[HIGH COURT OF AUSTRALIA.]

THE PRESIDENT &c. OF THE SHIRE OF CHARLTON . . . . . APPELLANTS;

AND

RUSE . . . . . RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

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MELBOURNE, *May* 21, 22, 28.

Griffith C.J., Barton and Isaacs JJ.

Local Government—By-law—Validity—Power to make by-laws as to position and construction of privies, &c., generally—Construction of Statute—Punctuation—Health Act 1890 (*Vict.*) (*No.* 1098), *secs.* 32, 35.

By sec. 35 of the *Health Act* 1890 municipal councils are authorized to make by-laws (*inter alia*) for "The regulation of noxious or offensive trades businesses or manufactories whether established before or after the passing of this Act in order to prevent or diminish the noxious or offensive effects thereof, and to prevent nuisance or injury to health arising therefrom; the position and manner of construction of privies earth-closets and cesspools or urinals." . . . "And generally for the abatement and prevention of nuisances not hereinbefore specified and for securing the healthfulness of the district and of its inhabitants."

Held, that a council was thereby authorized to make by-laws as to the position and manner of construction of privies, &c. generally, and not merely of privies connected with noxious or offensive trades, businesses or manufactories, and that the power was not confined to privies &c. to be erected in the future, but extended to those in existence when the Act was passed.

The punctuation of Statutes does not control the sense if the meaning is otherwise reasonably clear.

A by-law made under the *Health Act* 1890 provided that no privy &c. should "be constructed, built, formed, or be allowed to remain" within a certain distance of any kitchen &c., and that "if the owner or occupant of

any land uses or permits to be used any privy " &c. in breach of the foregoing provisions, he should be subject to a certain penalty.

Held, that the by-law was valid.

Decision of the Supreme Court : *In re a by-law of the Shire of Charlton* ; *Ex relatione Ruse*, (1911) V.L.R., 429 ; 33 A.L.T., 111, reversed.

APPEAL from the Supreme Court of Victoria.

An order *nisi* was obtained by Robert Ruse, the present respondent, calling upon the President &c. of the Shire of Charlton, the present appellants, why a certain by-law the material parts of which are set out in the judgment of *Griffith* C.J. hereunder, should not be wholly or in part quashed for the illegality thereof on the grounds (*inter alia*) (1) that the by-law was wholly or in part *ultra vires* and made without legal authority ; (2) that the by-law was unreasonable, and (3) that the by-law was uncertain.

The order *nisi* was heard by the Full Court, which ordered that the by-law should be wholly quashed for the illegality thereof : *In re a By-law of the Shire of Charlton* ; *Ex relatione Ruse* (1).

From this decision the appellants now by special leave appealed to the High Court.

Irvine K.C. (with him *Latham*), for the appellants. On the grammatical ending of sec. 35 of the *Health Act* 1890 a Council has power to make by-laws as to the position of privies &c. generally, and the power is not limited to privies &c. connected with noxious or offensive trades. Apart from this section there is no power to regulate the position of privies &c. The clause of the by-law imposing a penalty is valid. A urinal is not a nuisance unless it is being used as such, and so the penalty is properly imposed on the user.

Schutt (with him *Ham*), for the respondent. The arrangement of sec. 35 shows that the power to make by-laws as to the position of privies, &c., is limited to privies on premises in which noxious or offensive trades are carried on. The *Health Act* 1890,

(1) (1911) V.L.R., 429 ; 33 A.L.T., 111.

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in secs. 260, 261, 262, contains specific provisions for privies, &c., in general, and it was intended to limit the power to make by-laws to privies &c. in connection with noxious or offensive trades. He referred to the *Public Health Amendment Act* 1867 (No. 310), secs. 37, 40, 41, 42; *Public Health Amendment Statute* 1883 (No. 782), sec. 23; *Vernon* v. *Vestry of St. James, Westminster* (1). Sec. 35 of the *Health Act* 1890 is not retrospective, and only gives authority to make by-laws as to privies, &c., to be erected after the making of the by-laws: *Gardner* v. *Lucas* (2). The penalty clause does not follow the by-law. The penalty is imposed in respect of the use only and upon the owner or occupier of the land. The by-law is effective to carry out its object.

Irvine K.C., in reply. Sec. 35 applies to places used or appropriated for particular purposes, although any building so used or appropriated were constructed before the by-law should have been made. That does not mean that the section is retrospective: *West* v. *Gwynne* (3).

Cur. adv. vult.

GRIFFITH C.J. The principal question debated in this case may be called the question of a semicolon. It was an application made to the Supreme Court under the provisions of sec. 48 of the *Evidence Act* 1890 to quash a by-law of the appellant Council for illegality. The by-law was made under the powers conferred on Councils by the *Health Act* 1890, by which various duties were imposed upon local authorities for preserving the health of the inhabitants. Sec. 35 of that Act authorizes a Council to make by-laws. The Act was a consolidation Act, and sec. 35 may be called a composite clause. The first part of it, which is taken from a much older Act, is in the old style of drafting, enumerating a number of matters in one long sentence, which is followed by the following words:—" and for the following and any other matters or things specially mentioned in this Act as matters in regard to which by-laws may be made by a

(1) 16 Ch. D., 449.
(2) 3 App. Cas., 582, at p. 600.
(3) (1911) 2 Ch., 1, at p. 11.

council (that is to say):—" Then follows an enumeration of 12 or possibly 13 different matters in respect of which by-laws may be made, printed in the form of paragraphs, and in an inner margin, each paragraph beginning with the word " The " with a capital T, each followed by a colon, and all relating to matters concerning public health and comfort. The eleventh as printed is as follows:—

" The regulation of noxious or offensive trades businesses or manufactories whether established before or after the passing of this Act in order to prevent or diminish the noxious or offensive effects thereof, and to prevent nuisance or injury to health arising therefrom "—then comes a semicolon, and then going on in the same line without a capital letter are these words—" the position and manner of construction of privies earth-closets and cesspools or urinals:"

The question for determination is whether the Council have power to make by-laws as to " the position and manner of construction of privies " &c. in general, or whether that is a power to be exercised only in conjunction with and as part of the power to regulate noxious or offensive trades, so that only privies connected with those trades can be regulated. But for the semicolon and the small " t " in the word " the " the question would be practically unarguable. It was, indeed, somewhat faintly argued by Mr. *Schutt* that the position of those words, if occurring as a separate paragraph, placed, as they are, between the power to regulate noxious or offensive trades and a power to prevent the use of steam whistles at factories, would show that it was intended to confine the power to such conveniences when used in connection with noxious or offensive trades. The argument was not very seriously pressed, and I cannot accept it.

It is to be remarked that, under the previous law, which had been repealed by the Act in which these provisions first appeared, there was a positive rule as to the position of privies, with a dispensing power, so that *primâ facie* it was not unlikely that the power should be continued, and very unlikely that the matter should be intentionally omitted altogether. The argument before the Supreme Court was based mainly if not almost entirely upon the use of the semicolon and the absence of a capital " T " in the

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word "the," coupled, however, with the preceding words which I have read. As a matter of grammatical construction I think the words "in order to prevent or diminish the noxious or offensive effects thereof, and to prevent nuisance or injury to health arising therefrom" are not tautological, as was thought by some of the learned Judges: indeed a good deal of their argument was based on this view. I think it is clear, on reference to other parts of the Act, that the legislature, at all events, did not think them tautological. For instance, I turn to sec. 225, which provides that "where it appears to any council that any place building or premises used for the purpose of carrying on any noxious or offensive trade business occupation process or manufacture has become a nuisance or injurious to health," they may take certain steps. That shows that the legislature did not by any means regard the existence of noxious or offensive trades as being necessarily a nuisance or injurious to health. There is, therefore, no tautology in allowing a council to make by-laws to prevent the noxious or offensive effects of, and also to prevent nuisance or injury to health arising from, noxious or offensive trades. So that, in my opinion, the argument from tautology fails.

Turning, then, to the question of the semicolon and the absence of a capital T, it is well known that originally stops were not used in Acts of Parliament, each section being a separate enactment running right on without stops from beginning to end, care being taken so to construct it that stops should not be necessary for its understanding. I have before me some observations made by learned Judges on that subject. The first are those of Lord *Kenyon* in *Doe d. Willis* v. *Martin* (1) where he said:—"By putting the stops, or using the parenthesis, as pointed out by the plaintiff's counsel, it becomes perfectly clear: and we know that no stops are ever inserted in Acts of Parliament, or in deeds; but the Courts of law, in construing them, must read them with such stops as will give effect to the whole." In the case of *Duke of Devonshire* v. *O'Connor* (2), Lord *Esher* M.R. said:—"To my mind, however, it is perfectly clear that in an Act of Parliament there are no such things as brackets any more than there are such things as stops." Without going quite so far as that, in

(1) 4 T.R., 39, at p. 65.

(2) 24 Q.B.D., 468, at p. 478.

view of the form of modern Acts of Parliament, I think that stops, which may be due to a printer's or proof reader's error, ought not to control the sense if the meaning is otherwise tolerably clear. It seems to me that as a matter of mere grammatical construction, forgetting for a moment the absence of a capital letter and the presence of the semicolon, "the position and manner of construction of privies" stands as a substantial matter which may be dealt with by by-laws, quite distinct from and unconnected with regulations as to noxious or offensive trades. It is, I think, impossible to read the power to deal with privies in connection with noxious or offensive trades only. I think it sufficient to rest my decision upon the plain meaning of the words, as they stand. Hearing them read without knowing of the absence of a capital T and the presence of the semicolon, there could be no doubt about the meaning of the provision.

A second objection taken, which was adverted to by the learned Chief Justice only, and as to which he expressed only an inclination of opinion, was that such a power ought to be read as relating only to privies, &c., to be erected in the future, and not as referring to those already in existence when the Act was passed. The reference, of course, is to the well known rule that legislation *primâ facie* lays down rules for the future. But the words are clearly large enough to cover all places of this sort, and in considering whether they were intended to apply only to structures to be erected in future regard must be had to the object of the legislation. The object was to protect the public health. It is obvious that conveniences of this sort, even if quite innocuous when erected, might well become a danger to public health or comfort by altered circumstances. It is clear that many of the powers conferred by sec. 35 may be exercised from time to time and in a different way as the circumstances alter. For instance, under one paragraph by-laws may be made as to the lighting ventilation, cleansing, drainage and water supply of certain houses, dairies and cowsheds. For those purposes it may be necessary to require radical alterations of buildings already constructed. On the whole, therefore, I think this objection must fail, and that the Council have power to make such by-laws as are from time to time necessary for the public health.

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A further objection, not referred to by the Judges of the Supreme Court, was that the provision for a penalty in the by-law does not follow the words of the by-law. The by-law in terms provides that "no privy, urinal, cesspool or earth-closet shall be constructed, built, formed, remain or be allowed to remain within ten feet of any kitchen, dining room, bedroom, dwelling house or room used for domestic purposes . . . except in any case where it is impossible to erect a privy, urinal, cesspool or earth-closet in accordance with the above distance, then such privy, urinal, cesspool, or earth-closet shall be erected at the extreme distance possible under the circumstances from any kitchen, dining room, bedroom, dwelling house or room used for domestic purposes." The penalty is "if the owner or occupant of any land uses or permits to be used any privy, urinal, cesspool or earth-closet on land owned or occupied by him in breach of the foregoing provisions, he shall be subject to a penalty of Five pounds for each day during which such breach shall be committed or continued." The penalty, therefore, does not in terms follow the prohibition. The power to impose a penalty is conferred by sec. 32, which provides that a Council may by by-laws "impose such reasonable penalties as they think fit not exceeding Ten pounds for every breach of any such by-law or a penalty not exceeding Five pounds for each day during which such breach shall be committed or continued." The answer to that argument is that the greater includes the less. The Council might, if they pleased, have imposed a penalty upon the mere existence of the place without any reference to its user. *Hood* J., indeed, thought that, having regard to the subject matter, a convenience of this sort could not be called a privy unless it was in use. But I think it is a safer view that the Council did not desire to punish, as they might, the mere existence of the thing, that is, they did not desire to exercise the power to its full extent, and that the penalty clause should be regarded as a qualified prohibition against the user only. By way of analogy I may put the case of a power to prohibit the use of tires less than six inches in width and a by-law prohibiting the use of tires less than five inches in width. That would clearly be within the power. Another illustration is a power to make a by-law prohibiting

having in possession certain things—sword sticks, for instance—and a by-law prohibiting the carrying of sword sticks in the street. That would be a partial exercise of the power, and it cannot be said that the exercise of such a power is bad, because it is not exerted to its full extent.

Still another difficulty was suggested in argument, namely, that the penalty is imposed upon the owner or occupier, and not upon the person who is responsible for the existence of the thing prohibited. That seemed at first to be rather a serious difficulty. But in addition to the specific powers conferred by sec. 35, there is a general and independent power at the end of the section:—"And generally for the abatement and prevention of nuisances not hereinbefore specified and for securing the healthfulness of the district and of its inhabitants." This penal provision imposing a penalty for permitting the use may, I think, be fairly regarded as an exercise of that general power, whether regarded as an independent or as an ancillary power, and I think it is good on that ground.

For these reasons I think that all the objections taken fail, and that the Supreme Court was not justified in quashing the by-law for illegality. I think therefore the appeal should be allowed.

BARTON J. I agree and I wish only to add a few words on the argument that if the power contained in sec. 35 of the Act of 1890 is to be read as the appellant Shire contends that it should be, the legislation has elsewhere made specific provision on the subject apart from this power.

There was in the Act No. 310 a section, numbered 37, the most material part of which for the present purpose is the first:—"No watercloset privy or cesspool shall be constructed within three feet from the boundary of any land or within five feet from any dwelling-house without the consent of the local board; and the contents of any watercloset privy or cesspool shall not be permitted to overflow or leak or soak therefrom." There were also secs. 40, 41 and 42, sec. 40 prescribing that all houses erected since 19th December 1854 should have attached to them "such water closets or earth closets or privies, with proper doors coverings drains and cesspools, and so constructed as shall be in the

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opinion of the local board sufficient for such houses respectively," and the other two sections referring respectively to public privies and to the like structures in places to be used as schools or factories or buildings in which persons above 20 in number are gathered or employed. There is no necessity to quote those two sections. I should mention that secs. 40, 41 and 42 re-appear in the *Health Act* 1883 as secs. 120, 121 and 122, and in the *Health Act* 1890 as secs. 260, 261 and 262. Now sec. 37 of Act No. 310 was repealed by the Act of 1883, but there is a provision in sec. 123 of the Act of 1883, which must be noted, and which is this: —"All drains whatsoever earth-closets privies cesspools and ash-pits shall be constructed and kept so as not to be a nuisance or injurious to health and so that there is no overflow or leakage or soakage therefrom." That appears to have been intended as a substitute for the first part of sec. 37, but it is to be observed that it is general as to the construction and keeping of these places and does not contain the limitation as to position and distance which was in sec. 37. That section, 123 of the Act of 1883, re-appears in the Act of 1890 as sec. 263. In respect of that section I digress for a moment to observe that it also indicates that the local board, on the report of the inspector or other officer of the local board that any drain, earth-closet, privy, &c. "is not constructed or kept according to the provisions of this Act or of any by-law or order in that behalf," may take certain steps. Unless the provision of the eleventh paragraph of sec. 24 of the Act of 1883, that is, of sec. 35 of the Act of 1890, is intended to give power to make by-laws generally as to the manner of construction of privies, &c., it is difficult to understand the part of the section which I have quoted, because it provides for action to be taken upon a report that the privy &c. is not constructed or kept in accordance with any by-law in that behalf, and, unless the authority for such a by-law is found in the eleventh paragraph of sec. 35 of the Act of 1890, that is, sec. 24 of the Act of 1883, there is no authority to make by-laws to which the enactment I have quoted can apply.

I return to the other question with which I was dealing. As I was pointing out, secs. 40, 41 and 42 of Act No. 310 reappear both in the Act of 1883 and in the Act of 1890, and this portion

of the repealed sec. 37 of Act No. 310 finds some sort of substitute in the Acts of 1883 and 1890, but in respect of the position, as well as of distance from other buildings, the later Acts make no provision whatever. The provision in Act No. 310, specific in the respect mentioned, has been repealed, and has not made its reappearance in the later Acts, so that is an additional reason why Parliament should in 1883 have thought it desirable to put into sec. 24 of the Act of that year a provision like that which we now find, and why it should have had the general application which the construction contended for by the appellant gives it. So that I think that, instead of the legislature having elsewhere made specific provision on the subject, there is a considerable portion of it for which the legislature has made no specific provision whatever, the reason probably being that in place of the specific provision in Act No. 310 the legislature has wisely substituted this general power to make by-laws, so as to enable local bodies to deal with the subject as occasion may require.

As to the remainder of the points in the case I have nothing to add to what the Chief Justice has said. I agree that the appeal should be allowed.

ISAACS J. I am also of opinion that the by-law is valid. The words which were alone relied on in argument and considered by the Supreme Court as conferring the power under which the by-law is made are certainly so printed and punctuated as to attach them pictorially to the power referring to noxious and offensive trades. I will assume, first, that the by-law has to rest merely on those words. There are many English cases deciding that punctuation is to be disregarded; but I am not at all sure how far those cases are guides to us, because it appears from them that the Rolls of the Imperial Parliament are not punctuated. That is not so, however, in Victoria; the original Acts assented to and signed by the Governor on behalf of the Sovereign are punctuated, and I have examined the original Statute No. 782—the Act of 1883 so signed—it is in fact punctuated as in the copies before the Court.

But though I am not prepared to discard wholly the punctuation of an Act, it would be unsafe to allow it to govern the

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construction. In *Maharani of Burdwan* v. *Krishna Komini Dasi* (1) Lord *Hobhouse*, for the Judicial Committee, said:—"Their Lordships think that it is an error to rely on punctuation in construing Acts of the legislature." Even in the case of wills Lord *Westbury* in *Gordon* v. *Gordon* (2), following *Sir William Grant* in a case before him, said "'it is from the words, and from the context, and not from the punctuation' that the meaning of the testator is to be collected." In the case of Statutes the history of the legislation is also material. On this basis Mr. *Schutt*, as I understood him, very properly argued the case, as if the punctuation were altogether secondary, and addressed himself to the more important considerations affecting the interpretation of the power. The contention was that, even assuming the semicolon before the words were a colon, and that the consequential change were made from a small letter of the first word in the power to a capital letter, still the true construction was to confine the effect of the words to the case of noxious trades.

The first point made was the immediate situation of the words between noxious trades and nuisances occasioned by steam whistles. The objectionable character of the other specifically enumerated powers added by the Act of 1883 was also pointed to, and so, it was urged, that the legislature must be rather taken to have meant to give control over conveniences appertaining to noxious trades than over those forming part of ordinary domestic inoffensive establishments. This however would immediately raise anomalies, because it would assume that that part of the third specific power which relates to dairies was directed against a nuisance or an offensive trade. If not, it would omit to provide for control of privies connected with dairies. But the argument of *noscitur a sociis*, if sound in this case, must have regard to all the powers in the company of which the one under discussion is found. There are other equally specific powers, though not printed in separate paragraphs, and one of them is that which began in the earlier Acts and came down to No. 782 namely "regulating the times and manner of cleansing, emptying and managing of earth-closets, privies, and cesspools," &c.—without

(1) (1887) L.R. 14 I.A., 30; 14 Calc., at p. 372.

(2) L.R. 5 H.L., 254, at p. 276.

limitation to any particular class of premises. Another answer is found in the fact that wherever these structures are found, whether in connection with a noxious trade or a private dwelling, they are in themselves naturally offensive and dangerous, and require regulation. The progress of time only renders the problem more difficult and insistent, and it is precisely in the case of non-noxious and non-offensive occupations that the overwhelmingly large share of the problem and the danger exists. It is not likely therefore that the legislature would have dealt with the smaller and less important class, and allowed the mass of trouble to go uncontrolled. Not only so, the history of the legislation shows distinctly the gradual and increasing control assumed by Parliament, and how free from any sort of the suggested limitation has been the control taken, and conferred from time to time. As far back as 1854 by Act 18 Vict. No. 13 passed "to make more effectual provision for improving the insanitary conditions of Towns and populous places in Victoria," it was enacted generally (sec. 10) that all houses to be erected or re-built should have attached to them sufficient water-closets or privies with proper drains and cesspools, and the board might also require in any particular case that any house, whenever built, should be similarly provided. Further and separate provisions were made as to noxious trades (sec. 18).

It therefore appears, at what I may term the threshold of this class of legislation nearly 60 years ago, that a public body was given authority to regulate the establishment and proper maintenance of privies and water-closets in all houses whatsoever, and, that no special or limited reference to them was made with respect to noxious trades.

In 1865 there was passed a more comprehensive *Public Health Act* No. 264.

In 1867 a further Act was passed, No. 310. It repealed by sec. 10 the first part of the Act of 1865, and strengthened the machinery for dealing with the subject, and enlarged the scope of the statutory health provisions. Sec. 31 contained the old regulative powers as to privies and water-closets unabridged. But in addition to that section 37 made a special enactment beyond the power of the central board or any local board to alter

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namely that "No watercloset, privy or cesspool *shall* be constructed within three feet from the boundary of any land, or within five feet from any dwelling-house without the consent of the local board." It further went on "each local board *shall* provide all drains whatsoever, and the water closets, earth closets, privies, cesspools, and ashpits, within their jurisdiction shall be constructed and kept so as not to be a nuisance or injurious to health, and so as that there shall be no overflow or leakage or soakage therefrom" &c.

It is clear from that section, that the legislature thought some provision necessary as to the position and manner of construction of all water-closets and privies whatsoever; and that the legislature considered a restriction as to position so important as to insert it itself, leaving the local board to legislate by regulation with regard to the manner of construction, but at the same time commanding it to do so. This consideration is of great importance to the present case. The same section gave power to the local board upon the written application of any person showing that any water-closet, &c., was a nuisance, or was not constructed or kept according to any by-law (which, as mentioned, was unrestricted) to take steps to remedy the matter.

The same Act (sec. 40) made substantially the same enactment with regard to all houses having privies, but with the addition of provisions as to proper doors and coverings, drains and cesspits so "constructed as shall be in the opinion of the local board sufficient for such houses respectively" which meant all houses whenever built.

In 1876 Parliament passed Act No. 524 further controlling the subject.

In 1883 a general amendment of the health laws took place. Act No. 782 was passed repealing what remained of No. 264 and of No. 310, and also No. 524. The Act of 1890 is only a repetition of that Act by way of consolidation, and so I treat the matter as under No. 782.

Sec. 20 and the following sections related to by-laws and orders. Local Boards were empowered, and, if required by the Central Board, were compelled to make by-laws; but no by-law was to be of any force until confirmed by the Central Board.

Sec. 24 provided for by-laws; it considerably extended the area of subject matters in respect of which general legislative regulations could be made; and the pervading characteristic of the added powers is a general oversight of matters which, from their nature, or from possible neglect, might be offensive to the senses or dangerous to the health of the inhabitants of the locality. The population of Victoria generally, and of the metropolis particularly, had grown in the preceding sixteen years; the law as to municipal government had in 1874 been placed on a definite footing, municipalities being more scientifically organized, and the legislature thought it desirable to drop the general and unvarying provision it had itself made in sec. 37 of No. 310, and to delegate to the municipal councils as the local boards of health the power to make such regulations in that behalf as suited their several localities. This was done by inserting among the powers in sec. 24 the words we have to construe. I read these words as transferring to the various local boards, controlled by the Central Board, the function of dealing elastically and with proper regard to local conditions and requirements, with the subjects of position and construction previously dealt with by an unvarying provision in sec. 37 of Act No. 310. It is not at all probable the legislature, in the face of increased urgency, relaxed its hold on this necessary branch of public health—but the repeal of sec. 37 of No. 310 without some general provision such as that contended for by the appellant would leave an enormous and a highly dangerous gap in the power of guarding the general safety. Not only private dwellings, but public habitations—hotels, restaurants, &c., would be uncontrollable centres for the dissemination of disease and offensiveness. Then we have at the end of the section the express language of the legislature itself indicating the broad lines on which it had proceeded, lines altogether inconsistent with any notion that the natural import of the words is to be restricted so as to endanger the healthfulness of the district and its inhabitants. But the import of the last paragraph has been undervalued. It is as truly distinct a substantive grant of power as is found in any preceding portion of the section. If we turn to the beginning of the section we read:—"Every Council may in the by-laws to be

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so made provide"—then follow a number of powers, and then comes the last paragraph saying—"And generally for the abatement and prevention of nuisances not hereinbefore specified, and for securing the healthfulness of the district and of its inhabitants." The section authorizes by-laws for three different groups, viz., (1) the old general group; (2) the new group of specifically divided powers; and (3) these last general purposes.

It is not necessary to say how far that power extends, but it is on its face a general power, and its scope is wide. It obviously has a twofold bearing on the present case. First, it rebuts the suggestion of any intention to confine the earlier words within a narrower compass than they naturally cover, and next it supplies sufficient to aid, even if it did not of itself afford enough to authorize this by-law, which I by no means deny.

The particular words which were specially under discussion, must, of course, be interpreted with reference to the Act in which they are found; but as something was said about their source it is not immaterial to observe that in 11 & 12 Vict. c. 63, passed in 1848, it was provided by sec. 53 that in all cases where houses were newly built, or were rebuilt to a specified extent, the local Board of Health had to approve of "the situation and construction of the privies and cesspools to be built, constructed or used in connection with such house."

In 1875, by Act 38 & 39 Vict. c. 55, which repealed the Act of 1848, power was given by sec. 15 to suburban authorities to make by-laws with reference to privies, &c. in connection with all buildings. The provision in the Victorian Act of 1883, therefore, combined the system of general by-laws extending to all privies with the specific reference to the subject-matter, other requirements as to privies, &c., being already specifically provided for, or else covered by the final paragraph of the by-law section.

I would add that the various sections pointed to in the argument as evidencing a specific treatment by the legislature of all necessary cases may be disposed of by the following considerations. First, many, and indeed, most of them, were in force either verbatim or in substance in earlier Acts previous to or contemporaneously with the provisions in sec. 37 of No. 310. Next some of them give power to the Council alone, or the Board alone,

to abate an actually existing peril, by non-legislative direction in the particular case. That is perfectly consistent with the larger preventive legislative power applicable to all cases, and which is entrusted not to the Council alone, nor to the Board alone, but to both together and subject to appeal to the Board as well as to the supervision of the Court for illegality. The two sets of provisions are different in scope, in object, and in respect of the authorities to which they are respectively entrusted.

For the rest I agree with what has been said by the learned Chief Justice, and think that this appeal should be allowed.

Appeal allowed. Order appealed from discharged. Order nisi discharged with costs. Respondent to pay the costs of the appeal.

Solicitors, for the appellants, *Weigall & Crowther* for *A. Phillips*, Charlton.

Solicitors, for the respondent, *Malleson, Stewart, Stawell & Nankivell* for *B. Green*, Charlton.

B. L.