

## Health.

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208. Health officer may cause vessel to be unloaded and cleansed.
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221. When board of freeholders may authorize expenditure of moneys to prevent contagious disease.
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### I. State and local boards of health.

An act to establish in this state, boards of health and a bureau of vital statistics and to define their respective powers and duties.

P. L. 1887, p. 80.

Approved March 31, 1887.

#### 1. STATE BOARD OF HEALTH AND BUREAU OF VITAL STATISTICS.

State board of health, how constituted and appointed.

1. That there shall be in this state a state board of health to be known as "the board of health of the state of New Jersey," which shall be composed of the secretary of state, the attorney-general and the state geologist, as ex-officio members, and seven persons to be appointed from time to time as hereinafter directed, by the governor; each of the appointed members shall hold office for the term of seven years, and their respective terms of office shall be so arranged that the term of office of not more than one member shall expire in any one year; if the office of any appointed member shall for any cause become vacant before the expiration of the term for which such member was appointed, the same shall be filled by the governor for the unexpired term only; *provided, however*, that whereas a state board of health has heretofore been created in this state and is now in fact constituted and organized in the manner hereinbefore prescribed, the members of said board heretofore created shall constitute and shall henceforth be deemed and taken to be "the board of health of the state of New Jersey," established by this act, that the appointed members of the said board heretofore created shall respectively continue to hold office as members of the board established under this act until the expiration of the terms for which they were originally appointed, and that the secretary and all other officers of said board heretofore created, shall continue to hold their respective offices under this act for the terms for which they were originally appointed or elected.

Proviso.

Powers and duties of the board.

2. That the said state board shall take cognizance of all matters affecting health and life among the citizens of this state, shall make sanitary investigations and inquiries in respect of the people, the causes of diseases and especially of epidemics and the sources of mortality, and the effects of localities, employments, conditions and circumstances on the public health; they shall also make investigations and inquiries into the sanitary condition of any state, county, city or township almshouse, asylum, prison, penitentiary, jail, reform school, school-house or other public building, and of tenements, manufactories and workshops; the said state board shall also constitute a state bureau of vital statistics who shall, as such board, cause to be made such tabular classification, and such index and transcription of the vital facts shown by the certificates of marriages, births and deaths now by law returned to the secretary of state, as may be useful to the said board or to the officers thereof in preparing for diffusion among the people of the state such facts as may bear upon public health; the said board shall fix and determine the amounts to be paid for the classification, index and transcription above required, which amounts shall not exceed the sum of four cents for each certificate returned to the secretary of state, and shall be paid out of the annual appropriations made to said state board as hereinafter provided.

3. That the said state board shall appoint a president who shall call meetings as often as once in three months and also whenever in his judgment it shall be necessary, and whenever requested so to do by three members of the board; they shall also elect a secretary to serve for a term of five years, who shall be a physician of at least five years' practice in this state, who shall also be medical superintendent of vital statistics, and who shall superintend the performance of the duties prescribed by law in relation to the state board of health and the classification, index and transcription of vital facts hereinbefore required to be made; the compensation of the said secretary shall be the sum of twenty-five hundred dollars per annum for the services required of him under the provisions of this act as such secretary and medical superintendent, which sum the treasurer of this state is hereby authorized to pay from any money in the treasury not otherwise appropriated upon a warrant drawn by the said state board of health signed by its president and attested by its secretary; the said state board of health shall also in the month of December of each year make a report to the governor of their investigations and inquiries for the year, with such communications and suggestions concerning the public health as they may deem proper.

Board to elect officers.

Duties and compensation of secretary.

State board to make annual report to the governor.

4. That the state board of health shall have a right to cause a sanitary inspection to be made of all chattels and persons in transportation through the state, and of the cars, boats and other vehicles in which such chattels or persons may be transported, and the said board shall have the same right of inspection, procedure and control in this respect as is or may be conferred by law upon the local board of health or local authorities in any township or city, or other local municipal government in this state, and when in the judgment of the said board it may be necessary, the said board may require or cause an examination of vessels, cars, boats or other vehicles and of all baggage and persons, to be made, and may enforce such detention or disinfection as they may deem necessary for the public safety.

Authorized to make sanitary inspections of chattels and persons in transportation, and of cars, boats, vehicles, &c.

5. That the said state board may appoint inspectors and assign them to such duties as the interests of the public health in any part of the state may require, and to aid in the execution of the laws relating thereto; and they may require the said inspectors to investigate the local epidemics, nuisances, needs for drainage, neglect of sanitary law, the condition of school-houses, tenements, manufactories and workshops, of public buildings belonging to the state, or to any county or city therein, and of the persons confined or employed therein; and the state board, its agents and appointees shall have the same right of inspection in regard to all matters affecting the public health as has been or may be conferred upon local boards of health; the inspectors appointed by the state board of health shall be paid by the board out of the moneys appropriated therefor such sum as may be fixed and determined by the board.

Board may appoint inspectors and assign their duties.

6. That every physician in this state making official reports to the state board of health through the bureau of vital statistics shall be entitled to receive by mail, from the treasurer of the state, a copy of the annual report of the state board of health and of the bureau of vital statistics.

Physicians making official reports entitled to copy of annual report.

7. That the annual appropriation of the state board of health, for the purpose of making sanitary investigations and inquiries in respect to the people, the causes of disease, epidemics and the sources of sickness and mortality, the effect of locality, employments, conditions and circumstances on the public health, and for the purpose of making inquiry and investigation into the sanitary condition of any state, county, city or township almshouse, asylum, prison, penitentiary, jail or reform school, and for such other expenses as the said board are by this act authorized to incur, shall be the sum of six thousand dollars, in addition to such appropriations as are authorized by law to be made for the purpose of preventing contagious and infectious disease among animals and the adulteration of foods and drugs; all moneys appropriated for the use of said board shall be paid by the treasurer of the state on the order of the comptroller upon requisition made by the board, signed by the president and secretary thereof and approved by the governor.

Annual appropriation to the state board.

Amount.

Additional appropriation in cases of emergency, by whom and how made.

8. That in case any emergency of epidemic or of peril to the public health shall, in the judgment of the state board of health, require the expenditure of a larger amount of money than is herein appropriated, the facts that warrant such expenditure, in the judgment of the board, shall be presented by it to the governor, comptroller and treasurer of the state, and if, in their judgment, additional expenditure is needed to enable the state board of health to meet such emergency, they are hereby authorized to add to the appropriation made, by virtue of the authority hereby given, such sum as in their judgment may be necessary therefor.

## 2. LOCAL BOARDS OF HEALTH.

Local boards of health in cities, towns, &c., how appointed and constituted.

9. That there shall be a local board of health in every city, borough, town and other local municipal government in this state, which shall be composed of not less than five nor more than seven members, who shall be appointed in such manner and hold their respective offices for such terms, not exceeding four years, as the board of aldermen, common council or other governing body may by ordinance provide; *provided, however*, that in cities containing a population of over one hundred thousand inhabitants such boards may consist of not less than five nor more than nine members; the terms of office of the members of said local boards shall be so arranged that the terms of not more than three members shall expire in any one year; if any vacancy shall occur in any of said local boards, it shall be filled in the same manner in which the original appointments were made, but for the unexpired term only. (a)

Proviso.

Who to constitute the local boards of health in townships.

10. That there shall be a local board of health in every township of this state, which shall be composed of the members of the township committee, the township assessor and one physician to be appointed by the township committee; such physician shall hold office for the term of three years from the time of his appointment and until his successor shall be appointed; if any township committee shall not appoint a physician as aforesaid on or before the first day of June, eighteen hundred and eighty-seven, or if they shall neglect or fail to make such appointment within ten days after the death, removal or resignation of any physician, or after the expiration of his term of three years aforesaid, it shall be lawful, in any of said cases, for the state board of health, at any time after the expiration of either of the periods above limited for appointment by the township committee, and before the township committee shall have made an appointment, to appoint a physician as a member of said local board of health who shall hold his office for the term of three years from the time of his appointment by said state board and until his successor shall be appointed; if, however, in any township, no physician shall be appointed, as hereinabove required, either by the township committee or by the state board of health, then and in such case the members of the township committee and the assessor shall constitute the local board of health of such township, and shall continue to constitute such board, until such appointment as aforesaid shall be made; in case of the death, removal or resignation of any assessor before the time of electing his successor, the township clerk shall succeed such assessor as a member of such local board, and shall continue as such member until an assessor shall be duly elected or appointed, and such township clerk shall take charge of and make all returns of marriages, births and deaths as required by law of assessors; in any township within whose limits a city, borough, town or other form of local municipal government now exists, or hereafter shall exist, the jurisdiction of the local board of the township shall extend only to such parts of the township as are, or shall be, outside of the territorial limits of such city, borough, town or other local municipal government, but in every other case the jurisdiction of the township board shall be co-extensive with the limits of the township. (b)

Failure of township committee to appoint physician, state board to make the appointment.

Who to constitute the local boards on failure to appoint.

(a) The establishment by the legislature of general and local boards of health is not to be regarded as detracting from the general powers of municipal governments, unless that legislative intent clearly appears. *Nicoulin v. Lowry*, 20 Vt. 391.

(b) The requirement that there shall be a board of health in

every township, and an examination of the law indicates that their duties cannot be discharged without the expenditure of money, it is therefore the duty of a town meeting to raise funds to meet such expenditure. *Allen v. Township of Bernards*, 28 Vt. 303.

**11.** That every local board of health now existing in any city, borough, town or other local municipal government in this state, which is, in fact, constituted and organized in the manner required by the ninth section of this act, and every local board of health now existing in any township which is in fact constituted and organized in the manner required by the tenth section of this act, shall be deemed, held and taken to be a local board of health, created under the provisions of this act, and every such board is hereby perpetuated and continued, and is hereby authorized, without re-organization to exercise all the powers and required to perform all the duties applicable to local boards mentioned in this act; the members of every such board shall continue in office until the expiration of the terms for which they were originally appointed; every ordinance which has heretofore been passed by any common council, or other governing municipal body, creating, establishing or organizing, or providing for the creation, establishment or organization of any such local board of health as aforesaid, shall be deemed, held and taken to be of the same force and validity as if it had been passed under the provisions and authority of this act; and all ordinances, rules and regulations heretofore adopted or passed by any such local board of health as aforesaid, which might be adopted or passed under the authority of this act, shall continue to be the ordinances, rules and regulations of such local board, and shall be of the same force and validity as if they had been actually adopted or passed under the provisions and authority of this act.

Local boards now existing to be deemed and held to be the local boards.

Authorized to exercise all the powers under this act.

Ordinances heretofore passed validated, &c.

**12.** [Amended by Sec. 49, *post.*]

**13.** That said local boards shall, within their respective jurisdictions, examine into all nuisances, foul or noxious odors, gases or vapors, and all causes of disease which may be known to them or brought to their attention which, in their opinion, are injurious to the health of the inhabitants therein, and shall cause the same to be removed and abated; whenever such nuisance, noxious odors, gases or vapors or cause of ill health or disease shall be found on public property or on a highway, notice shall be officially given by the said board to the person in charge thereof officially, and such persons shall be notified to remove and abate the same; and if there be failure or neglect to comply with such notice the mode of procedure shall be the same as is hereinafter provided in case of private individuals.

Boards may abate nuisances, foul odors, &c.

When on public property.

**14.** That where such nuisances, noxious gases or vapors, or cause of ill health or disease shall be found on private property, the said board shall cause notice thereof to be given to the owner or owners to remove and abate the same at his own expense, within such time as the said board may deem proper; a duplicate of the notice so given shall be left with one or more of the tenants or occupants of the premises; if the owner resides out of the state or cannot be reached with notice speedily, notice left at the house or posted on the premises shall be deemed sufficient, and if the owner or owners thus notified shall not comply with such notification or order of the local board of health within the time specified, the board shall proceed to abate such nuisance and remove the cause of such foul and noxious odors, gases or vapors or other thing detrimental to the public health, and such board shall have a right to recover by action of debt the expenses incurred by such board in the abatement or removal, from any person or persons who shall have caused or allowed such nuisance, source of foulness, or cause of sickness, hazardous to the public health, and from any owner, tenant or occupant of the premises who, after notice as aforesaid, shall have failed to remove such nuisance, source of foulness, or cause of sickness, hazardous to the public health, within the time specified in such notice; and in case such board of health shall fail to recover by such action an amount sufficient to defray such expenses, or if it shall be deemed inexpedient to bring such suit, they may present a bill, certified by such board, or a majority thereof, to the local municipal authorities, and such bill shall be audited and paid by the city, borough, town, township or other local municipal government in and for which such board is organized

When on private property

Failure of owners to abate nuisances, board to remove.

Expenses, how recovered.

in the same manner as the bills for the ordinary current expenses for such municipality are paid.

No injunction to issue against board without notice.

**15.** That no injunction shall issue out of any of the courts of this state to stay, stop or enjoin proceedings, or to prevent any local board of health from proceeding with the removal of any alleged nuisance, source of foulness, or cause of sickness, hazardous to the public health, until such board has been duly notified to appear and be present at the hearing of such application, and has an opportunity to be heard thereon; and no suit shall be maintained in any of the courts of this state to recover damages against any such board, its officers or agents, on proceedings had and maintained by them to abate and remove such nuisances and cause of disease, unless it shall be shown in such suit that the alleged nuisance and cause of disease did not exist, and that the same was not hazardous and prejudicial to the public health, and unless it be shown that the said board acted without reasonable and probable cause to believe that such nuisance did exist, and that such foul or noxious odors, gases, vapors or other cause was in fact prejudicial and hazardous to the public health.

When suits to recover damages against board shall not be maintained.

**16.** That in the making of ordinances any local board of health may adopt and ordain the same in the form of a code, or each ordinance may be separate and apart by itself, and in all cases said board shall cause such code, ordinance or ordinances to be published for at least two weeks, once in each week, in one or more newspapers printed and circulating in the city, township, borough, town, or other local municipal government in which such code, ordinance or ordinances shall take effect; and in case no newspaper shall be printed in such township, or in such city, borough, town or other local municipal government, then the said code or ordinances shall be posted in five public places therein and published for the said period of time in some newspaper published in the county and circulating in such township, or in such city, borough, town or other local municipal government.

Ordinances may be in form of code. Ordinances and code to be published.

Code or ordinance may be amended or repealed.

**17.** That such boards of health may amend or repeal any part or section of such code or ordinances as they may see fit, such amendments to be passed and amended as aforesaid, and every code, ordinance, amendment or repealer shall take effect in thirty days after the date of the first publication.

Boards of health may prescribe penalty for violations of code, &c.

**18.** That any such board of health may prescribe a penalty for the violation of any of their ordinances or sections of any code they make and ordain as aforesaid, not to exceed one hundred dollars and not less than ten dollars; and every district court in any city, and every justice of the peace in any county, and any police justice or recorder in any city, is hereby empowered, on oath or affirmation made according to the law that any person or persons has or may have violated any section of the code, or any of the ordinances of any such board as aforesaid, to issue process at the suit of any such board as aforesaid, either in the nature of a summons or warrant, against the person or persons so charged, which process shall, when in the nature of a warrant, be returnable forthwith, and when in the nature of a summons shall be returnable in not less than one nor more than ten entire days; such process shall state what section of the code or ordinance of any such board is alleged to have been violated by the defendant or defendants; and on the return of such process, or at any time to which the trial shall have been adjourned, the said court, justice of the peace, police justice or recorder shall proceed to hear the testimony and to determine and give judgment in the matter, without the filing of any pleadings, and a copy of the ordinance or section of the code alleged to have been violated, certified to under the hand of the clerk or president of the board, and under the seal of such board, if it have a seal, shall be taken as full and legal proof of the existence of such ordinance or code, and that all requirements of law in relation to the ordaining, publishing and making of the same, so as to make the same legal and binding, have been complied with, unless the contrary be shown; and the said court, justice of the peace, police justice or recorder shall, if judgment be rendered for the plaintiff, forthwith issue execution against the goods and chattels and per-

Proceedings in case of violations of code and ordinances.

sons of the defendant or defendants, and said court, justice of the peace, police justice or recorder is further empowered to cause such defendant who may refuse or neglect to pay the amount of the judgment rendered against him, and all costs and charges incident thereto, unless an appeal is granted, to be committed to the county jail for any period not exceeding ninety days; and said court, justice of the peace, police justice or recorder is further empowered in case any such defendant shall have been twice convicted, within the space of six months, of the violation of the same ordinance, and due proof of the same is made, in addition to the payment of the appropriate penalty, to cause said defendant to be imprisoned in the county jail or county workhouse, with or without hard labor, for any number of days not exceeding one for each dollar of the penalty. (a)

19. That no district court of any city, justice of the peace, police justice or recorder, shall have jurisdiction of any offenses against any code or ordinances of any board of health, which offenses shall take place outside of the territorial jurisdiction of such district court, justice of the peace, police justice or recorder, as such territorial jurisdiction is now or may hereafter be established by law.

Jurisdiction of courts.

20. That the officers to serve and execute any process issued out of any court under this act shall be the officers authorized by law to serve and execute process in said courts and before such magistrates and officers as aforesaid, including constables and police officers.

What officers to serve and execute process.

21. That the board of health of any township, or any city, borough, town or other local municipal government in this state, shall have the right to declare any epidemic or cause of ill health to be so injurious or hazardous as to make it necessary to close any or all of the public or private schools in the limits of such township, or of such city, borough, town or other local municipal government; but in case of public schools, the same shall not be closed except by the direction of the board of education, school trustees or other body having the control or direction thereof; any such board of education, school trustees or other body having control of public schools may in such case cause any or all of the schools under their control to be closed, if, in their judgment, such closing be necessary for sanitary purposes.

When public or private schools may be closed.

22. That any board of education, school trustees or other body having control of the public schools may, on account of the prevalence of any contagious disease, or to prevent the spread of such contagious disease, prohibit the attendance of any teacher or scholar upon any school under their control, and may specify the time during which such teacher or scholar shall remain away from such school, and may prohibit the attendance of any unvaccinated child who has not had the small-pox, and shall also have the power to decide how far re-vaccination shall be required if a case or cases of small-pox have occurred in the city or district.

When board of education, &c., may prohibit attendance of teachers or scholars.

23. That at the enrollment of the children by the clerk of the school districts in the townships of this state, or by other proper officers in the cities or municipalities, inquiry shall be made as to how many of the children within the school age are unvaccinated, and the same shall be designated by a mark on the said roll, and in case any are found to be unvaccinated, whose parents desire them to be protected from small-pox, and who, in the judgment of the board of education or the trustees of the school districts, are unable to pay therefor, the clerk of said district, or other authorized person, may give to the said child or children a permit to appear at the office of any regularly-licensed physician in said district or municipality to be vaccinated, and such physician, on presentation of said permit, with his certificate appended thereto that the said vaccination has been by him successfully performed, shall be entitled to receive from the said township or local municipal authority the sum of fifty cents for each case so certified, and the same shall be paid in the same manner that other bills for current expenses are paid therein.

Unvaccinated children to be designated on enrollment.

Children may be vaccinated at expense of township.

(a) The common pleas has no jurisdiction to hear an appeal from the judgment of a police justice in a suit for a penalty for violating an ordinance of a board of health. *Holzworth v. Newark*, 21 Vr. 85. This decision was rendered upon section

23 of the health act of 1886, which section is in the same words as section 18. See, also, *Warden v. Board of Health*, 18 N. J. L. J. 248.

Nuisances may be abated without passing ordinances.

When public funerals may be prohibited.

Board may determine when physicians shall notify board of existence of contagious diseases.

When inspector may abate nuisances.

Board may file bill in chancery for abatement of nuisance.

When court may issue injunction.

When costs may be awarded against board.

Boards empowered to appoint officers and agents and to fix compensation, &c.

**24.** That the power herein given to local boards of health to abate nuisances, sources of foulness, or causes of sickness, hazardous to the public health, shall not depend upon whether such boards have exercised their power to pass, alter or amend ordinances in relation to the public health.

**25.** That such local boards shall have power to specify any contagious disease or diseases in case of death from which no public funeral shall be had, and to prohibit such public funeral under a penalty to be imposed, not to exceed fifty dollars, and in case of the threatening or prevalence of an epidemic, to prohibit such public funeral of persons dying with the particular disease or diseases then prevalent; and they shall also have power to prohibit such public funeral in any case in which the attending physician shall by writing so advise, or in any case in which two reputable physicians in the same district or municipality certify that they believe that the interests of the public health require such restriction.

**26.** That any such local board may determine whether or when it is necessary for a physician or other person in attendance on the sick to notify said board of the existence of contagious or infectious diseases; where such notification is required, the local board shall enter in a book kept for that purpose, subject only to the inspection of the board and its proper officers, the name of the physician making such notification, the date of the notice, the name and precise locality of the disease, and at the close of each six months such physicians shall be entitled to receive, on the certificate of the said board, from the disbursing officers of the said township or municipality the sum of twenty-five cents for each notification so given, unless such notification shall be found to have been erroneous.

**27.** That a notice of any inspector of any local board of health to abate any nuisance, or by the executive officer or other authorized member of said board, shall be taken as a notice from the board, and if the owner or person notified shall fail to abate the nuisance complained of, the said board may cause the same to be abated in a summary way, giving written directions to the inspector in relation thereto, and he shall proceed according to the directions so given.

**28.** That any such local board of health, instead of proceeding in a summary way to abate a nuisance hazardous to the public health, may file a bill in the court of chancery, in the name of the state, on the relation of such board of health, for an injunction to prohibit the continuance of such nuisance, and such actions shall proceed in the court of chancery according to the rules and practice in such cases on the relation of individuals, and cases of emergency shall have precedence over other litigation pending at the time in the court of chancery, and may be heard on final hearing within such time and on such notice as the chancellor shall direct.

**29.** That in all cases in which it shall be ascertained by the court of chancery in such suits that such nuisance existed at the time of filing such bill, substantially as set forth in the same, the court shall have power to abate the same by an injunction or otherwise, according to the practice of the court, and may charge the costs of such suit upon the property whereon such nuisance is found, and enforce the same by sale of the said property, or any part thereof, on writ of fieri facias, or the said court may order the person or corporation which caused such nuisance or allowed the same to continue, to pay such costs, and enforce obedience to such order. (a)

**30.** That in case no such nuisance shall be found to exist, costs shall not be awarded as of course against the board of health which caused such suit to be brought, but only in case it shall appear to the chancellor that no probable cause existed for bringing such suit.

**31.** That such local boards of health shall have power and authority to appoint such subordinate officers and agents to carry into effect the powers hereby conferred as they may deem necessary, to fix the term of such appointments and the compensation of such appointees; and in every city,

(a) A bill filed under sections 28 and 29, to abate a nuisance as dangerous to the public health, must show that the situation or practice complained of amounts, of itself, and without the aid of similar practices or situations (for which the defendants are not responsible), to a public as distinguished from a private

nuisance, and one which would be indictable as such. A mere tendency to injury is not sufficient to constitute such a nuisance. *State v. Freeholders of Bergen*, 1 Dick. 173. See *Trenton Board of Health v. Hutchinson*, 12 Stew. 220, 573.

town, borough or other local municipal government, containing a population of two thousand inhabitants or more, there shall be at least one inspector appointed by such board ; the duties of the officers and appointees of the said board shall be prescribed and defined by rules, regulations or ordinances made for that purpose.

**32.** That where, in any township, sufficient sanitary inspection is not secured, the state board of health may, on notice to the local board, require the appointment by the local board, of a health inspector for such township, who shall be paid by the local board of the township a sum not less than fifty dollars a year for his services as inspector.

State board may require local boards in townships to appoint inspectors.

**33.** That such local boards of health shall take cognizance of any neglect or failure to make return on the part of any person charged with this duty under the laws of this state, and such boards are authorized to pass ordinances in relation thereto, and prescribe penalties therefor, and to enforce the same in any lawful manner.

Local boards to take cognizance of neglect or failure to make returns.

**34.** That the local board of health of every city, borough, town or other local municipal government, shall each year, before the budget of municipal taxes to be levied for such year shall be determined, present to the common council or other governing body of such city, borough, town or other local municipal government, an estimate of appropriations which it shall believe to be needed for health purposes, and if said estimate is not beyond a pro rata of five cents for each inhabitant as returned by the last preceding census, the same shall be allowed, and as much in addition thereto as such common council or other governing body shall approve ; the appropriations so allowed shall be paid by the treasurer or other custodian of the municipal funds to the board of health, at such times after the budget of municipal taxes shall be determined, and in such sums, as the board shall require by their written order drawn upon the treasurer or other custodian of the municipal funds, signed by the president of the board and attested by its secretary ; and all fines, fees and penalties imposed and collected under the ordinances of any such board shall also be paid to said board.

Local boards to present to common council, &c., an estimate of appropriations needed.

Appropriations, by whom paid.

**35.** That the local board of health of each township in this state may expend annually the sum of one hundred dollars in the care of the public health, and in addition thereto fifty dollars for each one thousand of the inhabitants thereof over two thousand, as returned by the last preceding census, if in its judgment such expenditure shall be required for the purpose, and itemized bills for such expenditure, having been approved by the president and secretary of such board, shall be paid by the usual disbursing officer of the township, and if in case of any emergency or of any special need for the protection of the public health such board shall consider the expenditure of a greater sum necessary, the board shall so certify to the township committee, and with their consent and approval may incur such further expense as said committee may authorize, and if the funds at the disposal of the township committee are not sufficient to cover such expenditure, said committee is hereby authorized to borrow money for the purpose on the credit of the township, and is directed to place the amount in the next annual tax levy, and with the money so raised to pay the debts so incurred.

Amount which may be expended annually by township local boards of health.

Township committee authorized to borrow money.

**36.** That the appointees, agents and officers of the said boards, except those merely temporary, shall hold their offices during the term for which they were severally appointed, and shall not be removed therefrom except for cause and after an opportunity has been given them for a hearing.

Agents, officers, &c., to be removed only for cause.

**37.** That the local board of health of every township, city, borough, town and other municipality, shall, on or before the first day of October in each year, in addition to other reports required, prepare an annual report of the condition of the public health within the limits of its jurisdiction, stating therein any special cause for the deterioration of health or of hazard thereto, and shall therein answer any inquiries which may have been addressed to such local board by the state board of health, and such local board shall forward a copy of such report to the state board of health on or before the fifteenth day of October in each year.

Local boards to make annual report.

Repealer.

**38.** That all acts and parts of acts which in anywise conflict with the provisions of this act be and the same are hereby repealed, and that this act shall take effect immediately.

3. SUPPLEMENTS AND MISCELLANEOUS ACTS RELATING TO STATE  
AND LOCAL BOARDS.

## Supplement.

Approved February 22, 1888.

P. L. 1888, p. 89.

Local boards of health, except in townships, may pass additional ordinances.

To compel the plumbing, ventilation and drainage of buildings, &c.

To secure the sanitary condition of buildings.

Board may delegate its powers to any member or officer thereof.

Form of conviction in prosecutions for violations of ordinances of board.

To be signed by magistrate before whom had, &c.

Costs.

Judgments may be docketed in court of common pleas.

**39. SEC. 1.** That local boards of health, except township boards, shall, in addition to the powers enumerated in the act to which this is a supplement, have power to pass, alter or amend ordinances, and make rules or regulations within their respective jurisdictions :

I. To compel, prescribe, regulate and control the plumbing, ventilation and drainage of all buildings, public and private, and the connection thereof with outside sewers, cesspools or other receptacles, and to require plans for the same, with necessary drawings or descriptions, to be submitted to said boards for inspection and approval, and to require all master and foreman plumbers and all building contractors to register their names and addresses at the office of said board ;

II. To secure the sanitary condition of all buildings, public and private.

**40. SEC. 2.** That any such board of health may, by resolution, delegate any portion of its powers to any member of the board or to any officer thereof, to be exercised only when the board is not in session, and any notice by any member of the board, or by any officer thereof, shall be notice by the board, and the person served therewith shall be bound thereby.

**41. SEC. 3.** That the conviction in prosecutions by any local board of health to recover penalties for the violation of the ordinances of said board, shall be in the following or similar form :

State of New Jersey, county of \_\_\_\_\_ ss.—Be it remembered, that on this \_\_\_\_\_ day of \_\_\_\_\_ A. D. \_\_\_\_\_ at \_\_\_\_\_ in said county, \_\_\_\_\_ defendant, was, by the second district court of the city of N. (or by E. F., a police justice, or as the case is), convicted of violating section \_\_\_\_\_ of the sanitary code of the board of health of the said city of N. (or of an ordinance entitled "An ordinance," &c.), in a summary proceeding, at the suit of the said the board of health of the city of N., plaintiff, upon a complaint made by \_\_\_\_\_ ; and further, that the witnesses in said proceeding who testified for the plaintiff were (name them), and the witnesses who testified for the defendant were (name them); wherefore, the said court (or police justice, or as the case is) doth hereby give judgment that the plaintiff recover of the defendant \_\_\_\_\_ dollars penalty and \_\_\_\_\_ dollars and \_\_\_\_\_ cents costs of this proceeding.

The said conviction shall be signed by the judge of the district court, police justice or other magistrate, before whom the conviction is had ; in case of the infliction of a penalty, the amount of which is increased by the fact that it is for a second or additional violation, the conviction shall state that it appeared that the defendant had been guilty of a previous violation of the same section of said code or ordinance ; the costs in prosecutions under the act to which this is a supplement, shall be the same as costs before justices of the peace, police justices or recorders, or in district courts in other civil actions.

**42. SEC. 4.** That any judgment rendered on conviction of a violation of any section of any ordinance or code of any local board of health, by any court having jurisdiction of such proceeding, may be docketed in the court of common pleas, as other judgments recorded in said courts may be, and in the same manner, and such judgment shall, from the time of said docketing in the court of common pleas, operate as a judgment obtained in a suit originally commenced in said court, and satisfaction thereof may be entered in the margin of the docket in the same manner and on the same evidence as is now provided by law in case of judgments rendered in the courts of common pleas ; and the execution issued thereon shall be of the same

effect as to the property of the defendant, either of a personal or real nature, as if issued on a judgment originally obtained in the court of common pleas upon a suit commenced therein ; and after said docketing, no further proceedings shall be had in the said district, police, justice's or recorder's court, in which said judgment was obtained.

## Supplement.

Approved February 27, 1888.

P. L. 1888, p. 103.

43. SEC. 1. That if in the judgment of the state board of health it is found that clerical aid is needed by the secretary of the said board in dealing with the investigations and inquiries authorized by the act to which this is a supplement, and in the general necessary work of his office, it shall be lawful for the board to employ for this purpose so much of the appropriation of said board not exceeding eight hundred dollars as it may deem necessary.

State board may employ portion of appropriation for clerical assistance to the secretary of the board.

## Supplement.

Approved February 25, 1889.

P. L. 1889, p. 27.

44. SEC. 1. That local boards of health in densely-populated townships, in which there is a public water-supply, shall, in addition to the powers enumerated in the act to which this is a supplement, have power to pass, alter or amend ordinances and make rules or regulations within their respective jurisdictions :

Local boards of health in densely-populated townships may pass ordinances for :

I. To compel, prescribe, regulate and control the plumbing, ventilation, and drainage of all buildings, public and private, and the connection thereof with outside sewers, cesspools or other receptacles, and to require plans for the same, with necessary drawings or descriptions, to be submitted to said boards for inspection and approval, and to require all master and foreman plumbers and all building contractors to register their names and addresses at the office of said board ;

Plumbing, drainage, &c.

II. To secure the sanitary condition of all buildings, public and private.

Sanitary condition of buildings.

45. SEC. 2. That any such board of health may, by resolution, delegate any portion of its powers to any member of the board, or to any officer thereof, to be exercised only when the board is not in session, and any notice by any member of the board, or by any officer thereof, shall be notice by the board, and the person served therewith shall be bound thereby.

May delegate its power to any member.

## Supplement.

Approved May 9, 1889.

P. L. 1889, p. 401.

46. SEC. 1. That all local boards of health shall, in addition to the powers now vested in them, have power to pass, alter or amend ordinances and rules within their respective jurisdictions ; to license and regulate persons to engage in the business of cleaning cesspools and privies ; to fix the fees that shall be charged for each license granted, not exceeding twenty dollars for each vehicle or conveyance ; to prohibit unlicensed persons from engaging in said business, and to require all vehicles and conveyances used in said business to be approved by the local board of health of the jurisdiction in which the same may be used.

Local boards may pass, alter, &c., ordinances for licensing persons engaged in the business of cleaning cesspools, &c.

47. SEC. 2. That each license granted under the provisions of the foregoing section shall continue for the term of one year from the date of granting the same ; *provided*, that if any person licensed as aforesaid, or any of his employes, servants or agents, shall violate any ordinance or rule of said board in cleaning any cesspool or privy, or in removing the contents thereof, such license may, in the discretion of the board which granted the same, be revoked by said board.

License to continue for one year.

Proviso.

48. SEC. 3. That all local boards of health except township boards of health which now have, or may hereafter pass an ordinance or ordinances under the power now conferred by law, requiring that the plan of the plumbing or drainage system to be constructed in any building within their respective jurisdictions, shall be filed in the office of the board of

Local boards may charge fee for filing plan of plumbing or drainage system.

health, shall have the power to charge a fee not exceeding two dollars, to be paid by the owner or other person filing said plan to the said board of health, on filing said plan.

## Supplement.

Approved March 29, 1892.

P. L. 1892, p. 343.

49. SEC. 1. That section twelve of the act entitled "An act to establish in this state boards of health and a bureau of vital statistics, and to define their respective powers and duties," approved March thirty-first, one thousand eight hundred and eighty-seven, be amended so as to read as follows :

What ordinances, &c., local boards may pass, and how.

[That the said local boards of health shall have power to pass, alter or amend ordinances, (a) and make rules and regulations in regard to the public health within their several jurisdictions, for the following purposes, but such ordinance shall have three readings before its final passage, and at least one week shall intervene between the second and third readings of said ordinance and a notice stating the title of said ordinance and the date when it passed its second reading, shall be published at least one week prior to its final passage in at least one newspaper published in the township, city, town, borough or other local municipal government, if any newspaper is published therein, and if there be no newspaper published therein, then in some newspaper of the county circulating in such township, city, town, borough or other local municipal government :

Adulteration of food, &c.

I. To aid in the enforcement of the law as to the adulteration of all kinds of food and drink, and to prevent the sale or exposure for sale of any kind of meat or vegetable that is unwholesome or unfit for food ;

Define nuisances.

II. To define and declare what shall constitute nuisances in lots, streets, docks, wharves, vessels and piers and all public or private places ;

Contagious diseases, &c.

III. To prevent the spreading of dangerous epidemics or contagious diseases, and to declare that the same has become epidemic, and to maintain and enforce proper and sufficient quarantine whenever deemed necessary ;

Keeping of animals, &c.

IV. To regulate, control and prohibit the keeping or slaughtering of all kinds of animals ;

Offal, &c.

V. To regulate, control and prohibit the accumulation of offal and all decaying or vegetable substances ;

Prohibit and remove nuisances.

VI. To prohibit and remove any offensive matter or abate any nuisance in any public highway, road, street, avenue, alley or other place, public or private, and to cause the removal at the expense of the owner ;

Return of births, &c.

VII. To compel the return of all births, deaths and marriages by physicians, midwives, nurses, clergymen, magistrates and other persons professionally officiating at such death, birth or marriage ;

Tenement-houses, &c.

VIII. To secure the sanitary condition of tenement-houses, jails, prisons and all public buildings ;

Cleaning sewers, &c.

IX. To regulate, control or prohibit the cleaning of sewers, the dumping of garbage, the filling of sunken lots or marsh lands, and to provide for the filling up of such lots or lands ;

Cesspools, &c.

X. To regulate and control the method of construction, the location, the method or manner of emptying or cleaning, and the frequency of cleaning of cesspools and privies ;(b)

House drainage, &c.

XI. To regulate and control the mode of connection of house drainage and plumbing with outside sewers, cesspools or other receptacles ;

Water-supply.

XII. To protect the public water-supply and prevent the pollution of any stream of water or well, the water of which is used for domestic purposes, and to order not to be used or closed any well, the water of which is polluted or detrimental to the public health ;

(a) The regulations required to be passed by ordinance are such as prescribed general rules with respect to the several matters entrusted to these boards, and a particular permit authorizing the doing of that which had already been authorized by ordinance may be granted by resolution. *Courter v. Newark*, 25 Vr. 325.

(b) The power to designate a place for the deposit of night-soil, although not given to health boards in express terms, is necessarily incident to the general jurisdiction of such bodies over cesspools and the removal of their contents. *Courter v. Newark*, 25 Vr. 325.

XIII. To remove persons infected to a suitable place, in case of contagious or infectious disease, where, in the judgment of the board, such removal is necessary and can be accomplished without any undue risk to the person or persons diseased, and to disinfect the premises when deemed necessary ;

Remove persons having contagious disease, &c.

XIV. To regulate the burial and disinterment of human bodies.]

Burial.

50. SEC. 2. That it shall be the duty of township boards of health to appoint, on the day of their organization, a place, day and hour for a regular meeting for the hearing of complaints, reports and general business, and to cause to be published in the township newspaper, or a paper circulating in the township, notice of the same ; *provided*, that at least one regular meeting shall be held in each year ; *and provided, further*, that special meetings may be called at any time by the president of said township board, or by the state board of health, and for attendance on meetings of said boards of health the members shall receive the sum of two dollars, for each meeting, to be paid in the same manner as members of township committees are paid for their services.

Boards to appoint regular meetings for the hearing of complaints.

Proviso.

Proviso.

51. SEC. 3. That all acts or parts of acts inconsistent with this act be and the same are hereby repealed.

Repealer.

#### Supplement.

Approved March 29, 1892.

P. L. 1892, p. 353.

52. SEC. 1. That whenever an epidemic of any contagious or infectious disease exists or is threatened or any special need arises for the protection of the public health and in the judgment of any local board of health, in any city, borough, town or other local municipal government, the expenditure of a greater sum than that already appropriated to said board for the current year is necessary, the said board of health shall so certify to the common council or other governing body having control of the finances of such city, borough, town or other local municipal government, and thereupon such local municipal authorities may appropriate and pay to such board of health such sum or sums as such board of health may certify to be necessary, and if the funds at the disposal of such local municipal authorities are not sufficient to make such payment, such local municipal authorities may borrow such sum or sums on the credit of the municipality and the said common council or other governing body may appropriate and pay to the said board of health the sum necessary for such additional expenditure.

Local boards of health may expend more than appropriation in certain cases.

To apply to governing body of city, &c., for increased appropriation.

#### Supplement.

Approved March 17, 1893.

P. L. 1893, p. 378.

53. SEC. 1. That whenever the state board or any local board of health, in order to prevent the spread of contagious disease, destroy, or order to be destroyed, personal effects or bedding, it shall be the duty of the said board to make, or cause to be made, an inventory of the said personal goods, and immediately thereafter to certify the value of said personal goods so destroyed to the state treasurer, in case they have been destroyed by the state board of health, and to the municipal authorities in case of local boards, and it shall be the duty of the state treasurer or municipal authority to pay over to the owner of said goods, or his or her legal representatives, the sum so certified.

Owner of goods destroyed by order of state or local board of health to prevent spread of disease to be reimbursed.

54. SEC. 2. That all acts and parts of acts inconsistent herewith be and the same are hereby repealed, and that this act shall take effect immediately.

Repealer

#### Supplement.

Approved March 17, 1893.

P. L. 1893, p. 405.

55. SEC. 1. That all police justices, recorders, justices of the peace and all other magistrates are hereby authorized on complaint founded on information and belief, supported by oath or affirmation of any officer or agent of the state board of health or of any local board of health that there is in any dwelling-house, store, stable or any building of any kind whatsoever any nuisance affecting health or any person sick of any contagious or

Police justices, &c., authorized to issue warrants to search dwelling-houses, &c., for nuisances affecting health.

infectious disease, or any condition of contagion or infection which may have been caused by anyone recently sick of any such disease in such dwelling-house, store, stable or any other building, to issue a warrant directed to the sheriff of the county within which such complaint shall be made, or to any constable, marshal, police officer or to any officer or agent of such board of health, directing him, them or any of them to search in such dwelling-house, store, stable or other building for such nuisance affecting health; or for any person sick of any contagious or infectious disease, or for any condition of contagion or infection which may have been caused by anyone recently sick of any such disease in such dwelling-house or other place as aforesaid, and if such nuisance be found, to abate the same; and if such sick person be found to deal with him according to law and the ordinances of such board of health; and if such condition of contagion or infection be found to exist, to destroy the same by means of proper disinfection.

Nuisance to be abated.

Return to be made.

Who are directed to assist officers.

**56. SEC. 2.** That the officer to whom such search warrant shall be directed shall make return of his proceedings thereunder to the court or magistrate by which or whom such warrant may be issued.

**57. SEC. 3.** That the sheriff of the county and all constables, marshals and police officers of any county, city, borough or town, or such of them as shall be required are hereby directed if required by any officer to whom such warrant may be directed, to be present and assist in the execution thereof.

#### Supplement.

Approved March 27, 1893.

P. L. 1893, p. 485.

Local board of health may prescribe a penalty for violation of ordinances, &c.

Board not required to provide a penalty specific in amount.

Proviso.

Repealer.

**58. SEC. 1.** That any local board of health may prescribe a penalty for the violation of any ordinance, section of code, or amendment thereof, heretofore or hereafter passed by such board, not to exceed one hundred dollars and not less than two dollars.

**59. SEC. 2.** That such board shall not be required to provide a penalty specific in amount for the violations referred to in section one hereof, but they may provide that the penalty shall not be less than one given sum nor greater than another given sum, the amount of such penalty between the maximum and minimum inclusive, shall be left to the discretion of the court or magistrate before whom complaint may be made; *provided, however,* that this act shall not be construed so as to invalidate any ordinances now in force.

**60. SEC. 3.** That all acts and parts of acts in conflict herewith be and the same, in so far as they may conflict, are repealed.

#### Supplement.

Passed May 24, 1894.

P. L. 1894, p. 495.

State board may abate nuisance within jurisdiction of local board.

**61. SEC. 1.** That whenever any nuisance or source of foulness within the limits of the territorial jurisdiction of any local board of health of this state is of such a nature that, in the opinion of the state board of health, it is hazardous to the health of persons residing within the limits of the jurisdiction of such local board, it shall be lawful for the state board of health to cause a notice in writing, signed by the secretary of said board, to be sent to such local board, requiring it to cause such nuisance or source of foulness to be abated within such time as said state board by said notice may specify, and if no action for the abatement therefor shall be taken by such local board within the time specified in such notice, or if in the opinion of the state board the action of the local board shall not be such as the necessities of the case seem to the state board to require, then it shall be lawful for such state board to file a bill in the court of chancery in the name of the state on the relation of such board, for an injunction to prohibit the continuance of such nuisance or source of foulness.

**62. SEC. 2.** That whenever any nuisance or foul odors, injurious to the public health within the territorial jurisdiction of any local board of health, shall have a source or origin outside of the limits of such territorial jurisdiction, it shall be lawful for the state board of health to file a bill in the

May file bill in chancery to abate nuisances, whose origin is outside the jurisdictional limits of the local board.

court of chancery, in the name of the state, on the relation of such board, for an injunction to prohibit the continuance of such nuisance or source of foulness or ill health.

**63. SEC. 3.** That actions instituted under the authority of either of the two preceding sections shall proceed in the court of chancery according to the rules and practice in such cases on the relation of individuals, and cases of emergency shall have precedence over other litigation pending at the time in said court, and may have final hearing within such time and on such notice as the chancellor may direct.

Actions to have precedence.

**64. SEC. 4.** That in every such action in which it shall be ascertained by the court of chancery that such nuisance or source of foulness or ill health existed at the time of the filing of the bill substantially as therein set forth, the court shall have power to abate the same by an injunction or otherwise, according to the practice of the court, and may charge the costs of such action upon the property whereon such nuisance or source of foulness or ill health is found, and enforce the payment of the same by sale of said property or any part thereof by writ of fieri facias, or the said court may order the person or corporation which caused such nuisance or source of foulness or ill health, or allowed the same to continue, to pay such costs, and may enforce obedience to such order.

Court may issue injunction to abate nuisance.

May sell property to pay costs.

**65. SEC. 5.** That in case no such nuisance shall be found to exist, costs shall not be awarded as of course against the state board of health, but only in case it shall appear to the chancellor that no probable cause existed for bringing such suit.

When costs shall not be awarded.

**66. SEC. 6.** That all acts and parts of acts inconsistent with this act are hereby repealed.

Repealer.

#### Supplement.

Approved March 28, 1895.

P. L. 1895, p. 752.

**67. SEC. 1.** That when the state board of health, or any officer thereof, duly authorized in writing by such board to act for or on behalf of said board, shall have reason to believe that any milk has been contaminated by the emanations, exhalations or discharges of any person sick with communicable disease, it shall be lawful for the said state board of health, or the officer so authorized to act in the premises, to prohibit the transportation or sale of any milk suspected to be contaminated as aforesaid, and also to prohibit the transportation or sale of any milk which may be produced, stored, kept or found upon any premises infected by such disease; such prohibition shall continue until the state board of health, or the officer authorized to act in the premises as aforesaid, shall in writing remove such prohibition.

Transportation and sale of contaminated milk shall be prohibited.

**68. SEC. 2.** That any person or persons who shall transport or sell any milk, the sale and transportation of which has been prohibited, pursuant to the provisions of the first section of this act, shall be liable to a penalty of fifty dollars, to be recovered by the state board of health in an action upon contract for the uses of the state of New Jersey in any court of record within said state.

Penalty.

#### An act to re-organize boards of health in cities of the first class in this state.

Approved May 15, 1894.

P. L. 1894, p. 344.

**69. SEC. 1.** That where in any city of the first class in this state the members of the boards of health of such city are now or hereafter may be appointed by the mayor of such city, such board of health shall consist of ten legal voters of such city to be appointed by the mayor of such city within five days after the passage of this act, and on the second Monday of May in each second succeeding year hereafter, five of which said commissioners shall be selected and appointed from the political party which, at the last preceding election for mayor of said city, cast the largest number of votes for mayor, and five from the political party at said election casting the next largest number of votes; the commissioners so appointed shall serve for the term of two years and until their successors shall be appointed and qualified.

Boards of health in cities of the first class.

Board shall be non-partisan.

Shall serve for two years.

Present offices vacated.

**70. SEC. 2.** That the members of the board of health in such cities appointed prior to the passage of this act shall continue in office until the appointment of their successors hereunder, at which time their respective offices shall become vacant, notwithstanding they may have been elected or appointed for a longer term.

Vacancies shall be filled for unexpired term only.

**71. SEC. 3.** That any vacancy which shall happen in the office of member of the board of health in such city shall be filled by the mayor of said city for the unexpired term only, and that the member so appointed to fill such vacancy shall be selected by the mayor from the same party as the member for whose expiring term he is appointed.

Terms of present officers and employes shall cease.

**72. SEC. 4.** That the terms of office of all officers and employes appointed by boards of health in any such city shall cease on the first day of June, one thousand eight hundred and ninety-four, notwithstanding such officers or employes may have been appointed for a longer term, and that such officers and employes shall receive and be paid as salary or compensation for services rendered up to said date, that part of the salary or compensation proportioned to the actual time served by them in said office or employment.

Powers of, under this act.

**73. SEC. 5.** That the boards of health provided for by this act shall perform all the duties and possess all the powers, and be subject to all the liabilities now or hereafter conferred upon boards of health in such cities by the laws of this state.

Repealer.

**74. SEC. 6.** That all acts and parts of acts inconsistent with the provisions of this act be and the same are hereby repealed, and this act shall take effect immediately.

**An act concerning boards of health in cities of the first class.**

P. L. 1895, p. 492.

Approved March 22, 1895.

Board may grant and regulate permits and fix fees therefor.

**75. SEC. 1.** That the boards of health in cities of the first class are hereby authorized to grant and regulate permits incident to health matters and fix the fees to be paid therefor.

May pass, alter and repeal ordinances and fix fines and penalties.

**76. SEC. 2.** That said boards of health in said cities of the first class be and are hereby empowered to pass, enact, alter, amend and repeal ordinances relating to the public health of said cities, and fix the amount of fines and penalties for the violation of said ordinances; the method now in use in said cities for the passing, enacting, altering, amending and publishing ordinances in said cities to be the method used to pass, enact, alter, amend, repeal and publish the ordinances herein mentioned; *provided, however,* that in any county of this state wherein there is established by law a county board of health and vital statistics, such board shall be and hereby is empowered to make ordinances in relation to, and for the protection of the public health and the registration of vital facts or statistics in and for such county; *and provided, further,* that no ordinances to be enacted by any board of health in cities of the first class, or any county board of health, shall be deemed of any force and effect within the limits of any city of the first class located in any county in which there may be established any such county board of health, until the said respective boards shall agree thereto and by ordinance enact and define their separate and respective jurisdictions within the limits of such city.

May provide for registration of vital statistics.

Proviso.

Repealer.

**77. SEC. 3.** That all acts and parts of acts, inconsistent with this act, are hereby repealed, and that this act shall take effect immediately.

**An act to authorize the board of health in cities of the first class in this state to condemn and prohibit the sale or use of impure ice or ice cut from polluted streams.**

P. L. 1895, p. 710.

Approved March 23, 1895.

Boards of health in cities of first class may pass ordinances prohibiting use or sale of impure ice, &c.

**78. SEC. 1.** That the board of health of each of the cities of the first class in this state shall have authority to provide by ordinance for the prohibition of the use or sale of impure ice or ice cut from polluted ponds or streams, and in order to properly carry out and enforce the provisions of such ordinance to provide that all dealers in ice for domestic or public use

shall obtain from the health authorities of such cities a permit, and to fix in such ordinance a penalty for the violation of the same, which shall not exceed a fine of fifty dollars for each offense. Penalty.

**An act relating to boards of health in cities of this state containing a population of over one hundred thousand.**

Approved March 5, 1895. P. L. 1895, p. 156.

**79. SEC. 1.** That in cities containing a population of over one hundred thousand inhabitants the board of health of such cities shall consist of not less than five nor more than ten members, who shall be appointed in such manner and hold their respective offices for such terms as the board of aldermen, common council or other governing body may by ordinance provide; if any vacancy shall occur in any such board, it shall be filled in the same manner in which the original appointments were made, but for the unexpired term only. Boards of health in cities having a population of over 100,000 inhabitants.

**80. SEC. 2.** That any board of health now existing in such cities shall be deemed, held and taken to be the board of health created under the provisions of this act, and every such board is hereby perpetuated and continued, and is hereby authorized, without re-organization, to exercise all the powers and required to perform all the duties applicable to boards of health under the laws of this state; the members of every such board shall continue in office until the expiration of the terms for which they were originally appointed; and all ordinances, rules and regulations heretofore adopted or passed by any such board of health as aforesaid which might be adopted or passed under the authority of this act shall continue to be the ordinances, rules and regulations of such board and shall be of the same force and validity as if they had been actually adopted or passed under the provisions and authority of this act. Existing boards recognized and continued.

**81. SEC. 3.** That the said boards of health in said cities are hereby authorized to grant and regulate permits and fix the fees to be paid therefor. Ordinances, &c., continued in force.

**82. SEC. 4.** That said boards of health in said cities be and are hereby empowered to pass, enact, alter, amend and repeal ordinances relating to the public health of said cities, and fix the amount of fines and penalties for the violation of said ordinances, and provide for the collection, appropriation and disbursement of the same; the method now in use by the boards of health in said cities for the passing, enacting, altering, amending and publishing ordinances in said cities to be the method used to pass, enact, alter, amend, repeal and publish the ordinances herein mentioned. Boards may grant permits and fix fees therefor.

**83. SEC. 5.** That all acts and parts of acts which in anywise conflict with the provisions of this act, be and the same are hereby repealed, and that this act shall take effect immediately. May pass, alter, amend and repeal ordinances. And fix penalties.

**An act respecting local boards of health in cities of this state.**

Approved March 19, 1895. P. L. 1895, p. 347.

**84. SEC. 1.** That where the board of health of any city in this state shall have established or shall hereafter establish a plant for the production of diphtheria anti-toxin serum, and shall be engaged in the production of diphtheria anti-toxin serum, that such board of health shall have power from time to time and at such price as they shall determine, to sell to any other municipality or to any person desiring to purchase the same, such surplus diphtheria anti-toxin serum as they may have and which is not needed in the city in which such health board is located. Surplus anti-toxin serum manufactured by city boards of health may be sold.

**An act concerning registrar of vital statistics in cities of the second class in this state.**

Approved March 21, 1895. P. L. 1895, p. 401.

**85. SEC. 1.** That in all cities of the second class of this state having over fifty thousand inhabitants the clerk of the city council, board of aldermen or other governing body shall be registrar of vital statistics. In cities of the second class, city clerk to be registrar of vital statistics.

**An act to authorize cities to make additional appropriations for purposes of public health.**

P. L. 1883, p. 32.

Approved February 13, 1883.

Cities may make additional appropriations in case of epidemics or contagious diseases.

**86. SEC. 1.** That whenever the regular annual appropriation in any city, made for purposes of public health, shall be found, on account of the prevalence of epidemic or contagious disease or diseases, to be inadequate for the carrying out and enforcement of proper measures to preserve and protect the public health, it shall be lawful for the board of aldermen or common council or other body charged by law with the appropriation of moneys for city purposes, of such city, to authorize, by resolution, the appropriation and expenditure of such additional sum as shall be necessary for the purposes aforesaid; and in case there shall not be sufficient surplus money in the city treasury, not otherwise appropriated, to answer such additional expenditure, it shall be lawful for the authorities of the city to provide therefor by temporary loan or loans, and the amount of such loan or loans shall be incorporated in the next annual tax levy.

**An act respecting the cutting and sale of ice in cities of this state, and giving to boards of health in such cities power to regulate and control the same.**

P. L. 1885, p. 104.

Approved March 13, 1885.

No ice to be cut or sold within limits of city without permit from board of health.

**87. SEC. 1.** That no ice shall be cut for the purpose of being sold or used in any city of this state from any pond, creek or river within the limits of any such city, unless a permit therefor shall be first obtained from the board of health of such city, and no person or persons shall sell or deliver any ice in any city in this state without first obtaining a permit therefor from the board of health of such city, and it shall be lawful for any such board of health to refuse a permit and to revoke any granted by them as aforesaid when in their judgment the use of any ice cut or sold, or to be cut or sold, under the same is or would be detrimental to the public health.

Board may prohibit sale and use of ice in certain cases.

**88. SEC. 2.** That the board of health of any city may prohibit the sale and use of any ice within the limits of such city when in their judgment the same is unfit for use, and the use of the same would be detrimental to the public health, and the said board may prohibit and through its officers stop, detain and prevent the bringing of any such ice for the purpose of sale or use into the limits of any such city, and also in the same manner stop, detain and prevent the sale or use of any such ice found within the limits of such city.

Penalty for violating provisions of act.

**89. SEC. 3.** That any person or persons who shall violate any of the provisions of this act or who shall attempt to cut, sell or bring into any city any such ice after being notified by said board of health or its officers not to do so, shall be guilty of a misdemeanor, and on conviction shall be sentenced to imprisonment in the county penitentiary for a term not to exceed six months, or to pay a fine of five hundred dollars, or both, in the discretion of the court; and it shall be lawful for the officers of said board of health or the police officers of any such city to arrest on sight any person or persons who shall be found violating any of the provisions of this act.

**Supplement.**

Approved March 8, 1888.

P. L. 1888, p. 160.

Provisions of act extended.

**90. SEC. 1.** That the provisions of the act to which this act is a supplement, be and the same hereby are extended to all boroughs, townships, towns and other local municipal governments in the state.

**An act concerning the use of moneys collected for permits issued by the health department of cities of this state.**

Approved May 2, 1885. P. L. 1885, p. 323.

**91. SEC. 1.** That any money collected by the health department of any city of this state for any permits issued by such department or any officer thereof, may hereafter be used by such department to prevent the spread of disease, the abatement of nuisances and for like sanitary purposes within such city; all such moneys shall, however, be accounted for at the end of each fiscal year in a detailed written statement to the board or department of such city having control of the finances thereof; and any unexpended balance on hand at that time exceeding the sum of two hundred dollars shall be paid over to the city treasurer or other like officer entrusted with the keeping or custody of the moneys and securities of such city.

Money collected in cities for permits issued by health department, how used, &c.

**II. County boards of health.**

**An act to render more effective the ordinances of county boards of health and vital statistics in the several counties of this state, and to define their powers and duties.**

Approved March 12, 1880. P. L. 1880, p. 278.

**92. SEC. 1.** [Supplied by Secs. 100 and 127, *post.*]

**93. SEC. 2.** [Supplied by Sec. 102, *post.*]

**94. SEC. 3.** That the board of chosen freeholders of such county shall appoint to said board a counsel, who shall be a counselor-at-law of this state, and who shall receive an annual salary of one thousand dollars, to be paid by said chosen freeholders, and who shall hold office for the term of two years from the date of his appointment and until his successor is appointed, and whose duties shall be to bring and defend all suits to which said board of health is a party, and to be the legal adviser of said board of health whenever called upon by said board of health; *provided*, that the term of the counsel of any board of health affected by this act who shall be acting as such at the time of the passage of this act shall continue for two years from the date of such passage.

Board of chosen freeholders to appoint a counsel for county board.

Salary.

Duties.

Proviso.

**95. SEC. 4.** [Supplied by Sec. 103, *post.*]

**96. SEC. 5.** [Supplied by Sec. 104, *post.*]

**97. SEC. 6.** [Supplied by Sec. 106, *post.*]

**98. SEC. 7.** [Supplied by Sec. 110, *post.*]

**99. SEC. 8.** That it shall not be lawful for any sexton, undertaker, or other person engaged in the profession or business of an undertaker, to act as deputy registrar of vital statistics, or to issue permits for the burial of the dead, either to themselves or to any other person in this state.

Unlawful for any sexton or undertaker to act as deputy registrar or to issue permits for burial.

**An act concerning county boards established for the protection of the public health and the registration of vital facts and statistics in counties of this state.**

Approved May 5, 1884. P. L. 1884, p. 282.

**100. SEC. 1.** [Amended by Sec. 127, *post.*]

**101. SEC. 2.** That said board may adopt rules or by-laws for its government and that of its officers and employes.

Board may adopt rules, &c.

**102. SEC. 3.** That said county board may appoint a health inspector for said county, who shall be a regularly-graduated physician or chemist of some reputable school, university or college, who shall receive and be paid by the board of chosen freeholders of such county an annual salary of not over fifteen hundred dollars a year, and who shall be subject to said board in the carrying out of their ordinances and the laws of this state in relation to the public health and the registration of vital statistics, and in a general supervision of the health and sanitary condition of said county, and whose office hours shall be from nine A. M. to five P. M. daily, legal holidays excepted, at the office of said board, or going to and fro in said county in

Authorized to appoint a health inspector.

Salary.

When to be on duty.

the performance of his duties ; and said inspector shall be subject to duty at such other hours and times as said board shall, by resolution, determine to be necessary.

Board authorized to pass, alter, amend or repeal ordinances in relation to public health :

Adulteration of food, &c.

Define and abate nuisances.

Spread of diseases.

Keeping of animals, &c.

Offensive trades, &c.

Night scavengers, &c.

Accumulating of manure, &c.

Prohibit and remove nuisances.

Registration of physicians, &c.

Compel return of births, deaths and marriages.

Registry of vital statistics.

All other purposes connected with public health.

Tenement-houses, &c.

Cleaning of sewers, &c.

Filling in sunken lots.

Ordinances may be adopted in form of code and published.

**103. SEC. 4.** That said board may and shall have power, at any special, regular or adjourned meeting thereof, to pass, alter, amend or repeal ordinances in relation to the public health and the keeping of a registry of vital facts or statistics in said county, and in so doing—

I. To provide against the adulteration of all kinds of foods and drinks, or any kind of meat or vegetable not fit for human food, sold, for sale, or exposed for sale or brought into said county for sale ;

II. To declare what shall be nuisances in lots, streets, docks, wharves, vessels, piers and all public or private places in said county or any part thereof, and to provide for the removal or abatement of such nuisances ;

III. To prevent the spread of any dangerous epidemic or contagious diseases in said county or any part thereof, and to declare when the same has become epidemic ;

IV. To regulate, control or prohibit the keeping of all kinds of animals, birds and beasts and the slaughter of the same, in said county or any part thereof ;

V. To regulate, control or prohibit the carrying on of all trades, manufactures or business in said county, which be noxious or offensive to the inhabitants of such county or any part thereof, and which is attended by noisome or injurious odors, and otherwise injurious to their estates. (a)

VI. To regulate, license and control all night scavengers, all dealers in bones, fat and animal offal or refuse whatsoever ; also, all bone and fat-boiling or grease-making establishments ; to regulate and control the removal of all night-soil in said county, and the cleaning of all privies, vaults, sinks and cesspools in said county or any part thereof ;

VII. To regulate, control and prohibit the accumulating of manure, compost and all decaying or vegetable substances, in any place in said county, public or private ;

VIII. To prohibit and remove any nuisance or offensive matter in any public highway, road, street, avenue, alleyway or other place, public or private, in said county, and to cause the removal of the same at the expense of the owner ;

IX. To provide for the proper registration of all physicians, nurses and midwives in said county ;

X. To compel the proper return of all births, deaths and marriages in said county, by physicians, midwives, nurses, clergymen, magistrates and all others professionally officiating at such death, birth or marriage, under the penalty for failure so to do as provided in the acts regulating the return of vital statistics in this state ;

XI. To regulate the keeping of a registry of the vital statistics of said county in accordance with the state law as to the same ;

XII. For all other such purposes as are connected with the public health or the registration of vital statistics and the practice of physicians, midwives and nurses in said county, with relation to such object ;

XIII. To secure the sanitary condition of tenement-houses, prisons and all public buildings in said county ;

XIV. To regulate, control and prohibit the cleaning of sewers and the dumping of garbage, and the filling of sunken lots or marsh lands in any part of said county ;

XV. To provide for the filling of sunken lots which have become the repositories of stagnant water in the built-up portions of such county.

**104. SEC. 5.** That in the making of ordinances, said board may adopt and ordain or enact the same in the form of a code or each ordinance separate and apart by itself, and in all cases shall cause said code, ordinance, or ordinances to be published for at least three weeks, once in each week, in at least one of the official newspapers of said county, the same to be paid for

(a) A license from a county board of health to manufacture "fertilizers and materials" does not authorize such manufacture in a way to create a public nuisance. *Garrett v. State*, 20

*Vr.* 94. The powers conferred by the legislature on boards of health of this state are to suppress and restrain public nuisances, not to legalize their creation or continuance. *Id.*

by the board of chosen freeholders of such county ; and if in the form of a code, said board may add to, take from, alter, amend or repeal any section of said code as they may see fit, by publishing such alteration, amendment or repealer as aforesaid.

**105. SEC. 6.** That said board may charge a license fee in all cases where it is authorized to do so by this act, not exceeding twenty dollars annually ; *provided*, that this section shall not apply to any charge or fee in this act otherwise specially provided for. [See Sec. 112, *post*.]

License fee may be charged.

Proviso.

**106. SEC. 7.** That said board may prescribe a penalty for the violation of any of their ordinances or sections of any code they make and ordain as aforesaid, not to exceed one hundred dollars, and not less than ten dollars, and every district court in any city in such county, and every justice of the peace in such county, and every police justice or recorder in any city in such counties, is hereby empowered on oath or affirmation made according to law, that any person or persons has or have violated any of the ordinances of any such board as aforesaid, to issue process in an action of debt at the suit of any such board as aforesaid, either in the nature of a summons or warrant, against the person or persons so charged, which process shall, when in the nature of a warrant, be returnable forthwith, and when in the nature of a summons, shall be returnable in not less than one nor more than ten entire days, such process shall state what ordinance or section thereof of any such board is alleged to have been violated by the defendant or defendants, and the penalty demanded, and on the return of such process, or at any time to which the trial shall have been adjourned, the said court, justice of the peace, police justice or recorder shall proceed to hear testimony and to determine and give judgment in the matter, without the filing of any pleadings ; and a copy of the ordinance alleged to have been violated, certified to under the hand and seal of the clerk or president of such board, shall be taken as full and legal proof of the existence of such ordinance, and that all requirements of law in relation to the ordaining, publishing and making of the same, so as to make the same in all respects a legal and binding ordinance, have been complied with, unless the contrary be shown ; and the said court, justice of the peace, police justice or recorder shall, if judgment be rendered for the plaintiff, forthwith issue execution against the goods and chattels and person of the defendant or defendants ; and said court, justice of the peace, police justice or recorder is further empowered to cause any such defendant, who may refuse or neglect to pay the amount of the judgment rendered against him or her, and all costs and charges incident thereto, unless an appeal is granted, to be committed to the county jail for any period not exceeding ninety days, and said court, justice of the peace, police justice or recorder is further empowered, in case any defendant shall have been twice convicted within the space of six months of a violation of the same ordinance, and due proof of the same made, in addition to the payment of the appropriate penalty, to cause said defendant to be imprisoned in the county jail of the county, or the county workhouse, with or without hard labor, for any number of days not exceeding one (——) for each dollar of the penalty ; the officers to serve and execute all process under this act shall be the officers authorized by law to serve and execute process in said courts and before such magistrates and officers as aforesaid, including the constables of such counties and all police officers of said cities, members of said boards ; all police officers, constables and health inspectors shall have the right to arrest, without warrant, any person in their presence violating any of the ordinances of such boards and to take the same forthwith before any police justice, justice of the peace or recorder in said city or county, who shall proceed to hear testimony and give judgment for or against such person so arrested, without any pleadings being filed ; *provided*, such person be shown and have read to him the ordinance for the alleged violation of which he has been so summarily arrested ; *and provided further*, that defendants, in case of an adjournment or postponement of the trial or hearing, may be required to enter into a bond or recognizance in a reasonable sum, not to exceed one hundred dollars in any one

Board may prescribe penalties for violation of ordinances.

Proceedings to recover penalties.

Who to serve process, &c.

Persons violating may be arrested without warrant.

Proviso.

Proviso.

case, for their future appearance to answer any charge made against them or any of them in pursuance of this act.

Proceedings to abate nuisance on private property.

**107. SEC. 8.** That whenever any nuisance, source of foulness, or cause of sickness, hazardous to the public health, shall be found on private property within said county, the said board shall at once notify the owner to remove the same at his own expense within such time as the said board may deem the public health to require, a duplicate of the notification being left with one or more of the tenants or occupants, if the owner resides out of the state or cannot be reached with the notice speedily enough for the necessities of the public health; a notice left at the house or premises with the tenant or occupant shall suffice; if the owner thus notified shall not comply with such notification or order of the said board within the time therein specified, said board shall proceed to remove said nuisance, source of foulness, or cause of sickness, hazardous to the public health, and such board shall have a right to recover, by action of debt, the expenses incurred by such board in such removal, from any corporation or any person or persons who shall have caused or allowed such nuisance, source of foulness, or cause of sickness, hazardous to the public health, and from any owner, tenant or occupant of premises who, after notice as aforesaid, shall have failed to remove such nuisance, source of foulness, or cause of sickness, hazardous to the public health, within the time specified in such notice; and in case such board fail to recover by such action an amount sufficient to defray such expenses, or shall deem it inexpedient to bring such action, they may present a bill, certified by such board or by a majority thereof, for such expenses or for such part thereof as may not have been recovered by such action to the board of chosen freeholders of the county, who shall audit and pay the same in the manner provided for the payment of other bills or claims of said board; *provided, however,* that in case any injunction or stay of proceedings in any form is applied for to prevent any such board from proceeding with the removal of any alleged nuisance, source of foulness, or cause of sickness, hazardous to the public health, such injunction shall not be issued until the said board has been notified to appear and be present at the hearing of such application, but the failure of the owner, tenant or occupant to cause removal, or the refusal of the court applied to, to grant an injunction or stay of proceedings shall not prevent the party or parties making the application from any suit at law and recovery of damages, if the alleged nuisance be shown to have been in no way hazardous or prejudicial to the public health, but in no case shall such damages be allowed or recovered unless it be shown that the board abating such alleged nuisance had no probable cause for their action in the premises.

Injunction not to issue against board without notice.

Board may file bill in chancery for abatement of nuisance.

**108. SEC. 9.** That any such board shall have power and authority in its proper name to maintain any bill in chancery, or other proceeding at law or equity, for the abatement of any public or private nuisance, within the limits of any such county, where it shall be made to appear by the pleadings and proof that such nuisance is of a character for the abatement of which any resident or property-owner living in the neighborhood or vicinity thereof and affected thereby could have maintained a like bill or action, and the court in any such suit shall take like proceedings and grant like injunctions or make such order or decrees as in case of proceedings taken in the name of a resident citizen or property-owner specially injured in person or property by such alleged nuisance. (a)

When costs may be awarded against board.

**109. SEC. 10.** That costs shall not be awarded as of course against such board in case its said bill shall be dismissed, but only in case it shall be made to appear to the chancellor that no probable cause existed for bringing such suit.

(a) This section was not intended to clothe county boards of health with the functions of the attorney-general in cases of public nuisances, but to authorize them to secure for individuals

that protection which equity would afford to those persons upon their own suit. *Board of Health v. N. Y. Horse Manure Co.*, 2 Dick. 1.

**110. SEC. 11.** That any county board of health or county board of health and vital statistics now existing in any county of this state under or by virtue of any law, general or special, the powers and duties of the same shall remain as heretofore except in so far as they have been altered, changed or diminished by this act.

Powers and duties of county boards not altered except by this act.

**111. SEC. 12.** That any ordinance or ordinances of the character provided for in the grants of power contained in this act, heretofore adopted or enacted by any such county board as is named in the preceding section of this act, shall be deemed and taken to be as binding and effective hereafter for the purposes designated in this act as if the same were adopted or enacted in pursuance of this act.

Ordinances heretofore passed deemed binding and effective.

#### Supplement.

Approved April 10, 1885.

P. L. 1885, p. 239.

**112. SEC. 1.** That any such county board as is provided for in the act to which this is a supplement, shall, by virtue of the powers conferred upon it by the fourth section of the said act, have power to fix and charge a reasonable license or permit fee for any license or permit which may be granted by such board under said section; such fee not to exceed twenty-five dollars annually, which said fees may be fixed by ordinance or by resolution of the board.

Board empowered to charge fee for license or permit.

**113. SEC. 2.** That all fees or moneys collected or realized by any such board may be used by it to prevent the spread of disease, the abatement of nuisances and for other sanitary purposes; and all such moneys and fees shall, at the end of each fiscal year, be accounted for in a detailed written statement to the county collector or other like officer having charge of the financial affairs or accounts of the county, and any balance on hand at that time exceeding three hundred dollars shall be paid over to him.

Fees collected, how expended.

**114. SEC. 3.** That any such board shall have power to remove, or cause to be removed, to a proper place, to be by them designated, persons sick with any contagious, pestilential or infectious disease, and said board shall also have power to remove, or cause to be removed, to a proper place, to be by them designated, all things within the county which, in their opinion, shall be infected with any matter likely to communicate disease to the inhabitants thereof, and said board may destroy such things, or cause them to be destroyed, when in their opinion the public safety requires it; and no person shall remove from any vessel, boat, house or place any person sick with any disease mentioned in this section without a permit from such board or a member of it.

Board empowered to remove persons affected with contagious disease.

**115. SEC. 4.** That the place or places to which removals may be made, as provided in the preceding section of this act, shall be provided by the board of chosen freeholders of every such county, and such board shall also provide ambulances or other proper means for making said removals.

Board of freeholders to provide place, &c., for persons removed.

**116. SEC. 5.** That such county board of health may cause any street, avenue, alley or other passage or place whatever to be fenced up or otherwise inclosed if they shall think the public safety requires it, and may forbid and prevent communication with any place infected with any contagious, infectious or pestilential disease except by means of physicians, nurses or messengers carrying necessary advice, medicines and provisions to the afflicted, and said board may put or place, or cause to be put or placed, on or near any place infected with any contagious, infectious or pestilential disease, or with any nuisance dangerous to health, placards or notices to indicate to and warn people of the existence of any such disease; and said board may also, by ordinance, prescribe penalties for any infraction or violation of this section, provided such penalties shall not exceed the penalties provided for in the seventh section of the act to which this is a supplement, and the same may be enforced and recovered in the manner provided for the enforcement and recovery of the penalties mentioned in said section.

Board of health may cause streets to be closed for public safety.

**117. SEC. 6.** That any such board of health may, by resolution, delegate any portion of its powers to any member of the board, or to any officer thereof, to be exercised only when the board is not in session; any exer-

Board may delegate powers to any member thereof.

cise of such powers shall be reported to the board at its next meeting thereafter.

Service of order,  
&c., of board,  
how made.

**118. SEC. 7.** That service of any order, demand, or notice of any such board of health, as also of any summons in any suit or action to recover a penalty or penalties commenced by it, may be made upon any person, firm, copartnership, corporation, company or board, by handing a true copy thereof to such person or to any member of any such firm, copartnership, corporation, company or board, or by leaving the same at his or her residence or usual place of abode; in the absence of such person or member, service as aforesaid may be made upon such person, firm, copartnership, corporation, company or board, by handing a true copy as aforesaid to any agent, manager, superintendent, book-keeper or clerk of the same; and when service of any order, demand, notice or summons as aforesaid shall be made in the manner above provided, such service shall be deemed and taken to be a sufficient and legal service thereof; *provided*, that nothing in this section shall be taken as limiting or affecting the time fixed for appearance to answer or respond to any such order, demand, notice or summons, but same shall remain as heretofore.

Proviso.

Board may prescribe ordinances to regulate the plumbing, ventilating and drainage of buildings.

**119. SEC. 8.** That any such board of health as aforesaid shall have power to prescribe ordinances to regulate and control the plumbing, ventilation and drainage of all buildings, both public and private, erected within the county after the passage of this act, and may require plans for the same, with necessary drawings or descriptions, to be submitted to such board for its inspection and approval; and such board may require all master and foreman plumbers and all building contractors to register their names and addresses at the office of such board, and all city and other local boards of health and health officers are hereby authorized to enforce and carry out the provisions of this section.

Board to enforce laws of state.

**120. SEC. 9.** That it shall be the duty of every board of health to aid in the enforcement of, and so far as practicable, to enforce all laws of this state applicable in said county to the preservation of human life, or the care, promotion or protection of health, and said board may exercise the authority given by said laws to enable it to discharge the duty hereby imposed, and by this section it is intended to include all laws relative to cleanliness and to the use or sale of poisonous, unwholesome, deleterious or adulterated drugs, medicines or food.

May appoint officers, employes, &c.

**121. SEC. 10.** That such board of health shall hereafter have power to control, appoint and supervise all the officers and employes connected therewith or authorized and required to perform service for it in any capacity, and may appoint such sanitary inspectors or officers not exceeding three, and from time to time procure such sanitary engineering service as may be essential for carrying out efficiently the objects, purposes and duties confided to it or which may hereafter be confided to it by any law of this state; said board shall fix the pay and compensation for all services which may be rendered under this section not already fixed by law and the same shall be paid by the county in the same manner that the compensation of the other officers and members of said board is now paid.

Fix compensation.

Expense of abating nuisance to be a lien on property.

**122. SEC. 11.** That any expense incurred by any such board of health in abating any nuisance upon any property in such county, or in the filling up of sunken lots which have become the repositories of stagnant water or are otherwise dangerous to health, shall be a lien on the same, and may be enforced by such board in such manner as it shall by ordinance direct; a record of all such liens and expenses shall be kept in the office of the board in a book to be provided for the purpose, which shall be properly indexed.

Not to be sued for act done in good faith.

**123. SEC. 12.** That no member, officer or agent of such board of health shall be sued or held to liability for any act done or omitted by either person as aforesaid (with good faith and with ordinary discretion), on behalf of or under said board or pursuant to its laws, rules, regulations or ordinances.

Board may appoint agents to aid in enforcing laws.

**124. SEC. 13.** That such board of health shall have power, in its discretion, to appoint such persons as agents to aid in the enforcement of the laws, regulations and ordinances of the same as may volunteer to do so

without any compensation or pay therefor, but the appointment of any such agents may be revoked at any time, and such board may also, in its discretion, furnish such agents and the other inspectors or officers of said board with a suitable badge, to be worn when in the performance of duty.

**125. SEC. 14.** That any member or the clerk of any such board of health shall have power to administer oaths and take testimony and proofs in any investigation or in regard to any matter of which such board shall have jurisdiction, and any person guilty of willfully testifying falsely in such cases shall incur all the pains and penalties of perjury.

Member or clerk of board may examine witnesses.

**126. SEC. 15.** That this act shall be deemed and taken to be a repealer of all other acts and parts of acts, public, general or special, in so far as the same relate to or prescribe a different or contrary system than that provided in this act for the appointment or manner of appointment as well as the control and supervision of any and every inspector, officer or other employe connected with said board or authorized or required in any way to act or perform service for it; *provided*, that it shall not be lawful hereafter for said board to appoint with compensation any health or sanitary inspector than the three (3) provided for in this act, but this restriction shall not apply to cases where such board is authorized to appoint special health inspectors during the prevalence of contagious or epidemic diseases.

Repealer.

Proviso.

#### Amendatory act.

Approved April 21, 1887.

P. L. 1887, p. 211.

**127. SEC. 1.** That section one [see Sec. 100, *ante*] of the above-entitled act be and the same is hereby amended to be and read as follows :

[That in any and every county of this state wherein there is or may be established by law a county board of health, or county board of health and vital statistics, or other like county board for the protection or preservation of the public health, such board shall be and hereby is empowered to enact and make ordinances in relation to and for the protection of the public health and the registration of vital facts or statistics.]

County boards of health established by law empowered to enact ordinances.

### III. Drainage for public health.

#### An act for the improvement of the sanitary condition of cities.

Approved March 14, 1879.

P. L. 1879, p. 276.

**128. SEC. 1.** [Amended by Sec. 140, *post*.]

**129. SEC. 2.** That if the board of health or a majority of the members thereof are of opinion that the place or district by them viewed and inspected, pursuant to the provisions of the first section of this act, is in a condition which is detrimental to the public health by reason of insufficient drainage, and that it is advisable and proper that the same should be drained, they shall so certify to the mayor and council, the mayor and aldermen or other governing body of the city wherein such insufficiently-drained place or district is situate.

Board of health may certify to mayor, &c., that drainage is advisable.

**130. SEC. 3.** That upon receiving the certificate of the board of health that any particular place or district is in a condition detrimental to the public health by reason of insufficient drainage, and that it is advisable and proper that the same should be drained, the corporate authorities of the city in which such place or district requiring to be drained is situated may appoint a competent civil engineer or engineers to make plans and specifications for the building of a sewer or sewers, the erection and construction of pumps, dykes, dams, tide banks and such other works as may be necessary to secure a sufficient and proper drainage of the place or district requiring to be drained. [See Sec. 143, *post*.]

Civil engineer may be appointed to make plans and specifications for the building of sewers, &c.

**131. SEC. 4.** That upon receiving the report of the civil engineer or engineers appointed pursuant to the preceding section of this act, the corporate authorities of such city may, by ordinance, authorize the construction of a sewer or sewers and the erection of pumps, dykes, dams, tide

On receiving report of engineer, sewers may be constructed.

banks and such other works as may be necessary to secure sufficient and proper drainage of the place or district requiring to be drained.

**132.** SEC. 5. [Amended by Sec. 141, *post.*]

**133.** SEC. 6. [Amended by Sec. 142, *post.*]

Costs and expense to be assessed upon real estate benefited.

**134.** SEC. 7. That the costs and expense of constructing such sewer or sewers, pumps, dykes, dams, tide banks and such other works as may be deemed necessary for the purpose aforesaid, shall be assessed upon the real estate specially benefited thereby, in proportion to the benefit received; and that any moneys which may be collected from assessments for any improvements made under the provisions of this act shall constitute a sinking fund, and be inviolably applied to the payment of such bonds or improvement certificates as may have been issued for the payment of said improvement.

Assessment, how made and collected.

**135.** SEC. 8. That such assessment shall be made and collected in the same manner as assessments are made for the construction of sewers in other cases in such city.

Excess of costs over benefits, how raised.

**136.** SEC. 9. That in case the cost of constructing such sewer or sewers, and the erection and construction of such other works as are deemed necessary for the purpose aforesaid, shall exceed the benefit to lands specially benefited thereby, such excess of costs and expenses shall be raised by general taxation, to be assessed, levied and collected in the same manner as taxes for other city purposes are assessed, levied and collected.

Annual appropriation may be made to operate pumps, &c.

**137.** SEC. 10. That in case it is necessary to erect pumps or other works which will require to be operated by steam power or by other artificial means, requiring an annual expenditure of money to operate the same, it shall be the duty of the inhabitants of such city, or of the board of tax commissioners, the board of works, or other body having authority to make appropriations of money to be raised by taxation, to appropriate and cause to be raised annually by taxation, a sufficient sum of money to run and operate such pump or pumps or other works, for the purpose of securing a proper drainage of the place or district required to be drained.

Appointment of engineer, &c., to operate works.

**138.** SEC. 11. That the corporate authorities of such city in which such drainage works shall be erected, shall have power to appoint an engineer or engineers and such other servants and workmen as may be necessary to operate the same, and to fix the compensation to be paid to them respectively.

Limit of bonds to be issued.

**139.** SEC. 12. That no city shall issue bonds in excess of the limit provided by its charter or the several amendments of the same; *and provided further*, that any issue of bonds under this act shall not increase the total indebtedness of any such city to an amount exceeding eight per centum of the assessed valuation of the taxable property of such city.

#### Supplement.

P. L. 1881, p. 261.

Approved March 25, 1881.

**140.** SEC. 1. That section one of the act to which this is a supplement be and the same is hereby amended to read as follows:

County board of health to view district said to have insufficient drainage.

[That whenever a petition signed by at least twenty-five freeholders, residents of any particular city in any county having a county board of health, stating that any particular place or district in said city is in a condition detrimental to the public health, by reason of insufficient drainage, shall be presented to such board of health, it shall be the duty of such board to forthwith appoint a time and place, when and where they will meet to consider said petition; at which time and place said board shall so meet, and shall proceed to the place or district designated in such petition, and carefully inspect and examine the same.]

**141.** SEC. 2. That section five of the act to which this is a supplement be amended to read as follows:

Contracts, how made.

[That the corporate authorities of such city, in case they shall decide to do the work, shall advertise for proposals therefor, as in cases of other improvements made under the charter of such city, and shall award the contract or contracts therefor to the lowest responsible bidder or bidders, who

will comply with all the requirements of such authorities ; *provided, however*, that all bids may be rejected and the work re-advertised if the public interest shall require.]

Proviso.

**142. SEC. 3.** That section six of the act to which this is a supplement be amended to read as follows :

[That the corporate authorities of such city shall have power to issue certificates of indebtedness or improvement certificates to the contractors for such works, or to raise money to pay for said works, by issuing and selling registered or coupon bonds, pledging the credit and property of such city for the payment thereof, payable in not less than two nor more than twenty years from the date thereof, at the discretion of such city authorities, with interest not exceeding six per centum per annum ; which bonds shall be advertised for sale in the official paper or papers of such city, and such other papers as may be designated by the corporate authorities, and shall be sold to the highest bidder ; *provided*, no more bonds shall be issued than shall be necessary to raise sufficient money to pay for the works provided for in this act, and such lands as may be purchased or taken under this act, or the act to which this is a supplement, whereon to locate and place such works ; *provided further*, that nothing in this act, or the act to which this is a supplement, shall authorize the incurring of any bonded or other indebtedness of such city in excess of ten per cent. of the average assessed valuation of property in such city for five years next previous to the time of incurring such debt or making such improvement.]

Certificate of indebtedness or bonds may be issued.

Proviso.

Proviso.

**143. SEC. 4.** That it shall be lawful for the civil engineer or engineers appointed by the corporate authorities of any city to make plans and specifications for the sewers or other works or structures mentioned in the third section of the act to which this is a supplement, his or their agents and assistants or others in their employ, to enter upon all lands or waters within the place or district so requiring to be drained as aforesaid thereto, for the purpose of exploring, surveying, leveling and laying out the route and location of any sewer or sewers, pumps, dykes, dams, tide banks or such other works as may be necessary to secure sufficient and proper drainage of such place or district, doing no unnecessary injury to private or other property ; and when the route or routes or location or locations of such necessary works or structures shall have been determined upon, and a survey of such route or routes, location or locations deposited in the office of the clerk of such city, then it shall be lawful for the corporate authorities of such city, by ordinance, to authorize the construction of a sewer or sewers, and the erection of pumps, dykes, dams, tide banks and such other works and structures as may be necessary to secure sufficient and proper drainage of the place or district requiring to be drained.

Civil engineer may enter upon all lands for surveying, leveling and laying out route of sewers, &c.

When route, &c., is deposited with city clerk, city may construct sewers, &c.

**144. SEC. 5.** That it shall be lawful for the corporate authorities of such city, by their contractors, workmen and other persons in their employ, to enter upon, take possession of, have, hold, use, occupy and excavate any such lands, and to erect such pumps, dykes, dams, tide banks and such other works and structures, and to do all other things which may be suitable and necessary to secure the sufficient and proper drainage of the place or district requiring to be drained, subject to such compensation as is hereinafter directed ; *provided always*, that the payment or the tender of the payment of all damages for the occupancy of the lands through or upon which said pumps, dykes, dams, tide banks, ditches, drains, sluices and such other works or structures may be laid out or located, be made before the corporate authorities of such city, or any person under their direction or in their employ, shall enter upon or break ground in the premises, except for the purpose of surveying and laying out said dykes, dams, tide banks, sewers and other works or structures, unless the consent of the owner or owners of such land be first had and obtained.

Contractors and workmen may enter upon and take possession of lands, &c.

Proviso.

**145. SEC. 6.** That it shall be lawful for the corporate authorities of such city, or their officers or agents, to contract with the owners of any land that may be required for the purpose of this act for the use and purchase

Corporate authorities may contract with owners of land required.

Proceedings in case owners and authorities cannot agree.

Justice of supreme court to appoint commissioners.

Commissioners to meet, make award and file same in clerk's office.

Parties aggrieved may appeal to circuit court.

Proceedings on appeal.

thereof ; and in case they cannot agree with such owner or owners, or if, by reason of the absence or legal incapacity of such owner or owners, no such agreement can be made, a particular description of the land so required for the erection and construction of such pumps, sewers, dykes, tide banks and other works and structures shall be given in writing, under the oath or affirmation of some engineer or proper agent of such city, and also the name or names of the occupant or occupants, if known, and their residences, if the same can be ascertained, to any justice of the supreme court, who shall cause the said city authorities to give notice thereof to the persons interested, if known, and in this state, or if unknown, or out of this state, to make publication thereof as he shall direct, for any term not less than one week, and not more than one month, and to assign a particular time and place for the appointment of the commissioners hereafter mentioned, at which time and place, upon satisfactory evidence to him of the service or publication of such notice aforesaid, he shall appoint three disinterested commissioners, freeholders of said county, to assess the price or value of said land and all damages sustained by the erection or construction of such works, which commissioners shall be sworn or affirmed faithfully to execute the duties of said appointment, and after like notice to said owners of the time and place of meeting of said commissioners, shall meet, view the premises, and hear the parties and evidence, if desired, and thereupon make such decision, award and report as to the value of said land and the damages sustained as to them shall seem just and proper, and within ten days thereafter transmit such decision, report and award, together with a description of the said land and the quantity taken, in writing, under their hands and seals, or under the hands and seals of any two of them, to the clerk of the city wherein said lands are, together with the aforesaid description of the land, and the appointment and oaths or affirmations aforesaid, there to remain as a public record ; and thereupon and upon payment, or tender of payment, of the amount so awarded as hereinafter provided, the corporate authorities of such city are hereby empowered to enter upon and take possession of said lands for the purposes aforesaid, and the said city shall thereby become seized and possessed in fee-simple of the land so valued and appraised as aforesaid.

**146. SEC. 7.** That if either party shall feel aggrieved by the decision and award of said commissioners, the party so aggrieved may appeal to the circuit court of the county in which such city may be situate, at the next term after such decision and award, by proceeding in the form of petition to the court, with five days' notice in writing to the opposite party of such appeal, which proceeding shall vest in said circuit court full right and power to hear and determine the same ; and if required, said court shall award a venire, and direct a proper issue to be framed for the trial of said controversy, and may, in its discretion, order a jury to be struck, and a view of said premises to be had, and the said issue to be tried at the next term of said court to be holden in said county, upon like notice, in the same manner as other issues in the said court are tried ; and it shall be the duty of the said jury to assess the value of the said land and all damages sustained, and if the said jury shall find a greater sum than shall have been awarded by said commissioners, then judgment shall be given against said city, with costs, and execution awarded therefor ; but if said jury shall be applied for by said owner or owners, and shall find a less sum than shall have been awarded by the commissioners, the costs shall be paid by said owner or owners, and either deducted out of said sum found by said jury or execution awarded therefor, as the court shall direct, but such application shall not prevent the said city from taking the said land on filing the report aforesaid, the value or damages being first paid, or upon a refusal to receive the same upon a tender thereof, or the owner or owners thereof being unknown or out of the state, or under a legal disability, the same being first paid into the circuit court of said county, and the party or parties entitled to receive the amount assessed by the commissioners may, upon tender thereof being made, receive the same without being barred thereby from his or her appeal from the report of the commissioners.

**147. SEC. 8.** That this act shall take effect immediately, and that all acts and parts of acts, either general or special, inconsistent with the provisions of this act, or the act to which this is a supplement, be and the same are hereby repealed. Repealer.

An act authorizing the construction of sewers or drains in certain cities, when necessary to preserve the public health, although the limit of authorized expenditure for public improvements in such cities would thereby be exceeded.

Approved March 25, 1881.

**148. SEC. 1.** That whenever the board of health in any city of this state shall, after due examination and consideration, determine, by resolution in writing, adopted or concurred in by two-thirds of the members of said board, that it is necessary for the preservation of the public health, or the prevention of the cause or spread of disease, that a sewer or drain, or sewers or drains should be constructed in any locality in said city, and shall certify to the common council or other legislative or governing body of such city such resolution and the reasons for which it was adopted, then said common council or other legislative or governing body, if in their judgment such sewer or drain, or such sewers or drains seem to be necessary, as a sanitary measure, may construct or order, direct and cause such sewer or drain, or sewers or drains to be constructed, although the limit of authorized expenditures for public improvements in such city would thereby be exceeded; *provided*, that such excess of expenditure shall not in any case exceed the sum of fifty thousand dollars in any one year.

P. L. 1881, p. 288.  
When common council, &c., may exceed limit of authorized expenditure to construct sewers, &c.

**149. SEC. 2.** That before any ordinance providing for the construction of any such sewer or drain shall be presented for the action of the legislative or governing body of any such city, all existing legal requirements with respect to the notice of intention to construct the same, shall be in all respects complied with.

Proviso.

All legal requirements to be complied with.

**150. SEC. 3.** That in order to pay for such improvements, it shall be lawful for said city to make temporary loans in anticipation of the collection of assessments therefor, and to secure the payment of such loans by debt certificates of the city; which loans may be made pursuant to a resolution of the legislative or governing body of said city, and shall not exceed the amount of such anticipated assessments; said loans may run, with any renewals thereof, until such assessments are sold and funded; and no such certificate shall be valid in any hands if issued after the issue of the amount hereby limited; and the assessments for such improvement, when made, shall be applied as collected to the payment of said certificates, and for no other purpose whatsoever.

Temporary loans to pay for improvements may be made.

**151. SEC. 4.** That assessments for benefits from such improvement shall be made, levied, collected and be a paramount lien upon the lands and real estate specially benefited thereby, in conformity with the provisions of existing law in force in such city with respect thereto; and if the said costs and expenses exceed the amount of such assessed benefits, such excess shall be paid by the said city, and raised in the annual tax levy following the ascertainment of the amount thereof assessed upon said city; and the moneys so raised as aforesaid shall be pledged to the payment of the obligation of the city incurred in the construction of the said works.

Assessments for benefits, how made, levied and collected.

Costs and expenses exceeding benefits, how raised.

**152. SEC. 5.** That in order to fund any temporary indebtedness created by any city under the authority of this act, in anticipation of the collection of such assessments, it shall be lawful for such city, after sale of the lands and real estate whereon said assessments are a lien, by resolution of its legislative or governing body, to issue its bonds for such an amount (not exceeding the amount of liens purchased by said city at its sale for such unpaid assessments), bearing such rate of interest (not above the legal rate), and payable at such times and manner as the legislative body of said city shall determine; and whenever any bonds shall be issued by any such city to fund its temporary indebtedness as aforesaid, all outstanding certificates of indebtedness of such city, issued as aforesaid, shall be

Bonds may be issued to fund temporary indebtedness.

Certificates of indebtedness to be paid and canceled

immediately paid and canceled; and thereafter, all moneys received on account of the redemption of real estate so sold for such assessments shall be pledged to commissioners of a sinking fund created for that purpose, and applied to the payment of said bonds at maturity.

Repealer.

**153. SEC. 6.** That all acts, general or special, inconsistent herewith, are hereby repealed, and this act shall be a public act, and take effect immediately.

**An act for the improvement of the sanitary condition of counties in this state.**

P. L. 1881, p. 265.

Approved March 25, 1881.

Justice of supreme court, upon petition of one hundred freeholders of county, may appoint engineer to make plans, &c., for building of sewers, &c.

**154. SEC. 1.** That whenever a petition, stating that any particular place or district described by metes and bounds in any county of this state is in a condition detrimental to the public health and signed by at least one hundred freeholders, residents of such county in this state (the aggregate assessed value of whose real estate in said county shall be certified by the assessors or other officers whose duty it is to assess such property for taxation to be more than one million dollars), such assessed valuation not to include any property described in the aforesaid petition, shall be presented to the justice of the supreme court of judicature of this state holding the circuit court in such county, such justice may appoint a competent civil engineer to make plans and specifications for the building of a sewer or sewers, the erection and construction of pumps, dykes, dams, tide banks, and such other works and such filling and excavating as may be necessary to secure a sufficient and proper drainage of such particular place or district required to be drained.

Compensation of engineer, how fixed and paid.

**155. SEC. 2.** That upon receiving the report of such civil engineer, such justice of the supreme court holding the circuit as aforesaid shall certify what compensation in his judgment such engineer is entitled to for his services, which amount shall be paid by the board of chosen freeholders of the county in which said place or district is contained.

Upon receiving report, commissioners to be appointed.

**156. SEC. 3.** That upon receiving such report the said justice of the supreme court holding such circuit shall appoint three freeholders of the county in which such place or district is required to be drained and filled in, who shall, in connection with the civil engineer appointed as aforesaid, constitute a commission under whose supervision and direction the plans of drainage and filling shall be carried out.

Commissioners to receive no compensation.

**157. SEC. 4.** That the commissioners appointed by the justice of the supreme court aforesaid shall not be entitled to receive any compensation for their services, and that said civil engineer shall receive such compensation as the said board of chosen freeholders shall deem proper.

Board of freeholders to advertise for proposals for constructing work.

**158. SEC. 5.** That within fifteen days from the presentation of a report to them, said board of freeholders shall advertise for proposals for doing and constructing such works in accordance with said report, plans and specifications, which shall be placed on file for public inspection in the office of said board, and shall award the contract or contracts to the lowest bidder or bidders therefor, in the same manner as they advertise for proposals and award contracts for other public improvement in said county.

May issue certificates of indebtedness or bonds.

**159. SEC. 6.** That such board of freeholders shall have power to issue certificates of indebtedness or improvement certificates to the contractors for said works, or to issue registered or coupon bonds of said county, for the purpose of providing funds to pay for said improvement, said bonds being payable in not less than twenty nor more than forty years, and bearing interest at the rate of six per centum per annum.

Bonds not to be sold less than par.

**160. SEC. 7.** That bonds issued under the last preceding section shall not be sold at less than their par value.

Costs and expenses, how assessed.

**161. SEC. 8.** That the costs and expenses of such filling and excavating and the construction of such sewer or sewers, pumps, dykes, dams, tide banks and such other works as may be deemed necessary for the public health, shall be assessed upon the estate especially benefited thereby in proportion to the benefit received.

**162. SEC. 9.** That when the aforesaid improvement shall have been completed, the commissioners having charge of the same shall report that fact to the justice of the supreme court aforesaid, who shall appoint and fix the compensation of three discreet freeholders of said county, whose lands are not liable to assessment for special benefits by reason of said improvement, to act as commissioners of assessment for said improvement.

Appointment of commissioners of assessment.

**163. SEC. 10.** That said commissioners of assessment shall distribute the amount of the expense of said improvement for which lands specially benefited shall, in their judgment, be liable, and when said assessment shall be completed it shall be filed with the clerk of said board of chosen freeholders, who shall give notice, by advertising in two or more newspapers printed and published in said county, of the fact that said report has been filed and that said commissioners will meet at the office or meeting-room of said board of chosen freeholders on a certain day, at least thirty days subsequent to the filing of said report, to hear remonstrances against the same.

Report of assessment to be filed.

Notice of and remonstrances.

**164. SEC. 11.** That the said commissioners of assessment shall meet at the time and place designated to hear remonstrances against their report, and shall revise the same as shall seem to them proper in view of such remonstrances, after which they shall file their report with the clerk of said board of chosen freeholders, and the assessment shall constitute liens upon the lands so assessed for special benefits.

Revision of assessment. Lien on lands.

**165. SEC. 12.** That if the owner or owners of said lands so assessed for special benefits shall neglect or refuse to pay said assessment with interest for the period of one year, the board of chosen freeholders in such county are hereby authorized and empowered to sell said lands for the least number of years that any person will take the same and pay said assessment, with costs and interest thereon; and the manner, time, place and notice to resident and non-resident owners of such lands to be sold, shall be fixed and designated by the justice of the supreme court holding the circuit court in the county where such lands are situate.

Lands may be sold.

**166. SEC. 13.** That upon receiving the amount of said assessment by sale as aforesaid, the board of chosen freeholders shall give to the purchaser a certificate of sale of the land for the term for which the same shall be sold, and thereupon said purchaser shall be entitled to immediate possession of said land, and to take the rents, issues and profits thereof for the period or term aforesaid; *provided*, that the owner of the fee of said land shall be entitled to redeem the same at any time within the period for which they shall be sold by payment to the purchaser of the term of the amount given for such certificate of sale, less the amount received as rent and profit as aforesaid, with interest, after the rate of twelve per centum per annum from the date of said sale.

Certificate of sale to be delivered to purchaser.

Proviso.

**167. SEC. 14.** That in case the cost of constructing such sewer or sewers, and the erection and construction of such other works as are deemed necessary for the purpose aforesaid, shall exceed the benefits to lands specially benefited thereby, such excess of costs and expenses shall be raised by general taxation, to be assessed, levied and collected in the same manner as taxes for other county purposes are assessed, levied and collected.

Excess of costs over benefits, how raised.

**168. SEC. 15.** That whenever bonds shall be issued by any board of chosen freeholders, and the proceeds applied for the purpose of carrying out any such improvement, it shall be the duty of said board of chosen freeholders to apply all moneys received in payment of the assessment for said improvement to the final payment of such bonds, and for no other purpose whatever.

Moneys received by issuing of bonds, how applied.

**169. SEC. 16.** That in case it shall be necessary in pursuance of the plans for said improvement, to erect pumps or other works which are required to be operated by steam power, or by other artificial means requiring an annual expenditure of money to operate the same, it shall be the duty of such board of chosen freeholders to appropriate a sufficient sum of money to run and operate such pump or pumps, or other works for the purpose of securing a proper drainage of the place or district required to be drained.

Board of freeholders authorized to appropriate money to operate pumps, &c.

Engineers and commissioners to take oath, &c.

**170. SEC. 17.** That such civil engineer or engineers as may be appointed by a supreme court justice, and such commissioners as may be appointed by any board of chosen freeholders under the provisions of this act, shall, before entering upon the duties of their office, take an oath before a justice of the supreme court or a supreme court commissioner, faithfully to perform the duties of their office, a certificate of which fact shall be filed with the clerk of the county in which said lands are situate.

Civil engineer and commissioners may be removed.

**171. SEC. 18.** That the justices of the supreme court holding the circuit court as aforesaid shall have power to remove any civil engineer appointed as aforesaid, and appoint another in his stead; and the board of chosen freeholders shall have the same power with reference to the commissioners or other officers appointed by such board.

Vacancies, how filled.

**172. SEC. 19.** That any vacancy caused by the death, resignation or removal from the state of any officer or commissioner appointed under this act shall be filled by the appointing power.

Notice to property-owners, &c., how given.

**173. SEC. 20.** That whenever, in the progress of said improvement, it shall become necessary to give notice, for any purpose whatsoever, to property-owners or others, the form and manner of service of such notice shall be prescribed and fixed by the justice of the supreme court aforesaid.

Restriction of act.

**174. SEC. 21.** That this act shall not extend to any lands flowed by the natural and complete flow of tide-water.

Repealer.

**175. SEC. 22.** That all acts be and are hereby repealed inasmuch as they are inconsistent with the provisions of this act.

**An act to provide for drainage where the same is necessary to the public health.**

P. L. 1881, p. 195.

Approved March 24, 1881.

Ten or more citizens may petition court for appointment of commissioners.

**176. SEC. 1.** Than any ten or more citizens who deem it necessary for the public health that any pond, artificial reservoir, marsh, swamp, bog, meadow, or low or wet lands should be drained, may present a petition duly verified to the court of common pleas of the county in which such pond, artificial reservoir, marsh, swamp, bog, meadow, or low or wet lands lie, or if the same lie in more than one county, to the supreme court of this state, in open court in each instance, setting forth the facts and the names of all owners of lands likely to be affected by the proceedings, so far as known to the petitioners, and praying for the appointment of three commissioners for the purposes and with the powers hereinafter set forth; notice of the proposed application and of the day on which the same is intended to be made, shall be given for at least two weeks previous to the day of making such application by advertisement in writing, under the hands of at least two of the petitioners, set up in three of the most public places in the township in which the premises proposed to be drained are situate, and if such premises are situate in more than one township, such advertisement shall be set up in at three of the most public places in each township.

Notice of application to be advertised.

Court to appoint commissioners.

**177. SEC. 2.** That the said court to which such application is made, on due proof being made that the advertisements have been set up according to law, on which the judgment of the court shall be final and conclusive, and being satisfied that the petition is in due form, shall thereupon appoint three persons, who shall be freeholders in the county or in one of the counties wherein the premises proposed to be drained are situated, and who shall not be interested in said premises or any of them, and one of whom shall be a civil engineer or surveyor, to hear and determine, first, whether the drainage petitioned for is necessary to the public health, and, second, through what lands it is necessary, in order to drain the premises in question, that a ditch or ditches or other channels for the free passage of water should be opened, and to take such other and further steps with reference thereto as are hereinafter provided for.

One to be a civil engineer or surveyor.

Commissioners to take oath and organize.

**178. SEC. 3.** That the said commissioners, before they enter upon the duties of their office, shall make and subscribe and file an oath with the clerk of the court by which they are appointed, that they will faithfully

discharge the duties of their office to the best of their knowledge and ability ; the commissioners shall, with all convenient speed, after qualifying as herein provided, meet and organize by appointing one of their number as chairman and another as treasurer ; the treasurer shall collect and be the custodian of all moneys to be collected or received by the commissioners under the provisions of this act, and shall pay out the same only upon the order of the commissioners, signed by at least two of the commissioners ; the treasurer shall give a bond or bonds with sufficient sureties to the township committee of the township where the premises in question lie ; or if in more than one township, then the township committee of each township ; such bond or bonds to be approved by a judge of the court in which the proceedings were commenced, both as to sufficiency and amount, and to be filed with the clerk of the court.

Officers of  
commission.

Treasurer to  
give bond.

**179. SEC. 4.** That the said commissioners shall, after notice to the petitioners and the parties named in the petition, in such manner as they shall order, proceed by personal view of the premises, or otherwise, to determine whether the drainage petitioned for is necessary to the public health.

Commissioners to  
view premises  
and determine  
whether drainage  
is necessary.

**180. SEC. 5.** That the said commissioners shall file in the office of the clerk of the court by which they were appointed, their determination, signed by them, or by a majority of them if they do not all concur, and give notice of such filing to all whom it may concern, by publishing such notice at least two times in some newspaper published at the county seat of the county in which such premises are situated ; and if they be situated in more than one county, in a newspaper published at the county seat of each county ; any party feeling aggrieved by such determination may appeal therefrom to the court in which the proceedings were commenced, by giving written notice of such appeal to said commissioners within twenty days after the last publication of such notice ; the said court shall thereupon, on motion of either party, on at least ten days' notice to the appellant or appellants, proceed to hear said appeal in a summary manner and in accordance with the rules and practice of the court and to determine the same ; if either or both parties desire that testimony be taken to be used on the hearing, such testimony may be taken orally, in open court, or in the form of depositions, as the court may direct.

Determination of  
commissioners to  
be filed in office of  
county clerk.

Notice of filing to  
be advertised.

Persons aggrieved  
by determination  
may appeal.

**181. SEC. 6.** That if it shall be adjudged and determined by the said commissioners, or by the court in case of appeal, that for the benefit of the public health, such ditches, drains or channels for the free passage of water shall be opened, or that such pond, artificial reservoir, marsh, swamp, bog, meadow, low or wet lands should be drained, it shall be the duty of said commissioners (unless the same shall be done by the owners of the lands to be thereby affected to the satisfaction of said commissioners) to cause an accurate survey of the lands and premises in question to be made, and a map thereof to be made, showing all the lands and premises that are proposed to be drained, the number of acres in each separate tract included in the district to be drained, the names of the owners and occupants thereof, so far as can be ascertained, and the relative levels of each tract, and the width, depth and slope of side, shape and course of such ditch or ditches or other channels for the free passage of water, as they shall determine to be necessary for the drainage of the land and premises in question, and for the purposes of this act said commissioners are empowered to employ a competent civil engineer or surveyor, or to authorize such commissioner as may be a civil engineer or surveyor to act as such, and to enter upon any and all the lands mentioned in the petition or deemed necessary by such commissioners and survey the same, and take the levels thereof, and by themselves, their servants and agents, to do all things necessary for the construction and completion of all such ditches and channels for the passage of water, as they shall deem to be necessary for the complete drainage of said pond, artificial reservoir, marsh, swamp, bog, meadow or low or wet land.

Upon determina-  
tion of commis-  
sioners or court,  
survey and map  
of lands proposed  
to be drained, &c.,  
shall be made.

Commissioners  
may employ a  
civil engineer  
or surveyor.

**182. SEC. 7.** That the said commissioners shall, upon the completion of the work, cause such map, certified by them, to be filed in the office of the clerk of the court in which the proceedings are pending, which map, or a

Maps filed in office  
of clerk of court.

duly-authenticated copy thereof, may be used in evidence in any suit or proceeding in this state.

Compensation of commissioners, and account of expenses to be kept.

**183. SEC. 8.** That the said commissioners shall be paid for their services three dollars each for each full day actually employed in their said duties ; they shall keep an account of all their expenses and of all the costs and expenses incurred in draining said lands and premises, including all the costs and expenses incurred in any proceeding under this act or preliminary or incident thereto, and any land damages or awards as hereinafter provided ; and in case it shall be necessary to raise funds for the construction of such ditches or drains or channels for the free passage of water or land damages or awards, before the assessment hereinafter provided for can be made and collected, the said commissioners are hereby empowered from time to time, with the approval of the court in which the proceedings are pending, to borrow so much money as may be necessary therefor, upon such evidence of indebtedness as they may deem proper, bearing interest at the rate of six per centum per annum, payable upon the completion of such assessment and collection, and the interest accruing thereon shall be assessed as the other expenses for said construction ; such evidence of indebtedness shall not be issued for less than par and shall be receivable in payment of such assessments.

Commissioners empowered, with approval of court, to borrow money.

Powers of commissioners.

**184. SEC. 9.** That the said commissioners shall have power to construct such drain or drains, ditch or ditches or other channels for the free passage of water, in accordance with the plans adopted, through and across any road or street in the township or townships in which the district to be drained lies, or through and across which it may be necessary in order to carry out the proposed drainage, and also through any private lands as shown on the said map, in which latter case they shall award the owner or owners of such lands just compensation therefor and shall add the amount of such compensation to the cost of constructing such works ; such compensation shall be awarded and notice thereof given to the owner personally, if he be known and a resident of the county in which the premises drained or any part of them are situate, and if not a resident of such county, then by mail, according to the best information that can be obtained as to his address, before commencing such work ; and such award shall be final unless the said commissioners shall reconsider the same and make a new award, or such owner shall appeal, as provided in section twelve of this act, and such award shall bear interest at the rate of six per centum per annum from the date of making the same until paid ; and in case any valuable water rights or privileges shall be injuriously affected or destroyed by such drainage, the said commissioners shall award the owner or owners thereof just compensation therefor and shall take the same proceedings in relation to such awards as in cases where land is taken.

Awards for lands taken.

Costs, damages and expenses to be assessed on lands benefited.

**185. SEC. 10.** That in order to provide for the payment of the costs, damages and expenses of the work of any drainage undertaken under the provisions of this act, the said commissioners shall ascertain the whole amount of such costs, damages and expenses, and shall make a just and equitable assessment of the same upon the lands specially benefited by such improvement in proportion to the benefit received thereby, but not in any case exceeding the amount of such benefit ; and in case the whole costs, damages and expenses shall exceed the amount of benefits to lands specially benefited thereby, such excess shall be assessed upon and raised by general taxation in the township or townships in which the drained district lies, to be assessed, levied and collected in the same manner as other taxes for township purposes are assessed, levied and collected ; and in case the drained district lies in more than one township, the said commissioners shall apportion the amount to be raised by said townships to each township in proportion to the number of acres in each that are affected by the said drainage, as shown by the said map ; and when the amounts assessed upon said township or townships shall have been levied and collected, they shall be paid over by the township collectors of the respective townships to the said commissioners for the purposes for which they were appointed under this

act; before proceeding to make such assessment the said commissioners shall give at least ten days' notice in a newspaper or newspapers, published in the county or counties in which the drained premises lie, that they will meet at a certain time and place to hear the views of all persons interested in the proposed assessment, at which time and place said commissioners shall meet and give full and reasonable opportunity to all persons interested to express their views, may adjourn from time to time, and shall thereupon proceed to make a just and equitable assessment of the costs and expenses of said improvement, including damages for land taken or used and for water rights or privileges injured or destroyed upon the lands specially benefited by such work, and upon the township or townships concerned, as hereinafter set forth, within ten days after making such assessment; a notice shall be sent through the post-office to each owner of lands so assessed, as nearly in each case as the name and address of the owner can be ascertained, and to the township committee of the township affected, stating the amount assessed against said land or against said township, as the case may be, and that said assessment will be open for inspection for the next fifteen days, and the said commissioners will then meet at a time and place in said notice specified, to hear objections and to revise and correct, and finally confirm said assessment; at which time and place the said commissioners shall meet and give all parties appearing before them an opportunity to be heard, and may adjourn from time to time, and may reconsider said assessment, and shall make any alteration therein that they may deem just; and thereupon they shall revise, correct and finally confirm said assessment, and within ten days thereafter shall file said assessment, together with a detailed statement of the costs, damages and expenses incident to the work as ascertained by them, in the office of the court in which the proceedings in relation to the drainage in question were begun, and shall give notice of such filing by publication once a week for four weeks in a newspaper or newspapers published in the county or counties where the drained premises lie; and the determination of said commissioners or a majority of them, shall be final and conclusive, unless an appeal be taken as provided by section twelve of this act; and the said commissioners shall retain in their possession a duplicate copy of said assessment, and it shall be their duty to collect the amounts assessed and disburse the same for the purpose of carrying on and completing the drainage in question.

**186. SEC. 11.** That from and after the filing of the said assessment in the office of the said clerk, the said assessment shall be and remain a first and paramount lien upon each lot of land or property assessed for the amount of such assessment, with interest thereon, and all costs and fees thereon, until the same shall be paid and satisfied, notwithstanding any devise, descent or alienation of such land, or any judgment, mortgage or incumbrance thereon, and notwithstanding any mistake in the name or names of the owner or owners thereof, or any omission to name the owner or owners thereof; and any assessment in which such mistake or omission occurs shall nevertheless be a valid and effectual lien as aforesaid upon the lands assessed; and if such assessment, with interest thereon, be not paid within six months from the time when the same is payable, then the land upon which the said assessment is a lien shall be sold by said commissioners to pay the same, with interest thereon from the time when the same became payable, and all fees, charges and expenses of collection and sale, in the same manner as land is authorized to be sold for unpaid taxes in the townships where said land lies.

**187. SEC. 12.** That any person or persons feeling aggrieved by the action of the commissioners in awarding compensation for lands or property taken or used, or for water rights or privileges injured or destroyed for the purposes of drainage, as contemplated by this act, or by the action of the commissioners in making the assessment pursuant to section ten of this act, or any township committee feeling aggrieved by reason of the action of said commissioners in the premises, may, within forty days after the publication of the notice of filing said assessment, appeal to the court in

Commissioners to give notice of meeting.

Owners of lands, &c., to be notified of assessment, &c.

Revision of assessment.

Assessment to be filed.

Notice of filing to be published.

Assessments, by whom collected.

Assessments to remain a first lien upon lands.

Mistake or omission not to invalidate assessment.

Persons aggrieved by the award of compensation for lands taken, &c., may appeal.

Proceedings  
on appeal.

which the proceedings were begun by serving a notice in writing upon one of the said commissioners and filing a copy of said notice, with an affidavit annexed, setting forth the service thereof, in the office of the clerk of said court; and the said court shall have full power to review the proceedings of said commissioners in the premises, and the same or any award or assessment or other action to confirm, alter, modify, set aside or reverse, in whole or in part, for errors either of fact or in law; and the said court shall have full power to hear and try the same in a summary way, and may summon a jury to determine any question of fact; and the said court may proceed in due course, according to the power of the court in other cases, and if the said court deem advisable, may refer back any assessment to said commissioners for them to make a new assessment under the direction of the court, and the determination of the said court shall be final and conclusive in the premises, and the said court or any judge thereof may, until such determination, stay all proceedings in the matter in reference to which the appeal may be taken, until such final determination. [See Sec. 192, *post.*]

Court may extend  
time.

**188.** SEC. 13. [Amended by Sec. 198, *post.*]

**189.** SEC. 14. That the time in which anything is required to be done in this act may be extended by the court to which the original petition was presented, for good reasons shown and on such terms and conditions as may be just, provided no rights are prejudiced thereby, and such extension may be granted after the time before limited has expired, and said court may make such other orders in the premises as they may deem just and reasonable according to law, and appoint a person to act as commissioner in place of any commissioner who shall die, resign or become otherwise disqualified to act.

Vacancies, how  
filled.

#### Supplement.

Approved April 20, 1885.

F. L. 1885, p. 278.

Commissioners  
may bid for and  
purchase lands in  
name of township.

**190.** SEC. 1. That whenever it shall become necessary for commissioners appointed under the act to which this is a supplement to sell any lands upon which an assessment made in pursuance of said act shall be a lien, said commissioners may, in the name of the township wherein said lands are located, bid upon the same to the amount of such assessment, including interest and all fees, charges, and expenses of collection and sale; and in case no higher bid is made upon said lands, said commissioners may purchase the same in the name of such township, and the township committee of said township shall thereupon forthwith pay or cause to be paid to said commissioners the amount of such bid, and said township shall thereupon become vested with the same title in such lands as if the same had been sold for unpaid taxes.

To pay surplus of  
money borrowed  
into treasury of  
township.

**191.** SEC. 2. That if any commissioner heretofore or hereafter to be appointed under the provisions of said act shall borrow more money than shall be requisite or necessary for the purposes mentioned therein, they shall, after the performance of all the duties enjoined upon them by said act, pay into the treasury of the township in which such drained district lies, such surplus of such moneys as shall then remain in their hands for and on account of the assessment made under the provisions of said act against such township.

Effect of appeal  
on amounts to be  
paid by township.

**192.** SEC. 3. That if any person or persons feeling aggrieved by the action of said commissioners shall appeal therefrom as provided in the twelfth section of said act, and upon such appeal a greater sum shall be awarded to such person or persons for land or property taken or used, or water rights or privileges injured or destroyed for the purposes mentioned in said act; or if the sums assessed for benefits upon land of such person or persons shall be reduced by such appeal, such excess awarded and such reduction of benefits shall be added to the sum assessed against said township; or if upon such appeal a less sum shall be awarded to such person or persons for lands or property taken or used, or water rights or privileges injured or destroyed for the purposes mentioned in said act, or if the sums assessed for benefits upon the lands of such person or persons shall be increased by such appeal, such decrease awarded and such increase of benefits shall be deducted from the sum assessed against said township.

**193. SEC. 4.** That in case upon such appeal a greater sum shall be awarded to such person or persons for lands or property taken or used, or water rights or privileges injured or destroyed for the purposes mentioned in this act, such excess shall be paid out of the treasury of the township in which such drained premises lie, upon a warrant therefor signed by said commissioners or a majority of them.

When on appeal a greater sum is awarded to any person, such excess to be paid by township.

**194. SEC. 5.** That all expenses for commissioners' fees or otherwise, accruing after the making of said assessment provided for in said act, shall be paid out of the treasury of the township in which said drained district lies, upon warrants therefor signed by said commissioners or a majority of them.

Fees accruing after assessment, to be paid by township.

#### Supplement.

Approved February 20, 1886.

P. L. 1886, p. 41.

**195. SEC. 1.** That any board of commissioners who may have been appointed under and by virtue of the provisions of the act to which this is a supplement shall, within sixty days from the passage of this act, make a report in writing, under their hands, properly sworn to, giving, in detail, a description of the work they were authorized and empowered to do, the part thereof already completed, and the part still to be completed; the amount of the assessment levied for the purpose of paying the expense of such work; the amount of the same collected and paid over to the said board of commissioners and the balance thereof still in their hands; the amount paid out by them for labor or other services, for what and to whom paid and the amount of each payment; the amount paid for commissioners' or other fees, to whom paid, the date or dates of rendering the service and the amount of each payment; the quantity and kind of materials or supplies purchased, from whom and at what price, and the details of all other expenditures not herein particularly enumerated; said report shall be filed within said thirty days with the clerk of the court appointing said board of commissioners, and a duplicate thereof with the clerk of the township committee or other governing body of the township, borough or incorporated town within whose limits the drainage district lies; and in case the same lies in more than one township, borough or incorporated town, then with the clerk of the township committee or other governing body of each, and yearly thereafter, at the same time, shall file a similar report, or, if their work be sooner completed, immediately upon the completion thereof; and any board of commissioners that may be hereafter appointed shall file a similar report within one year after their said appointment, and yearly thereafter, at the same time, unless their work be sooner completed, and then immediately upon the completion thereof. [See Sec. 199, *post.*]

Sworn statement to be made by commissioners within sixty days after passage of this act.

Annual report to be made.

**196. SEC. 2.** That any person interested in said report may, at any time within thirty days from the time limited for the filing of the same, file his exceptions thereto; and the said court shall proceed to hear the proofs and allegations with reference to the same at such time as they may appoint, and confirm or make such other order with reference thereto as to them may seem right and proper; if no exceptions to said report be filed within the time herein fixed, the said court shall examine the same and confirm or make such order with reference thereto as may be just and right.

When exceptions to report may be filed.

Court to examine and confirm report.

**197. SEC. 3.** That all contracts for doing work or furnishing materials for any work provided for under the said act to which this is a supplement, exceeding in amount the sum of one hundred (100) dollars, shall be advertised for three weeks in a newspaper printed, published or circulating in said township or townships, borough or boroughs or incorporated town or towns, and the said contracts shall at all times be given to the lowest bidder, he or they giving bond in at least double the amount of his or their bid, with sufficient freehold security for the performance of the same according to contract.

Contracts to be advertised and given to lowest bidder.

**198. SEC. 4.** That section thirteen (13) of the said act to which this is a supplement [see Sec. 188, *ante*], be amended so as to read as follows:

Township committee to keep ditches and drains in repair at expense of township.

[That whenever any ditch or ditches, drain or drains, or other channel or channels for the free passage of water shall have been constructed under this act and the supplement thereto, it shall be the duty of the township-committee of the township in which the same are situate, to keep the same in repair at the expense of the township; and for the purpose of providing funds to be used for such repairs, the legal voters at their annual town meetings may appropriate moneys for that purpose; and where the contract for such repairs, either for work or materials, shall exceed the sum of one hundred (100) dollars, bids shall be advertised for in the manner hereinbefore directed, and the contract for the same shall at all times be given to the lowest bidder, he or they giving security for the faithful performance of said contract, in manner herein provided.]

#### Supplement.

Approved March 24, 1887.

P. L. 1887, p. 50.

Upon failure of commissioners to file report, court may order report to be filed.

**199. SEC. 1.** That whenever the said commissioners fail or neglect to file the report required to be filed by them under and by virtue of the provisions of the first section of the act entitled "Supplement to an act entitled 'An act to provide for drainage where the same is necessary to the public health,'" approved March twenty-fourth, one thousand eight hundred and eighty-one, and which said supplement was approved the twentieth day of February, one thousand eight hundred and eighty-six, the said court appointing said commissioners may, upon application of any persons or person interested, by their order direct said commissioners, within a certain time to be therein fixed, to file their said report; and thereupon any persons or person interested therein may, within thirty days from the time limited in said order for the filing of said report, file exceptions thereto. [See Sec. 195, *ante*.]

Exceptions may be filed.

**200. SEC. 2.** That in case said commissioners shall have filed or shall hereafter file their said report, out of time, the said court may at any time, upon application of any persons or person interested, order that exceptions thereto may be filed within such time as the said court shall direct, and that notice of such order and the filing of said exceptions be given to the said commissioners.

Court to proceed and hear exceptions.

**201. SEC. 3.** That upon the filing of the exceptions in the last two preceding paragraphs provided for, the said court shall proceed to hear the same in manner provided in the second section of the act herein last above-referred to.

#### Supplement.

Approved April 23, 1888.

P. L. 1888, p. 465.

**202. SEC. 1.** [Amended by Sec. 203, *post*.]

Supplement to an act entitled "Supplement to an act entitled 'An act to provide for drainage where the same is necessary to the public health,' approved March twenty-fourth, one thousand eight hundred and eighty-one," and which said supplement was approved April twenty-third, one thousand eight hundred and eighty-eight.

P. L. 1889, p. 141.

Approved April 1, 1889.

**203. SEC. 1.** That section one of the act to which this is a supplement, and which reads as follows [see P. L. 1888, p. 465], be amended so as to read as follows:

Proceedings when moneys in hands of commissioners insufficient to pay indebtedness.

[That whenever the commissioners chosen under the act to which this is a supplement shall have borrowed money for the construction of such ditches, drains and channels for the passage of water as they were authorized to construct, or for the payment of land damages or awards for lands taken or used for such work, and have given certificates of indebtedness therefor, or have incurred any just indebtedness in the construction of said ditches, drains and channels, and the moneys raised by the assessment for benefits, together with the amount assessed against the township or townships and raised by taxation therein, as provided in said act, shall have been ex-

pendent on said work, and there are not sufficient moneys in the hands of said commissioners, available for the payment of such certificates and the interest thereon after the same have become due, or for the payment of any such just indebtedness incurred by said commissioners as aforesaid, and the interest thereon, it shall be the duty of said commissioners, on application of the holders of one-half in amount of such certificates, or upon the application of any person to whom they may be justly indebted as aforesaid, to notify the township committee or township committees of the township or townships in which the drainage district lies, of the amount of such indebtedness remaining unpaid, and a sum sufficient to pay such certificates and the interest thereon, or such other just indebtedness as aforesaid, and the interest thereon, shall, at the next assessment for taxes for township purposes, be assessed and raised by general taxation in such township or townships, to be assessed, levied and collected in the same manner as other taxes for township purposes are assessed, levied and collected; and in case the drained district lies in more than one township, the said commissioners shall apportion the amount to be raised, to each township in proportion to the number of acres in each that are affected by such drainage; and when the amounts so assessed shall have been levied and collected, they shall be paid by the township collectors to the said commissioners, who shall forthwith apply the same to the redemption of such certificates or the payment of any such just indebtedness incurred as aforesaid.]

Amount unpaid to be raised by taxation.

#### Supplement.

Approved March 7, 1892.

P. L. 1892, p. 47.

**204. SEC. 1.** That whenever the commissioners appointed under the act to which this is a supplement shall have made an assessment for benefits and also a general assessment against the township or townships, for the payment of the costs, damages and expenses of any drainage undertaken under the provisions of said act, and shall have expended the whole of the moneys so realized towards paying said costs, damages and expenses, without fully completing the work, the costs, damages and expenses of which were to be paid by the moneys realized from said assessment, it shall be lawful for the legal voters of said township or townships, at their annual town meetings to vote, grant and raise such moneys as they may deem necessary for the purpose of completing said drainage, which moneys shall be assessed and collected as other taxes are now assessed and collected in said township or townships.

Legal voters of townships may raise money necessary to complete drainage whenever commissioners have made an assessment and expended the whole of the money so realized without fully completing work.

#### IV. Miscellaneous acts.

**An act to provide for the security of the citizens of this state, against the introduction of contagious diseases.**

Passed November 19, 1799.

R. S. 511.

WHEREAS, It has been represented to the legislature, that for want of due provision on the part of this state, the laws of the states of Pennsylvania and New York, for preventing contagious diseases, have been repeatedly evaded by the citizens of this state, and by the crews and passengers of infected vessels landing on the shores of this state; and it being necessary to prevent a repetition of a conduct so dangerous,

**205. SEC. 1.** That it shall and may be lawful for the governor of the state for the time being, upon application to him made by the executive or other competent authority, in the states of Pennsylvania or New York, of any vessel infected with a malignant disease, and performing quarantine under the laws of the said states of Pennsylvania or New York, being then in the rivers Delaware or Hudson, or the waters adjacent to the city of New York, to issue his proclamation, forewarning all citizens of this state from entering on board of, or having any communication with such infected vessel; and if any person or persons shall, after the publication of the said proclamation, and in contravention thereof, enter

In what case the governor shall issue his proclamation, prohibiting all communication with certain infected vessels.

## HEALTH.

on board of any such vessel, so as aforesaid described in the said proclamation, or be any way concerned in bringing to the shores of this state, any goods, merchandise, bedding or clothing, he, she or they, for every such offense, shall, on conviction thereof, in due course of law, be fined in any sum not exceeding three hundred dollars, at the discretion of the court before whom such conviction shall be had.

An act to prevent the introduction of malignant and other infectious diseases into this state.

P. L. 1871, p. 84.

What vessels shall come to anchor and be subject to the visitation of the health officer.

Approved April 4, 1871.

**206. SEC. 1.** That all vessels intending to go by the way of Raritan bay, or by the way of said bay and Raritan river, or Arthur Kull sound, to any port now in existence in this state, or to be hereafter in existence in this state, between the first day of March and the first day of December, in this or any other year hereafter, or at any time of the year that the board of health hereinafter mentioned shall designate by order, under their hands, from time to time, from any port, island or other place in America lying south of Georgia, or from any West India, Bahama or Bermuda island, or from any port or place where yellow or pestilential fever prevails, or on board of which vessel any person shall have been sick or died while at a foreign port, or on the homeward passage, or on board of which the health officer hereinafter mentioned shall have reason to believe that one or more persons are sick with small-pox, or other contagious disease, or on board of which there are contained articles or things as part or all of the cargo, or any materials which may communicate small-pox or other contagious disease (to ascertain which, said vessel shall be subject to visitation and examination by the health officer at the place or places hereinafter mentioned), shall come to anchor at some place being to the southward of a straight line drawn from the south ferry wharf in Perth Amboy to the house on Staten Island, formerly of Caleb Ward, as well as southward and eastward of a straight line drawn from the said south ferry wharf to the most easterly wharf of South Amboy, and shall be subject to the visitation and examination of the health officer to be appointed as hereinafter mentioned, at such place of anchorage, or at such other place in the waters of Raritan bay lying westward of a line drawn from the light-house at Princes bay to the mouth of Matavan creek, or in the waters of the remainder of Raritan bay to the main sea, lying south of the middle of said bay, or in the waters of the sound between Staten Island and New Jersey, south of Woodbridge creek, or in the waters of Raritan river, as the said health officer shall think proper, and shall be subject to such regulations as may be deemed expedient by him; and that any master or commander of a vessel offending in the premises shall be considered as guilty of a misdemeanor, and on conviction of the same shall be fined by any court having cognizance thereof in a sum not exceeding one hundred dollars, or be imprisoned for a term not exceeding two months.

Who shall prescribe regulations.

Penalty.

Vessels may be visited by health officer on request of the master, owner or consignee.

**207. SEC. 2.** That all other vessels which come into that part of the waters of Raritan bay bounded on the westward by the said line drawn from the light-house at Princes bay to the mouth of Matavan creek; on the eastward by the main sea, and on the north by the middle of Raritan bay, between the first day of March and the first day of December, in this or any other year, or at any other time of the year that the said board of health shall designate by order, under their hands, from time to time, from any port, island or other place in America lying south of Georgia, or from any West India, Bahama or Bermuda island, or from any port or place where yellow or pestilential fever prevails, or on board of which vessel any person shall have been sick or died while at a foreign port, or on the homeward passage, or on board of which the health officer shall have reason to believe that one or more persons are sick with the small-pox or other contagious disease, or on board of which there are contained articles or things as part or all of the cargo, or any materials which may communicate small-pox, or other contagious disease, to ascertain which,

said vessel shall be subject to visitation and examination by the health officer at the place or places in this section before mentioned, shall, on request of the master, owner or consignee thereof, be visited and examined by the said health officer, and thereupon shall come to anchor at such place in the waters of the state of New Jersey as may be ordered by the health officer, and shall be subject to such regulations as may be deemed expedient by him ; and that any master or commander of a vessel offending in the premises shall be considered as guilty of a misdemeanor, and on conviction of the same shall be fined by any court having cognizance thereof, in a sum not exceeding one hundred dollars, or be imprisoned for a term not exceeding two months.

Penalty.

**208. SEC. 3.** That whenever a vessel so subject under the first or second section of this act, to the visitation and examination of the health officer, shall arrive at the anchoring places above mentioned, the master, owner or consignee of such vessel shall, if the health officer shall judge it necessary, forthwith cause such vessel to be unloaded, cleansed, ventilated and purified, and that until then no permit shall be granted for her to proceed nearer to the city of Perth Amboy, or other place in the state of New Jersey than the said places of anchorage ; and every vessel so subject under the first or second section of this act, to the visitation and examination of the health officer, arriving between the first day of March and the first day of December, or at such other time as shall be designated as aforesaid by the board of health, may be detained at quarantine for any time not exceeding twenty days after her cargo shall have been discharged, and the said vessel thoroughly cleansed, ventilated and purified to the satisfaction of the health officer and the board of health ; and that every master, owner or consignee neglecting or refusing to comply with the provisions herein contained, shall be guilty of a misdemeanor, and upon conviction of the same shall be fined in a sum not exceeding one hundred dollars, or imprisonment for a term not exceeding two months.

Health officer may cause vessel to be unloaded and cleansed.

May be detained.

Penalty.

**209. SEC. 4.** That the mayor and aldermen of the city of Perth Amboy, for the time being, shall, ex-officio, be members of a board of health, a majority of whom shall constitute a quorum, and they, or a majority of them, or a majority of the quorum thereof, shall exercise all the powers herein given to the board of health, and shall have power to do and perform all such duties not devolving on the health officer by this act, as may be necessary to carry this act into effect, and the expense of any act or thing necessary to be done for the protection of the public health shall, in such case, be paid by any master, owner or consignee of the vessel the condition of which requires the doing of such act or thing, and shall have the power to appoint, by writing, under their hands and the corporate seal of the city of Perth Amboy, some fit person as health officer, or visiting physician, whose duty it shall be to visit at the place or places aforesaid, all vessels which are required to come to anchor as aforesaid, or are subject under the first or second sections of this act to his visitation and examination as aforesaid, and in case one or more of the crew or passengers are sick, to report the same and the situation thereof to the board of health, and to grant permits to land passengers, baggage, crews and cargoes, or to discharge cargoes into lighters and release vessels from quarantine, and to grant bills of health, and to direct, at the expense of the master, owner or consignee of all such vessels subject under the first or second sections of this act to visitation and examination as aforesaid, the manner in which the same shall be cleansed, ventilated and purified, and when done, to certify the same to the board of health ; and the said health officer shall be entitled to ask, demand and receive of and from the master, owner or consignee of all vessels aforesaid, the sum of ten dollars for the first visit to such vessels, and the further sum of five dollars for his report to said board of health, and the further sum of two dollars and fifty cents for his permit for the crews, passengers and baggage or cargo to leave the vessel and be put on land or into lighters, and the further sum of two dollars and fifty cents for every visit thereafter made at the request of such master, owner or consignee, or of the board of health, to inspect

Mayor and aldermen of Perth Amboy to constitute a board of health.

Powers of.

May appoint health officer.

Duties of.

Fees of health officer.

such vessel after she shall have been cleansed, ventilated and purified as aforesaid, or to attend any person sick on board, and the further sum of two dollars and fifty cents for every bill of health, when demanded by the master, owner or consignee, and the like sum to be paid by the person demanding it for a bill of health in any other case.

Board of health may grant permits to vessels to leave anchorage.

**210. SEC. 5.** That the said board of health or a majority thereof, or a majority of a quorum thereof shall upon the report of the health officer that it is proper to do so, grant a permit to any vessel to leave the said anchorage after she shall have been cleansed, ventilated and purified, if the same be necessary to be done and has been done; and they, as well as the health officer, shall have power to forbid the intercourse with any vessel aforesaid having on board persons sick of a pestilential disease, or yellow fever, or being in a condition in which there is danger to the public health by such intercourse, and to prevent any of the crew or passengers of such vessel (except the captain or master of the vessel for the purpose of entry) from leaving the vessel; and every person offending in the premises shall be adjudged guilty of a misdemeanor, and shall on conviction of the same in any court of competent jurisdiction, be fined in a sum not exceeding two hundred dollars, or be imprisoned for a term not exceeding three months.

Penalty.

Fees of board of health.

**211. SEC. 6.** That it shall be lawful for the board of health to ask, demand and receive from the master, owner, or consignee of any such vessel in respect of which the duties shall be performed by them the following fees, viz.: for any meeting of the board to hear the report of the health officer in case of sickness on board as aforesaid, the sum of five dollars; for every permit for passengers and crews to leave the vessel granted by them after such report, the sum of three dollars; for release of the vessel after the final report of the health officer in case of sickness as aforesaid, the sum of two dollars and fifty cents, and fees to be divided between the members of the board acting in the premises.

How divided.

Health officer may appoint deputies.

**212. SEC. 7.** That the health officer is hereby authorized to appoint one or more deputies to act with him as well as in his stead, who shall continue in office at his pleasure, and be paid by the said health officer out of his fees hereinbefore provided for.

Repealer.

**213. SEC. 8.** That the act entitled "An act to prevent the introduction of malignant and other infectious diseases into the city of Perth Amboy," passed the third of February, one thousand eight hundred and twelve, be and the same is hereby repealed, and that this act shall take effect immediately.

#### Supplement.

P. L. 1882, p. 17.

Certain vessels to be subject to examination by health officer of Perth Amboy.

Approved February 18, 1882.

**214. SEC. 1.** That all vessels intending to go by the way of Raritan bay and Raritan river, or Arthur Kull sound, to any port now in existence in this state, between the first day of April and the first day of December in this or any other year hereafter, or at any time of the year that the board of health shall designate by order under their hands from time to time, from any port, island or other place in America lying south of Cape Henlopen, in order to prevent the introduction of contagious, malignant and infectious diseases of all kinds into the city of Perth Amboy and other ports of the state of New Jersey, shall be subject to examination by the health officer of the port of Perth Amboy.

#### An act for the preservation of health of female employes.

P. L. 1882, p. 227.

Seats at counters, &c., to be provided for female employes.

Approved March 31, 1882.

**215. SEC. 1.** That it shall be the duty of all employers of females in any mercantile business or occupation to provide and maintain suitable seats for the use of such female employes at or beside the counter or work-bench where employed, and to permit the use of such seats by such employes to such an extent as may be reasonable for the preservation of their health. [See Sec. 217, *post.*]

**216. SEC. 2.** That any violation of this act by any employer shall be deemed a misdemeanor, and on being thereof convicted shall be punished by a fine not exceeding one hundred dollars, at the discretion of the court.

Penalty for violation.

**An act for the preservation of the health of female employes employed in manufacturing, mechanical and mercantile establishments.**

Approved April 17, 1884.

P. L. 1884, p. 222.

**217. SEC. 1.** That every person or corporation employing female employes in any manufacturing, mechanical or mercantile establishment in this state shall provide suitable seats for the use of the female employes so employed, and shall permit the use of such seats by them when they are not necessarily engaged in the active duties for which they are employed.

Suitable seats to be provided for use of female employes.

**218. SEC. 2.** That a person or corporation violating any of the provisions of this act shall be punished by a fine of not less than ten dollars nor more than twenty-five dollars for each offense.

Penalty for violation of act.

**An act to prevent the discharge or escape of sludge acid into or upon the waters of this state.**

Approved April 17, 1884.

P. L. 1884, p. 221.

**219. SEC. 1.** That from and after the passage of this act it shall be unlawful for any person, persons, corporation or corporations, to permit the discharge or escape, directly or indirectly, of such refuse or residuum, resulting from the refining of petroleum, as is commonly called "sludge acid," into or upon any river, stream, water-course, lake, pond or other body of water, or any tidal waters within or bordering upon this state; and every violation of this act shall constitute a public nuisance and shall be punishable as such.

Unlawful to permit or discharge "sludge acid" into streams, ponds, &c.

**220. SEC. 2.** That every person, persons, corporation or corporations violating, or whose servants or agents shall violate this act, in addition to the penalty indicated in section one of this act, shall forfeit and pay the sum of one thousand dollars for each violation of this act which shall be proved, to be recovered in any court of competent jurisdiction by any person who shall sue for the same, one-half of said penalty to go to such person so suing therefor and the other half to go to the state.

Penalty for violation of act.

**An act to provide means and moneys to guard against the spread of contagious or infectious diseases when epidemic or likely to become epidemic, and to regulate the disposition of said moneys.**

Approved March 24, 1885.

P. L. 1885, p. 132.

**221. SEC. 1.** That whenever there shall be presented to the board of chosen freeholders of any county of this state, which has a county board of health, a certificate signed by the surgeon-general of the state, the president or secretary of the state board of health, the president of the board of health of said county, the county physician (where there is such an officer) and the director of such board of freeholders, certifying that any contagious or infectious disease is prevailing or epidemic, or likely to become so in said county, it shall thereupon be lawful for such board to authorize, by resolution, the expenditure of such sum of money as to said board shall seem necessary for the purpose of guarding against and preventing the spread of such disease; and that notwithstanding there may be no appropriation then available for such purpose, or the sum authorized may be in excess of any such appropriation, or in excess of any limit of expenditure for the current fiscal year theretofore fixed by said board or by any law of this state; said board may also, from time to time, as the exigency of the case shall require, authorize further expenditure for the purpose aforesaid.

When board of freeholders may authorize expenditure of moneys to prevent contagious disease.

**222. SEC. 2.** That said sum or sums, the expenditure of which shall be so authorized, shall be expended under the direction of the board of health of said county, where such board exists.

Money to be expended by county board of health.

When financial department of city, &c., may authorize expenditure of money to prevent contagious disease.

**223. SEC. 3.** That whenever there shall be presented to the board or body having charge of the financial affairs of any city, borough, village, town or township of any county which has a county board of health, a certificate signed by the surgeon-general of the state, the president of the county board of health, the president or other head officer of the local board of health (if any such board exists), the local health officer (if any such there be), and the mayor or other chief magistrate of the municipality, certifying that any contagious or infectious disease is prevailing or epidemic or likely to become so in such city, borough, village, town or township, it shall thereupon be lawful for such board or body having charge of such financial affairs to authorize, by resolution, the expenditure of such sums of money as to said board or body shall seem necessary for the purpose of guarding against and preventing the spread of such disease; and that notwithstanding there may be no appropriation then available for such purpose, or the sum authorized may be in excess of any such appropriation or in excess of any limit of expenditure for the current fiscal year theretofore fixed by said board or body, or by any law of this state; said board or body may also, from time to time, as the exigency of the case shall require, authorize further expenditure for the purpose aforesaid.

Money to be expended by local board of health.

**224. SEC. 4.** That said sum or sums, the expenditure of which shall be so authorized, shall be expended under the direction of the local board of health, if there be such a board, and if not, then under the direction of the board or body authorizing such expenditure.

How expenditure provided for.

**225. SEC. 5.** That for the purposes of this act, the board or body authorizing such expenditure may bind the credit of the county, city, borough, village, town or township, as the case may be, and may borrow money, if required, on temporary loan, in a sufficient sum to pay the debts so contracted, and moneys borrowed and expended for the purpose aforesaid shall be included in the next annual tax levy thereafter made.

Excess of money raised, how applied.

**226. SEC. 6.** That if more money shall be raised than shall be expended for the purpose aforesaid, the excess shall be applied upon the bonded debt of the city, borough, village, town or township, as the case may be, or, if there be no bonded debt, then such excess shall be allowed for in fixing the appropriations for the next fiscal year and reduce the same accordingly.

**An act for the prevention of blindness in the state of New Jersey.**

Approved March 11, 1895.

P. L. 1895, p. 262.

Persons having charge of infants whose eyes show any inflammation, swelling, &c., within two weeks after birth, to report same to local board of health.

**227. SEC. 1.** That should one or both eyes of an infant become inflamed, swollen or reddened, or show any unnatural discharge at any time within two weeks after its birth, and no legally-qualified practitioner of medicine be in attendance upon the infant at the time, it shall be the duty of the midwife, nurse, attendant or relative having charge of such infant to report the fact in writing, within six hours, to the local board of health of the city, township or other municipality in which the parents of the infant reside.

Local board shall cause infant to have proper medical attendance.

**228. SEC. 2.** That the said local board of health shall direct the parents or person having charge of such infant suffering from such inflammation, swelling, redness or unnatural discharge of the eyes to immediately place it in charge of a legally-qualified practitioner of medicine, or in charge of the physician of the city, township or other municipality if unable to pay for medical services.

Copies of this act shall be furnished to physicians, midwives and nurses.

**229. SEC. 3.** That every local board of health in the state of New Jersey shall furnish a copy of this act to every legally-qualified practitioner of medicine, and to each person who is known to act as a midwife or nurse, in the city, township, or other municipality for which such board of health is appointed; and the secretary of state shall cause a sufficient number of copies of this act to be printed, and to supply the same to such officers for distribution.

Secretary of state shall provide copies of this act.

Penalty for non-compliance.

**230. SEC. 4.** That any failure to comply with the provisions of this act shall be punished by a fine not to exceed two hundred dollars, or imprison-

ment not to exceed six months, or both, upon conviction under prosecution proceedings to be brought by any local board of health.

**231. SEC. 5.** That this act shall take effect and be in force on the first day of May, one thousand eight hundred and ninety-five. When act to take effect.

**An act to prevent the adulteration of candy.**

Approved March 14, 1895

P. L. 1895, p. 279.

**232. SEC. 1.** That no person shall by himself, his servant or agent, or as the servant or agent of any other person or corporation, manufacture for sale or knowingly sell or offer to sell any candy adulterated by the admixture of terra alba, barytes, talc or other mineral substance, by poisonous colors, flavors, fusil oil, intoxicants or other ingredients deleterious or detrimental to health. Manufacture and sale of adulterated candy prohibited.

**233. SEC. 2.** That every person who shall violate any of the provisions of this act shall forfeit and pay a penalty of fifty dollars for the first offense and one hundred dollars for a second or subsequent offense, the one-half thereof to the use of the state of New Jersey and the other moiety to him who shall sue for the same, to be recovered by action upon contract in any court of record of this state, together with costs of suit. Penalty.

**An act to prevent deception in the sale of cakes and biscuits and to preserve the public health.**

Approved March 22, 1895.

P. L. 1895, p. 473.

**234. SEC. 1.** That no person by himself or his agents or servants nor as an agent or servant shall manufacture, sell, offer for sale, expose for sale or have in his possession with intent to sell, any cakes or biscuits in which yolka, yolka-line, turmeric, chrome yellow or any other substitute for eggs of like nature has been used, except there be displayed in a public manner on the package in which such cakes and biscuits are carried, or on the place, receptacle or holder in which such articles are placed for sale a label, show-card or sign, on which shall be printed in letters of the English language at least three inches high and one and one-half inches wide the words, "these cakes and biscuits are colored with an artificial substitute for eggs."

**235. SEC. 2.** That any person or persons who shall violate any of the provisions of this act shall forfeit and pay a penalty of one hundred dollars for the first offense and two hundred dollars for each subsequent offense, to be recovered in an action of debt by any person who may sue for the same, one-half of said penalty to go to the person so suing and one-half for the use of the municipality where such offense is committed. Penalty.

**An act for the protection of the public health.**

Approved March 22, 1895.

P. L. 1895, p. 491.

**236. SEC. 1.** That every physician shall, within twelve hours after his first professional attendance upon any person who is suffering from cholera, yellow fever, typhus fever, leprosy, plague, trichinosis, small-pox, varioloid, enteric (or typhoid) fever, diphtheria, membranous croup, scarlet fever, or any other contagious, infectious or communicable diseases which hereafter may be publicly declared by the state board of health to be preventable and specially dangerous to the public health, report such sickness to the clerk of the local board of health having jurisdiction over the territory within which such sickness may be, or if such local board of health shall have designated some other officer thereof to receive such reports, then to such officer, which report shall be in writing, signed by such physician, and shall set forth the name, age and precise location of the person suffering from such disease; and every house-owner or householder who knows that any person living, dwelling or being in any building under his control is affected by any of the contagious, infectious or communicable diseases hereinabove specified or referred to shall, when no physician has professionally attended such sick person, Physicians to report cases of contagious and communicable diseases to local board of health.

Report to be in writing.

House-owners and householders to report in absence of physician.

Physician or person making report shall be entitled to fee.

Penalty for neglect to perform this duty.

Officer to whom report is made to record the same.

Officer of local board shall report to state board.

Shall further advise state board.

Penalty.

Unlawful for common carriers to transport persons affected with contagious diseases, &c., or infected articles of clothing, &c.

Exception.

Penalty.

Sale and use of impure vaccine virus, anti-toxin, &c., prohibited.

within twelve hours after discovering the same, report the fact in writing to the same person and in the same manner as any physician attending such sick person would be required to do as hereinabove set forth; and on the thirtieth day of June and the thirty-first day of December in each and every year every physician, house-owner and householder making any report or reports as in this section required, shall be entitled to receive from the officer to whom such report or reports shall have been made during the preceding six months, a certificate in writing under the hand of such officer, setting forth the number of names of persons reported to have been affected with any of the diseases hereinabove specifically named or referred to, which certificate when presented by such physician, house-owner or householder to the proper disbursing officer of the city, borough, town or other local municipal government or township within which such affected person may have been, shall entitle such physician, house-owner or householder to receive from such disbursing officer the sum of ten cents for each and every name by such certificate certified to have been reported, unless such notification shall be found to have been erroneous; and any physician, house-owner or householder who shall refuse or neglect to perform the duty hereinabove required of him shall be liable to a penalty of fifty dollars.

**237. SEC. 2.** That the facts contained in every report filed with the clerk or other officer of any local board of health, pursuant to the provisions of the first section of this act, shall be entered by the officer to whom the same shall be delivered in a book kept exclusively for that purpose, which book shall be subject to the inspection of the local board of health and its proper officers, and to the state board of health and its officers only; the officer of the local board of health to whom such report shall be delivered, and whose duty it is to make record of the same, as in this section above set forth, shall also at least once in each week, and daily when required by the state board of health, transmit the facts stated therein by mail to the board of health of the state of New Jersey, at Trenton, and shall further keep the said state board of health constantly informed concerning the measures which are employed by the local board of health to prevent the spread of the diseases in such reports mentioned, which facts and information shall be conveyed to the said state board of health in writing, and upon such blank forms as may be furnished by the said state board of health; any officer whose duty it is to make any report to said state board of health, as in this section above provided, and who neglects or fails to perform such duty, shall be liable to a penalty of fifty dollars for each and every such neglect or failure of duty.

**238. SEC. 3.** That it shall be unlawful for any common carrier to accept for transportation, or to transport or carry within this state any person affected with any of the contagious, infectious or communicable diseases named or referred to in the first section of this act, or any infected article or articles of clothing, bedding or other property whatsoever, or the body of any person who shall have died of said contagious, infectious or communicable diseases, except the same be inclosed in an hermetically-sealed casket, and except a license for such transport be first obtained in writing from the local board of health of the municipality or township in which the said infected person, infected articles or dead body may be located; and any common carrier knowingly violating any of the provisions of this section shall be liable to a penalty of one hundred dollars.

**239. SEC. 4.** That if the board of health of the state of New Jersey shall ascertain any vaccine virus, anti-toxin or other animal product sold, or offered for sale, or held for sale or use within this state for prophylactic or remedial purposes, to be dangerous to human health, or so impure or inert as to be inefficacious in rendering immune or less susceptible to disease any person in whom such product may be used, it shall be lawful for the said board of health of the state of New Jersey to prohibit the further sale or use within this state of any vaccine virus, anti-toxin or other animal product, as aforesaid, manufactured or produced by the party who shall have manufactured or produced such dangerous, inert, impure or ineffica-

scious product; any person who shall, after such prohibition, and with knowledge thereof, sell, or offer for sale, or use, or offer for use within this state any such prohibited product shall be liable to a penalty of one hundred dollars. Penalty.

**240. SEC. 5.** That any penalty incurred under any of the provisions of the first, second, third or fourth sections of this act may be recovered in an action upon contract, in any court of record within this state, for the use of the state of New Jersey. Penalty may be recovered by suit.

## Heirs and Devisees.

1. Creditors may maintain actions against heirs and devisees.
2. Heir liable for lands descended.
3. Pleadings, judgment, execution.
4. Devisees liable in like manner.

### An act for the relief of creditors against heirs and devisees.

Passed March 7, 1797.

Rev. 291.

R. S. 83.

Creditors may maintain action on special and simple contracts against heirs and devisees.

1. That all and every creditor or creditors, whether by simple contract or specialty, and whether the heirs are mentioned therein or not, shall and may, by virtue of this act, have and maintain his, her and their action and actions, against the heir and heirs-at-law of any debtor who hath already died, or shall hereafter die intestate, seized of any messuages, lands, tenements or hereditaments, and against the heir and heirs-at-law, and devisee and devisees of such debtor, in case such debtor made any last will and testament; and such heir and heirs, devisee and devisees shall be liable and chargeable for a false plea by him, her or them pleaded in the same manner as any heir should have been for any false plea, by him pleaded, in any action of debt upon specialty, or for not confessing the lands or tenements to him descended; and moreover, all such creditors shall be preferred as in actions against executors and administrators. (a)

2. That in all cases, where any heir or heirs-at-law is, are, or shall be liable to pay the debt of his, her or their ancestor, in regard of any lands, tenements or hereditaments, descending to him, her or them, and shall sell, alien, or make over the same, before any action brought, or process sued out against him, her or them, such heir and heirs-at-law shall be answerable for such debt, to the value of the said lands, tenements or hereditaments, so by him, her or them sold, aliened or made over; in which cases, all creditors shall be preferred, as in actions against executors and administrators; and further, such execution shall be taken out upon any judgment so obtained, against such heir or heirs, to the value of the said lands, tenements or hereditaments, as if the same were his, her, or their own proper debt, but the lands, tenements and hereditaments, which were bona fide aliened before the action brought, shall not be liable to such execution. (b)

If the heir alien land descended to him before action brought, he shall be liable to the value of the land.

(a) An action of covenant will lie against heirs and devisees for the breach of a covenant against incumbrances contained in a conveyance of the ancestor. *New Jersey Ins. Co. v. Meeker*, 8 Vr. 282. See 4 *Grif. Reg.* 1286-9. The heirs of a deceased heir having lands by descent, should be joined. *St. Mary's Church v. Wallace*, 5 Hal. 311. An action at law may be brought against heirs and devisees under the statute, although the claim be not presented to the administrator, and there is sufficient personal property to pay the debt. *Stone v. Todd*, 20 Vr. 274. In a declaration under the statute against heirs and devisees it is not necessary to aver that the personal estate of the decedent is insufficient to pay his debts. *Dodson v. Taylor*, 24 Vr. 200. Where the remedy at law against the executors and devisees of a deceased surety on a bond is adequate, equity will, of course, not interfere. *Dixon v. Vandenberg*, 8 Steu. 47. The liability of an heir for the engagements of his ancestor is a legal liability, enforceable only by an action at law. *Mutual Life Ins. Co. v. Hopper*, 16 Steu. 387.

(b) The heir or devisee is still liable, although a bona fide purchaser from him will hold the land discharged. *Skellman v. Van Felt*, Sax. 511. A mortgage by the heir is an alienation within the meaning of the act. *Dun v. Jaques*, 5 Hal. 269; reversed May Term, 1851, *Hal. Dig.* 634, § 11. In a suit on a bond

against the heir-at-law, who has aliened the descended lands before suit brought, the recovery will be only for the value of the lands in the condition in which they were at the time of the descent cast. *Fredericks v. Isenman*, 12 Vr. 212. In such a suit the improvements put on the land by the heir will not enter into the valuation of such land, nor will the heir be called on for the rents and profits, nor, on his side, can he claim for repairs. *Id.* Under this act a creditor of a deceased debtor may recover in an action against his heir or devisee (1) if defendant pleads properly a special judgment requiring the debt to be made only out of lands descended or devised, and which have not been bona fide aliened before the commencement of the action, or (2) if defendant fails to plead, or pleads falsely or improperly, a general judgment, as if for the debt of the defendant, or (3) if it is made to appear in the manner prescribed that such lands have been so aliened before action brought, a like general judgment, but only for the value of the lands. *Muldoon v. Moore*, 26 Vr. 410. A judgment against an heir or devisee for his individual debt, and levy of an execution issued thereon upon lands descended or devised prior to the commencement of an action against the heir or devisee upon a debt of the ancestor or testator, is not an alienation within the meaning of the act. *Id.* See *post*, ORPHANS' COURT, Sec. 70.