



Public Health Act 1875

1875 CHAPTER 55

PART VII

LEGAL PROCEEDINGS.

Prosecution of Offences and Recovery of Penalties, &c.

251 Summary proceedings for offences, penalties, &c.

All offences under this Act, and all penalties forfeitures costs and expenses under this Act directed to be recovered in a summary manner, or the recovery of which is not otherwise provided for may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts before a court of summary jurisdiction. The court of summary jurisdiction, when hearing and determining an information or complaint under this Act, shall be constituted of two or more justices of the peace in petty sessions, sitting at a place appointed for holding petty sessions, or of some magistrate or officer for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace sitting at some court or other place appointed for the administration of justice.

252 General provisions as to summary proceedings.

Any complaint or information made or laid in- pursuance of this Act shall be made or laid within six months from the time when the matter of such complaint or information respectively arose.

The description of any offence under this Act in the words of this Act shall be sufficient in law.

Any exception exemption proviso excuse or qualification whether it does or does not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information ; and, if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant.

Status: This is the original version (as it was originally enacted).

253 Restriction on recovery of penalties.

Proceedings for the recovery of any penalty under this Act shall not, except as in this Act is expressly provided, be had or taken by any person other than by a party aggrieved, or by the local authority of the district in which the offence is committed, without the consent in writing of the Attorney General : Provided that such consent shall not be required to proceedings which are by the provisions of this Act relating to nuisances or offensive trades authorised to be taken by a local authority in respect of any act or default committed or taking place without their district, or in respect of any house building manufactory or place situated without their district.

254 Application of penalties.

Where the application of a penalty under this Act is not otherwise provided for, one half thereof shall go to the informer, and the remainder to the local authority of the district in which the offence was committed : Provided, that if the local authority are the informer they shall be entitled to the whole of the penalty recovered ; and all penalties or sums recovered by them on account of any penalty shall be paid over to their treasurer, and shall by him be carried to the account of the fund applicable by such authority to the general purposes of this Act.

255 Proceedings in certain cases against nuisances.

Where any nuisance under this Act appears to be wholly or partially caused by the acts or defaults of two or more persons, it shall be lawful for the local authority or other complainant to institute proceedings against any one of such persons, or to include all or any two or more of such persons in one proceeding ; and any one of more of such persons may be ordered to abate such nuisance as far as the same appears to the court having cognizance of the case to be caused by his or their acts or defaults, or may be prohibited from continuing any acts or defaults which, in the opinion of such court, contribute to such nuisance, or may be fined or otherwise punished, notwithstanding that the acts or defaults of any one of such persons would not separately have caused a nuisance ; and the costs may be distributed as to such court may appear fair and reasonable.

Proceedings against several persons included in one complaint shall not abate by reason of the death of any among the persons so included, but all such proceedings may be carried on as if the deceased person had not been originally so included.

Whenever in any proceeding under the provisions of this Act relating to nuisances, whether written or otherwise, it becomes necessary to mention or refer to the owner or occupier of any premises, it shall be sufficient to designate him as the "owner" or " occupier " of such premises, without name or further description.

Nothing in this section shall prevent persons proceeded against from recovering contribution in any case in which they would now be entitled to contribution by law.

256 Summary proceedings for recovery of rates.

If any person assessed to any rate made under this Act by any urban authority fails to pay the same when due and for the space of fourteen days after the same has been lawfully demanded in writing, or if any person quits or is about to quit any premises without payment of any such rate then due from him in respect of such premises, and refuses to pay the same after lawful demand thereof in writing, any justice may

summon the defaulter to appear before a court of summary jurisdiction to show cause why the rate in arrear should not be paid; and if the defaulter fails to appear, or if no sufficient cause for nonpayment is shown, the court may make an order for payment of the same, and, in default of compliance with such order, may by warrant cause the same to be levied by distress of the goods and chattels of the defaulter.

The cost of the levy of arrears of any rate may be included in the warrant for such levy.

257 Recovery of expenses by local authority from owners.

Where any local authority have incurred expenses for the repayment whereof the owner of the premises for or in respect of which the same are incurred is made liable under this Act or by any agreement with the local authority, such expenses may be recovered, together with interest at a rate not exceeding five pounds per centum per annum, from the date of service of a demand for the same till payment thereof, from any person who is the owner of such premises when the works are completed for which such expenses have been incurred, and until recovery of such expenses and interest the same shall be a charge on the premises in respect of which they were incurred. In all summary proceedings by a local authority for the recovery of expenses incurred by them in works of private improvement, the time within which such proceedings may be taken shall be reckoned from the date of the service of notice of demand.

Where such expenses have been settled and apportioned by the surveyor of the local authority as payable by such owner, such apportionment shall be binding and conclusive on such owner, unless within three months from service of notice on him by the local authority or their surveyor of the amount, settled by the surveyor to be due from such owner, he shall by written notice dispute the same.

The local authority may, by order, declare any such expenses to be payable by annual instalments within a period not exceeding thirty years, with interest at a rate not exceeding five pounds per centum per annum, until the whole amount is paid ; and any such instalments and interest, or any part thereof, may be recovered in a summary manner from the -owner or occupier for the time being of such premises, and may be deducted from the rent of such premises, in the same proportions as are allowed in the case of private improvement rates under this Act.

258 Justices may act though members of local authority are liable to contribute.

No justice of the peace shall be deemed incapable of acting in cases arising under this Act by reason of his being a member of any local authority, or by reason of his being as one of several ratepayers, or as one of any other class of persons liable in common with the others to contribute to, or to be benefited by any rate or fund, out of which any expenses incurred by such authority are under this Act to be defrayed.

259 Appearance of local authorities in legal proceedings.

Any local authority may appear before any court, or in any legal proceeding by their clerk, or by any officer or member authorised generally or in respect of any special proceeding by resolution of such authority, and their clerk, or any officer or member so authorised shall be at liberty to institute and carry on any proceeding which the local authority is authorised to institute and carry on under this Act.

Status: This is the original version (as it was originally enacted).

260 Name of local authority need not be proved.

In any proceeding instituted by or against a local authority under this Act it shall not be necessary for the plaintiff to prove the corporate name of the local authority or the constitution or limits of their district: Provided that this section shall not abridge or prejudice the right of any defendant to take or avail himself of any objection which he might have taken or availed himself of if this Act had not been passed.

261 Demands below 50l may be recovered in county courts.

Proceedings for the recovery of demands below fifty pounds, which local authorities are empowered to recover in a summary manner, may, at the option of the local authority, be taken in the county court as if such demands were debts within the cognizance of such courts.

262 Proceedings not to be quashed for want of form.

No rate order conviction or thing made or done or relating to the execution of this Act shall be vacated quashed or set aside for want of form, or (unless otherwise expressly provided by this Act) be removed or removable by certiorari or any other writ or process whatsoever into any of the superior courts : Provided that nothing in this section shall prevent the removal of any case stated for the opinion of a superior court, or of any rate order conviction or thing to which such special case relates.

263 False evidence punishable as perjury.

Any person who on any examination on oath, under any of the provisions of this Act, wilfully and corruptly gives false evidence shall be liable to the penalties inflicted on persons guilty of wilful and corrupt perjury.

264 Notice of action against local authority, &c.

A writ or process shall not be sued out against or served on any local authority, or any member thereof, or any officer of a local authority, or person acting in his aid, for anything done or intended to be done or omitted to be done under the provisions of this Act, until the expiration of one month after notice in writing-has been served on such local authority member officer or person, clearly stating the cause of action, and the name and place of abode of the intended plaintiff, and of his attorney or agent in the cause ; and on the trial of any such action the plaintiff shall not be permitted to go into evidence of any cause of action which is not stated in the notice so served ; and unless such notice is proved the jury shall find for the defendant.

Every such action shall be commenced within six months next after the accruing of the cause of action, and not afterwards, and shall be tried in the county or place where the cause of action occurred, and not elsewhere.

Any person to whom any such notice of action is given as aforesaid may tender amends to the plaintiff his attorney or agent, at any time within one month after service of such notice, and, in case the same be not accepted, may plead such tender in bar ; and in case amends have not been tendered as aforesaid, or in case the amends tendered are insufficient, the defendant may, by leave of the court, at any time before trial, pay into court under plea such sum of money, as he may think proper ; and if upon issue joined, or upon any plea pleaded for the whole action, the jury find generally for the

defendant, or if the plaintiff be nonsuited or judgment be given for the defendant, then the defendant shall be entitled to full costs of suit, and have judgment accordingly.

265 Protection of local authority and their officers from personal liability.

No matter or thing done, and no contract entered into by any local authority or joint board or port sanitary authority, and no matter or thing done by any member of any such authority or by any officer of such authority or other person whomsoever acting under the direction of such authority, shall, if the matter or thing were done or the contract were entered into bona fide for the purpose of executing this Act, subject them or any of them personally to any action liability claim or demand whatsoever ; and any expense incurred by any such authority member officer or other person acting as last aforesaid shall be borne and repaid out of the fund or rate applicable by such authority to the general purposes of this Act.

Provided that nothing in this section shall exempt any member of any such authority from liability to be surcharged with the amount of any payment which may be disallowed by the auditor in the accounts of such authority, and which such member authorised or joined in authorising.

Notices.

266 Notices, &c. may be printed or written.

Notices orders and other such documents under this Act may be in writing or print, or partly in writing and partly in print ; and if the same require authentication by the local authority the signature thereof by the clerk to the local authority or their surveyor or inspector of nuisances shall be sufficient authentication.

267 Service of notices.

Notices orders and any other documents required or authorised to be served under this Act may be served by delivering the same to or at the residence of the person to whom they are respectively addressed, or where addressed to the owner or occupier of premises by delivering the same or a true copy thereof to some person on the premises, or if there is no person on the premises who can be so served by fixing the same on some conspicuous part of the premises ; they may also be served by post by a prepaid letter and if served by post shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the notice order or other document was properly addressed and put into the post.

Any notice by this Act required to be given to the owner or occupier of any premises may be addressed by the description of the " owner " or " occupier " of the premises (naming them) in respect of which the notice is given, without further name or description.

Status: This is the original version (as it was originally enacted).

Appeal.

268 Appeal in certain cases to Local Government Board.

Where any person deems himself aggrieved by the decision of the local authority in any case in which' the local authority are empowered to recover in a summary manner any expenses incurred by them, or to declare such expenses to be private improvement expenses, he may, within twenty-one days after notice of such decision, address a memorial to the Local Government Board, stating the grounds of his complaint, and shall deliver a copy thereof to the local authority ; the Local Government Board may make such order in the matter as to the said Board may seem equitable, and the order so made shall be binding and conclusive on all parties.

Any proceedings that may have been commenced for the recovery ' of such expenses by the local authority shall, on the delivery to them of such copy as aforesaid, be stayed ; and the Local Government Board may, if it thinks fit, by its order, direct the local authority to pay to the person so proceeded against such sum as the said Board may consider to be a just compensation for the loss damage or grievance thereby sustained by him.

269 Appeal to quarter sessions.

Where any person deems himself aggrieved by any rate made under the provisions of this Act, or by any order conviction judgment or determination of or by any matter or thing done by any court of summary jurisdiction, such person may appeal therefrom subject to the conditions and regulations following :

- (1) The appeal shall be made to the next court of quarter sessions for the county division or place in which the cause of appeal has arisen, holden not less than twenty-one days after the demand of the rate or the decision of the court from which the appeal is made:
- (2) The appellant shall, within fourteen days after the cause of appeal has arisen, give notice to the other party and to the authority or court of summary jurisdiction by whose act he deems himself aggrieved, of his intention to appeal, and of the ground thereof :
- (3) The appellant shall, immediately after such notice, enter into a recognizance before a justice of the peace, with two sufficient sureties, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court, or give such other security by deposit of money or otherwise as the justice may allow :
- (4) Where the appellant is in custody the justice may, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody :
- (5) On appeals under this Act against any rate the court of appeal shall have the same power to amend or quash any rate or assessment, and to award costs between the parties to the appeal, as is or may by law be vested in any court of quarter sessions with respect to amending or quashing any rate or assessment, or awarding costs, on appeals with respect to rates for the relief of the poor ; and the costs awarded by the said court under this Act may be recovered in the same manner in all respects as costs awarded on the last-mentioned appeals: Provided that, notwithstanding the quashing of any rate appealed against, all moneys charged by such rate shall, if the court of appeal think fit so to order, be levied as if no appeal had been made, and such moneys,

when paid, shall be taken as payment on account of the next effective rate for the purposes in respect of which the quashed rate was made :

- (6) In the case of other appeals the court of appeal may if it thinks fit adjourn the appeal, and on the hearing thereof may confirm reverse or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just :
- (7) The decision of the court of appeal shall be binding on all parties : Provided that the court of appeal may, if such court thinks fit, state the facts specially for the determination of a superior court.