## CHAPTER II.

## THE PRESENT LAW REGARDING SMOKE NUISANCES.

At the present time all smoke nuisances outside London can be dealt with under the general provisions of the Public Health Act, 1875.

*Section* 91 enacts that (*a*) any furnace or fireplace which does not as far as practicable consume its own smoke, (*b*) any chimney (except in a private dwelling-house) sending forth black smoke in such quantity as to be a nuisance, shall be deemed a nuisance liable to be dealt with summarily.

In *Section* 92 the local authority shall abate the nuisances by enforcing the provisions of the Act, and if the local authority make default, the Local Government Board may under *Section* 106 authorise any police officer in the district to take proceedings, and recover the costs from the defaulting authority.

There is no statutory power to proceed against any smoke of any colour density or duration except it be black smoke. In court it is most difficult to differentiate (satisfactorily) black smoke from dense smoke of other colours, and convince the Magistrates that the smoke complained of is black. One of the simplest (and proved satisfactory) definitions of black smoke is—smoke the colour of coal, or something named as black as coal, and so dense that it is impossible to see through it (with a light background) two feet from the top of the chimney. But black smoke is not a nuisance (statutory) except it be sent forth in such a quantity as to be deemed a



nuisance, and the quantity is determined by the local authority.

The quantity of black smoke which is a statutory nuisance is the amount, little or much, which is not necessary for the efficient and satisfactory working of furnaces and fireplaces. It is then the duty of the local authorities, or the Ministry of Health, to find out by demonstrations at the furnaces how much smoke is absolutely necessary for the efficient and economical working of the furnaces, and to fix smoke-limit allowances, which, if exceeded, become a contravention of the Act. Proceedings should be taken for the abatement of the unnecessary smoke, and its abatement would not hinder but help trade by saving coal. Under *Section* 93, information of any nuisance may be given to the local authority by an aggrieved person.

*Section* 94 provides for the service of notice requiring abatement of the nuisance, and on non-compliance, complaint may be made before a justice (*Section* 95), who may make an order to abate the nuisance in the terms of the notice, to prohibit the recurrence and may impose a penalty not exceeding £5 (*Section* 96). Further penalties for each day's neglect (10s. and 20s.) to obey the order of the court are provided for by *Section* 98. The life limit of a notice is six months, during which period proceedings can be taken for disobeying the notice, but the Act does not fix the life or period during which proceedings can be taken for the failure to obey an order. That is left to the local authority, and it is no unusual thing to prosecute for failure to obey an order four years old, and the court to convict and impose daily penalties.

*Section* 102 gives the local authority power of entry, and *Section* 103 imposes a penalty of £5 for refusal. *Section* 105 enables a person aggrieved by a nuisance to take court proceedings on the same lines as a local authority, if the local authority refuse, or the local

authority commits the nuisance. A local authority did create a smoke nuisance by belching volumes of black smoke for long periods from their water works' chimney. A resident near to the nuisance took out a summons against the local authority, which was successful in making them move in the matter to escape if possible the humiliation of court proceedings. The writer at their request suggested what must be done to abate the nuisance, and prevent a recurrence. It was done forthwith, and the complainant was so satisfied that he withdrew the summons. *Section* 108 gives power to a local authority to proceed where cause of nuisance arises without their district.

A few years ago local authority A wrote local authority B *re* smoke nuisance outside its district, and promised to render the help it needed, and notified that if it did not take action to abate the nuisance then proceedings would be taken. B availed itself of the offer of help, and carried out the work suggested by A, and the nuisance, which consisted of from 35 to 50 minutes of black smoke in the hour from one chimney, was abated. The nuisance had existed for years, but B had neither the expert knowledge nor the courage to take action against the defaulting firm (which was the largest ratepayer in the district) until pressed by A to do so.

There is a great necessity for the administration of *Section* 108 in spite of one local authority disliking to proceed against another local authority. *Section* 299 gives the central authority power to enforce performance of duty by a defaulting local authority. If complaint is made to the Local Government Board of default on the part of a local authority, and if the Board is satisfied, after enquiry concerning the complaint, it shall make an order limiting a time for the performance of its duty, and, if such duty is not performed, such order may be enforced by writ of mandamus, or the Local Government Board may appoint some person to perform such duty.



Over 90 per cent. of the local authorities have been defaulters ever since 1875, when the said section became law, and the central authority may some day issue an order authorising the defaulters to do their duty, and if they continue to refuse then some person may be appointed to perform the much-needed national duty.

*Section* 334 is much misunderstood concerning the power contained therein. It is called the Exemption Section, and the general belief is that the processes named, smelting of ores and minerals, calcining, puddling, rolling of iron, and other metals, conversion of pig iron into wrought iron, are entirely exempt, and can make as much smoke as they like. But such is not the fact. They forget that it says, "Nothing shall be done to interfere or obstruct the efficient working of the said processes," which means that the processes are exempt only up to the point of practicability—that is, they are allowed the amount of smoke absolutely necessary for the satisfactory carrying on of the processes, and smoke made in excess of the necessary amount is a nuisance within the meaning of the Act, and proceedings can, and should be, taken for its prevention.

**London.**—In London *Sections* 23 *and* 24 of the Public Health (London) Act, 1891, relates to smoke nuisances. Under *Section* 23 furnaces are required to be so constructed as to consume their own smoke as far as possible under a penalty not exceeding £5 for the first offence, £10 for second, and for each subsequent conviction the fine is double the amount of the previous conviction. If the sanitary authority make default in enforcing the provisions, the County Council may take proceedings against the sanitary authority. But they rarely if ever do.

And under *Section* 24 proceedings may be taken against any chimney serving any fireplace or furnace (except the chimney of a private dwelling-house) which does not as far as practicable consume its own black

smoke, and to which the general provisions of the Act apply.

The London County Council have power to deal with smoke nuisances within the County of London in special cases when a sanitary authority request them to do so, and they may, in place of the sanitary authority, enforce the provision of *Sections* 23 *and* 24 of the Public Health (London) Act, 1891, in their application to any building or any premises belonging to or used by a sanitary authority, and the Council may institute proceedings and do any act as if, within the meaning of the Act of 1891, the Council were a sanitary authority and the County were their district. These provisions do not apply to the Port of London.

Under *Section* 19 of their Act, the London County Council are empowered to spend a sum not exceeding £500 yearly, in experiments and investigations *re* smoke abatement.

**Rail and Road Locomotives.**—*Section* 114 of the Railway Clauses Consolidation Act, 1845, requires that every locomotive shall be constructed to consume its own smoke, and if any engine be not so constructed, the railway company using such engine shall forfeit £5 for every day during which the engine shall be used. *Section* 19 of the Regulation of Railways Act, 1868, provides that if a locomotive is constructed to consume its own smoke but fails to do so as far as practicable, the railway company using such locomotive shall be deemed guilty of an offence under *Section* 114 of the Act, 1845. Road locomotives can be dealt with under *Section* 30 of the Highways and Locomotives Act, 1878, which provides that a locomotive shall be constructed on the principle of consuming its own smoke, and any person using any locomotive not so constructed or not consuming as far as practicable its own smoke, shall be liable to a fine not exceeding £5 for every day during which such locomotive is used in any such highway.



**Local Acts.**—Several municipal corporations have obtained special powers, in local Acts, to deal with the smoke nuisance in their boroughs. Among the boroughs which have obtained such powers are Manchester, Sheffield, Nottingham, Leeds, and Bradford.

Birmingham Improvement Act, 1851, incorporates *Section* 108 of the Towns Improvement Clauses Act, 1847, which provides for the construction of (or alteration within a given period) all fireplaces or furnaces used in manufacturing so as to consume their own smoke, and for penalties for using fireplaces, etc., not so constructed (or altered), or for negligent use resulting in the emission of smoke.

Manchester Corporation Act, 1882, *Section* 44, provides for the infliction of higher penalties than are provided for by the Public Health Acts.

Sheffield Corporation Act, 1900, *Section* 105 (the Sheffield Corporation (Consolidation) Act, 1918, *Section* 483) also provides for the infliction of higher penalties than the Public Health Act, 1875. If a chimney serves boilers only, and a magistrate's order is made to abate a nuisance (under the Public Health Act, 1875), and the order is disobeyed, the magistrates have power under the Corporation Act to impose a penalty of £5 per day during failure to obey, instead of 10s. and 20s. per day as under the Public Health Act, 1875.

The increased penalties imposed in hundreds of cases in Sheffield have acted as a deterrent and generally prevented a recurrence of the nuisance for a long time.

So long ago as 1874, presumably on account of its local industries, Nottingham obtained drastic powers in *Section* 76 of the Nottingham Improvement Act of that year with regard to the emission of smoke, these provisions are not restricted to black smoke, nor apparently do they allow of the defence that the " best practicable means " have been used. If the said section is carried out in letter and spirit (which probably it never

is), it will inflict gross injustices on the manufacturers, for they will have to prevent smoke emission, even if it is not practicable to do so, and carry on their trade. But the only way to prevent the emission will be to put out the fires, and shut up the shops. Such legislation, which goes beyond practicability if administered, provides a remedy worse than the disease.

The Leeds Corporation (Consolidation) Act, 1905 (Part XIV., *Section* 272-276) provides for increased penalties, and for the appointment of a smoke inspector. In this case also the provisions are not confined to black smoke.

Bradford have had special provisions, in the matter of smoke nuisances, in their local Acts since the Bradford Improvement Act, 1850. In 1903 the Corporation obtained powers for increased penalties, in *Section* 66 of the Bradford Corporation Act of that year. Also, on account of the serious nuisance created by grit, which could not be dealt with under any existing Act, the Corporation obtained special powers under the Bradford Corporation Acts, 1910 and 1913, for dealing with smoke and grit.

The Bradford Corporation Act, 1910, *Section* 53, provides for the construction of new furnaces and the alteration of existing furnaces on the principle of consuming the smoke arising therefrom. The Act deals with all smoke without reference to colour, also with grit and gritty particles. If the smoke is emitted from furnaces that are constructed to consume their own smoke, a penalty is liable to be inflicted unless the person summoned can show there has been no negligence, or the smoke is due to an accident, or other unforeseen cause. No penalty is to be inflicted if the court is satisfied that the best practicable methods have been used to prevent the emission of smoke or grit.

An owner or occupier, or other person employed by such owner or occupier, may be proceeded against; in practice, however, proceedings are rarely or never taken against the employee.



The Bradford Corporation Act of 1913, *Section* 72, *Sub-Section* 3, provides, *inter alia*, for the exemption from penalty of any owner or occupier in case where the furnaces are constructed properly as required by *Section* 53 of the Act, 1910, and the emission of smoke is due to the act or default of a stoker, or other employee. This provision, however, is stated to have worked badly in practice, and to have weakened the effect of the Act. If the provision has worked badly, it is not the fault of the provision, but the fault of administration.

The manufacturers say very strongly and rightly so, "That when they have spent in some cases thousands of pounds in providing plenty of boiler power, the necessary smoke-preventing appliances, good fuel, and have paid good wages to the stoker, who is not overworked, and the stoker or any other employee deliberately refuses to do his duty, and creates a smoke nuisance, it is grossly unjust that the owner or occupier should be summoned instead of the person solely and wholly responsible for the nuisance." It is the law, but it is unfair and unjust. True, the employer can, if he care to, discharge the stoker for negligence, but he may be afraid to do so for fear of getting a worse man than the one discharged.

Every local authority should possess the power to proceed against the person or persons responsible for the nuisance, and, if the employees are responsible, they should be prosecuted (drivers of highway locomotives are prosecuted for negligence); then there would be no injustice done to the employer, and no injustice done to the employee; it would be a deterrent to negligence, and contribute largely to the abatement of smoke.

But the smoke inspector would have to possess the necessary expert knowledge to demonstrate and decide

beyond the shadow of a doubt who was responsible for the nuisance, and then prosecute him. In this way the section would be admirably administered.

**The Present Law in Scotland.**—The general law in Scotland with regard to smoke nuisances is contained in the Smoke Nuisances (Scotland) Abatement Act, 1857, the Burgh Police (Scotland) Act, 1892, and the Public Health (Scotland) Act, 1897. The Smoke Nuisance (Scotland) Act, 1857 (Sections (1) and (2)) requires all furnaces to consume their smoke as far as practicable. The Burgh Police (Scotland) Act, 1892, Section 384, requires, under penalty, any person using or suffering to be used any furnace or fire (except a household fire) to use the best practicable means for preventing smoke, and to attend carefully such furnace or fire to prevent as far as possible the escape of smoke. A fine not exceeding 40s., and a continuing daily penalty of 5s., may be inflicted. A proviso with reference to mines and certain metallurgical processes is included, following the wording of Section 334 of the English Public Health Act, 1875. The Act applies to all burghs, except Edinburgh, Glasgow, Aberdeen, Dundee, and Greenock, which, however, have power to adopt it.

The Public Health (Scotland) Act, 1897, Section 16, (9) and (10), requires furnaces and fires (except the domestic fire) to consume their smoke as far as practicable.

In addition to the above-mentioned provision of the general law, certain towns have their own local Acts.

With regard to smoke from rail and road locomotives, the Scottish law is contained in the Railway Clauses Consolidation (Scotland) Act, 1845, Section 107, the Regulation of Railways Act, 1868, Section 19, and the Locomotive (Scotland) Act, 1878, Section 5, and appears to be the same as the English law on the subject. In the Scottish Act the phrase black is not used, the emission of smoke of any colour in such quantity as to be a nuisance, or injurious or dangerous to health, is the offence against the law.



The Glasgow Act not only omits the word black, but applies to all processes and fireplaces excepting only a household fire.

(Glasgow Police (Further Powers) Act, 1892.)