



Public Health (Scotland) Act 1897

1897 CHAPTER 38

PART IX

LEGAL PROCEEDINGS.

Enforcement of and Procedure under Act.

146 Procedure if local authority neglect its duty under Act Procedure under 18 & 19 Vict. c.68.

- (1) If any nuisance shall exist upon or in premises possessed or managed by the local authority, or in which the local authority have any interest, or if the local authority shall fail or neglect to perform any duty imposed upon them by this Act, or to take all due proceedings in this Act authorised for the removal of nuisances or preservation of health, or due regulation of lodging-houses, or for any other of the purposes of this Act, it shall be competent for any ten ratepayers residing within the district, or for a parish council, or for the procurator fiscal of the sheriff court of the county, or for the Board, to give written notice to such local authority of the matters in which such neglect exists; and if the local authority do not within fourteen days after such notice, or, in the case of neglect to enforce any regulation or direction of the Board under Part IV. of this Act, within two days after such notice, remove or remedy the nuisance referred to, or in any other case neglect to take the steps authorised or required by or under this Act, it shall be competent for the parties aforesaid, or any one of them, to apply to the sheriff by summary petition, and the sheriff shall thereupon inquire into the same, and may make such decree as shall in his judgment be required to enforce the removal or remedy of the nuisance, or otherwise to compel execution of or carry out the provisions and purposes of this Act, and may appoint the same to be carried into effect by and at the sight of such persons as he may think fit, and at the expense of the local authority, or of other parties on whom the expense ought in his opinion to be laid, and for payment of the expenses of such application by the petitioners or by the local authority or other party, as justice may require: Provided always, that in regard to any nuisance for the removal of which drainage works are necessary, the sheriff may suspend consideration of the complaint for such time as may seem proper, in order to

enable a general system of drainage under any general or local Act or otherwise to be carried out, the better to remove such nuisances.

- (2) It shall be competent for the Board, or for any local authority, or for any parish council, to present a petition to the sheriff, under the fourth section of the Burial Grounds (Scotland) Act, 1855, to the same effect, and to be followed out in like manner, as if presented by any of the persons or parties therein mentioned.

147 Provision for refusal or neglect of local authority.

In case any local authority shall refuse or neglect to do what is herein or otherwise by law required of them, -or in case any obstruction shall arise in the execution of this Act, it shall be lawful for the Board, with, the approval of the Lord Advocate, to apply by summary petition to either division of the Court of Session, or during vacation or recess to the Lord Ordinary on the Bills, which division or Lord Ordinary are hereby authorised and directed to do therein and to dispose of the expenses of the proceedings as to the said division or Lord Ordinary shall appear to be just.

148 Procurator fiscal may sue by directions of Board.

In any place within the jurisdiction of a local authority the procurator fiscal of the sheriff court, on the Board being satisfied that the local authority have made default in doing their duty, may, with the approval of the Lord Advocate, institute and follow out proceedings against the local authority for compelling them to do their duty, and may institute and follow out in all respects any proceeding which the local authority of such place might institute with respect to the removal of nuisances or otherwise ; and the expense as between agent and client of all such proceedings shall be paid by the local authority, but with such relief to them against the author of any nuisance or any other party as may be competent.

149 Procedure where nuisance beyond district.

Where a nuisance is situated in a district the local authority of which does not cause the same to be removed, which nuisance is offensive, or injurious, or dangerous to another district, the local authority of the latter district may call on the first-mentioned local authority to take all competent steps for removal of such nuisance, and the said first-mentioned local authority shall be bound to do so accordingly ; and any expense thereby occasioned to the said second-mentioned local authority shall be reimbursed by the first-mentioned local authority, the amount of such reimbursement in the case of dispute to be finally determined by the Board.

150 Local authority may require payment of costs, &c. from owner or occupier, and occupier paying to deduct from rent.

It shall be lawful for the local authority, at their discretion, to require the payment of any costs or expenses which the owner of any premises may be liable to pay under this Act either from the owner or from any person who then or at any time thereafter occupies such premises, and such owner or occupier shall be liable to pay the same, and the same shall be recovered in manner authorised by this Act. and the owner shall allow such occupier to deduct the sums of money which he so pays out of the rent from time to time becoming due in respect of the said premises, as if the same had been actually paid to such owner as part of such rent: Provided always, that no such

occupier who shall not be the author of a nuisance shall be required to pay any further sum than the amount of rent for the time being due from him, or which, after such demand of such costs or expenses from such occupier, and after notice not to pay his landlord any rent without first deducting the amount of such costs or expenses, becomes payable by such occupier unless he refuse, on application being made to him for that purpose by or on behalf of the local authority, truly to disclose the amount of his rent and the name and address of the person to whom such rent is payable, but the burden of proof that the sum demanded from any "such occupier is greater than the rent due by him at the time of such notice, or which has since accrued, shall lie upon such occupier: Provided also, that nothing herein contained shall be taken to affect as between the contracting parties any contract made or to be made between any owner, tenant, or occupier of any house, building, or other property, whereby it is or may be agreed that the tenant or occupier shall pay or discharge all rates, dues, and sums of money payable in respect of such house, building, or other property, or to affect as between the contracting parties any contract whatsoever between landlord and tenant.

151 Penalty for wilful damage of works.

If any person wilfully damages any works or property belonging to any local authority, he shall be liable to a penalty not exceeding five pounds, in addition to the cost of repairing such works or property.

152 Appearance of local authorities in legal proceedings.

Any local authority may appear and plead before any sheriff, magistrate, or justice, or in any legal proceeding, by any officer or member, or other person authorised generally, or in respect of any special proceeding, by resolution of such authority, certified under the hand of the clerk thereof, and such person being so authorised shall be at liberty to institute and carry on any proceeding which the authority is authorised to institute and carry on under this Act; and it shall not be necessary for the local authority to appear in any other manner in any prosecution or proceeding at their instance.

153 Recovery of penalties.

All penalties under this Act, and also all sums of money and expenses herein directed to be recovered in a summary manner, may, unless otherwise provided in this Act, be recovered at the suit of the local authority, and may be applied for the purposes of this Act: Provided always, that nothing contained in this section shall impair or affect any other mode of recovery allowed by this Act: Provided also, that all contraventions of the provisions contained in this Act relating to overcrowding of houses, and all contraventions of the provisions in this Act or of the byelaws, rules and regulations made under the authority of this Act relating to common lodging-houses may be prosecuted as police offences before any judge or magistrate having police jurisdiction, and in the same way and manner as police offences are prosecuted before him under any general or local police Act; and in the event of the offender being convicted, and failing to make immediate payment of the penalty which may have been imposed, he shall be liable to imprisonment in accordance with the provisions of the Summary Jurisdiction (Scotland) Acts, without prejudice to diligence by poinding or arrestment, if no imprisonment has followed on the conviction.

154 Form of applications to the sheriff, &c.

All applications to enforce any provision of this Act, or for the recovery of penalties herein imposed, or other sums of money becoming due to the local authority in virtue of this Act, in so far as not herein otherwise provided for, may be by summary petition, and such petition may refer to the sections of this Act on which it is founded, without setting forth the same; and the sheriff, magistrate, or justice shall thereupon, if he see fit, appoint the petition to be answered within three days after service, or may order the parties to attend him in person, and on advising such answer, or hearing the parties, or on the respondent failing to appear, he may at once decern, or may appoint any competent person to examine the premises and report to him, and may decern on such report, or he may, if either party desire it, order proof to be led before himself on any specified points, and shall in that case appoint a day, not more than five days thereafter, for hearing such proof, and if the proof be not on that day completed may adjourn the same from time to time until completed, and within three days after such completion he shall give decree, and he may find either party liable in expenses, or in any modified sum of expenses, and may, without prejudice to diligence by pouncing or arrestment, grant warrant for the imprisonment of the person convicted or found liable in a penalty or sum of money, unless he shall pay the whole sums found due within a specified time, until the same be paid, such imprisonment to be in accordance with the provisions of the Summary Jurisdiction (Scotland) Acts.

155 No written pleadings, &c. allowed.

No written pleadings, other than the petition and answers (when ordered), shall be allowed, and the sheriff, magistrate, or justice shall have power to grant diligence in common form to cite witnesses and havers, and in cases under sub-sections (9), (10), and (11) of section sixteen of this Act the sheriff shall take the evidence in like manner as in civil proofs: Provided always, that no decree under this Act against any party shall bar his right to relief against any other party legally liable therein.

156 Appeal in certain cases.

Where in cases under sub-sections (9), (10), and (11) in section sixteen it shall appear to the sheriff that the true value of the subject complained of as a nuisance, or the cost of the operations necessary to remove or amend it as ordered, or the value of the trade or business interfered with, exceeds the sum of twenty-five pounds but does not exceed the sum of fifty pounds, he shall certify his opinion to that effect in his decree, and the parties shall thereupon be entitled to appeal from, the sheriff substitute, where the judgment has been pronounced by him to the sheriff, on lodging, within three days after the decree, a note of appeal with the sheriff clerk, and serving the same on the opposite party or the agent acting in such proceedings for such party, and such note shall operate as a sist of execution until the appeal be determined; and on such note being lodged the sheriff clerk shall transmit the process, together with the evidence, to the sheriff, whose decision thereon shall be final where the value certified is not above fifty pounds; and in the event of such value or cost being so certified to exceed the sum of fifty pounds, the parties shall be entitled to present a note of appeal to the Lord Ordinary on the bills against the judgment either of the sheriff substitute or of the sheriff, whether this last be an original judgment or on appeal: Provided that, along with such note, the appellant shall lodge a sufficient bond of caution by one or more obligants, to the amount of fifty pounds sterling, for payment or performance of any judgment that may be pronounced under his appeal; and also provided that such note be lodged in the Bill chamber, and a copy thereof served on the opposite party or his

said agent within eight days after the date of the sentence or judgment complained of, which note shall in like manner operate as a writ of execution until a judgment be pronounced by the Lord Ordinary, which judgment shall be final unless the Lord Ordinary shall allow a reclaiming note to the inner house, and the judgment of the inner house shall be final.

157 No appeal otherwise.

Save in so far as otherwise provided, no appeal shall be competent from any decree or order of any magistrate or justice, or from the decree or order of any sheriff, except in cases certified in terms of the preceding section ; and no decree or order, or any other proceeding, matter, or thing done in the execution of this Act, shall, excepting as herein provided, be subject to review in any way whatever.

158 Justices, &c. being members of local authority may act.

The sheriff, justices of the peace, or magistrates may in all cases, notwithstanding their being members of the local authority, exercise the jurisdiction vested in them under this Act.

159 Service of notices, petitions, and orders.

Notices, intimations, petitions, and orders under this Act may be served by any person by delivering the same to or at the residence of the parties to whom they are respectively addressed, or by being put into the post office duly addressed to the parties; and where addressed to the owner or occupier of premises they may be served by any person delivering the same or a true copy thereof to some person upon the premises, or, if there be no person upon the premises who can be so served, by fixing the same upon some conspicuous part of the premises; and service of such notices, petitions, or orders may be proved by a certificate under the hand of the person who posted or delivered or affixed the same, attested by one witness who was also present

160 Proof of regulations of local authority and Board.

Copies of any orders, resolutions, or regulations (other than byelaws) of the local authority or their committee purporting to be signed by the clerk of such body or committee, shall, unless the contrary be shown, be received as evidence thereof without proof of their meeting, or of the official character or signature of the person signing the same.

161 One or more joint owners may be proceeded against alone.

In case of any demand or complaint under this Act to which two or more parties, whether as owners or occupiers of premises, may be jointly answerable, it shall be sufficient to proceed against any one or more of them without proceeding against the others or other of them, and any one or more of such persons may be proceeded against, notwithstanding that the acts or defaults of any one or more of them would not separately be an offence against this Act; but nothing herein contained shall prevent the parties so proceeded against from recovering relief in any case in which they would now be entitled to relief by law. Proceedings against several persons included in one demand or complaint shall not lapse by reason of the death of any one or more of such persons, but all such proceedings may be carried on as if the deceased persons had

not been originally so included. Whenever in any proceeding under the provisions of this Act relating to nuisances 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.

162 Penalty on occupier obstructing owner.

If the occupier of any premises prevent the owner thereof from obeying or carrying into effect the provisions of this Act, the sheriff or any magistrate or justice to whom application is made shall, by order in writing, require such occupier to permit the execution of the works required to be executed, provided that such works appear to such sheriff, magistrate, or justice to be necessary for the purpose of obeying or carrying into effect the provisions of this Act; and if within a reasonable time after the making of such order the occupier against whom it is made refuse to comply therewith, he shall be liable to a penalty not exceeding five pounds for every day afterwards during the continuance of such refusal.

163 Penalty for violating Act or obstructing its execution.

Whoever wilfully violates or contravenes any provision of this Act to which a pecuniary penalty is not herein attached, obstructs any person acting under the authority or employed in the execution of this Act, or wilfully violates any direction or regulation issued by the Board under this Act, shall be liable for every such offence to a penalty not exceeding five pounds.

164 Compensation to be made.

Full compensation shall be made, out of any fund or assessment applicable to the purposes of this Act, to all persons sustaining any damage by reason of the exercise of any of the powers of this Act, except when otherwise specially provided; and in case of dispute, if the sum claimed do not exceed the sum of fifty pounds sterling, the same may be ascertained on a summary application by either party to the sheriff, whose decision shall be final and not subject to review, unless when pronounced by the sheriff substitute, in which case it may be reviewed by the sheriff on appeal; and when the sum claimed exceeds fifty pounds sterling, such compensation shall be ascertained and disposed of by a sole arbiter appointed in manner set forth in sub-section eleven of section one hundred and forty-five of this Act.

165 Convictions not void for want of form.

No conviction or other legal proceeding under this Act shall be void for want of form, or for want of any previous notice, provided in this latter case the party proceeded against or convicted has appeared or the charge had come to his knowledge; and the charge may be amended at any time, and the proceedings may be adjourned on the ground of want of sufficient notice, or for other good cause.

166 Local authority or Board not liable for irregularity of their officers.

The local authority and the Board shall not be liable in damages for any irregularity committed by their officers in the execution of this Act, or for anything done by themselves in the bona fide execution of this Act; and every officer acting in the bona fide execution of this Act shall be indemnified by the local authority under which he

acts in respect of all costs, liabilities, and charges to which he may be subjected ; and every action or prosecution against any person acting under this Act on account of any wrong done in or by any action, proceeding, or operation under this Act shall be commenced within two months after the cause of action shall have arisen; provided that nothing in this section shall exempt any member of any local authority from being 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.

167 Forms.

The forms contained in the Second Schedule to this Act annexed, or any forms to the like effect, may be used for the purposes of this Act, and shall be sufficient therefor, and all proceedings or documents under this Act may be wholly or partly written or printed.

168 Exemption from stamp duties.

All bonds, assignations, conveyances, instruments, agreements, receipts, or other writings made or granted by or to or in favour of the local authority under this Act shall be exempt from all stamp duties.

169 Police constables to aid in executing Act.

The constabulary and police force in their respective jurisdictions shall aid the authorities and officers acting in execution of this Act, or any directions or regulations issued as aforesaid.

170 Act not to impair right of action, &c.

Nothing in this Act shall be construed to impair any right of action in respect of nuisances at common law.

171 Powers of Act cumulative.

All powers given by this Act shall be deemed to be in addition to, and not in derogation of, any power conferred by Act of Parliament not hereby specifically repealed, or any law or custom; and such last-mentioned powers may be exercised in the same manner as if this Act had not passed, but without prejudice to the powers conferred by this Act.