the river, &c., on or before, &c., under the penalty of, &c.

Ordered, that *E. B., &c.*, do pay the sum of, &c., towards the reparation of the wall of, &c.

Ordered, that *B. M.*, expeditor, do pay the sum of, &c., to, &c., for several timber trees used in repairs, heard and determined by plaint.

Ordered, that *L. E.* and his tenant of, &c., lands, be exempted and discharged from all taxes of sewers, they well and duly repairing the wall of, &c., aforesaid.

Ordered, that *L. A.*, surveyor, and *B. M.*, expeditor of sewers, be fined for neglect of duty in, &c., made out upon oath by, &c., and they are accordingly fined five pounds each.

Ordered, that *A. T.* be fined for his contempt in not obeying the order of this court, made for, &c., and he is accordingly fined two pound ten shillings.

Ordered, that *T. G.*, for giving abusive language to the court whilst sitting, and contemning the authority thereof, be fined thirty-six shillings and eightpence, and committed for one month.

An order to repair a Wall or Bank.

WHEREAS the wall or sea-bank called, &c., leading from and to, &c., is by means of the great violence of the sea of late become very ruinous, defective, and out of repair, and not fit to resist the rage of the waters, but oftentimes letting in the same on the marsh and low grounds and land thereto adjoining, in the parish of, &c., aforesaid, to the very great detriment and loss of all and every the owners thereof, in the grass there grown and cattle therein depastured, which are frequently destroyed: We, Her Majesty's Commissioners of Sewers within the county, of, &c., aforesaid, whose names and seals are hereto put and affixed, being willing and desirous to redress so great a grievance, by virtue of the authority to us given, do order, direct, and appoint that *G. H.*, of, &c., and *J. K.*, of, &c., or some or one of them to whom the same appertains, do, on or before, &c., next coming, cause the wall or bank above-mentioned to be well and sufficiently repaired, amended, and re-edified, with good and substantial materials, in all parts thereof where it shall appear that the same is in any ways defective, that the lands and low grounds in the said parish of &c., may be thereby secured from all inundations for the future; and this the said *G. H.*, *J. K.*, &c., are to do at their perils.

Given under our hands and seals, &c.

Order to remove Stakes and Piles set up in a River.

IT being presented by the jury returned to inquire of defaults in reparation of sewers, &c., in the county of, &c., that *T. M.* had in the month of, &c., then past, set up and erected several stakes and piles in the river of, &c., in the said county, to the great nuisance and annoyance thereof, which said *T. M.* is not to be found: We do therefore hereby order and empower *L. B.*, who is likely to receive the most damage and injury by reason thereof, to remove and abate the said nuisance on or before, &c., next, as to him the said *L. B.* shall be thought fit.

Given, &c.

Order of Court of Sewers upon presentment of liability by custom where owner in default.

IT is ordered by this court that all the works this day presented by the jurors to be done in respect of the [here describe the work] on the lands called _____ in the said levels mentioned in the said presentment is and they are hereby made an order and decree of this court. And it is further ordered and decreed by this court that the bailiff [state officer in question] doth immediately set about and use his

utmost endeavours to complete the repair of the said [here describe the work] agreeably to the presentment of the jury, for the security of the lands lying within the said levels, and that he doth particularly attend in the first place to the repairing and making good and secure such as may be considered most necessary to be instantly done to prevent a breach and consequent inundation. Also *J. S.* is assigned and appointed surveyor of the walls, ditches, banks, gutters, gates, and sewers within the levels aforesaid, to oversee, survey, and inspect the works and reparations presented by the jury to be done, and ordered and decreed by the Commissioners of Sewers for the said levels to be carried into immediate execution upon , and from time to time to report the state and condition of the said , and also of the progress made in repairing and making good the said , and completing the works agreeably to such presentments and to the clerk in writing.

It is ordered by this court that *A. B.* of , in the county of , do on or before the day of pay unto *J. H.*, our collector and expeditor for the said levels, the sum of £ for and towards the repair of the [here describe the work], situate and being, &c., in the said county, within the levels aforesaid and fronting, &c., the property of the said *A. B.*, which [here describe the work] it hath this day been presented unto us of [state number; three Commissioners a quorum (24 & 25 Vic. c. 33, s. 15) named in the Commission of Sewers now in force for the said levels by the jurors present here in court, the said *A. B.* of right ought to repair in respect of a certain farm [or, if necessary, state what property] called , situate, lying and being at aforesaid in the said county and now in his occupation; and we, the same Commissioners present at the said court, do accordingly tax, assess and charge the same *A. B.* in respect of the same farm, &c., with payment of the same sum. And it is ordered by this court that the said *A. B.* do, on or before the day of instant, pay unto our said collector and expeditor the further sum of £ being the amount of certain costs, charges and expenses incurred in the execution of the Commission now in force for the levels aforesaid, by reason and in consequence of the default of the said *A. B.* in repairing the said [here describe the work] when and as he ought to have done, and of his disobedience of an order of the Court of Sewers in that behalf, on the day of , now last past.

And we the Commissioners present at this court do accordingly tax, assess and charge the said *A. B.*, in respect of the said farm &c., with payment of the last-mentioned sum of £ .

Given under our hands and seals the day of

[Signatures of Commissioners and seals]

Order to repair.

LINCOLNSHIRE TO WIT—AUGUST, 1880.—At a Session and General Court of Sewers then held for _____ levels.

At this court upon reading so much of the presentment made at the General Court of Sewers for the said levels, holden on the day of _____ 188____, as relates to the supporting, maintaining, repairing and keeping in good repair the [insert description of work] within the levels aforesaid, and the liability of the owner or owners for the time being of certain land called _____, in the parish of _____, to repair and amend a certain part of _____, within the limits aforesaid, situate and being upon the said lands at the part and for the space in the said presentments mentioned in relation thereto, and after taking the depositions on oath of *A. B.*, the bailiff and surveyor to the said levels touching certain reparations and amendments now required to be done to the said _____ by reason of the default of *A. B.*, the owner of the said lands, in not having repaired and amended the said _____, and upon consideration thereof it is ordered that the said *A. B.* do well and sufficiently repair or cause to be repaired the _____ in manner following (that is to say): That he do, &c., &c., and that he do complete the repairs as above ordered on or before the day of _____, under the penalty of _____ for neglecting or refusing so to do.

Order of Commissioners to cleanse, scour and repair the banks of a stream.

WHEREAS it appears unto us *A. B.*, *C. D.*, *E. F.*, *ſc.*, esquires, Her Majesty's Commissioners for the county of, &c., by views and survey by us made, that the stream or river called, &c., running through the parish of &c., and county aforesaid, is very defective, and incapable to carry off the water, and drain the grounds and lands adjoining, in the winter season, when the land-floods from the hill there are very violent by reason of its being choked up with sand, weeds, trees, bushes and other impediments to the current thereof, and the many shoals therein, which stop and hinder the free passage of the water, to the great damage and injury of the meadow grounds and pasture lands, not only in the said parish of, &c., but in the county of, &c., aforesaid in general, by frequent overflowings of the same, which we, taking into our consideration, do adjudge absolutely necessary for the public good, and the aforesaid defects and annoyances should be amended and removed. And we, therefore, by virtue of the laws and statutes in that case made, and the power and authority to us hereby given do hereby order, direct and appoint, that the said stream, or river called, &c., running from, &c., to, &c., be on or before the day, &c., next in every part thereof, new dug, cut, made and cleansed in the best and most effectual

manner, from all sand, weeds, trees, bushes, and other impediments and incumbrances, so as to be ten feet wide and five feet deep in all parts of the same, between the places aforesaid. And we do also ordain and appoint that *G. H., J. K., &c.*, gentlemen, with whom they shall take to their assistance, do effect and perform, or cause to be effected and performed, the work and repairs above directed in every part thereof, according to this our order above mentioned for doing of the same; and thereupon empower the said *G. H., J. K., &c.*, to agree and compound with the owners of the soil of the land adjoining to the said river, for effecting the purposes aforesaid, and the good of the public.

Given under our hands and seals, this day and year, &c.

A. B.

C. D.

E. F., &c.

An order to remove and abate weirs erected on the river.

WHEREAS, *L. B.*, of &c., hath lately erected or caused to be erected, upon the river, &c., in the said county, certain weirs or dams, as found by jury at the Court of Sewers holden on, &c., last, to the great impediment and hindrance of the free passage of the said river, whereas the lands and grounds adjoining thereto, from, &c., to, &c., are oftentimes subject to great inundations, to the manifest damage and injury of the owners thereof: We, Her Majesty's Commissioners of Sewers for the said county of, &c., whose business it is to redress such grievances, do therefore hereby order and direct the said *L. B.*, on or before, &c., next coming, to remove or pull down the said weirs or dams, by him the said *L. B.* so erected on the said river, of, &c., as aforesaid upon the pain of incurring the penalty of £ by statute, and being further punished by law for the same.

Given, &c.

Notice of Court of Sewers to Owner of Land to pay Costs of Repair, &c.

LINCOLNSHIRE TO WIT.—To Mr. *A. B.*, of _____, in the county of _____, and all other persons whom it may concern. Whereas at a Court of Sewers for the lands within the limits of the several parishes of, and in the county of _____ or in the borders and confines of the same, holden at _____, in the said county, it was, amongst other things, presented unto us eight of the Commissioners of the said levels then and there present by the oath of the jurors then present, that a certain [here state description of work], situate and being in the parish of _____ aforesaid, in the said county, and within the

said levels, and fronting on certain lands and marsh grounds otherwise called _____, the property of one C. D., in the county of _____, farmer (or other description), those running from _____ for the space of _____, or thereabouts, and particularly the [here describe], on the _____ day of _____ in the year 188____, was, and from thence continually hath been and still is in a ruinous state by and through the negligence and default of the said _____, and that the said _____, as owner of the aforesaid farm, lands and marsh grounds, situate and being at _____ aforesaid, in the said county of _____, and within the levels aforesaid, by reason of ancient customs, from time whereof the memory of man is not to the contrary of right, ought to repair and amend the said _____, and make the same sufficient and secure, so that the waters may be kept and prevented from flowing in and upon the lands within the levels aforesaid, and that the said _____, of right ought to have made good the repairs thereof accordingly; and whereas by _____ orders made at the same court it was ordered that the said _____ should, on or before the _____ day of _____ instant, pay unto _____ our collector and expeditor for the said levels the sum of £ _____, for and towards the repairs of the same [describe work], and also the further sum of £ _____ the amount of certain costs and expenses incurred in the execution of the commission then and now in force for the levels aforesaid, by reason and in consequence of default of the aforesaid _____ in repairing the said _____ when and as he ought to have done, and of his disobedience of the order of the Court of Sewers in that behalf made on the _____ day of _____ last; and we the said Commissioners, present at the said court held on the day of the date thereof, did accordingly tax and charge the said _____ in respect of the said messuage, lands and marsh grounds, with payment of the two several sums of £ _____ and £ _____ in respect of the said lands and marsh grounds.

We do hereby order the said _____ to pay unto the said _____, our said collector and expeditor, the aforesaid sum of £ _____, to be applied in repairing or amending the [here describe work] above-mentioned, and also the aforesaid sum of £ _____ to be applied in satisfaction and discharge of the costs, charges and expenses above-mentioned, or on the said _____ default therein, we shall decree the said messuages, lands and grounds to be sold to satisfy the same sums of which the said _____, and all persons claiming any estate or interest in the said messuage, lands and grounds through or under him, are to take notice.

Given under our hands and seals this _____ day of _____ in the year of our Lord, 188____.

[Signatures and seals.]

[This notice should be also entered as an order of the Court of Sewers.]

Notice of Rate.

HUNDRED OF _____ AND PARTS ADJACENT
DISTRICT OF _____

At the adjourned General Session of Sewers for the said Hundred and parts adjacent, holden at the _____, in the county of _____ on the _____ day of _____ 188 _____, by and before the _____ Esqs., Commissioners of Sewers for the said Hundred and parts adjacent (amongst others assigned), it was ordered that a rate or assessment of _____ shillings in the pound be and the same was assessed and laid on the respective owners and occupiers whose names appear in the rate-book as rated and assessed of all the lands, tenements and hereditaments within the said district of _____, according to the quantities and quality of the estates for defraying the costs, charges and expenses of maintaining and repairing the bank and other necessary works of sewers, also the costs, charges and expenses incidental to the procuring of plans and estimates, and also the clerk's costs and charges in carrying out the orders of the Commissioners affecting the said district, and that _____ be collectors of the same.

Now, therefore, we, the collectors appointed by the above order of sewers, hereby give you notice that you are rated and assessed in respect of lands, tenements and hereditaments particularly set out in the rate-book, which can be inspected at the office of the Clerk of Sewers, and we request that the amount of such rate or assessment, which is stated below, be paid to us on or before the _____ instant.

A. B.,

C. D.,

Collectors.

3rd March, 188 _____

Laws and Ordinances of Commissioners of Sewers.

LINCOLNSHIRE TO WIT.—Laws and Ordinance made and ordained by A. B., C. D., E. F., G. H., &c., esquires, Commissioners of Sewers for the county aforesaid, at a Court of Sewers held, &c., to be kept and observed within the level of, &c., in the said county, for the well ordering and better government of the same.

Imprimis. We ordain that all and every the owner and owners of goats, flood-gates, and sluices, within the level aforesaid, do constantly keep the same, and every of them, up and open from, &c., to, &c., yearly, and longer if it be found necessary, on notice given by our surveyor, or all and every the owner and owners of such goats, flood-gates, and sluices shall be fined six shillings for each default.

Item. We ordain that no person or persons whatsoever do cast, throw, or empty into any of the rivers, streams, or sewers within the limits of the said level, any sand, stone, dirt, earth or rubbish, to the interruption of the current of the said rivers and streams; or do erect or set up any stakes, piles, or other things therein to the annoyance thereof, under the penalty of forfeiting, on conviction thereof, for every offence three shillings and fourpence.

Item. We ordain that all and every the owner and owners of the lands adjoining to the rivers of, &c., in the said level, do yearly, once in every year, within one month after, &c., cut, or cause to be cut, the weeds, rushes, and docks in the said rivers, and cleanse the same rivers of and from all filth therein arising; and that, on default thereof, they shall be fined sixteen shillings and eightpence.

Item. We ordain that the owners and occupiers of the lands next to the ditches in, &c., do new dig the said ditches in the best manner once in every seven years, so as to be, &c., feet deep to carry off the water through the said lands, on pain of forfeiting thirteen shillings and fourpence for every neglect.

We ordain that if any person or persons, who of right ought to amend and repair any wall or bank, shall on notice of our surveyor, neglect to do the same, then our said surveyor shall make good the said reparation at the charge of the level; and the person neglecting it shall pay and forfeit double costs to the said surveyor for the common benefit of the whole level, toward repairing the walls and defences thereof.

Item. We ordain that whenever any post or timber work belonging to the sewers shall yield or give way to the rage of the waters, that then the owner of the lands adjoining shall immediately do what in him lies to amend the same till our further orders be obtained therein, or he shall forfeit thirty shillings.

Item. We ordain that if any time hereafter it shall so happen, that, by the violence of the sea or land-floods any wall, bank, or work within the said level, shall be broke down or overturned, or any breach made in the same, and then on notice of our surveyor, all and every person or persons having lands in the said level liable to inundations do and shall forthwith send labourers and workmen with proper tools, each owner of land one workman, to repair the same during the present exigency until we can make further order therein; and if any shall make default herein and be convicted thereof by the testimony, &c., he shall be amerced thirteen shillings and fourpence.

Item. We ordain that no person or persons, owners of lands, or others whatsoever, do at any time obstruct, hinder, or interrupt the reparation of any breach in any of the walls, banks, or defences within the said level, whereby any damage, injury, or prejudice shall happen to the adjoining lands, on pain of forfeiting, &c., according to the quantity of the offence, or forfeiting for every offence twenty shillings.

Item. We ordain that if on any extraordinary and necessitous occasion, through some sudden inundation of the water, earth, stones, timber, or

other materials shall be wanting immediately to fill up the breach of any wall, bank, or other thing, that then any person or persons inhabiting in the level aforesaid taking with them our surveyor of sewers may go upon the lands nearest to the said breach and inundation, and then and there take and carry away to the place where required, any earth, stones, timber, or other things necessary for the same, till our further order can be had and obtained therein.

Item. We ordain and require that all these laws and ordinances be well and duly observed and kept under the several pains, penalties, and forfeitures afore-mentioned, according to the tenor and true meaning thereof.

Given, made, and ordained between us aforesaid Commissioners, under our hands and seals this day and year, &c.

A. B.
C. D.
E. F.
G. H., &c.

N.B.—It may be necessary to proclaim these laws, and that all the offences, as they happen, be presented by the jury to inquire of defaults before the particular penalties are levied.

Ordinance or Bye-law of Commissioners of Sewers.

That no person or persons shall remove any [here insert description] or beach between the sea wall and low water mark of the river, or damage, deface, or remove any bridges, gowts, gate-posts, rails, &c., or any notice board erected or placed up by order of the Commissioners in any part of the level, or any of the boundary stones or landmarks placed on the sea-wall, or on any run or sewer to distinguish the shares of the different persons liable to repair or cleanse the same wall, run, or sewer; or wilfully or clandestinely remove any stones, balk, or other thing placed in front of the sea-wall for the preservation thereof; under a penalty not exceeding £5 above the value of the property removed or damaged, according to the nature and degree of the offence, and as the Commissioners before whom any complaint shall be made shall in their discretion think fit.

By order,

[Signed]

A. B.,

Clerk to the Commissioners of

Entry of Proceedings of a Court of Sewers.

LEVEL OF A.—At a Court of Sewers held the day and year, &c.,

before *A. B., C. D., E. F., &c.*, esquires, Commissioners of Sewers for the said level and county, &c.

| | | |
|-------------------------------|---|--|
| T. D., Bailiff of Sewers, ap. | } | And made presentments of what done in their offices. |
| L. A., Surveyor, ap. | | |
| A. T., Collector, ap. | | |
| B. M., Expnditor, ap. | | |

The Jury sworn:—

| | | |
|-------|--|-------------|
| L. W. | \| | T. K. |
| W. B. | \| | E. M. |
| C. L. | \| | M. C. |
| T. A. | \| | T. B. |
| M. C. | \| | J. E. |
| J. W. | \| | E. T., &c., |
| S. E. | \| | Jurors. |

Imprimis. The jury aforesaid present that all manner of persons who have any lands subject to inundations, or who receive any benefit by the sewers, ought to be and appear at this court, and be ordered by the same.

Item. The aforesaid jury upon their oaths present that *L. E.*, of, &c., by the tenure of his estate, of right ought to repair the wall or sewer of, &c.; and that he, the said *L. E.*, is thus bound by reason of, &c., lands now in the possession of him, the said *L. E.*

Item. The said jury present that *E. W.* by prescription, time out of mind, ought to repair the bank of, &c., he, the said *E. W.*, and his ancestors, having always repaired and amended the same by means of his estate there.

Item. The aforesaid jury present that *T. E.*, of, &c., and those whose estate he hath, have, time beyond memory, had the use of the river of, &c., for their own private occasions; and that the said *T. E.*, by reason of the said use of the said river, is and ought to keep the banks of the same in repair.

Item. The said jury present and find that *A. D.*, of, &c., by indenture of lease or grant from, &c., is by covenant obliged to pay the sum or rent of, &c., yearly, towards the repairs of the walls or banks of, &c. And that the said *A. D.* is in arrear the sum of, &c.

Item. The aforesaid jury present that the chanel of the river of, &c., s choked up with weeds, sand and other rubbish; and that the same hath happened through the default of *E. L.* of, &c., whom they do amerce ten shillings.

Item. The said jury present that *W. E.*, of, &c., hath erected and set up a mill-dam on the river, &c., to the annoyance of the stream therein, and the great loss and damage of, &c., and they do amerce the said *W. E.* twenty shillings.

Item. The aforesaid jury present that the wall and banks of, &c., are ruinous and out of repair, and not sufficient to oppose the violence of the sea; and that *E. B., J. L., R. J., &c.*, by reason of, &c., lands, are fit and proper persons to be charged for the reparation thereof.

Item. The said jury present that the wall or bank of, &c., which should be repaired by, &c., by a sudden tempest having been overturned without any default in him, and he not being able to do the same, that the said wall ought to be new built and erected by all and every the owner and owners of lands within the level.

Item. The aforesaid jury present that whereas *L. E.* is obliged, by tenure of his lands, to make good the repairs of the wall of, &c., aforesaid, that the said *L. E.* and his tenant ought therefore to be exempted from all taxes of sewers, they repairing the aforesaid wall.

Item. The jury aforesaid present that *L. A.*, Surveyor of Sewers, hath neglected to survey the works of, &c., lately overthrown by wind, and to give directions for the reparations thereof, to the great damage of *T. B.*

Item. The said jury present that *A. T.*, of, &c., hath contemptuously refused to obey the order of this court, made in the case of, &c.

A Rate and Assessment for Repairs of Sewers.

LINCOLN, SS.—A rate and assessment made on all the owners of lands in the parish and limits of, &c., in the said county, according the quantities and qualities of their estates, for the repairing, amending, and maintaining of the banks, walls, and sewers in the said parish and limits, for the year, &c.

| | | £ | s. | d. |
|---|-----|---|----|----|
| <i>T. A.</i> , for his tenement and lands, containing 150 acres ... | ... | 2 | 0 | 0 |
| <i>A. B.</i> , for his freehold messuage, called, &c. ... | ... | 1 | 0 | 0 |
| <i>C. D.</i> , for a leasehold tenement, and, &c., lands ... | ... | 1 | 5 | 0 |
| <i>E. F.</i> , for 100 acres of meadow ground ... | ... | 1 | 10 | 0 |
| <i>G. H.</i> , for 70 acres of pasture, &c. ... | ... | 0 | 17 | 6 |
| <i>I. K.</i> , for 30 acres of meadow ... | ... | 0 | 10 | 0 |
| <i>L. M.</i> , for 10 acres of, &c. ... | ... | 0 | 5 | 0 |
| <i>N. P.</i> , &c. | | | | |

The above rate and assessment was this day, &c., assessed by us, six of Her Majesty's Commissioners of Sewers for the county of, &c., aforesaid; and we do hereby authorise and empower *T. D.*, our collector for the said parish and limits of, &c., to ask, demand, and levy the same of the several persons therein named, to be applied towards repairing, amending, and maintaining of the banks, walls, and sewers aforesaid, according to the statutes in that case made and provided.

Given under our hands and seals, &c.

B. M.

J. B.

E. N.

N. W.

R. E.

J. H., Commissioners.

An Order on a particular person to pay a Tax.

WHEREAS on making a rate and assessment upon the owners of lands in the parish and limits of, &c., for the repairing, amending, and maintaining the sea-banks, walls, and sewers therein, for the year, &c., it appeared to us by the information of, &c., on oath, that one *A. B.* holdeth a certain messuage and twenty acres of land in the said parish and limits, &c., by the tenure and payment of, &c., towards the repairs and maintenance of the said banks and sewers, and the said *A. B.* having neglected to pay the said sum to our collector appointed to receive the same: We do therefore hereby order the said *A. B.* within, &c., days next after the date hereof, to pay unto, &c., our collector aforesaid, the aforesaid sum of, &c., to be applied in repairing, amending, and maintaining the walls, banks, and sewers above mentioned; or on the said *A. B.*'s default therein, we shall decree the said messuage and lands to be sold to satisfy the same; of which the said *A. B.* is to take notice.

Given, &c.

Summons to show cause on non-payment of Rate.

To *A. B.*—You are hereby summoned and required personally to be at a Court of Sewers, for the _____, and other limits within the county of _____, to be holden by adjournment, at the _____ in the county of _____, on the _____ day of _____, at _____ o'clock in the afternoon, to show cause why you refuse to pay the sum of £ _____, assessed upon you as owner and occupier of certain hereditaments in the parish of _____, by certain laws and ordinances of sewers, made and confirmed at a Court of Sewers, holden by adjournment at the _____ in _____ aforesaid, on the _____ day of _____, 188 _____, under the hands and seals of six Commissioners. Herein fail not.

A Warrant to take a Distress for a Tax, and Sell Goods.

To *J. S.*, our bailiff of sewers, and to *C. D.*, our collector, and to each and every of them, and to all constables and peace officers. Whereas, at the Court of Sewers holden for the _____ limits within the county of _____, on the day of _____, *A. B.*, of _____ in the county of _____, was assessed or taxed in the sum of £ _____, which sum it hath this day been proved to us, the undersigned, being six or more of the Justices and Commissioners of Sewers for the aforesaid limits, by the oath of _____, duly appointed to receive the same tax of £ _____, that the said *A. B.* hath neglected or omitted to pay when

demande of him : These are, therefore, to authorise and command you, and any or either of you, to levy the said sum of £ _____ by distress and sale of the goods and chattels of the said *A. B.*, together with the costs and charges of such distress and sale, rendering the surplus (if any) to the said *A. B.*

Given under our hands and seals the _____ day of _____ 188

[Signatures and seals of six Commissioners.]

Same in another form.

To *T. D.*, sewer bailiff or collector of the level of, &c. Whereas complaint hath been made unto us, that *C. D.* and *E. F.*, of, &c., aforesaid, who are severally rated and assessed in the several sums of, &c., for and towards the necessary reparations and amendments of the banks, walls and sewers within the said level, have refused to pay the same when demanded, contrary to the laws in that case made : These are, therefore, to authorise and command you to levy the said respective sums of, &c., on the goods and chattels of the said *C. D.* and *E. F.* respectively, by distress and sale thereof ; and that you do employ the said money, when levied, towards the repairs above mentioned ; for which this shall be your warrant.

Given, &c.

A Decree and Sale of Lands by Commissioners, for Payment of Lots and Charges.

THIS indenture made, &c., between *A., B., C., D., E., F., &c.*, esquires (six), Commissioners of Sewers for the county of, &c., of the one part, and *G. H., &c.*, of the other part. Whereas the said Commissioners, parties to these presents, having the execution of the laws of sewers, on, &c., last past, made and ordered an equal rate, charge, and assessment upon all and every the owners and occupiers of lands in the parish and limits of, &c., in the county aforesaid, according to the quantities and qualities of the said lands, for and towards the reparation and amendment of the banks, walls, and sewers within the said limits, pursuant to the laws and statutes in that case made and provided ; And whereas in and by the said rate and assessment, *L. M.*, of, &c., aforesaid, was legally charged and assessed in the sum of, &c., as his proportionate lot and charge, towards the said reparations and amendments, for his messuage, tenement, and lands, called, &c., held by lease and grant from, &c., for the term of, &c., who on demand thereof, by, &c., the Commissioners' collector lawfully authorised, hath absolutely and contemptuously denied and

refused to pay the same; And whereas the said Commissioners, or some of them, are credibly informed that the said *L. M.* hath no goods or chattels whereout the said sum of, &c., may be any ways levied for the purposes aforesaid: Now, to the end that the said sum, &c., may be paid and applied to the uses above mentioned, in repairing the said sewers, This indenture witnesseth, that the said Commissioners, parties to these presents, by force and virtue of the statutes of sewers, and the power to them thereby given, and for and in consideration of the covenants and conditions hereinafter on the part and behalf of the said *G. H.*, his executors and administrators, to be performed and done, and also of five shillings of lawful British money to them the said Commissioners in hand paid by the said *G. H.*, the receipt whereof is hereby acknowledged, Have ordered, bargained, sold and assigned, and by these presents do, as much as in them the said Commissioners, parties to these presents, lieth, order, decree, bargain, sell and assign from the said *L. M.*, his executors, administrators and assigns, unto the said *G. H.*, his executors and administrators, All and singular the said message or tenement, lands and premises above-mentioned, and all ways, waters, easements, profits, privileges, advantages, and appurtenances to the said message or tenement and lands belonging or appertaining, To have and to hold the said message or tenement, lands and premises to the said *G. H.*, his executors and administrators, for and during all the rest and residue of the said term of, &c., which he the said *L. M.* had, or ought to have, of or in the same, Upon condition, nevertheless, that he the said *G. H.*, his executors and administrators, do and shall yearly and every year, during the said term of, &c., pay or cause to be paid, unto the collector or collectors appointed, all such rates, lots, charges and assessments as shall be rated, assessed or imposed by the Commissioners of Sewers for the county of, &c., aforesaid, for the time being, on the message or tenement and lands above mentioned, upon demanding the same, and on no other condition or trust whatsoever. And the said *G. H.* for himself, his executors and administrators, doth covenant and grant to and with the said Commissioners parties to these present, and to and every of them, their executors, &c., That he the said *G. H.*, his executors and administrators, shall and will from time to time, and at all times during the said term of, &c., aforesaid, well and truly pay or cause to be paid unto the collector or collectors appointed to receive the same, all and all manner of rates, cesses, lots, charges, assessments and payments, which shall be rated, assessed, charged or imposed by the Commissioners of Sewers for the said county of, &c., for the time being on the message, tenement, lands and premises above mentioned, or any part thereof, towards the reparation of the said sewers, on demand thereof, including the assessment of, &c., aforesaid, without any default, denial, or neglect by him the said *G. H.*, his executors, &c., according to the true intent and meaning of this present decree and assignment.

In witness whereof the said Commissioners and parties have hereunto put their hands and seals, the day and year, &c.

Reply (a) by Inclosure Commissioners to application for leave to Mortgage Rates.

INCLOSURE COMMISSION (b),
3, St. James's Square, London,

18

I am desired by the Inclosure Commissioners to state, in reply to your letter of the _____, that they cannot entertain an application for their sanction to the mortgage of the rates for an expenditure for "the improvement of existing works," or for "new works"—*vide* s. 16 of the Act of 1861—unless the notices required by s. 29 were given before the works were commenced. But if the expenditure is not more than £1,000, or for "the maintenance of existing works," they will be prepared to consider such an application, notices in such cases not being required.

The application should be made under the signature of the quorum of the Board or their seal, or whatever may be the authorised mode of authenticating the decision of the Board, and should state the term within which it is proposed the sum to be borrowed should be paid off.

The application should also state for which of the three classes of works described in s. 16 of the Act the money is required, and shortly the object and necessity for the proposed expenditure, and whether the works are authorised by the Acts relating to the Commission of Sewers.

If the works are either "the improvement of existing works" or "new works," the notices required by s. 29 must be given *before* the works are commenced, and it will be observed that under the last paragraph of s. 31 the amount of the estimate given in the notice cannot be exceeded.

It should further afford information as to the incidents of the rating, and whether the charge will be a tax on the owners or occupiers.

A report from the engineer to the Commissioners, countersigned by the chairman of the board, and a tracing, showing generally the character and extent of the proposed works, should accompany the application.

I am, &c.,

By order.

Form of Mortgage Security, under 3 § 4 Will. IV. c. 22, s. 42.

By virtue of an Act passed in the third year of His Majesty, King William IV., intituled [here insert the title of this Act], we, the undersigned, being six of the Commissioners [here insert the general description of the Commission under which they act], in consideration of the sum of

(a) The application in the first instance should be made by the clerk to the Commission or Drainage Board, in a letter upon foolscap folio paper, containing a brief statement of the objects of the application and the ground upon which it is made.

(b) Now the Land Commission.

of lawful money of Great Britain to [here insert the name of the receiver of the district] lent and paid by _____, do hereby certify that [here describe the particular lands, or, if by assessment, the valley, level or limit in which the lands are situate, which are to be charged], are become charged with the repayment of the said sum, in instalments of one part on the _____ day of _____ in every year, together with interest on such part of the said principal money as shall remain unpaid from time to time at and after the rate of _____ pounds per centum per annum, until the whole thereof shall be repaid; which sum so lent and advanced by the said _____ is part of a capital sum of _____ which, at a Court of Sewers holden at _____ on the _____ day of _____ last, was decreed and ordered to be taken up and borrowed for the purpose of [here briefly state the general cause or object of borrowing the money].

In witness whereof we have hereunto set our hands and seals the day of _____ .

Form of Transfer of Mortgage, under 3 § 4 Will. IV. c. 22, s. 43.

I [or we] A. B., of, &c., in consideration of the sum of _____ to me this day paid by [C. D., of, &c.], do hereby transfer the within certificate of charge, with all my right and title to the principal money thereby secured and now remaining due thereon, and to all the interest money now due or hereafter to become due, unto _____, his [her, or their] executors, administrators, successors and assigns [as the case may be]. Given under my hand and seal this _____ day of _____ .

Witness,

Form of Mortgage Security for Money borrowed for General Purposes, under 4 § 5 Vic. c. 45, s. 5.

BY virtue of an Act passed in the _____ year of the reign of Her Majesty, Queen Victoria, intituled [here insert the title of this Act] we, the undersigned, being six of the Commissioners [here insert the general description of the commission under which they act], in consideration of the sum of _____ of lawful money of Great Britain to [here insert the name of the treasurer] lent and paid by _____, do hereby certify that the several general sewers rates to be made and levied within [here insert the name of the district or level] under and by virtue of the said Act are become charged with the repayment of the said sum, in instalments of one part on the _____ day of _____ in every year, together with interest on such part of the said principal money as shall remain unpaid from time to time, at and after the

rate of pounds per centum per annum, until the whole thereof shall be repaid; which sum so lent and advanced by the said is part of a capital sum of which, at a Court of Sewers, holden at on the day of last, was decreed and ordered to be taken up and borrowed.

In witness whereof we have hereunto set our hands and seals the day of .

Form of Transfer of the above Mortgage, under 4 § 5 Vic. c. 45 s. 6.

I [or we] A.B., of, &c., in consideration of the sum of to me this day paid by C. D., of, &c., do hereby transfer the within certificate of charge, with all my right and title to the principal money thereby secured, and now remaining due thereon, and to all the interest money now due or hereafter to become due, unto [his, her or their] executors, administrators, successors and assigns [as the case may be].

Given under my hand and seal this day of

Witness,

Petition of Proprietors to the Inclosure Commissioners for a Commission of Sewers under the Land Drainage Act, 1861 (a).

IN THE MATTER OF THE LAND DRAINAGE ACT, 1861.

TO the Inclosure Commissioners of England and Wales, the humble petition of the several persons whose names are subscribed hereto sheweth—

- (1.) That the area of land inclosed by the boundary lines coloured on the map (b) accompanying this petition, and endorsed with the names of your petitioners, situate in the county of , comprises acres or thereabouts.
- (2.) That your petitioners are proprietors, as defined by the above-mentioned Act, of land of more than a tenth part of the land within the said boundary lines, that is to say, of acres or thereabouts.
- (3.) That no Commission of Sewers has jurisdiction within the said area, or any part thereof (c).

(a) The names of the petitioners should be affixed to the foot of the petition.

(b) The map may be annexed or referred to in any manner that admits of being readily authenticated. The subscription or endorsement of the names of the whole or some of the petitioners is a ready mode of distinguishing.

(c) If Commissioners have jurisdiction within any part of the area, the petition must go on to state that they have had a special meeting, and assented.

- (4.) That the said area is drained by the river _____, and the said boundary lines show the limits of the catchment basin of the said river (a).
- (5.) That the drainage of the said area is greatly impeded by reason of divers obstructions that exist to the course of the said river, and to the channels of the streams and drains leading into such river, and by reason of the want of an outfall for the waters running from the lands situate in the upper part of the basin, and the negligent way in which the main drains throughout the said area are maintained.
- (6.) That it would be greatly for the benefit of the property of your petitioners, and of the other proprietors of property within the said area, that a Commission of Sewers (or drainage district) should be issued, having for the limits of its jurisdiction the said area, or such other like area as may be thought expedient.
- (7.) That your petitioners are willing to give such security for the costs that may be incurred in or about the matter of this petition as may seem meet to your Honourable Commission.

Your petitioners therefore humbly pray that you, the Inclosure Commissioners for England and Wales, would be pleased to approve of the boundaries of the area proposed by your petitioners as the limits of the jurisdiction of a Commission of Sewers (or drainage district), and that you will be pleased to notify such approval to one of Her Majesty's Secretaries of State, in order that he may convey an intimation of such approval to Her Majesty, to the end that it may please Her Majesty to direct the issue of such Commission as aforesaid.

And your petitioners will ever pray.

[Signatures.]

Petition of Proprietors to Inclosure Commissioners for the constitution of an Elective Drainage District, under ss. 63 § 64 of the Land Drainage Act, 1861.

IN THE MATTER OF THE LAND DRAINAGE ACT, 1861.

TO the Inclosure Commissioners of England and Wales, the humble petition of the several persons whose names are subscribed hereto sheweth—

- (1.) That the area of _____ lands enclosed by the boundary lines coloured blue on the map accompanying this petition, and endorsed with the names of your petitioners, situate in the county of _____, comprises _____ acres or thereabouts.

(a) This statement and the following one will vary according to circumstances. State anything to show that the issue of a Commission of Sewers would be beneficial.

- (2.) That your petitioners are proprietors as defined by the above-mentioned Act, of more than one-tenth in part of the land within the said boundary lines, that is to say, of _____ acres or thereabouts.
- (3.) That the said area is not within any Commission of Sewers, or of any borough, or of any district under the management of a Local Board of Health or Improvement Commissioners.
- (4.) That the said area consists at present of a moor watered by land springs, and in many parts boggy and unfit for cultivation.
- (5.) That the said area is in its nature fertile, and would be greatly improved by a combined system of drainage, whereby the said land springs might be cut off and the land rendered firm and dry.
- (6.) That it would be greatly to the benefit of your petitioners and the other proprietors of the property within such area, if the same were constituted a drainage district, and the superintendence of matters relating to drainage within the said area vested in a Drainage Board. And your petitioners are satisfied that the proprietors of more than two-thirds of the said area are in favour of the same being constituted a drainage district.
- (7.) That your petitioners are willing to give such security for all costs that may be incurred in or about the matters of this petition, as may seem meet to your Honourable Board.

Your petitioners, therefore, humbly pray that you, the Inclosure Commissioners for England and Wales, would be pleased to make a Provisional Order declaring the said area to be a drainage district within the meaning of the second part of the above-mentioned Drainage Act, and further, to take all proper steps as soon as conveniently may be for the confirmation of the said Provisional Order by Act of Parliament.

And your petitioners will ever pray, &c.

Petition of Commissioners of Sewers to the Inclosure Commissioners for application of Lands Clauses Acts under s. 23 of the Land Drainage Act, 1861 (24 & 25 Vic. c. 133. (a))

IN THE MATTER OF THE LAND DRAINAGE ACT, 1861.

TO the Inclosure Commissioners of England and Wales, the humble petition of the Commissioners sheweth—

That the jurisdiction of your petitioners as Commissioners of Sewers comprises, amongst other places, a large tract of land in the county of _____, situate within the catchment basin of the river _____.

(a) This form is applicable to similar petitions by a Drainage Board. The petition should be in writing on folio foolscap paper. The names of the petitioners should be affixed to foot of the petition.

That the tract of land above referred to is enclosed by lines coloured blue on the map (*a*) accompanying this petition and authenticated by the seal of your petitioners.

That the drainage of the said tract of land would be greatly improved if a main drain (*b*) was cut in the course of the line marked red on the said map, and an additional outlet thereby afforded for the waters of the river _____, at the spot marked "A" on the same map.

That some of the owners of the lands required to be purchased for the purpose of constructing the said main drain have refused to sell the same unless compelled so to do by Act of Parliament.

That plans and sections (*c*) of the said intended drains and works and plans of the lands required to be taken compulsorily accompany this petition and are authenticated by the seal of your petitioners.

That your petitioners are prepared with evidence in support of the allegations of this petition, and are desirous that an inspector should, if your Honourable Board think it necessary, be sent to investigate the matter of this petition, and to report to your Honourable Board as to the expediency of your petitioners making the said intended drain and the advantages to be derived therefrom.

Your petitioners therefore humbly pray that you the said Commissioners would be pleased to make a Provisional Order empowering your petitioners to put in force, with reference to such parts of the land as are shown on the said plans to be required to be taken compulsorily, the powers of the Lands' Clauses Consolidation Act, 1845, in relation to the compulsory taking and purchase of land, and further, that you will be pleased, as soon as may be, to take all proper steps for the confirmation of such Provisional Order by Act of Parliament.

And your petitioners will ever pray, &c.

(*a*) The map will be an ordnance or other similar map.

(*b*) Here state the proposed works

(*c*) These plans and sections should be prepared according to the model plan referred to in the Standing Orders of Parliament in force.

APPENDIX C.

SOMERSETSHIRE DRAINAGE ACT, 1877.

(40 Vic. c. XXXVI.)

PART III.

Existing Liabilities.

59. It shall be the duty of the Commissioners, as soon as conveniently may be after their final constitution, to proceed to ascertain, fix, determine, and commute as hereinafter provided, the liabilities (whether within the jurisdiction of the existing Drainage Boards or the Boards to be constituted under this Act) then existing of all owners, whether by themselves or their tenants, to cleanse, repair, build, maintain, or renew any rivers, water-courses, drains, sewers, ditches, banks, droves, bridges, sea-walls, walls, sluices, gates, hatches, or other outfalls for water, and defences against flooding, whether by reason of tenure, custom, prescription, or otherwise, and to enter the same in a register to be provided and kept for that purpose in manner and form according to Schedule C to this Act annexed, and hereinafter called the register of liabilities, which said register shall be kept at the offices of the Commissioners, and shall be open to the inspection of all owners, lessees and occupiers owning or holding lands within the jurisdiction of the Commissioners at all reasonable times.

Liabilities to be ascertained, registered, and commuted.

60. For the purpose of so ascertaining, fixing, determining and commuting the liabilities aforesaid, the following proceedings shall be observed:—A notice in form according to Schedule B shall be served upon all owners of land who by themselves or their tenants are deemed by the Commissioners to be under any liability to do any of the works aforesaid, stating that on a day to be named therein, not being less than 28 days from the service of such notice, the Commissioners will take into consideration, with a view to ascertaining, fixing, determining and commuting the liability to which such person or persons is or are then liable, and stating that sufficient cause be shown to the contrary, the Commissioners will proceed to order that such person or persons be placed upon the register of liabilities

Notices to be served on persons deemed to be liable and liabilities to be determined and commuted.

in respect of the liability specified in the notice aforesaid, and their liabilities commuted for such annual payment by way of rent-charge as in the opinion of the Commissioners may fairly represent the probable average annual cost (taking one year with another) of executing and maintaining the respective works in a due state of efficiency, and on the day named in the notice aforesaid the Commissioners shall, if necessary, proceed to take evidence with a view to ascertaining, fixing, determining and commutting the liability of any such person or persons, and in case no sufficient cause to the contrary be there shown, shall place such person or persons upon the register of liabilities in respect of the work or works so specified in the notice aforesaid: provided always that any person or persons aggrieved by any such order made by the Commissioners may appeal to the Court of Quarter Sessions in manner hereinafter mentioned.

Where persons liable cannot be ascertained Commissioners or District Boards may execute works.

61. In cases where the Commissioners are unable, either from want of evidence or other sufficient cause, to ascertain the person or persons liable to execute any specific work, it shall be lawful for the Commissioners or District Boards, as the case may be, to execute the work themselves, and to defray the costs out of any moneys in their hands which would have been applicable to such a purpose if there had been no person liable to execute such work by reason of tenure, custom, prescription or otherwise: provided always that no such work shall be executed by the Commissioners or District Boards until the Commissioners have certified under the hand of their clerk such inabilities as aforesaid.

Commissioners may order works hitherto repairable, *ratione tenure*, to become a general charge.

62. In all cases where it would be necessary for the Commissioners and District Boards respectively to exercise the powers conferred upon them by the last preceding section, if in the judgment of the Commissioners it would be unfair, either owing to the large proportion of the work which would have to be borne out of the general funds of such Commissioners or District Boards respectively, under such last-mentioned section, compared with that which would have to be ascertained, fixed, determined and commuted under the 59th and 60th sections of this Act, or from any other cause to ascertain, fix, determine and commute such last-mentioned liabilities, it shall be lawful for the Commissioners (but as to all works not required for purposes of arterial drainage which would have to be executed within the area of any District Board by such last-mentioned Board, then only at the request and at the cost of such District Board) to order that all liabilities to build, repair, maintain or renew any drainage works by reason of tenure, custom, prescription or otherwise within that area shall, from a date to be named in the notice hereinafter mentioned, cease and determine, and thereupon such drainage works shall from the date mentioned in such notice be executed by the Commissioners and District Boards respectively, and the cost thereof defrayed in like manner as if there were no persons liable to execute such works: provided that before the Commissioners shall order any drainage works to become a general charge under the powers of this section, they shall publish for three successive weeks in some newspapers circulating within or near the area proposed to be effected by such order, a notice giving a general description of the drainage works which it is proposed to

make a general charge as aforesaid, and also naming a day upon which all owners, tenants and occupiers of land may be heard before the Commissioners, and if upon the day named in such notice no objection shall be made, or if made be overruled by the Commissioners, then it shall be lawful for the Commissioners to make the order aforesaid, naming in such order the day on which all the liabilities aforesaid shall cease and determine: provided also that any person aggrieved by any order of the Commissioners in this behalf may appeal to the Court of Quarter Sessions in manner hereinafter mentioned, who shall have power to quash any order in whole or in part, or make any alteration or amendment in the same as shall seem just.

63. Any commutation made under the provisions of this Act shall be charged as an unusual rent-charge on the lands in respect of which the obligation existed at the time of the commutation, and any charge so created shall be recoverable by the Commissioners in the same manner in which the rent-charge is recoverable, and shall have priority over all incumbrances created, or to be created, by any proprietor of the lands on which the same is charged. Nature of commutation.

64. The record of any such charge as aforesaid shall be entered upon the register of liabilities hereinbefore referred to, and a certified copy thereof, if demanded, be given to all persons whose liabilities have been so commuted as aforesaid, and shall be signed by the clerk to the Commissioners, and shall be receivable in evidence in all legal proceedings. The record or commutation to be entered upon the register.

65. Subject to the provisions hereinbefore contained as to commutation of liability, the liability of any person whomsoever to defray or contribute towards the expense, making, completing, altering, amending, or maintaining any sewer or drain, or any walls or works for protecting the land against the force of the sea, or any river or flood, or doing any other works within the jurisdiction of the Commissioners or District Boards respectively, shall continue; and the same may be enforced as if this Act had not passed, and the rates to be levied under this Act shall be made only for the purposes to which such liability does not extend. Saving of existing liabilities to repair.

APPENDIX D.

REPORT.

[24th July, 1877.]

BY THE SELECT COMMITTEE (a) appointed to inquire into the Operation of existing STATUTES in regard to the Formation of and Proceedings by COMMISSIONERS of SEWERS, and CONSERVANCY, DRAINAGE, and RIVER NAVIGATION BOARDS;—To consider by what means such Bodies may be more conveniently and inexpensively constituted, their Procedure improved, and their Powers enlarged, so as to provide more efficiently for Storage of Water, the Prevention of Floods, and the Discharge of other Functions appertaining to such Boards; and to report to the House.

ORDERED TO REPORT,

That the Committee have met and considered the subject-matter referred to them, and having examined a considerable number of witnesses in relation thereto, have agreed to the following Report :—

I.—It is evident to the Committee, from the information which has been laid before them, that considerable damage has been caused in various parts of England by the prevalence of floods during the last winter, and that such floods have been more frequent and of longer duration in recent times than formerly.

Among the causes which have been assigned for this state of things, the Committee find that prominence is given to the very general adoption of the system of subsoil drainage, owing to which a greatly augmented quantity of water is rapidly carried into rivers, and to the deterioration which is constantly taking place in the channels of the rivers themselves, whereby they are rendered inadequate to carry off the drainage of their respective watersheds.

(a) The following Peers formed the Committee :—Lord President (Duke of Richmond and Gordon), Duke of Bedford, Duke of Northumberland, Marquis of Salisbury, Marquis of Ripon, Earl of Sandwich, Earl Cowper, Earl Stanhope, Lord Monson, Lord Vernon, Lord Stewart of Garlies, Lord Meldrum, Lord Ker, Lord Penrhyn, Lord Somerton, Lord Winmarleigh.

The Committee gather from the evidence that if the channels and outfalls of rivers be properly cared for, any water flowing into these rivers from the catchment basins of which they are the outlets, may reasonably be expected to be discharged by them in sufficient time to render unlikely any serious damage to agricultural lands by floods.

It is the opinion of several witnesses of experience, that floods of moderate duration are not always prejudicial, but, on the contrary, have the effect of improving and fertilising grass lands by the deposit which they bring down, and that in such cases it is mainly when, owing to the insufficient arterial drainage, or other causes, flood waters are suffered to stagnate upon the soil for a lengthened period that injurious consequences are found to arise.

One of the principal points to which the Committee have directed their attention has been the best means of preserving the channels and outfalls of rivers in such a condition as to suffice for the discharge, with reasonable facility, of the waters flowing into them; and in order to arrive at a judgment upon this point, it has been necessary to inquire at some length into the manner by which the conservancy of rivers is at present regulated.

II.—The first public statute which undertook to deal with river conservancy, and that upon which all subsequent legislation in reference to this subject was founded, is the 23 Hen. VIII. c. 5. That statute provided for the appointment of Commissioners of Sewers, with very extensive powers for taking such measures as they might think proper for preventing floods and improving the state of rivers. These Commissioners were appointed by the Sovereign upon the recommendation of certain officers of State, and remained in office during the Royal pleasure. The particular mode of executing their duties was left very much to their own discretion, and the expenses which they might incur for works of repair, demolition, or improvement, were to be defrayed by the riparian owners, in proportion to the benefit derived from the works. Subsequent Acts defined and extended their powers, and in the year 1861 further provision was made for the drainage of agricultural lands by the Land Drainage Act, 24 & 25 Vic. c. 133, in which the representative principle seems for the first time to have been adopted as regards the choice of persons to deal with arterial drainage. This Act, however, related mainly to the drainage of land for agricultural purposes, and did not materially affect the constitution or functions of Commissioners of Sewers.

It is generally acknowledged that these Acts have not worked successfully for the prevention of floods; and this seems to be owing partly to defects in the machinery provided for carrying the Acts into execution, and partly to obstructions caused by private legislation.

As regards the first of these causes, although very large powers of executing works and of rating have been conferred upon the persons charged with the execution of these general Acts, their duties have only been indicated in a vague and general manner; and it further appears that certain powers are wanting which are essential for the maintenance of an

adequate system of drainage. In addition to this, the constitution of either a Commission of Sewers or an elective Drainage Board for any district is not compulsory, so that in many cases districts urgently in need of such bodies are without them. The principle of rating exclusively according to the benefit received is difficult of application, and is frequently found to work unsatisfactorily in practice. Moreover, owing to the existence of several distinct authorities for the course of a single river, conflicts have arisen which are fatal to the adoption of any uniform and comprehensive scheme for the conservancy of the river as a whole, and there is, moreover, an absence of responsibility, which may be held to account in a great measure for the present neglected state of several important streams.

The difficulties which private legislation has placed in the way of any public system of conservancy are many and grave. It has been stated to the Committee that there are between 2,000 and 3,000 private Acts now in operation which relate to drainage, navigation, and matters of a similar kind; and the interests of the several persons, or bodies of persons, in whose behalf these Acts were passed, are frequently found to conflict with the due exercise of the powers granted under the public Acts above referred to. This more especially applies to private Acts relating to canals and navigations, in many of which, while the main purpose of the particular Act has in great measure, or entirely, ceased, the duties imposed by it are still required to be discharged. Moreover, as the general Acts provide for the maintenance of the rights conferred by private Acts, Commissioners of Sewers and district Drainage Boards are powerless to interfere with such rights, however inconsistent with the public interest.

There is a further obstacle, arising from liability *ratione tenuræ* for the maintenance of river banks. This liability, being in the case of many rivers distributed among a large number of riparian owners, can rarely be enforced with such uniformity as to make it thoroughly effective for maintaining the banks along the whole of the river at any one time.

III.—The sufficiency of the main channel of a river may be affected by several causes; such as a continuance of heavy rain within the area of the watershed, and by various natural and artificial obstructions, all tending to limit the capacity of the channel. With these causes the Committee believe that it is possible to deal, more or less, successfully; at the same time rivers are found to differ so widely in their characteristics that in the opinion of the Committee it would be impracticable to prescribe any general scheme of conservancy which would be applicable to all rivers without exception.

The particular measures therefore which should be adopted for keeping the main channel in a satisfactory condition must, the Committee think, be left to be determined by a consideration of the circumstances of each separate case.

IV.—The Committee find that almost all the witnesses examined by

them are of opinion that in order to secure uniformity and completeness of action in dealing with each river, each catchment area should, as a general rule, be placed under a single body of Conservators, who should be responsible for maintaining the river from its source to its outfall in an efficient state, and in this view the Committee entirely concur. With regard, however, to tributary streams, the Committee consider the care of these might, in some instances, be entrusted to district committees, acting under the general direction of the Conservators; but near the point of junction with the principal stream they should be under the direct management of the Conservators of the main channel, who should be a representative body, constituted of residents and owners of property within the whole area of the watershed.

In some instances a tributary stream might be of such magnitude and importance as to require a separate Conservancy Board for itself. In these cases it might be desirable to vest in some authority the power of deciding differences which may arise between these co-ordinate bodies.

Although the Committee are of opinion that means should be taken to ensure the appointment of a Conservancy Board for each watershed area, they consider that it should, in the first instance, result if possible from the application of persons having an interest in the district. Upon receiving such application, the Department of Government, in whose province the matter may lie, should send an inspector to the locality, who should ascertain the necessities and capacities of the district, and suggest the area and proportions of taxation. After this inquiry a scheme should be framed by the department, and deposited in some public place or places in the district, and public notice should be given of its purport, and a time appointed for hearing objections to it. When the objections have been heard, the scheme, with such modifications as may be deemed necessary, should be embodied in a Provisional Order to be submitted to Parliament for confirmation.

The scheme should prescribe the constitution of the proposed Conservancy Board, and should provide for the repeal of the provisions in any local or other Acts, preventing or in any way interfering with the system of management contemplated by the scheme.

V.—The jurisdiction of the Conservancy Board should include the power of removing obstructions, improving outfalls, and of deepening and dredging the bed of rivers, and such power of dealing with river banks and bridges, and of compulsorily acquiring land at a fair compensatory value as may be conferred upon them by provisional order. Duly limited powers of rating should be conferred upon them.

The Committee are also of opinion that the Conservancy Boards should be enabled to execute the powers for the prevention of the pollution of rivers, conferred on local authorities by the Rivers Pollution Prevention Act.

The removal of obstructions would frequently necessitate an interference with the prescriptive rights of millowners and others in respect of dams and weirs and millgates, and the Committee think that whilst such

rights should be made the subject of compensation when requiring to be interfered with, great caution should be exercised in dealing with them, as the evidence before the Committee points to the conclusion that weirs and dams, when constructed in a proper manner, are not necessarily prejudicial.

The Committee are of opinion that it should be competent to the Conservancy Board to take such steps, by arrangement or otherwise if necessary, as shall provide for the opening of millgates, in the event of flood or expected flood.

Among the measures for averting floods which have been suggested to the Committee, that of embankment has taken a prominent place; and if this were to be carried out in the manner proposed, it would occasionally be necessary for the Conservancy authority to interfere with private property along the sides of a river, and to restrict the manner in which the owners of such property could exercise their proprietary rights. The extent to which this might be done should be specially provided for by Provisional Order.

Where the rights of the Crown or of public bodies are concerned, as, for instance, in any question of dealing for conservancy purposes with the foreshore, or with county bridges, special provision will be required.

In order to facilitate the legislation necessary to give effect to their recommendation, the Committee are of opinion that a general statute in the nature of the statute known as the Companies Clauses or Lands Clauses Consolidation Acts should be passed, embracing all the provisions applicable to this subject, and that so much of such general statute as is applicable to each particular case, should be incorporated with, and form part of, every Provisional Order issued for the constitution of a conservancy district.

VI.—With regard to the principle of assessment which should be adopted in raising the rates which would be required to meet the expenses of conservancy, the Committee find that there is much variance of opinion. The principle introduced by the statute of Henry VIII. and observed ever since, of taxing in proportion to the benefit conferred in each particular case by the works of conservancy, appears to work unfairly in some instances, and to be incapable of application in others. That of taxing equally all riparian lands included within a certain level seems likewise to be open to objection.

They are strongly of opinion that towns and houses should contribute to the rates in question.

At the same time there does not appear to be any injustice in rating uplands to the maintenance of a channel to which they contribute their quota of waters, and the case is still stronger with respect to towns which are at present exempt from taxation for this purpose. There is also, as the Committee think, no reasonable objection to the taxation of lands, &c., situated upon tributary streams on account of their being taxed for the conservancy of such streams.

Having regard to these considerations, and looking to the extreme difficulty of rating lands according to the benefits derived, the committee

think that the rates should be distributed over the whole area of a watershed, the lands and houses below the flood level being rated at a higher amount than those above it, and other graduations and exceptions being made to meet particular cases.

Subject to the above recommendations, the committee think that the taxation required for drainage purposes should be levied on the basis of rateable value.

And the committee have directed the minutes of evidence taken before them, together with an appendix and index, to be laid before your Lordships.

LAND DRAINAGE ACT, 1861.

PARTICULARS OF APPLICATION UNDER THE ACT.

| Name of District. | County. | Whether District Board or Commission of Sewers. | Extent. |
|-----------------------------|-------------------|---|---------------|
| | | | <i>Acres.</i> |
| Morden Carrs - - - | Durham - - - | District Board - - | 4,000 |
| Wormbrook - - - | Hereford - - - | Commission of Sewers - | 1,977 |
| Wissey - - - | Norfolk - - - | District Board - - | 8,240 |
| Ladden Brook - - - | Gloucester - - - | Commission of Sewers - | 957 |
| Longdon and Eldersfield | Worcester - - - | District Board - - | 3,595 |
| Llangorse - - - | Brecon - - - | Commission of Sewers - | 1,085 |
| Maxey - - - | Northampton - - - | District Board - - | 7,918 |
| Martham - - - | Norfolk - - - | Commission of Sewers - | 591 |
| River Idle - - - | Nottingham - - - | ditto - - | 6,000 |
| Stanmoor - - - | Somerset - - - | District Board - - | 676 |
| Currymoor - - - | ditto - - - | ditto - - | 1,820 |
| Dysunny - - - | Merioneth - - - | ditto - - | 2,564 |
| Staunton Common - - - | Hereford - - - | Commission of Sewers - | 1,454 |
| Winterton - - - | Norfolk - - - | ditto - - | 1,055 |
| Chedzoy - - - | Somerset - - - | District Board - - | 2,412 |
| Kings Sedgmore - - - | ditto - - - | Commission of Sewers - | 11,259 |
| Frodsham - - - | Chester - - - | District Board - - | 4,217 |
| Northmoor - - - | Oxford - - - | ditto - - | 2,364 |
| Northmoor - - - | Somerset - - - | ditto - - | 3,235 |
| Aller Moor - - - | ditto - - - | ditto - - | 2,155 |
| Haddiscoe - - - | Norfolk - - - | ditto - - | 1,628 |
| Muckfleet - - - | ditto - - - | Commission of Sewers - | 1,404 |
| Westmoor - - - | Somerset - - - | District Board - - | 1,574 |
| Digby - - - | Lincoln - - - | ditto - - | 1,440 |
| Bourne South Fen - - - | ditto - - - | ditto - - | 880 |
| Clist Valley - - - | Devon - - - | Commission of Sewers - | 1,327 |
| Chet Valley - - - | Norfolk - - - | ditto - - | 847 |
| Deeping Fen - - - | Lincoln - - - | District Board - - | 460 |
| Walmore Common - - - | Gloucester - - - | Commission of Sewers - | about 700 |
| Lay - - - | ditto - - - | District Board - - | 393 |
| Bispham and Carlton - - - | Lancashire - - - | ditto - - | 763 |
| Frodsham and Helsby - - - | Cheshire - - - | ditto - - | 2,797 |
| Swavesey & Fen Drayton. | Cambridge - - - | ditto - - | 2,698 |
| Feltwell and Methwold - - - | Norfolk - - - | ditto - - | 3,815 |
| Fenstanton - - - | Huntingdon - - - | ditto - - | 319 |
| Burgh St. Peter - - - | Suffolk - - - | ditto - - | 840 |
| Didcot - - - | Berks - - - | ditto - - | 754 |
| Burgh Castle - - - | Suffolk - - - | ditto - - | 1,630 |
| Donington - - - | Lincoln - - - | ditto - - | 3,010 |

RIVERS OF ENGLAND AND WALES (a).

First Class Rivers, having Catchment Basins of 1,000 Square Miles and upwards.

| NAME. | COUNTY. | Length. | Area of Basin. | Tributaries. | | REMARKS. |
|--------------|----------------|---------------------|-------------------------|--------------|---------------------|--------------|
| | | | | No. | United Length. | |
| Humber - - - | York - - - | <i>Miles.</i> 37 | <i>Sq. Ms.</i> 1,229 | 2 | <i>Miles.</i> 55 | |
| Mersey - - - | Lancaster - - | 68 | 1,707 | 6 | 188 | |
| Nene - - - | Northampton - | 99 | 1,055 | 1 | 11 | |
| Onse - - - | York - - - | 59½ | 4,207 | 11 | 629 | Bedfordshire |
| Ouse - - - | Cambridge - - | 156¼ | 2,894 | 8 | 212 | |
| Severn - - - | Gloucester - - | 178 | 4,437 | 17 | 450 | |
| Thames - - - | - - - | 201¼ | 5,162 | 15 | 463 | |
| Trent - - - | Lincoln - - - | 167½ | 3,543 | 10 | 293 | |
| Tyne - - - | Northumberland | 35 | 1,053 | 6 | 154 | |
| Witham - - - | Lincoln - - - | 89 | 1,052 | 4 | 75 | |
| Wye - - - | Hereford - - - | 148 | 1,655 | 9 | 223 | |

Second Class Rivers, having Catchment Basins of from 500 to 1,000 Square Miles.

| | | | | | | |
|---------------|-----------------|-----|-----|---|-----|--|
| Avon - - - | Somerset - - - | 78½ | 869 | 4 | 59 | |
| Avon - - - | Hants - - - | 67 | 666 | 1 | 28¼ | |
| Dee - - - | Flint - - - | 93 | 850 | 4 | 82 | |
| Eden - - - | Cumberland - - | 79½ | 916 | 4 | 97½ | |
| Ex - - - | Devon - - - | 58½ | 562 | 5 | 81¼ | |
| Medway - - - | Kent - - - | 69 | 997 | 3 | 62½ | |
| Parrett - - - | Somerset - - - | 38½ | 561 | 4 | 106 | |
| Ribble - - - | Lancaster - - - | 61 | 501 | 4 | 90¾ | |
| Tees - - - | York - - - | 95 | 744 | 9 | 132 | |
| Test - - - | Hants - - - | 35¼ | 544 | 1 | 6¾ | |
| Towy - - - | Carmarthen - - | 66½ | 522 | 3 | 55 | |
| Usk - - - | Monmouth - - - | 76½ | 650 | 7 | 107 | |
| Welland - - - | Northampton - | 72½ | 707 | 3 | 78 | |
| Yare - - - | Norfolk - - - | 35 | 533 | 4 | 84 | |

(a) This classification was furnished to the Select Committee of the House of Lords on Conservancy Boards, 1877.

Third Class Rivers having Catchment Basins of from 100 to 500 square miles.

| NAME. | COUNTY. | Length. | Area of Basin. | Tributaries. | | REMARKS. |
|------------------|----------------|---------------|-------------------|--------------|-------------------|----------|
| | | | | No. | United Length. | |
| | | <i>Miles.</i> | <i>Sq. Ms.</i> | | <i>Miles.</i> | |
| Arun - - - | Sussex - - | 51½ | 349 | — | — | |
| Adur - - - | Sussex - - | 21 | 147 | — | — | |
| Alde - - - | Suffolk - - | 30¾ | 127 | 1 | 8 | |
| Alt - - - | Lancaster- - | 16½ | 170 | — | — | |
| Aln- - - | Northumberland | 24 | 102 | — | — | |
| Axe - - - | Devon - - - | 25¼ | 155 | 1 | 14½ | |
| Blackwater - - | Essex - - - | 50 | 465 | 2 | 53 | |
| Brue - - - | Somerset - - | 36¼ | 197 | — | — | |
| Bure - - - | Norfolk - - | 52¼ | 338 | 1 | 11¼ | |
| Camel - - - | Cornwall - - | 28¼ | 155 | 1 | 8¼ | |
| Cleddau, Western | Pembroke- - | 24½ | 116 | — | — | |
| Colne - - - | Essex - - - | 37¾ | 200 | 1 | 13½ | |
| Conway - - - | Carnarvon - - | 30¼ | 224 | 3 | 29¾ | |
| Coquet - - - | Northumberland | 45 | 213 | — | — | |
| Crouch - - - | Essex - - - | 20½ | 150 | 1 | 13¼ | |
| Dart - - - | Devon - - - | 37¼ | 179 | 1 | 10½ | |
| Deben - - - | Suffolk - - | 32 | 159 | 1 | 10 | |
| Derwent - - - | Cumberland - - | 35¼ | 268 | 1 | 13½ | |
| Derwent - - - | Derby - - - | 64½ | 429 | 3 | 37 | |
| Dovey - - - | Montgomery - - | 35 | 264 | 5 | 44½ | |
| Duddon - - - | Cumberland - - | 27¼ | 117 | — | — | |
| Elwy - - - | Denbigh - - | 31½ | 306 | 3 | 49¾ | |
| Esk - - - | Cumberland - - | 8¼ | 143 | 2 | 35 | |
| Esk - - - | York - - - | 29½ | 136 | 3 | 25 | |
| Fal - - - | Cornwall - - | 20½ | 118 | 1 | 9¼ | |
| Fowey - - - | ditto - - - | 27 | 116 | 1 | 6¼ | |
| Frome - - - | Dorset - - - | 34 | 206 | 1 | 7¾ | |
| Glaslyn - - - | Carnarvon - - | 18½ | 142 | 1 | 14¾ | |
| Itchen - - - | Hants - - - | 27¼ | 137 | — | — | |
| Kent - - - | Cumberland - - | 28½ | 196 | 4 | 49 | |
| Leven - - - | Lancaster- - | 6½ | 123 | 3 | 25 | |
| Llwehwr- - - | Carmarthen - - | 22½ | 130 | 5 | 45 | |
| Lune - - - | Lancaster- - | 53½ | 434 | 3 | 41¼ | |
| Mawddach - - - | Merioneth - - | 21¼ | 147 | 3 | 26¼ | |
| Neath - - - | Glamorgan - - | 24½ | 121 | 3 | 23½ | |

Third Class Rivers having a Catchment Basin of from 100 to 500 square miles—*continued*

| NAME. | COUNTY. | Length. | Area of Basin. | | Tributaries. | | REMARKS. |
|-----------------------------------|----------------|------------------|----------------|---|--------------|------------------|----------|
| | | | | | No. | United Length. | |
| | | <i>Miles.</i> | <i>Sq. Ms.</i> | | | <i>Miles.</i> | |
| Ogmore - - - | Glamorgan - | 15 $\frac{3}{4}$ | 111 | 3 | — | 27 $\frac{3}{4}$ | |
| Orwell - - - | Suffolk - - | 35 | 257 | — | — | — | |
| Ouse - - - | Sussex - - | 34 $\frac{1}{4}$ | 212 | — | — | — | |
| Portsmouth and Chichester Basin - | - - - | — | 315 | — | — | — | |
| Rother - - - | Sussex - - | 33 $\frac{1}{2}$ | 281 | — | — | — | |
| Steeping - - - | Lincoln - - | 24 | 102 | — | — | — | |
| Stour - - - | Essex - - | 61 $\frac{3}{4}$ | 420 | 2 | — | 34 | |
| Stour, Great - - - | Kent - - | 52 $\frac{3}{4}$ | 291 | 1 | — | 12 | |
| Stour - - - | Dorset - - | 64 | 479 | 2 | — | 25 | |
| Taf - - - | Carmarthen - | 31 $\frac{3}{4}$ | 187 | 2 | — | 27 | |
| Taff - - - | Glamorgan - | 38 $\frac{1}{4}$ | 202 | 6 | — | 59 $\frac{1}{4}$ | |
| Tamar - - - | Cornwall - - | 55 $\frac{3}{4}$ | 381 | 2 | — | 32 | |
| Tawe - - - | Glamorgan - | 27 $\frac{1}{4}$ | 110 | 1 | — | 10 $\frac{1}{2}$ | |
| Teifi - - - | Cardigan - - | 70 | 389 | 8 | — | 57 $\frac{3}{4}$ | |
| Teign - - - | Devon - - | 34 $\frac{1}{2}$ | 189 | — | — | — | |
| Titchfield - - - | Hants - - | 20 $\frac{3}{4}$ | 128 | — | — | — | |
| Torridge - - - | Devon - - | 52 $\frac{1}{2}$ | 349 | 2 | — | 30 | |
| Trent, or Piddle - - - | Dorset - - | 21 $\frac{1}{2}$ | 125 | — | — | — | |
| Tweed - - - | Northumberland | 22 | 267 | 1 | — | 30 | |
| Wansbeck - - - | ditto | 27 | 183 | 2 | — | 27 $\frac{1}{2}$ | |
| Waveney - - - | Norfolk - - | 58 $\frac{3}{4}$ | 339 | — | — | — | |
| Wear - - - | Durham - - | 70 | 455 | 6 | — | 74 $\frac{3}{4}$ | |
| Wyre - - - | Lancaster - - | 35 $\frac{1}{4}$ | 179 | 2 | — | 20 $\frac{1}{4}$ | |
| Yeo - - - | Somerset - - | 14 $\frac{1}{2}$ | 127 | — | — | — | |

Fourth Class Rivers, having Catchment Basins of from 50 to 100 square miles.

| | | | | | | |
|------------------------|----------------|------------------|----|---|---|------------------|
| Aeron - - - | Cardigan - - | 19 $\frac{1}{2}$ | 63 | — | — | — |
| Avon or Aune - - - | Devon - - | 23 $\frac{1}{4}$ | 55 | — | — | — |
| Ax - - - | Somerset - - | 24 | 98 | — | — | — |
| Blyth - - - | Northumberland | 26 $\frac{1}{2}$ | 80 | 1 | — | 19 $\frac{1}{4}$ |
| Blythe - - - | Suffolk - - | 18 $\frac{1}{4}$ | 71 | — | — | — |
| Cleddau, Eastern - - - | Pembroke - - | 19 $\frac{1}{2}$ | 84 | 1 | — | 12 $\frac{3}{4}$ |
| Cuckmare - - - | Sussex - - | 24 | 75 | — | — | — |

Fourth Class Rivers having Catchment Basins of from 50 to 100 square miles—*continued.*

| NAME. | COUNTY. | Length. | Area of Basin. | | Tributaries. | | REMARKS. |
|--------------------|--------------------|---------------|----------------|---|--------------|----------------|----------|
| | | | | | No. | United Length. | |
| | | <i>Miles.</i> | <i>Sq. Ms.</i> | | | <i>Miles.</i> | |
| Daneleddau - - - | Pembroke - - - | 11 | 76 | — | — | — | |
| Dysynni - - - | Merioneth - - - | 14 | 64 | — | — | — | |
| Ehen - - - | Cumberland - - - | 14½ | 59 | — | — | — | |
| Ellen - - - | ditto - - - | 20¾ | 54 | — | — | — | |
| Erch - - - | Carnarvon - - - | 12 | 53 | — | — | — | |
| Germaines, St. - - | Cornwall - - - | 8 | 95 | 2 | — | 35½ | |
| Lai or Ely - - - | Glamorgan - - - | 24 | 64 | — | — | — | |
| Lime Water - - - | Northumberland - - | 15½ | 50 | — | — | — | |
| Otter - - - | Devon - - - | 27 | 95 | — | — | — | |
| Plym - - - | ditto - - - | 15 | 73 | — | — | — | |
| Rheidol - - - | Cardigan - - - | 25½ | 74 | 2 | — | 32 | |
| Rumney - - - | Glamorgan - - - | 35½ | 99 | 1 | — | 7 | |
| Tavey - - - | Devon - - - | 23 | 87 | 1 | — | 12 | |
| Taw - - - | ditto - - - | 48¾ | 77 | 3 | — | 49½ | |
| Wampool - - - | Cumberland - - - | 18 | 62 | 1 | — | 8 | |
| Withern - - - | Lincoln - - - | 20¼ | 91 | — | — | — | |
| Ystwyth Eau - - - | Cardigan - - - | 23¼ | 75 | — | — | — | |

Fifth Class Rivers, having Catchment Basins of from 10 to 50 square miles.

| | | | | | | | |
|---------------------|--------------------|-----|----|---|---|----|--|
| Afon - - - | Cardigan - - - | 13½ | 39 | 1 | — | 5½ | |
| Afon-Fawr - - - | Carnarvon - - - | 4¼ | 10 | — | — | — | |
| Alaw - - - | Anglesea - - - | 18 | 32 | — | — | — | |
| Arth - - - | Cardigan - - - | 9 | 14 | — | — | — | |
| Artro - - - | Merioneth - - - | 8¼ | 33 | — | — | — | |
| Babingley - - - | Norfolk - - - | 8¼ | 26 | — | — | — | |
| Beaulieu - - - | Hants - - - | 12 | 30 | — | — | — | |
| Berryburn - - - | Northumberland - - | 7 | 12 | — | — | — | |
| Birk Head Beck - - | York - - - | 5½ | 21 | 1 | — | 5½ | |
| Braint - - - | Anglesea - - - | 12¼ | 28 | — | — | — | |
| Bredy - - - | Dorset - - - | 7¾ | 17 | — | — | — | |
| Brit - - - | ditto - - - | 9¼ | 45 | — | — | — | |
| Buckbarrow Beck - - | Cumberland - - - | 6 | 16 | — | — | — | |

Fifth Class Rivers, having Catchment Basins from 10 to 50 square miles—*continued.*

| NAME. | COUNTY. | Length. | Area of Basin. | Tributaries. | | REMARKS. |
|--------------------|----------------|------------------|-------------------|--------------|-------------------|----------|
| | | | | No. | United Length. | |
| | | <i>Miles.</i> | <i>Sq. Ms.</i> | | <i>Miles.</i> | |
| Buckton Burn - - | Northumberland | 6 $\frac{1}{4}$ | 16 | — | — | |
| Bude - - - | Devon - - - | 8 | 31 | — | — | |
| Burn, Fleetham - | Northumberland | 10 $\frac{3}{4}$ | 27 | — | — | |
| Burn, Embleton - | ditto - - | 6 $\frac{1}{2}$ | 10 | — | — | |
| Calder - - - | Cumberland - | 8 $\frac{3}{4}$ | 23 | — | — | |
| Castle Eden Burn - | Durham - - - | 8 $\frac{1}{2}$ | 14 | — | — | |
| Cefni - - - | Anglesea - - | 13 | 48 | — | — | |
| Cegin - - - | ditto - - - | 6 $\frac{1}{4}$ | 10 | — | — | |
| Char - - - | Dorset - - - | 8 | 21 | — | — | |
| Clarach - - - | Cardigan - - | 8 $\frac{1}{4}$ | 18 | — | — | |
| Cocker - - - | Lancaster - - | 9 | 15 | — | — | |
| Cober - - - | Cornwall - - | 9 | 21 | — | — | |
| Coniston Water - | Westmoreland - | 10 $\frac{1}{2}$ | 36 | — | — | |
| Crigyll Haradoc - | Anglesea - - | 8 | 25 | — | — | |
| Crindon Beck - - | Durham - - - | 8 $\frac{1}{4}$ | 12 | — | — | |
| Cwm Wyrri - - - | Cardigan - - | 10 $\frac{1}{4}$ | 22 | — | — | |
| Dawlish - - - | Devon - - - | 5 $\frac{3}{4}$ | 12 | — | — | |
| Ddaw - - - | Glamorgan - - | 13 $\frac{1}{4}$ | 45 | — | — | |
| Dry Burn - - - | Northumberland | 9 | 19 | — | — | |
| Dulas - - - | Denbigh - - - | 7 $\frac{1}{2}$ | 19 | — | — | |
| Dulas - - - | Anglesea - - | 6 $\frac{1}{4}$ | 15 | — | — | |
| Dwyfawr- - - - | ditto - - - | 12 $\frac{1}{2}$ | 43 | 1 | 10 | |
| Erm - - - | Devon - - - | 15 | 41 | — | — | |
| Esk - - - | Cumberland - | 17 $\frac{1}{2}$ | 43 | — | — | |
| Ffaw - - - | Anglesea - - | 7 | 18 | — | — | |
| Gilbert's Water - | Cornwall - - | 7 $\frac{3}{4}$ | 17 | — | — | |
| Gorfai - - - | Carnarvon - - | 10 $\frac{3}{4}$ | 28 | — | — | |
| Gwaen - - - | Pembroke - - | 9 $\frac{1}{4}$ | 23 | — | — | |
| Gwendraeth Fach - | Carmarthen - | 15 $\frac{3}{4}$ | 32 | — | — | |
| Gwendraeth Fawr - | Ditto - - - | 14 | 32 | — | — | |
| Hamble - - - | Hants - - - | 11 $\frac{1}{2}$ | 48 | — | — | |
| Hayter - - - | Cornwall - - | 10 | 42 | — | — | |
| Heddon - - - | Somerset - - | 5 $\frac{3}{4}$ | 16 | — | — | |
| Helford - - - | Cornwall - - | 9 | 36 | — | — | |
| Irt - - - | Cumberland - | 16 $\frac{1}{4}$ | 48 | — | — | |
| Keer - - - | Westmoreland - | 8 $\frac{1}{2}$ | 17 | — | — | |
| Kilton Beek - - | Durham - - - | 6 | 20 | — | — | |

Fifth Class Rivers, having Catchment Basins of from 10 to 50 square miles—*continued.*

| NAME. | COUNTY. | Length. | Area of Basin. | Tributaries. | | REMARKS. |
|------------------|-----------------|------------------|-------------------|--------------|-------------------|----------|
| | | | | No. | United Length. | |
| | | <i>Miles.</i> | <i>Sq. Ms.</i> | | <i>Miles.</i> | |
| Lihedi - - - | Carmarthen - | 8 | 10 | — | — | |
| Llyfni - - - | Carnarvon - | 9 $\frac{1}{4}$ | 20 | — | — | |
| Looe - - - | Cornwall - | 9 $\frac{1}{4}$ | 42 | — | — | |
| Ludd - - - | Lincoln - | 16 | 45 | — | — | |
| Lymington - - | Hants - | 13 $\frac{3}{4}$ | 47 | — | — | |
| Lynn, East - - | Devon - | 11 $\frac{1}{4}$ | 37 | — | — | |
| Medina - - - | Isle of Wight - | 11 | 26 | — | — | |
| Minsmere - - - | Suffolk - | 12 $\frac{1}{2}$ | 25 | — | — | |
| Mite - - - | Cumberland - | 8 $\frac{3}{4}$ | 10 | — | — | |
| Nevern - - - | Pembroke - | 13 | 45 | — | — | |
| Newton - - - | Isle of Wight - | 4 $\frac{1}{2}$ | 22 | — | — | |
| Ogwen - - - | Carnarvon - | 10 $\frac{3}{4}$ | 31 | — | — | |
| Pennar - - - | Pembroke - | 8 $\frac{1}{2}$ | 15 | — | — | |
| Pillingwater - - | Lancaster- - | 4 $\frac{3}{4}$ | 21 | — | — | |
| Rousby Beck - - | Durham - | 8 | 22 | 1 | 6 | |
| Scioni - - - | Carnarvon - | 14 $\frac{1}{2}$ | 36 | — | — | |
| Seaton - - - | Cornwall - | 10 $\frac{3}{4}$ | 22 | — | — | |
| Seaton Burn - - | Northumberland | 10 $\frac{3}{4}$ | 42 | — | — | |
| Sid - - - | Devon - | 6 | 14 | — | — | |
| Sillybrook - - - | Glamorgan - | 2 | 19 | — | — | |
| Skelton Beck - - | Durham - | 8 $\frac{3}{4}$ | 37 | — | — | |
| Sock - - - | Carnarvon - | 10 $\frac{1}{2}$ | 26 | — | — | |
| Solva - - - | Pembroke - | 9 $\frac{1}{4}$ | 18 | — | — | |
| Stream - - - | Anglesea - | 5 | 13 | — | — | |
| Ditto - - - | Pembroke - | 6 $\frac{3}{4}$ | 12 | — | — | |
| Ditto - - - | ditto - | 4 $\frac{3}{4}$ | 11 | — | — | |
| Ditto - - - | Somerset - | 7 $\frac{1}{4}$ | 28 | — | — | |
| Ditto - - - | ditto - | 9 $\frac{3}{4}$ | 18 | — | — | |
| Ditto - - - | ditto - | 10 | 18 | — | — | |
| Ditto - - - | Cornwall - | 7 $\frac{1}{4}$ | 14 | — | — | |
| Ditto - - - | ditto - | 8 $\frac{1}{2}$ | 27 | — | — | |
| Ditto - - - | ditto - | 10 $\frac{1}{4}$ | 37 | — | — | |
| Ditto - - - | ditto - | 8 | 25 | — | — | |
| Ditto - - - | ditto - | 5 $\frac{1}{2}$ | 13 | — | — | |
| Ditto - - - | ditto - | 6 $\frac{3}{4}$ | 10 | — | — | |
| Ditto - - - | ditto - | 3 $\frac{3}{4}$ | 10 | — | — | |
| Ditto - - - | ditto - | 3 $\frac{3}{4}$ | 10 | — | — | |
| Ditto - - - | ditto - | 6 $\frac{3}{4}$ | 12 | — | — | |
| Ditto - - - | ditto - | 7 $\frac{1}{2}$ | 15 | — | — | |
| Ditto - - - | ditto - | 8 | 32 | — | — | |

Fifth Class Rivers, having Catchment Basins of from 10 to 50 square miles--*continued.*

| NAME. | COUNTY. | Length. | Area of Basin. | Tributaries. | | REMARKS. |
|------------------|-------------------|------------------|-------------------|--------------|-------------------|----------|
| | | | | No. | United Length. | |
| | | <i>Miles.</i> | <i>Sq. Ms.</i> | | | |
| Stream - - - | Devon - - - | 9 $\frac{1}{4}$ | 34 | -- | -- | |
| Ditto - - - | ditto - - - | 6 $\frac{1}{4}$ | 11 | — | — | |
| Ditto - - - | Hants - - - | 9 $\frac{1}{4}$ | 17 | — | — | |
| Ditto - - - | Isle of Wight - - | 4 | 10 | — | — | |
| Ditto - - - | ditto - - - | 15 $\frac{1}{4}$ | 31 | — | — | |
| Tetney Drain - - | Lincoln - - - | 19 $\frac{1}{4}$ | 44 | — | — | |
| Waren Burn - - - | Northumberland | 9 | 20 | — | — | |
| Waver - - - | Cumberland - - - | 15 $\frac{3}{4}$ | 48 | — | — | |
| Wey - - - | Dorset - - - | 7 $\frac{1}{2}$ | 19 | — | — | |
| Wold Grift - - - | Lincoln - - - | 11 $\frac{3}{4}$ | 26 | — | — | |
| Yar - - - | Isle of Wight - - | 3 | 13 | — | — | |
| Yealme - - - | Devon - - - | 14 | 38 | — | — | |

RIVERS OF ENGLAND AND WALES.

PARTICULARS OF LENGTHS AND WATERSHEDS.

First Class Rivers, having Catchment Basins of 1,000 square miles and upwards.

| | |
|----------------------------------|--|
| 1 exceeds 5,000 square miles | Maximum area, 5,162 square miles (Thames) |
| 2 " 4,000 " | Minimum " 1,052 " (Witham) |
| 1 " 3,000 " | |
| 1 " 2,000 " | Maximum length, including Tributaries, 688 $\frac{1}{2}$ miles (Ouse). |
| 6 " 1,000 " | Minimum length, including Tributaries, 92 miles (Humber). |
| <hr/> Total - 11 No. <hr/> <hr/> | |

Second Class Rivers, having Catchment Basins of from 500 to 1,000 square miles.

| | |
|---------------------------|--|
| 2 exceed 900 square miles | Maximum area, 997 square miles (Medway). |
| 2 " 800 " | Minimum " 501 " (Ribble). |
| 2 " 700 " | |
| 2 " 600 " | Maximum length, including Tributaries, 227 miles (Tees). |
| 6 " 500 " | Minimum length, including Tributaries, 42 miles (Test). |
| <u>Total - 14 No.</u> | |

Third Class Rivers, having Catchment Basins of from 100 to 500 square miles.

| | |
|---------------------------|---|
| 6 exceed 400 square miles | Maximum area, 479 square miles (Stour, Dorset). |
| 8 " 300 " | Minimum area, 102 square miles (Ahn and Steeping). |
| 12 " 200 " | Maximum length, including Tributaries, 144½ miles (Wear). |
| 33 " 100 " | Minimum length, including Tributaries, 14½ miles (Yeo). |
| <u>Total - 59 No.</u> | |

Fourth Class Rivers, having Catchment Basins of from 50 to 100 square miles.

| | |
|--------------------------|---|
| 5 exceed 90 square miles | Maximum area, 99 square miles (Runney). |
| 3 " 80 " | Minimum " 50 " (Line Water). |
| 7 " 70 " | |
| 4 " 60 " | Maximum length, including Tributaries, 98½ miles (Taw). |
| 5 " 50 " | Minimum length, including Tributaries, 11 miles (Dauleddu). |
| <u>Total - 24 No.</u> | |

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