

CHAPTER XXV

ADMINISTRATIVE POWERS UNDER HEALTH LEGISLATION

§225. *General comment.*—Health legislation covers a greater variety of subjects than safety legislation: contagious and infectious disease, both of men and animals (measures against plant disease and insect pests are similar in kind); sewage and protection of water supply; housing; foods and drugs; and noxious trades. The control of professions that have to do with health has been considered before.

While some of the legislation is of relatively old date (noxious trades, some food control, and quarantine), the greater part originated in the nineteenth century. Different from safety legislation, the dangers to be guarded against were old, but the scientific ascertainment of their sources and of the means of combating them was new, and enlarged facilities of locomotion increased the danger of transmission.

The protection of the public health affects so many private interests, and in such a vital manner, that the organization of the appropriate public powers is necessarily complex. It cannot be, like safety control, almost entirely localized; neither can it be, like banking, insurance, or labor legislation, entirely centralized; but it requires both central and local organs, and their relation presents special problems.

While technical knowledge is requisite, the responsibilities for decisions in the matter of property or business are likely to be such as to make a politically organized authority desirable: hence, generally speaking, powers are vested in executive authorities or governing boards, which, however, are either in part composed of, or advised by, medical officers.

Moreover, it is not always possible to concentrate all public health administration under one head or department. The argument, for example, that all sanitary inspection should be under one control encounters the other argument that factory or tenement inspection by different authorities for different purposes would be not only more expensive but also more vexatious. Actual arrangements show that the latter argument frequently prevails.

As in some other branches of regulative legislation, the most effective administrative power is that of inspection. This power is found

wherever it is an appropriate method of giving effect to a law, and often it is the only power that precedes enforcement in the courts; but in accordance with the general plan of the survey, there will be no attempt to state these powers in detail.

The plan of treatment will be to discuss the legislative systems of the four jurisdictions successively, noting the use of the several classes of administrative powers and the general administrative organization in each of them, and then to substantiate this general comment by a practically full catalogue of the administrative powers conferred by the statutes.

§226. *New York. Status of legislation and of administrative organization.*—The Public Health Law, which appears in the Consolidated Laws as chapter 46, contains all the provisions for the regulation of professions that can be said to have any connection with the protection of health. The principal other matters which it regulates are potable waters and quarantine. It also incorporates the provisions of law organizing the State Department of Health and local boards of health; and in connection therewith creates certain general powers concerning diseases and nuisances, which will be presently considered.

It is clear that this Public Health Law does not cover the entire field of health legislation. The three principal other statutes dealing with matters affecting the public health are the Tenement House Law; the Labor Law, which contains sanitary requirements in connection with labor conditions not only for the protection of employees but also for the general public (tenement labor, bakeries); and the Farms and Markets Law of 1922, which takes care of the important subjects of food products, cold storage, and animal and plant diseases.

Outside of these general statutes are local laws, the most important of which is the Charter of the city of New York, which recognizes the Sanitary Code of the city as established by local authority, with power of revision, alteration, and addition. This Sanitary Code is a very comprehensive measure dealing with many matters not touched upon by the general laws of the state; thus it requires a permit for the establishment of a hospital, a subject upon which the general statutes are silent.

It should also be observed that the State Commissioner of Health with the advice of a Public Health Council is authorized to establish a sanitary code, which in the territory prescribed therefor, supersedes all inconsistent local ordinances but does not apply to the city of New York (§2*b, c*). This State Sanitary Code is less comprehensive than

the New York City Sanitary Code, dealing chiefly with communicable diseases, the sale of milk, regulation of labor camps, procedure in dealing with nuisances, and—under an express authorization contained in the statute—with the practice of midwifery. The latter subject is now regulated by statute (Laws, 1922, c. 501).

The Public Health Law is administered by a State Commissioner of Health, and by local boards of health, the orders of which are subject to the revision of the Commissioner in so far as they affect the public health beyond the local district (§4). But the State Commissioner of Health does not administer the sanitary provisions of the Labor, Farms and Markets, and Tenement Laws. These laws provide their own administrative organizations, the two former entirely centralized, the latter entirely local. There is, however, provision for a certain amount of co-operation with local health authorities, particularly with reference to tenements.

The State Commissioner of Health must be a physician, and the majority of the members of the Public Health Council, which co-operates in the making of sanitary regulations, are likewise men of professional training. In the local boards of health one member must be a physician; in the smaller cities, the mayor is also a member of the board. The board has a medical health officer who is its executive subordinate.¹ In New York City two of the three members of the Board of Health are professional men, and one of the two, who is the president, is also the executive medical officer. There is therefore always a strong, if not a dominating, professional element in the exercise of determining powers. It deserves notice, however, that in the exercise of the broad power over nuisances under section 6 of the Public Health Law the Commissioner of Health merely inquires and recommends, while the decision rests with the Governor.

§227. *Directing and summary powers.*—Both in the article on the State Department of Health (art. 2) and the article on local boards of health (art. 3), the Public Health Law confers very general administrative powers.

In addition to a sweeping power of inspection ("the Commissioner of Health and any person authorized by him so to do, may enter, examine or survey all grounds, erections, vehicles, stores, apartments, buildings, places and premises"), the State Commissioner of Health is given power to make examination into nuisances and questions affecting the

¹ Chapter 249 of the laws of 1921 authorizes cities to substitute a departmental for a board organization.

security of life and health in any locality. The report of such examination, when approved by the Governor, shall be filed in the office of the Secretary of State, and the Governor may declare the matters adversely reported on public nuisances, to be changed, abated, or removed as he may direct. He may require all county officers to take all measures to execute such order and cause it to be obeyed, all acts reasonable or necessary to such abatement to be lawful or justifiable, the expense to be paid by the municipality and to be recoverable from the owner of the land (§6).

Every local board of health has power to make orders and regulations that it may deem necessary and proper for the preservation of life and health and the execution and enforcement of the Public Health Law in the municipality. It may make such orders and regulations for the suppression of nuisances and concerning all other matters in its judgment detrimental to public health in special and particular cases not of general application, serving copies upon the owner or occupant of the premises or posting the same thereon. It is given the powers of a justice of the peace to compel testimony, and may issue warrants to constables and policemen to apprehend and remove persons, who cannot otherwise be subjected to its orders, and a warrant to the sheriff to bring to its aid the power of the county whenever it is necessary to do so. In view of this latter provision, the power given earlier in the same section to employ persons necessary to carry orders into effect should perhaps not be construed as a power to take summary action. The board of health may impose penalties for non-compliance with its orders and may proceed judicially for specific enforcement; but the law does not, as is usual in such cases, declare each day's continuance in default a separate offense (§21).

No power of equally general scope is found in English public health legislation; no power of equally general scope is found in the legislation of New York outside of the Public Health Law. In Germany (Prussia) orders addressed to individuals to remove dangers to health or safety for which they are responsible are within the well established jurisdiction of administrative authorities, and have found a legislative recognition in the very brief and general definition of the police power contained in the Prussian Code of 1794; but there the limitations of the power are well understood, and its penal sanctions and remedial checks are specified by general statutes.

Such a practice of issuing individually addressed orders is, as a general administrative power, unknown to Anglo-American systems of

government; and when the power is conferred in sweeping terms by reference to a criterion of so diversified an incidence as the protection of the public health, the question arises whether its scope should not be held to be limited by more specific powers found either in the same act or in related statutes or in the subordinate codes, in accordance with the recognized principle of construing general in the light of particular provisions.

The specific matters, with reference to which there are additional express grants of directing powers, are: sewage and refuse disposal, communicable diseases, unsanitary bakeries, animal and plant diseases, and tenement houses; under the State Sanitary Code, also dairies; under the Sanitary Code of the city of New York, all nuisances.

It is of some interest to scrutinize the terms of these powers. Only the power over nuisances under the New York City Sanitary Code is very general in its wording: an owner may be ordered to make suitable or necessary repairs or improvements where a nuisance has been declared by the Board of Health (§185). The power in connection with communicable diseases is more specific (Public Health Law, §25): it extends to the requiring of purification and the prohibition of intercourse and communication with or use of infected premises, persons, and things, and the power is subject to the provisions of the Sanitary Code, which specifies very fully the customary precautionary measures; a power to order the vaccination of a particular person is apparently not given. In connection with tuberculosis, the power to require disinfection calls for no comment; but quite peculiar are the powers to serve notice upon a tubercular person to dispose of his sputum so as to remove the danger of infection, and to require an attending physician to take additional precautions in treating the patient, disobedience in either case to constitute a misdemeanor (§§326, 328-31). There is power to commit a disease-carrier to a hospital or an institution, but the power is vested in a magistrate, and not in the health authorities (§326a). These particular provisions must undoubtedly be taken to qualify more general powers, with which they make a striking contrast; evidently the problem of administrative authority assumes a much more sober aspect when formulated with reference to a specific matter than when stated as an abstract proposition in a general enumeration of powers.

Directing powers with reference to the other matters mentioned are, with perhaps one exception (directing treatment of diseased plants, Farms and Markets Law, §166), specifically defined (discon-

tinuing discharge of sewage, lighting of halls and painting of rooms in tenements, cleaning and disinfecting dairies, etc).

These directing powers are generally unqualified as to form or procedure, and unchecked by provisions for remedial relief; on the other hand they are not reinforced by adequate penalties for non-compliance, nor by presumptive evidence provisions. In so far as they depend upon judicial enforcement, they are in effect little more than warning notices, and this character of the notice is emphasized in section 47 of the Farms and Markets Law by the provision, that if the notice is complied with within ten days no prosecution shall be instituted.

They may also serve as warning notices, where there is power of direct action. This summary power to deal with dangers to health is granted with some degree of liberality both in the statutes and in the subordinate codes, even if the very sweeping powers under sections 6, 21, and 31, of the Public Health Law, above noted, are ignored. In connection with the suppression or prevention of the spread of communicable disease, the power is to prevent, as well as to prohibit, communication and intercourse. In a number of cases the law gives the power to placard or tag or seal unwholesome or unclean matter, thereby practically preventing its further use. The power of the Commissioner of Farms and Markets to close any unsanitary cold-storage warehouse and to seize and destroy cold-storage food unfit for consumption deserves notice, because the state law gives no similar power with regard to food in general; it is however given by the Sanitary Code of the city of New York both with regard to food and drugs (§§129, 137, 153), and probably by other local laws and regulations.

The power to "take measures" which seems to include both directing and summary authority, is generally reserved for emergencies. In New York it does not appear to be expressly granted for dealing with human communicable disease, but is given to the Commissioner of Farms and Markets for the purpose of preventing the introduction and spread of animal disease and suppressing an outbreak. The power is followed by more specific provisions, and it is not quite clear to what extent the latter qualify the former (Farms and Markets Law, §72).

The summary powers, like the directing powers, of the New York Health Law are unchecked by procedural or remedial provisions. Against error or abuse the owner or other private party may obtain relief by injunction or by action for damages, which is supposed to satisfy his constitutional rights (*People v. Board of Health*, 140 N.Y. 1; *North Am. Cold Storage Co. v. Chicago*, 211 U. S. 306). Provision

for compensation is, however, made in connection with the slaughter of animals; and the Charter of the city of New York transfers to the city the liability in damages which at common law falls upon the acting or directing health officers if the action turns out to be unjustified (§1178).

§228. *Permit and certification requirements.*—In the nature of things, such requirements cannot be as generally phrased as directing powers; the latter may be given with reference to the entire range of dangers to public health; whereas a requirement that a permit must be obtained where the public health is affected would be unmeaning. And there are so many acts, conditions, and occupations that have a possible relation to the public health that there must be considerable latitude of legislative discretion in singling out those that should be placed under administrative powers of advance determination. That discretion is usually exercised by the legislature itself; with reference to obviously local conditions, it is also frequently delegated to local legislative bodies; and in New York, the Public Health Law gives to the State Commissioner of Health, acting with the concurrence of an appointed Public Health Council, power to establish a sanitary code, which must have been expected to establish a number of license requirements, and, as a matter of fact, has done so. The Sanitary Code of the city of New York, originally framed by administrative authority, is now incorporated in the Code of Ordinances of the city, enacted by the Board of Aldermen. The sanitary codes of both the state and the city are given by statutes the force of law, and their violations are made misdemeanors.

The permit requirements of the State Sanitary Code are relatively few, the principal ones relating to the sale of milk, the establishment of labor camps, and the practice of midwifery (the latter under special statutory authority, and now superseded by direct statutory provision); the minor provisions relate to cases of communicable diseases and the use of living bacterial organisms for purposes of inoculation. On the other hand, the permit requirements of the Sanitary Code of the city of New York are extremely varied and numerous, applying to upward of fifty acts or occupations ranging all the way from the establishment of a cemetery and the burial of the dead to the keeping of live pigeons, and covering practically every business in which carelessness may cause disease, and every use of property which in congested urban districts may create a nuisance. The cases in which places are merely required to be kept subject to the regulations of the Board of Health

(for instance, barber shops) are less common than those in which a permit is required. In many cases (about one-fourth of the total number), the Code provides that those permits shall be subject to the terms prescribed by the Commissioner of Health.

This far-reaching administrative licensing power is almost entirely unchecked by formal or procedural safeguards (Code c. 14, art. 1), the whole matter being apparently left to the discretion or the regulative power of the Commissioner of Licenses. The provisions adopted for the city of Chicago in 1921 show that a municipal code can establish some procedural checks, whereas it can do very little in the way of granting remedial relief; it can give an appeal from one municipal authority to another (under the State Sanitary Code of New York the refusal of a permit for a labor camp by the local health officer is subject to an appeal to the State Commissioner of Health), but it cannot provide for review of local administrative action either by state authority or by any court of justice. For such review powers, we should have to look to a statute, but neither the Public Health Law nor the Charter of the city of New York attempt to check the exercise of local licensing powers by procedural requirements or by provisions for review. The whole matter is left to such checks and remedies as the common law may provide; and the courts of New York have been inclined to reduce procedural and remedial checks; they have recognized the power to attach to a permit the condition of its revocability, they recognize the right to revoke without notice or hearing, and they will review administrative action only if a case of abuse of power is affirmatively made out (*Metropolitan Milk Company v. City of New York*, 113 App. Div. 377; *People v. Department of Health*, 189 N.Y. 187). Under these circumstances the licensing powers exercised in the city of New York constitute a striking example of administrative authority raised upon the vaguest kind of legislative delegation.

The permit or certification requirements established by statute directly are much more restricted in number: the State Commissioner of Health issues permits in connection with the discharge of sewage and refuse into the waters of the state, and, under carefully framed safeguards, licenses tuberculosis hospitals and camps (§319); the Commissioner of Farms and Markets licenses cold-storage plants and gives a number of miscellaneous permits in connection with the moving of milk from the country to the city, and in connection with the movement of animals and the transportation of nursery stock; the Commissioner of Labor licenses bakeries and tenement manufacture, and

the Tenement House Law introduces for the city of New York the novel requirement of elaborate administrative checks both prior to the erection and prior to the occupancy of tenement houses.

The legislation concerning food supply contains no certification requirements applicable to individual food products, in striking contrast to the federal provision for meat inspection.

It is interesting to compare the provision in the Public Health Law, §33, for permits for tenement manufacture of various kinds "if deemed advisable," with the provision of the Labor Law subjecting the manufacture of clothing in tenements to permits and licenses, the grant of which, upon compliance with carefully prescribed prerequisites, is practically a matter of ministerial duty (see Labor Law, art. 13). In like manner the very generally phrased permit requirements of the New York Sanitary Code should be compared with the carefully elaborated provisions of the Tenement House Law, which call for a considerable number of dispensing powers. Generally speaking, the treatment of licensing requirements in the three statutes devoted to special phases of public health protection—Labor, Farms and Markets, and Tenements—shows much greater care and regard for private right than the general provisions of the Public Health Law and of the New York City Charter; but not even these three laws contain any provisions for judicial relief, and compare unfavorably in this respect with such statutes as the Insurance Law.

§229. *Federal health legislation. Extent of powers.*—For the first hundred years of the national government, sanitary protection, even against the dangers of sea-borne commerce, was left almost altogether to the states; all, for example, that the United States did in connection with quarantine was to accommodate the collection of customs duties to the exigencies of the situation (act of 1799, U.S. R. S., §§4793, 4796). The most important sanitary measure during that period was the act of 1848 against the importation of adulterated or inferior drugs and medicines, which permitted the customs authorities to reject them, and to destroy them if a bond was not given for their re-export. The act provided for an appeal to a qualified chemist (R. S., §§2933-38). Forty years later, the Tariff Act of 1890 permitted the President to prohibit the importation of any articles adulterated to an extent dangerous to the health and welfare of the people of the United States.

In consequence of the cholera panic of 1892 the United States took an active share in guarding against the importation of disease by

sea, and the present law dates from that time. Health certificates are now required of all entering vessels, both from the consul of the port of sailing and from the health officer of the port of entry, and the federal government co-operates with the states in the enforcement of quarantine (act of February 15, 1893). The act of 1893 also authorizes the President to suspend immigration from countries affected by disease, and under the immigration laws all immigrants are subjected to medical inspection.

The control of animal and meat products began in 1884 and gave rise to a series of acts: 1884, 1890, 1891, 1902, 1903, 1905, 1907, 1913, 1919. It now extends to various phases of interstate commerce, import, and export. It operates partly through statutory prohibitions subject to powers of exemption (importation of neat cattle; prohibition suspended on finding that there is no danger [Tariff Act, 1913]), partly through inspection and certification requirements, and partly through powers of seizure and destruction.

The President may suspend the importation of animals for a limited time (act of July 24, 1919).

Since 1909 the importation of wild animals requires a permit; this is a conservation measure.

Food products generally and drugs are covered by the act of 1906; an earlier act of 1897 places the import of tea with regard to its commercial quality under administrative control (this is not a purely sanitary measure). The administrative powers under the act of 1906 are likewise significant chiefly in connection with imports, which may be refused admission; but there is now a general power to disapprove trade-names, which applies to all food products moving in interstate or foreign commerce (acts of 1906 and 1919; 249 U.S. 495). Since 1909 protection has been extended to plants. The powers first related to imports;² but interstate shipments were covered by an act of 1915 giving postmasters power to act in co-operation with state inspectors; and an act of 1917 permits interstate quarantine against plant diseases and insect pests.

An act of 1927 establishes permit requirements, subject to dispensing powers, for the importation of milk and cream.

² Act of 1909 relating to permits for bringing in wild animals; 1910: power to reject insecticides, with a provision for an administrative hearing before prosecution for adulteration; 1912: permit for importing nursery stock, power to prohibit import of plant products from places to be specified, and power to make rules to prevent the importation of adulterated grain seeds.

The United States has also assumed control of establishments for preparing serums or virus for treating human diseases. The administration of the law, vested in 1902 in the Secretary of the Treasury, was in 1913 transferred to the Department of Agriculture.

The establishment requires a license, and the product must be prepared under rules and regulations in order to be admitted to commerce. If preparations are harmful or worthless, the license may be revoked; and a dealer who has made his purchase from the establishment prior to the revocation of the license may be prohibited from selling.

Permits are required for imports; worthless imports may be returned or destroyed, and permits revoked after hearing.

The export control of meat products requires some comment. It is much more highly systematized than import control. There is no licensing requirement for packing establishments, merely a power to reject the entire product of an insanitary plant. But there is the extraordinary requirement that the carcass of every individual animal slaughtered for export is inspected and passed or condemned. The Sanitary Code of the city of New York (art. 172) makes a similar requirement for imports into the city; but New York state legislation does not carry control to this point.

The explanation of the federal requirement must be found in the policy of foreign countries; their agrarian interests demanded the exclusion of foreign meat products, and put forward sanitary reasons. It became necessary to meet and disarm the antagonists of the American meat industry. The act of 1890 provided for certification on request, or if required by foreign law; the act of 1891 provided for marking under rules, but prohibited transportation only after a declaration of unsoundness; finally in 1907 the requirement of passing and marking was made absolute, and the foreign prohibitions had to be withdrawn (Clemen, *American Live Stock and Meat Industry*, pp. 323, 326).

Summary powers.—To a certain extent, federal sanitary legislation now extends to interstate as well as to foreign commerce, and in cases of emergency it operates through the summary powers of destruction which also occur in state legislation. But the main field of federal control is import and export, and in connection with these it has the advantage of readily available administrative enforcing powers, which (except in connection with shipments by mail) are absent from the control of domestic commerce. Imports are universally subject to administrative checks for the protection of the revenue; and long established legislation, due to international require-

ments, makes a clearance necessary for every vessel sailing for a foreign port. Every statutory provision relating to import and export can therefore be given effect by withholding entry or clearance, thereby throwing the initiative for going into court, if an appropriate form of remedy can be found, upon the aggrieved individual.

Of this facility, federal legislation concerning animals and plants and foods and drugs takes constant advantage. Thus the Meat Act of 1891 requires the condition of meat intended for export to be certified before a vessel carrying it can obtain clearance, and this provision was extended to dairy products in 1908. The act of 1891 also permitted a prohibition against a vessel from carrying cattle as a penalty for violation of regulations, enforced by refusal of clearance.

In case of imports, a simple provision for refusal of admission is sufficient for administrative enforcement, and only a power to destroy requires express statutory warrant. A statement in one of the Year Books of the Department of Agriculture that no prosecutions were found necessary to carry into effect the restrictions concerning imported drugs thus finds its ready explanation (1912, pp. 203, 204).

Administrative organization.—Federal health administration is divided between the Treasury Department and the Department of Agriculture. The former becomes active when sanitary powers involve the control of imports or of the movement of vessels. When the Department of Commerce was organized and many functions formerly exercised by the Treasury Department were transferred to it, the public health service was left with the Treasury. The United States recognizes the quarantine powers of the states (§4792).

All powers for the prevention or suppression of animal and plant disease, and slaughter house inspection, are committed to the Secretary of Agriculture.

Where sanitary protection involves the prohibition of imports or of immigration on a large scale, the appropriate power is vested in the President directly.

§230. *English health legislation. Extent of powers.*—In addition to the Public Health acts (1848, superseded by revision of 1875, supplemented by amending acts, the most important ones those of 1890 and 1907), there are acts relating to vaccination (1867-98), river pollution (1876), diseases of animals (1894), food and drugs (1875-99), and housing acts of 1909, 1919, and 1925. The Public Health Act is in part an act to deal with the outbreak of communicable disease, in part a "local improvement" act, creating local organs

and powers to deal with the sources of noxious exhalations which were formerly believed to be the main sources of epidemic diseases, warding off dangers either by public undertakings and services or by compelling private action.

As regards legislative recourse to administrative ruling powers, a difference appears between local improvement requirements and other phases of sanitary control.

Considering the latter first, administrative powers are sparingly bestowed in dealing with the suppression of contagious diseases, whether of men or animals; an order may be issued requiring disinfection of premises or articles, and, subject to compensation, the destruction of articles, with power of substitutional execution; infected persons, if it is impossible to isolate them effectually, may be removed to a hospital; but it requires an order of a justice to remove a well person or to force vaccination or the immediate burial of a dead body (1890, §8; 1925, §62).³ There are no general emergency powers.

The administrative powers in dealing with animal disease are: the power to prohibit imports; the power to determine conclusively that an area or that an animal is infected, and—subject to compensation—the slaughter of animals by order of the Minister of Agriculture. Perhaps there are other powers under the regulations which may be made by administrative authority regarding the movement of animals after a declaration of infection has been made.

In dealing with foods and drugs, there are strong administrative powers over the import of tea (prescribing terms of delivery if found mixed, power to destroy if found unfit) and with regard to such drugs as opium and cocaine (import license; rules may require manufacturing licenses).

On the other hand, the food acts (1875-99) depend on inspection and (in the case of margarine) registration; there are only a few minor dispensing and approving powers. The Milk and Dairies Act of 1915 gives the Local Government Board an extensive rule-making power, but does not mention licensing requirements or directing powers as possible subjects of rules; this act, however, does directly give a power to deal with milk supply by particular dairies by way of prohibition or conditional permits.

³ The Public Health Act of 1925 deals also with verminous premises and persons; an administrative order may require the cleansing of the former; but a person may be dealt with against his wish only on the order of a petty sessional court (§§46, 48).

The amending act of 1922 refers to local enactments providing for the registration of surveyors of milk, and contains remedial provisions applicable to such registration. The same amending act also requires licenses for the sale of special grades of milk.

Powers of inspection are accompanied by powers to seize and to procure samples for analysis; but condemnation or destruction requires the order of a justice (1875, §§ 116, 117).

In connection with local improvements or the lack of improvements, housing, water supply, nuisances, and noxious trades, administrative powers, beginning with the Town Improvement Clauses Act of 1847, have been liberally bestowed, both in the form of consent, approval, or certification requirements and in the form of powers to issue orders, the latter often accompanied by powers of substitutional execution. In many cases, however, the sanction of a magistrate is required. A summary power of abatement without notice or hearing appears only where the owner cannot be found.

The public health acts are careful and specific in their administrative provisions and protect private rights by reviewing powers, and in the absence of fault, by compensation provisions.

The Housing Act of 1909 substitutes the Local Government Board for the Court of Quarter Sessions as a reviewing authority in the matter of condemnation of houses unfit for habitation. It was the administrative or bureaucratic method of procedure adopted by the Local Government Board (treating the report of its inspector as confidential), which gave rise to the well-known case of *Local Government Board v. Arlidge* ([1915] A. C. 120); and the House of Lords took note of the legislative policy of changing from judicial to administrative action.

The Rivers Pollution Prevention Act of 1876 illustrates a very cautious policy in restraining private action. The statute does not operate through licensing or (like the New York law) through directing powers, but establishes direct prohibitions, subject to rather generally phrased qualifications. It checks, however, the enforcement of these prohibitions by requiring the consent of the Local Government Board to the institution of criminal proceedings, and directing the Board to consider industrial interests and the character of the locality. This form of administrative discretion occurs in other English statutes but is unknown to the American law.

Administrative organization.—The English health laws are locally administered by the elected governing bodies of urban or rural

districts, who have medical officers and inspectors of nuisances as their executive subordinates. The latter do not exercise determining powers, but their certificates furnish the basis for board or council action or for judicial orders. The council is generally authorized to act through a committee of its members, subject to the approval of the council (Local Government Act, 1894, §56).

The central authorities are likewise politically constituted. The first Public Health Act, of 1848, created a general Board of Health, two of whose three members were apparently intended to be medical men, though not so expressed in the act. This board met with strong opposition, and it was abolished in 1858, its functions being transferred partly to the Privy Council and partly to the Home Secretary. In 1871 the supervisory powers were vested in a newly constituted Local Government Board, which became one of the principal government departments. It is an interesting reversion that in 1919 this Local Government Board was again superseded by the Ministry of Health, with much more important status than that of the old Board of Health.⁴ Sanitary powers with regard to animals are vested in the Board of Agriculture. Some special powers are given to the Commissioners of Customs where imports are involved.

§231. *German health legislation.*—The federal jurisdiction over matters affecting health under the Constitution of 1867-71 rests generally on the power over trade and industry and upon a more specific power over measures of medicinal and veterinary police. This leaves the sanitary aspects of local improvements other than trade nuisances to state legislation.

The Empire enacted laws concerning vaccination (1874), communicable diseases (1900), cattle and meat inspection (1900), and animal diseases (1909). The food and drug laws do not in all cases serve sanitary purposes (margarine, 1897; saccharine, 1902). The legislation against the Phylloxera was probably constitutionally justified as a measure to carry into effect an international convention (1883, 1904; concurrent Prussian legislation of 1878). The Trade Code determines the principles on which trade nuisances are to be dealt with.

The only Prussian statute of importance appears to be one of 1905 for combating communicable diseases.

⁴ In the more detailed listing of powers, *infra*, the original statutory reference to the Local Government Board is retained, since some of its powers have been transferred to other government departments than the Ministry of Health.

It is clear that a good deal of sanitary protection and control must proceed from delegated power: the Prussian law on police administration (March 11, 1850) gives to the local and district authorities power to make regulations for the purpose of caring for life and health, and without consulting these a view of administrative powers must be as imperfect as would be a list of powers under the laws of New York that would not take account of the Sanitary Code of the city of New York.

Under the Prussian Code of 1794, moreover, every physical danger can be met by a police order applicable to the particular situation.

Several of the imperial statutes are merely outlines of powers to be exercised either by the Federal Council or by the states.

Thus the law concerning foodstuffs, etc., of May 14, 1879, gives a comprehensive rule-making power to the Federal Council, specifying a great many things that may be forbidden, referring to powers of supervision and authorizing the taking of samples, but not in terms either delegating, or providing for the delegation of licensing or directing powers.

The act concerning animal diseases lays down principles to be observed by the states. It names the diseases subject to notification; it imposes a local duty to isolate infected or exposed animals, but also a duty to take the advice of the official veterinarian (§11). It specifies permissible permanent requirements, including among these the power to require certification (§17), and permissible emergency measures, including the killing of animals (§§19-30). It makes full provision for compensation (§§66-73). It also establishes a right of administrative appeal (remonstrance) to be recognized by the states. The act is of a "charter" type unknown to English and American legislation.

The act concerning communicable diseases of 1900 is likewise an authorizing rather than a regulating act. The act itself merely specifies diseases (subject to addition by the Federal Council) and establishes a duty of notification. It creates a general emergency power to take necessary measures but imposes limitations as to what may be required in the matter of quarantine, restriction of residence, and restriction of trading rights (§§8, 12, 14, 15). On the other hand, it specially authorizes a number of measures: examination of dead bodies (§10), quarantine and supervision (§11), reporting new arrivals (§13), restricting or prohibiting use of public water supply (§17), vacation of premises and disinfection (§19), some of these measures not to be

taken except on the advice of a medical officer. This act likewise contains provisions for compensation (§§28-34).

The Federal Council may make regulations concerning imports, transit, and transportation; concerning the application of measures to travelers; and concerning scientific experiments with disease-producers (§§25, 27, 40).

The Prussian law of 1905 is of a similar character; it goes farther than the federal law in permitting the ordering of the dissection of bodies where there is a suspicion of certain diseases, and of the compulsory treatment of prostitutes in case of venereal disease. This would seem to show that the authorizations of the federal law are not construed as exclusive.

The act concerning cattle and meat inspection of 1900 differs from those before noted in being not merely an authorizing measure.

It requires in the case of specified animals (the list may be added to by the Federal Council) official examination before and after slaughter. The inspector after the first examination may give a two days' permit for slaughter, subject, if necessary, to precautions. After slaughter he issues in a proper case a declaration that the meat is suitable for food; or, if conditionally suitable, prescribes precautions or issues revocable licenses for sale or use. Revocable permits may be given for sale or use of horse meat. The use of condemned meat for other than food purposes requires a police permit which may be given subject to prescribed precautions.

The Federal Council is given power to make regulations concerning: ingredients and processes prohibited in the preparation of meat; the designation of foreign meat; the carrying out of the prohibition of imports; addition to the import restrictions contained in the law; extending the rules of the act regarding horse meat to other kinds of meat.

Part of the object of the law was undoubtedly to justify the insistence upon equal standards with regard to foreign imports.

The act is more detailed in its provisions than the federal meat inspection legislation of the United States.

The Phylloxera acts of 1883 and 1904 are not strictly health, but conservation measures. They authorize the taking and the direction of measures necessary to eliminate the pest from infected vineyards, subject to compensation.

The Saccharine Act of 1902 is an extraordinary measure, likewise not strictly sanitary in character. It applies to artificial sweetening

ingredients sweeter than sugar without corresponding nutritive value. According to Federal Council regulations, one or more concerns may be given manufacturing or import licenses. The license is revocable; the concern is under supervision. The authorities fix maximum prices and conditions of export. Sales may be made only to druggists or persons belonging to specified categories who hold revocable licenses. Druggists may sell to other than licensed persons only on conditions fixed by the Federal Council. The Council may also prescribe the form of packing and labels. The act typifies the extreme of administrative control.

The subject of trade nuisances is handled by the Federal Trade Code in a very general way: Section 16 provides that the consent of the authorities competent under the state laws is required for the erection of plants which, on account of local situation or on account of the condition of the site of operations, are calculated to induce special prejudice, danger or annoyance, either for the owners or occupants of neighboring estates or for the public in general. The section enumerates a large number of specified trades generally falling under the head of "trade nuisances," and provides that the list may through changing conditions be altered by the Federal Council with the approval of the next legislature. The Code then proceeds to establish procedural safeguards, which are typical of the law of license requirements based on local conditions, and which are referred to in other provisions of German statutes as applicable directly or by analogy. The application for the license must be accompanied by drawings and specifications. If these appear to be complete, public notice is given. If this results in no objection, an ex-officio inquiry is held into the question of public detriment and of compliance with police requirements. The license may be refused or granted conditionally; the conditions may be for the benefit of health and life of employees. Decision and conditions must be in writing; refusal and conditions must be accompanied by reasons. If there are objections, those resting on private title are left to ordinary litigation, but do not affect the administrative decision; others are fully discussed and decided. The applicant may, on giving security, and at his peril, be permitted to build at once. The administrative decision is subject to appeal to the next higher authority. Further details of procedure are left to the state laws, which must observe several principles: the decision either in the original or in the appeal stage must be made by a board having full examining powers. An appellate board decision must always be rendered in public session after

notice and hearing, an original board decision must be rendered in this way if there is no unqualified approval and the applicant demands an oral hearing. Licenses are not limited in duration, but changes require new licenses (Trade Code, §§16-25).

Under this method of regulation the federal statute does two things: it lays down the principle of license requirement for noxious trade establishments, defining them in a very general manner; and it insures the observance of fundamental principles of administrative law. Subject to these controlling principles, the details of administration, including organization of authorities and procedure, are left to the laws of the member-states.

The regular hierarchy of administrative officials, as determined by general laws of the several member-states, is charged by the federal laws with the execution of health legislation, physicians and other experts acting only in an advisory capacity.

§232. CONSPECTUS OF POWERS

A. New York

1. General (Public Health Law):

The State Public Health Council may establish a sanitary code (§26).

The State Commissioner is given general power of entry and examination (with provision for delegation) (§4).

On report of the Commissioner, the Governor may declare a nuisance, order change, abatement, or removal, and may order officials to execute the order (§6).

A local board may make orders in individual cases for suppression of matters in its judgment detrimental to public health, and may direct the apprehension and removal of persons (§§21, 21b); it may, with regard to nuisances, enter and inspect, and order their suppression and removal, and on default of the owner, may cause removal at his expense (§§26, 31).

2. Protection of waters:

The Department of Health has regulative powers concerning potable waters and concerning specific matters in connection with bathing-establishments (§§70, 312).

The permit of the State Commissioner is required for discharging into the waters of the state, sewage (§76) or refuse (§78). As regards sewage, he may, with the approval of the Governor and Attorney-General, order the discontinuance of the discharge or direct methods of treatment or disposal (§76a); with regard to refuse he may impose conditions and may revoke the permit when necessary for the public health (§80).

He shall issue permits, if not detrimental to public health, for refuse discharge pipes (§79).

The Department of Health may abate summarily violations of its rules (§71).

3. Contagious diseases, quarantine, etc.:

Local boards of health and health officers may prohibit and prevent communication and require purification (§25); may quarantine persons recently exposed to smallpox who refuse to be vaccinated (§§129, 134); the health commissioner may prescribe the manner of vaccination and gives certificates of approval (for limited period) for vaccine virus (§311).

As to vessels: The local health officer may hold and treat as he deems necessary any vessel deemed by him to be in a condition dangerous to public health (§131); may order it removed to quarantine, and persons who have left to be returned to the ship (§136); he may make requirements specified by law before admitting a vessel to pratique (§132); he may require masters to present bills of health (§124). If the master does not comply with the health officer's directions, the latter may employ assistance to enforce his order.

Burial permits: Bodies are not to be interred or removed from the registration district or held beyond a specified period unless a permit is obtained from the registrar. The permit is not to be issued until the certificate of death has been filed (§375).

4. Tuberculosis:

Where premises are vacated by a tubercular patient, the local health officer shall direct disinfection; on default, cause the premises to be placarded (§§323, 324, 325); the health officer on complaint shall require a tubercular patient so to dispose of his sputum as to remove danger; failure is misdemeanor (§326); if a physician's precautions are insufficient, he shall require additional precautions; noncompliance is misdemeanor (§331); a disease carrier may be committed by a magistrate (§326a); the establishment of a tuberculosis hospital requires the approval of a State Commissioner of Health (§319; full regulation of licensing procedure).

5. Cold storage:

The subject is covered both by the Public Health Law and the Farms and Market Law, 1922. Though not in terms repealed, the former is probably superseded by the latter, and the citations refer to the latter.

Each cold-storage plant requires an annual license from the Commissioner, the issue of which is mandatory if the plant is sanitary and properly equipped (§232); if he deems the licensed warehouse conducted in an unsanitary manner, he shall close it till put in condition; he may suspend the license if the required changes are not made in the time specified (§232); temporary (up to 30 days) storage at a temperature below 20° requires a permit; also, under regulations, if a chill room is not structurally separate (§231); the Commissioner may seize and destroy cold-storage food unfit for consumption (§237); there are full powers of inspection (§243).

6. Bakeries (New York Labor Law):

Establishment or operation requires a sanitary certificate from the Commissioner of Labor. The law contains formal and procedural provisions (§337); the Commissioner may, if he finds unsanitary conditions, order discontinuance of operations until properly cleaned; on non-compliance, he may seal the oven and label the equipment "Unclean"; he must

file his reasons, but is not required to give notice (§336); upon non-compliance with the order, or if the health of the community or of the employees requires it, the Commissioner may make or rescind the certificate, filing his reasons, and he then seals the oven (§337); cellar bakeries not conforming to requirements of the law are forbidden without a certificate of exemption asked for on the ground of their being operated or in course of construction prior to act (§338).

7. Food stuffs; animal and plant diseases (Farms and Markets Law, 1922):

There is no general power to deal with unsound or adulterated food.

A permit is required for testing milk at other than receiving stations (§54); where milk receptacles are unclean, the Commissioner shall issue a notice to comply with the law (no prosecution, if complied with within 10 days) (§47); he may seize them for evidence if unclean (§48) and mark them as "Condemned" (§49).

A permit is required: for returning animals removed from the state where they have reacted to the tuberculin test (§74); for the immediate removal of imported animals upon a veterinarian's certificate (§74); for the sale and removal of tubercular animals other than for immediate slaughter (§81); for applying, for scientific purposes, an otherwise forbidden mode of treatment (§89).

The Commissioner may order the detaining for examination of animals coming into the state (§74); he may order an owner to put animals in quarantine (§76); on the outbreak of animal disease, he may take measures to suppress and prevent the spread of disease (§72); he may destroy animals only after a veterinarian's examination and certificate (§77); he may seize and destroy the carcass of an infected animal (§83); he may order animals suspected to be liable to contract or communicate disease to be slaughtered, if necessary to the speedy and economical suppression of disease (§85) (provision for appraisal, §§81, 84, 88); he may order the slaughter of a tubercular cow if a menace to health or undesirable for production of milk (§78); he may order the seizure or destruction of a calf less than 3 weeks old, or of veal from such a calf, or from an unhealthy calf (§91); he shall destroy foul broods of bees to prevent spread (§175); a permit is required for removal of diseased bees for treatment (§174).

A certificate of soundness based on a veterinarian's certificate is required for offering a stallion for service (§105).

A permit is required for unpacking of nursery stock brought into the state (§161); also for bringing specified insects into the state for scientific purposes (§189); the Commissioner may issue orders for carrying out treatment directed by him with regard to diseased plants (§166); infected plants are to be abated as a public nuisance (§165; provision for appraisal, §167).

Owners may be required to fumigate stock (§170) and to destroy specified insects (§171).

8. Tenement houses (Tenement House Law, 1916, type of a carefully drawn act):

There is the double check of a building-permit (with provision for changes in plans) and of a certificate of compliance. Both are ministerial; the certificate is conclusive in favor of purchasers (§§120, 121); the permit may be revoked for non-compliance or for false statements (§120).

Miscellaneous approval requirements and order issuing powers:

Approval is required (the requirement is generally qualified with some care): for the occupation of not duly ventilated rooms, in the cases specified where such occupation may be permitted, subject to alteration requirements (§73); for size of skylight determined by the Department to be practicable (§77); for maintaining water closets in cellars (unqualified except that writing required) (§93); for occupying living-rooms in basements, subject to statutory conditions; the reason for refusal must be stated in writing, in a book accessible to public (§95); (also special permit in connection with existing tenements in certain cases, by head of department on two separate inspectors' certificates, subject to requirement of alterations (§95); for janitors' apartments in cellars under specified conditions (§96); for stabling of (not more than two) horses (§109).

The Public Health Law requires a permit for the manufacture of clothing in tenements (§33).

The Department has power to order: the painting of rooms white when necessary to improve lighting (§73); the lighting of public halls and stairs where not sufficiently lighted (§90); the exposing of plumbing pipes (§94).

The law requires "to the satisfaction of the department": the cleansing of rooms (§104); the lighting and ventilating of basements and cellars (§90).

9. Lodging houses (New York City Charter):

The Bureau of Buildings issues, under conditions specified by law, permits for converting buildings into lodging-houses (§1315); light and ventilation alterations or enlargements are subject to approval (§1315); the approval may be conditioned upon compliance with rules made by the Bureau.

10. Permit requirements under the Sanitary Code of the city of New York (Code of Ordinances, c. 20):

§13, for admission to the city of a milch cow, certificate of freedom from tuberculosis; §18, for keeping for sale dogs, cats, birds, etc. (subject to terms of permit); §19, for keeping live fowl except on premises used for farming in unimproved sections; §20, for keeping live pigeons within the built-up portion; §21, horses to be tested and found free from glanders by a veterinarian; §§37-42, for removal, burial, or other disposition of dead bodies; §45, for establishing a crematory or burying ground or vault, or for placing any dead body therein, or for opening any grave, etc.; §46, for engaging in the business of undertaking; §58, for establishing a stable; §98, for moving through the city any person affected with, or any article exposed to, an infectious disease; §104, for using certain chemicals for fumigating; §105, for conducting diagnostic laboratories; §120, for use, sale, or distribution of inoculating preparations; §149, for conducting a restaurant (subject to the terms of the permit); §165, for manufacturing

or bottling mineral, carbonated, or table water; §168, for using water from wells in the borough of Manhattan in tenements, manufactories, or office buildings or restaurant; §170, for manufacturing or bringing to the city ice-cream (subject to terms of permit); §172, carcasses not to be brought into the city unless inspected and passed by some federal, state, or local authority; §174, for bringing to the city or manufacturing reconstituted milk (subject to terms); §190, clinical thermometers to be tested under Board of Health regulations; §196, for practicing midwifery (subject to terms); §197, for boarding any child under 12 years old other than a relative, etc.; §198, for conducting day nurseries; §217, for erecting or occupying any tent or camp; §220, for conducting a hospital (subject to terms); §222, for maintaining a school for children under 16 years old (subject to terms); §230, process of sterilizing animal hair used in manufacture of brushes or cloth to be prescribed by the Board of Health; §232, for opening ground filled with offensive material; §240, for engaging in the business of transporting garbage, etc.; §241, for gathering, etc., bones, refuse, or offensive material; §242, for depositing any dirt or garbage, etc., within 300 feet of any inhabited dwelling; §245, for vessels used for removal of any garbage, etc.; §252, for using street sweepings to fill up or raise the level of any grounds; §287, for having a school sink, otherwise than as specified in this section; §322, for carrying on any offensive noise in trade or business (subject to terms); §324, for carrying on certain specified businesses in boroughs other than Manhattan (for Manhattan they are absolutely prohibited); §325, for conducting business of slaughtering cattle, etc. (subject to terms); §327, for keeping or selling horse flesh; §328, for maintaining tanneries (subject to terms); §329, for carrying on the business of rendering or melting fat (subject to terms); §330, for carrying on the business of preparing sausages or preserving meat or fish; §331, for breaking out eggs, etc. (subject to terms); §332, for boiling varnish or oils, etc.; §333, for erecting or converting buildings to be used for the manufacture of gas; §334, for keeping a lodging-house with more than three beds or for more than six persons; §340, for maintaining a bathing establishment or hiring out bathing suits; §342, for maintaining a horseshoeing establishment; §352, for bringing a vessel liable to quarantine; §355, for removing from a vessel a person sick of or liable to develop infectious diseases; §359, for bringing to or unloading at any dock, skins, etc., from any infected foreign or southern place (subject to terms); §360, for mooring any house-boat (subject to terms).

B. United States

1. Contagious diseases, quarantine:

Consent, approval, license, or certifying requirements: for the discharge of the cargo of a vessel in quarantine at some other than regular place, under conditions; Collector or Secretary (U.S. R. S., §4793, act of 1799); for extending the time of entry, or dispensing with or varying rules; Secretary; (§4793, act of 1799); consular bill of health for vessels clearing foreign port in order to enter U.S. port (February 15, 1893); certificate of quarantine health officer, if compliance with rules and regulations, for entry into U.S. port (act of February 15, 1893).

Power to order: the storing of goods in designated warehouses until they can be removed without contravening health laws (§4795, act of 1799); the suspension of immigration from any country in which contagious disease exists, if satisfied of serious danger of introduction of disease (act of February 15, 1893, power vested in President); the prohibition of import of articles adulterated to an extent dangerous to health or welfare of U.S. (President; act of August 30, 1890); the suspension of the importation of animals for a limited time (act of July 24, 1919, power vested in President); the removal of an infected vessel to quarantine for disinfection (Secretary of the Treasury); on certificate of disinfection, it may be admitted to any port named in certificate (act of February 15, 1893).

Regulative power; the President may cause the Secretary of Agriculture to promulgate rules and regulations to prevent spread of disease (March 27, 1890).

2. Imported drugs and medicines (Act, June 26, 1848; R. S., §§2933-38):

Power to mark on invoice as adulterated or below a given standard, whereupon it is barred; there is an appeal to a qualified chemist; re-export is permitted on bond to take them outside of U.S.; otherwise they are destroyed by the collector. This act is probably superseded by the Food and Drug Act, 1906.

3. Animals and meat:

Consent, approval, or certifying requirements:

The Secretary of Agriculture, under joint regulations of himself and Secretary of Treasury, may in his discretion admit tick-infested animals from Mexico to specified parts of Texas; he may inspect and on request, or, if required by foreign law, certify, salted pork and bacon (act of August 30, 1890); condition of meat intended for export is to be certified by inspectors of the Department of Agriculture, before vessel is granted clearance (act of March 3, 1893 extended to dairy products by act March 2, 1908).

For districts affected by disease an inspector may issue certificates of soundness, whereupon transportation may proceed without further inspection except as ordered (act of May 20, 1884).

Carcasses and products of animals found sound are to be marked under rules; the wrongful use of marks is punished; it is unlawful to transport carcasses or products declared unsound (act of March 3, 1891); carcasses of specified animals and meat products are inspected at slaughtering plants and marked passed or condemned; the products of a plant found to be unsanitary may be rejected (act of 1907); horse-meat products are to be marked as such. The Secretary approves trade-names under which meat food products are sold (act of 1919; see 249 U.S. 495); on certificate of the Department of Agriculture pure-bred animals are imported free of duty (act of October 3, 1913); permits are granted for reshipping in interstate commerce animals shipped for breeding or feeding purposes, if they have reacted to tuberculin test (July 14, 1919).

Dispensing power: Secretary of the Treasury may suspend the prohibition of the importation of meat or cattle hides on determination that there is no danger of contagion (Tariff Act, 1913).

Summary powers: renovated or process butter may be confiscated if unwholesome material is used (act of May 9, 1902); a vessel may be prohibited for a limited time from carrying cattle if regulations are violated; clearance may be refused (March 3, 1891); no clearance is to be given to vessels having meat on board without an inspector's certificate, subject to waiver by Secretary of Agriculture for particular countries (act of 1907).

Emergency powers: Secretary may adopt measures to prevent importation of disease; may seize and dispose of animal products from infected foreign countries when deemed advisable (act of September 11, 1919; acts of 1884, 1903, 1919); the Secretary may direct the slaughter of animals declared infected or exposed, subject to provision for compensation (arbitration; act of August 30, 1890); he may quarantine imported animals (*ibid.*) or deal with them according to regulations (*ibid.*); if, under regulations, an animal has been adjudged infected or dangerously exposed, the law prohibits export (August 30, 1890); the Secretary may quarantine any part of the United States on determining that its live stock is affected with contagious disease, and may establish rules for inspection, disinfection, certification, and manner of shipment from quarantined district (act of March 3, 1905).

4. Food and drugs (act, June 30, 1906):

If imported food or drugs are adulterated or misbranded, they are refused admission; if they are not reshipped within a stated time, Secretary of Treasury may destroy them under regulations; the examination is made by the Secretary of Agriculture.

Tea (March 2, 1897; May 31, 1920): import requires a permit upon an examiner's finding of conformity to standards, rejection is subject to appeal to board of tea appraisers; if not re-exported, the tea is destroyed; on bond, importation of inferior teas is allowed for specified purposes.

5. Plant protection:

A permit of the Secretary of Agriculture is required for importation of any wild animal (act of March 4, 1909).

If adulterated insecticides are imported, their admission may on hearing be refused; if not re-exported, they are destroyed. Specimens are examined; if found adulterated, the owner is notified and heard; if a violation of law appears, the U.S. attorney is notified (act of 1910); a permit for importing nursery stock is to be issued on compliance with regulations; there is a provision for acceptance of foreign certificates; regulations are to provide for scientific imports and for imports from countries without an inspection system.

The Secretary of Agriculture is given power, after public hearing, to restrict the import of plants, to be specified from countries to be specified; also power to forbid, after public hearing, imports from places where diseases or infestations exist (act of August 20, 1912); a postmaster may notify a sender that infested plants will be returned at his expense or turned over to the state authorities for destruction (act of 1915); an act of 1917 provides for interstate quarantine against plant diseases and insect pests with appropriate regulative powers, and for prohibition of imports

after a public hearing. See also act of February 15, 1927, regulating the importation of milk and cream.

Serums or virus for diseases of man: An act of July, 1902 permits the Secretary of the Treasury to make regulations for licenses of establishments preparing them, and also gives him power to revoke such licenses. An act of March 4, 1913, gives the Secretary of Agriculture power to license establishments; interstate (etc.) sale is prohibited unless the product prepared in such establishment is in compliance with rules and regulations; it also gives him power to revoke the license if the preparations are worthless or harmless; importation requires a permit; worthless or harmless preparations are denied entry and destroyed or returned; the permit may be revoked after hearing, if preparations are worthless or harmful; the Secretary has power to prohibit the sale of virus which had been delivered to the seller before license of maker had been suspended.

C. England

1. Infectious and contagious diseases (Public Health Acts of 1875 and 1907; Infectious Diseases Prevention Act, 1890; Quarantine Act, 1904; Diseases of Animals Act, 1894, 1919):

a) Premises and articles:

The local authority,^{*} on the certificate of a medical officer (or physician; act of 1875) may order by notice the disinfection of premises or articles (especially bedding and clothing) or the destruction of articles, to the satisfaction of the authority, with power of substitutional execution. For destruction of articles, compensation is paid, which in case of dispute is settled by arbitration. The power extends to filthy and dangerous articles, if there is a risk of injury to health, compensation being paid if the owner is without fault (1875, §§120, 121; 1890, §§5, 6, 55, 56, 66).

b) Persons:

The Local Government Board may make rules as to treatment of persons affected with epidemic or contagious disease and for the prevention of the spread of disease (1875, §130, a power of regulation unqualified in terms); on the certificate of a physician, infected persons may, if it is impossible to isolate them effectually, be removed to a suitable near hospital, with the consent of the hospital (1875, §124); on the certificate of a medical officer and on the order of two justices (subject to the conditions of the order) a well person may be removed from an infected house to a temporary shelter (1907, §61); a medical certificate is required before a child that had been exposed or infected can be sent to school (1907, §57); if a person has died of an infectious disease, the body may be retained for more than 48 hours only with the written consent of a medical officer or physician; in the absence of such consent, a justice may order burial, with power of substitutional execution by the relieving officer (1890, §8); if death has occurred in a

^{*}The "local authority," which is generally the licensing or order-issuing authority, is the governing body (council) of the locality, but is authorized (Local Government Act, §56) to act through a committee of its members.

hospital, the medical officer or physician may certify that removal shall be only for burial, other removal then becomes unlawful (1890, §9).

The vaccination acts of 1867, 1871, and 1898 provide for notices by the registrar of births, requiring vaccination, to be followed, if disregarded, by an order from a justice.

The public vaccinator may give certificate of unfitness or unsusceptibility.

c) Persons on ships (regulative powers):

The Local Government Board may require that where there is reason to apprehend yellow fever, etc., no person shall leave a ship before the state of health of the persons on board the ship is ascertained (Customs Consolidation Act, 1876, §234).

Local regulations approved by the Local Government Board may require that persons brought by a vessel infected with a dangerous infectious disease may be removed to and kept at a hospital (1875, §125).

2. Diseases of animals and plants (principal act, 1894):

Administrative powers relate to: ascertainment of diseases; definition of area; movement of animals; destruction; and importation.

The Board of Agriculture with the local authority have authority to declare areas infected (plague, pleuropneumonia, foot-and-mouth disease), and prescribe the limits of the infected area; may also alter limits and declare freedom; §§5, 6, 8, 9, 12; the declaration is conclusive (§10); the certificate of a veterinary inspector that an animal is infected is also conclusive for the purposes of the act (§44); the Board may prohibit the holding of markets for the selling of animals in the infected area (§§8, 9); may prohibit or regulate the movement of animals therein (§12); for the movement of animals in or out of free parts of an infected area, a local license is required subject to conditions laid down by the Board (§10); if inspector certifies that orders are not complied with, vessels may be detained (§45).

Slaughter of animals may be ordered by the Board of Agriculture; it shall be ordered if animals are exposed to or suspected of plague or if they are infected with pleuropneumonia (§14), and may be ordered in case of other diseases (infected, suspected, or exposed) (§19); the slaughter is subject to compensation, and is made in accordance with Treasury regulations (§3); compensation may be withheld if rules are violated or if the animal was diseased at the time of landing (§30).

The Board of Agriculture may prohibit the landing of animals, carcasses, fodder, etc., from any specified country and shall prohibit the same when not satisfied as to the security afforded by the laws of the other country (§25); with regard to animals imported for exhibition and for other exceptional purposes, the Board may permit the same and specify measures of control in connection with the landing of the animals.

An Order in Council may prohibit the importation of anthrax-infected goods (1919).

An act of 1922 makes special concessions in favor of the landing of Canadian store cattle, the privilege being checked by full inspecting and

licensing powers vested either in the Ministry of Agriculture or in local authorities (Importation of Animals Act, 1922).

Powers in connection with vermin: The Board of Agriculture may prohibit the keeping or selling of specimens of destructive insects; may order the removal or destruction of crops on compensation (destructive insects acts of 1877 and 1907). The Board has also regulative powers. The forestry commissioners, on default of the owner, may authorize a competent person to enter and destroy vermin damaging trees, recovering the expense from the owner (Forestry Act, 1919, §4).

The local authority may order an owner to destroy rats or mice, with power of substitutional execution at his expense (Rats and Mice Act, 1919, §5).

Powers in connection with horse-breeding (act of 1918): A license is required for a traveling stallion. The license is granted by the Board of Agriculture, on compliance with requirements as to application and inspection; it may be refused or revoked if the animal is diseased, inadequately prolific, or calculated to injure the breed (§1). The license is annually renewable (§2). Refusal or revocation is subject to appeal to a panel of referees, on whose report the Board finally decides (§4).

3. Food and drugs:

The subjects dealt with by legislation are food and drugs in general (1875, 1899), bread (1836), butter and margarine (1887, 1907), horse flesh (1889), tea (1899), milk and dairies (1915), dangerous drugs (1920), and slaughter houses (1890).

The Milk and Dairies Act, 1915, gives to the Local Government Board a very extensive regulative power, authorizing regulations concerning registration, inspection, adulteration, labeling, etc., but not in terms referring to rules authorizing any powers to approve or to issue orders; the act, however, gives to local councils, on a report of a medical officer of occurrence of tuberculosis, and after an order to show cause, power to prohibit absolutely, or except on conditions prescribed, the supply of milk by any dairy (§3, Schedule 1). The order must state grounds and is subject to appeal to a court of summary jurisdiction. There is also provision for compensation. An inspector may require a cow to be milked in his presence.

With regard to tea: The consent of the Commissioners of Customs, if on inspection tea is found to be mixed, is required for its delivery, and they may prescribe terms and, if found unfit for food, may order it destroyed (act of 1899).

As regards dangerous drugs: The import and export of raw opium (there is an absolute prohibition regarding prepared opium) and of cocaine, morphine, etc., requires a license from the Secretary of State (power unqualified), and rules may require the licensing of premises for manufacture and of persons for manufacture, sale, or distribution (act of 1920).

Slaughter houses require licenses under the Public Health Act (1890, §§29-31). The license is revocable by a court upon conviction.

With regard to margarine, factories and consignments are required to be registered (not licensed); there are minor administrative powers: to

direct the non-application of requirements regarding the place of business retroactively, and to authorize the inspection of non-registered premises; to approve the marks placed on certain blends (not to be approved if word suggests butter).

Otherwise the administrative powers in connection with food are powers to inspect and to seize, the power to condemn or order destruction being reserved to a justice (Bread Act, 1836; act of 1875, §§116, 117; act of 1889, regarding horseflesh; power to order disposal as he thinks desirable).

The powers of inspection are accompanied by powers to procure samples for analysis (Margarine Act, 1887, §110, "without going through the form of purchase"), and certificates of analysis are made *prima facie* evidence (1875, §10; 1899, §1; certificate of principal chemist of Commissioners of Customs sufficient evidence unless his testimony called for co-operation with the Board of Agriculture).

4. Land, improvements, housing, trade nuisances:

The principal acts are the Town Improvement Clauses Act, 1847; the Public Health Acts of 1875, 1890, and 1907, and the Housing Act of 1909.

The following list covers the principal subject matters and powers:

Drains: consent for building over sewers (1847, §31; 1875, §26), ordering covered drain according to the report of a surveyor (1875, §21), and every new house to have such a drain (1875, §25); ordering repairs (1847, §44; 1875, §41); ordering specified tests to be applied to drains (on order of court) and requiring owner to apply a remedy (1907, §45); ordering owner to provide sink or drain (1907, §§25-49).

Privies, etc.: Required to be constructed to satisfaction of authority (1847, §42; 1875, §36).

Cess pools, etc.: May be required to be filled up (1907, §49).

Stagnant water: If nuisance, removal from cellar may be required (1847, §99; 1875, §47).

Foundation levels: Required to be submitted to give opportunity for prohibition (1847, §§38-41).

Courts, entrances, means of access: Not to be closed or narrowed without consent (1907, §26).

Cellar dwellings: In courts to be prohibited; every court to be covered by prohibiting orders as soon as possible (1847, §113); cellar window to open in manner approved by surveyor (1875, §72).

Back-to-back houses: Permitted only on certificate of medical officer that effective ventilation is secured (1909, §43).

Refuse or noxious matter: Owner notified to remove; on default, becomes property of local authority and is sold, with provision for surplus or deficit (1847, §§100, 101; 1875, §49); with regard to stables, the order may direct periodical removal (1875, §50).

Smoke: Owner may be notified to remedy a furnace that does not consume smoke (1847, §108) (this provision is not in the act of 1875).

Ventilation: In buildings for public meetings the owner may be required to submit plans and after a stated time (to give opportunity for

approval or disapproval) to carry them out (1847, §110); provision for appeal.

Whitewash: Order to clean or whitewash on certificate of medical officer (1847, §102); if house endangers health, certificate may be by two practitioners (1875, §46).

Water supply: Notice to provide, on report of surveyor, if possible at reasonable expense (1875, §62), reasonableness determined by Local Government Board (1878, general order for a district); house not to be erected or rebuilt without certificate of availability of wholesome supply, appeal from refusal to summary court (1875, §6); also full provision for ordering water supply for rural dwelling houses, with opportunity for objections, such objections being decided by a court of summary jurisdiction or, if the contention is that the supply should be provided by the local authority, by the Local Government Board; provision for joint supply for several owners (1878, §3).

Nuisances: Local authority may require abatement; on default, order of court. Authority may abate if owner cannot be found (1875, §§91 ff.).

Fitness for habitation: If it is proposed to use building not described in its plan as a dwelling house, as such, the local authority may require structural alterations (1890, §33); if legal requirements are not complied with, local authority may require execution of works with power of substitutional execution; provision for appeal (1909, §15); dwelling houses, unfit for habitation may be required to be closed until fit; appeal to Local Government Board (1899, §17); three months after closing order, if not rendered fit, on notice and hearing and specified findings, power to order demolition of house, subject to appeal to Local Government Board (1909, §10); on owner's default to demolish within specified time, power of substitutional execution, subject to appeal (1890, §§34, 35).

Temporary buildings (specified buildings exempted): Consent of local authorities required; plans to be submitted for opportunity for disapproval or for imposition of conditions; power in case of contravention to remove at expense of owner (1907, §27).

Lodging houses: Requirement of registration (1847, §116); local power to require that notice of registration be affixed (1875, §79); power to require water supply, on default removal from register (1875, §81); to be limewashed to satisfaction of local authority (1875, §82); court as penalty on third conviction may require for five years local license subject to conditions (1875, §88); registration may be refused, if authority not satisfied of character and plans (1907, §69); deputy of keeper must be approved and approval may be canceled (1907, §7); notice to comply with sanitary requirements, with power of substitutional execution (1907, §74). Only a court can cancel registration (1907, §72).

Slaughter houses: Required to be registered; new ones to be licensed; suspension and revocation only on conviction by court (1847, §§125, 127, 129).

Trade nuisances: Proceeded against judicially (1875, §114); offensive trades in towns require consent (1875, §112).

Alkali industries: Various alkali acts, last 1906; requirement of registration; appliance must appear to chief inspector to meet legal requirements, subject to appeal to Local Government Board (1906, §9); condensation of gas to be secured to satisfaction of chief inspector (1906, §§1, 6). If nuisance, notice to abate, enforced judicially (1906, §5). Rules for workmen with sanction of Local Government Board (§85). Dispensing power of Local Government Board in favor of works antedating legislation. Extensive administrative regulative power.

Canal boats, used as dwellings, acts of 1877, 1884: Regulations of Local Government Board fix number of persons permitted to occupy; registration; certificate of registration to show number and other prescribed particulars; sanitary authority may in case of infectious disease take measures to prevent spread, remove persons, etc. Certificate made void by structural alterations changing original conditions.

River pollution prevention, act of 1876, places administrative checks on criminal proceedings: under the part of the act forbidding the discharge of polluting liquid from factories or mines, the sanitary authority cannot proceed without consent of Local Government Board, which considers industrial interests and the locality and which is to withhold its consent under circumstances specified by statute. Notwithstanding consent of Board, proceedings may be objected to before sanitary authority, which then decides on similar considerations. An inspector's certificate that best practicable means are used for rendering refuse harmless, is, subject to appeal to Local Government Board, conclusive.

D. Germany

1. Dangerous diseases (act of June 30, 1900):

The law itself prescribes duty of notification specifying contagious diseases, to which the Federal Council may add (§§1, 5); there is a general emergency power of police to take required measures (§8), but subject to limitations as to quarantine (§14) and as to placing restrictions on residence (§12) and on trading rights (§15).

The following measures are specially authorized: ordering examination of dead bodies (§10); quarantine and supervision (§11); requiring reports on part of persons arriving at any place (§13); restricting and prohibiting the use of a public water supply (§17); vacation of premises (§18); disinfection (§19); some measures may be taken only on advice of a health officer.

The act contains compensation provisions (§§28-34).

The regulative power of the Federal Council relates to legally authorized precautions (§22); import, transit, and transportation (§25); applicability of measures to travelers (§40); and scientific experiments with disease producers (§27).

There is a general statutory requirement of vaccination (act of April 8, 1874); the administrative powers under this act are therefore of a very minor character, the most important being the determination of a medical officer that the state of health of a child for the time being prevents vaccination.

Prussian law for combating communicable diseases, August 28, 1905: The police has power to order the dissection of a body in case of suspicion of typhus (§6); specified measures may be ordered in case of specified diseases (§8); compulsory treatment of prostitutes may be ordered in case of venereal disease (§9); the council of ministers may extend quarantine supervision to other than specified diseases; to be laid before the legislature (§11).

The act contains compensation provisions (§§14-24).

Prussian law concerning cremation of September 14, 1911: crematories are to be licensed; licenses are granted only to public corporations having charge of cemeteries. The license is to be refused under specified circumstances and also unless the application of the corporation is by a two-thirds vote of its members. The rules of the crematory must be confirmed by the competent authority. No cremation may be had without a police license which is to be refused except on presentation (among other things) of a certificate of the local authority that there is no suspicion of crime.

2. Cattle and meat inspection (act of June 3, 1900):

The law requires official examination of specified animals before and after slaughter (the Federal Council may add to the list) (§1); if there is no objection, the inspector gives a permit, good for two days, for slaughter; precautions may be ordered if necessary (§2); after slaughter there is inspection and a declaration of suitability for food (§8); the carcass may be declared "conditionally suitable," subject to police precautions and to revocable license for sale, and, in case of restaurant keepers, for use (§§10, 11); there may be a police permit for use of condemned meat for other than food purposes with power to prescribe precautions (§9); also a revocable permit for use of horsemeat by dealers and restaurant-keepers (§18).

The Federal Council has power to make regulations concerning: ingredients and processes prohibited in preparing meat (§21); designation of foreign meat (§19); carrying out prohibition of imports (§22); it may add to import restrictions of (§§12, 13); it may extend horse-meat rules to other animals specified and to be specified (§18).

3. Animal diseases: Act June 26, 1909:

The Federal law leaves details of measures to states, and therefore is an authorizing and limiting law; it requires that state laws provide for an administrative appeal from decisions made under the law; it specifies the diseases subject to notification (§§9, 10); it imposes a local duty to isolate diseased animals; it imposes a local duty to take advice of the official veterinarian (§11); it specifies what may be required permanently (inspection, certification, regulations regarding many matters) (§17); it specifies what may be required in particular emergencies (emergency power including killing) (§§19-30); it provides for compensation (§§66-73).

The law has also provisions for nine specified diseases.

4. Food and drugs:

Under the Federal Trade Code, imperial administrative regulations may prescribe what drugs may be freely sold and the member-states are

permitted to fix prices; a regulation has introduced the Pharmacopoeia Germanica, November 21, 1890.

A food law of May 14, 1879, creates an extensive regulative power to be exercised by the Federal Council, providing that these rules may forbid a great many things specified in the law, the rules to be submitted to the Reichstag. The act refers to powers of supervision and authorizes the taking of samples, but neither the act itself nor the rule-making powers refer to the vesting of determinative (enabling and directing) powers in administrative authorities.

The margarine and butter-substitute law of June 15, 1897, likewise creates regulative, but not particular determining powers. The same is true of acts concerning white phosphorus (May 13, 1884), lead and zinc utensils (July 6, 1887), and injurious coloring matter (July 6, 1887).

The administrative powers contained in the Phylloxera and Saccharine acts have been sufficiently stated before.