The London Building Acts 1894 to 1905 : (57 & 58 Victoria, cap. CCXIII; 61 & 62 Victoria, cap. CXXXVII. 5 Edwardus VII. cap CCIX.) : with copious index, notes, cross references, legal decisions and diagrams, also the bylaws and regulations / edited by Bernard Dicksee.

THE LONDON BUILDING ACTS 1894 TO 1908

BERNARD DICKSEE, F.R.I.B.A.

SECOND EDITION
WITH SUPPLEMENT

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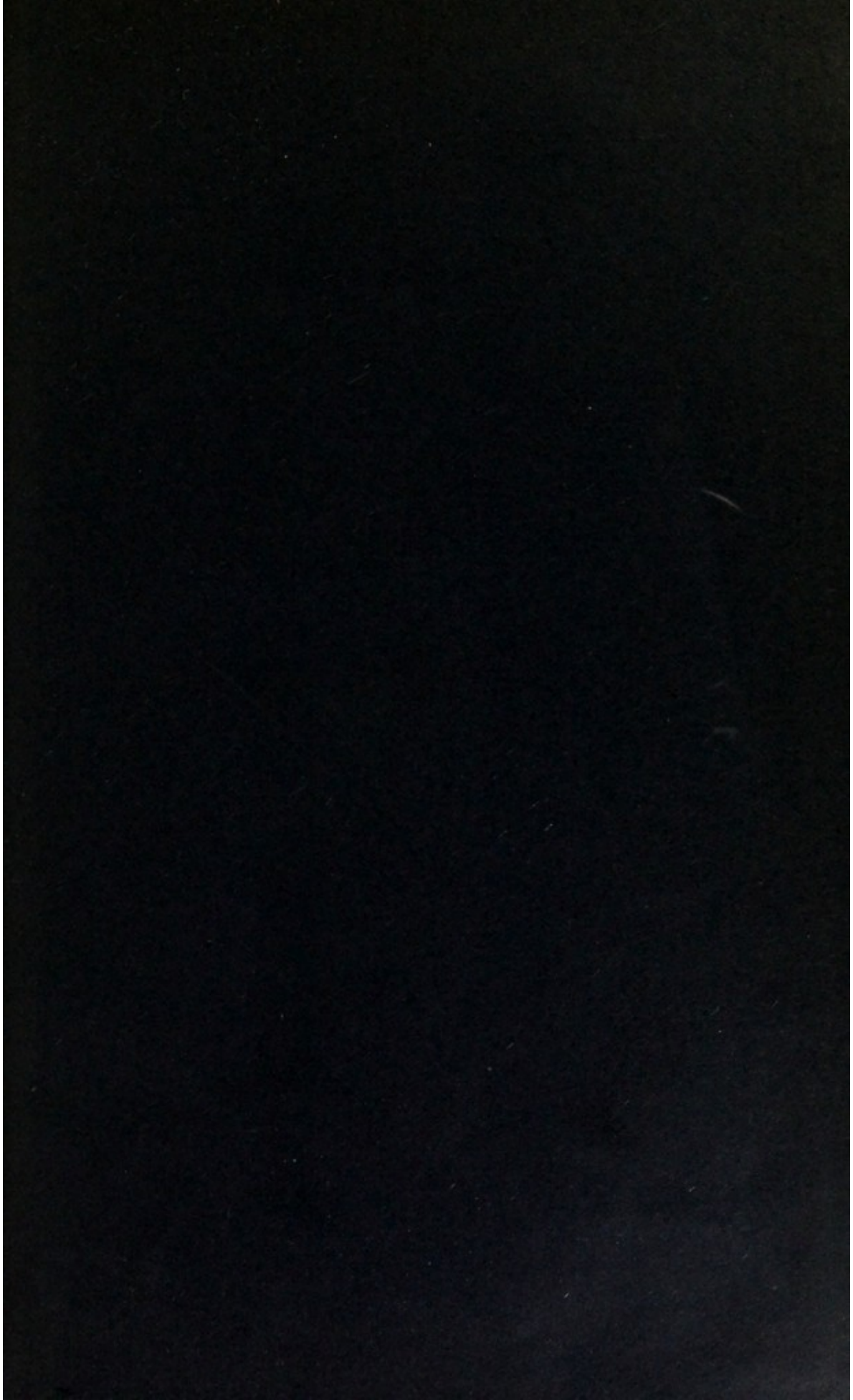

THE

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1894 TO 1908

(57 & 58 Victoria, Cap. CCXIII.; 61 & 62 Victoria, Cap. CXXXVII.
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EDITED BY

BERNARD DICKSEE, F.R.I.B.A.

DISTRICT SURVEYOR FOR NEWINGTON AND PART OF ST. GEORGE THE MARTYR

SECOND EDITION, REVISED AND ENLARGED

WITH SUPPLEMENT

CONTAINING

THE LONDON BUILDING ACTS AMENDMENT OF 1908 AND
DIGEST OF LAW CASES 1905 TO 1908

LONDON: EDWARD STANFORD

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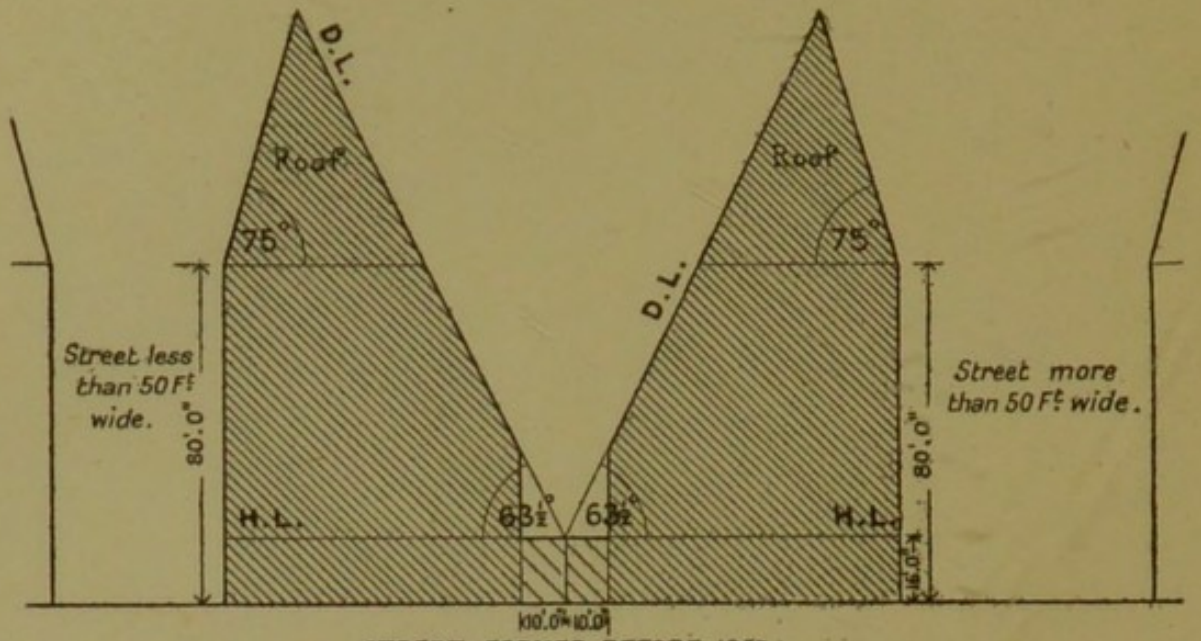
1894 TO 1905



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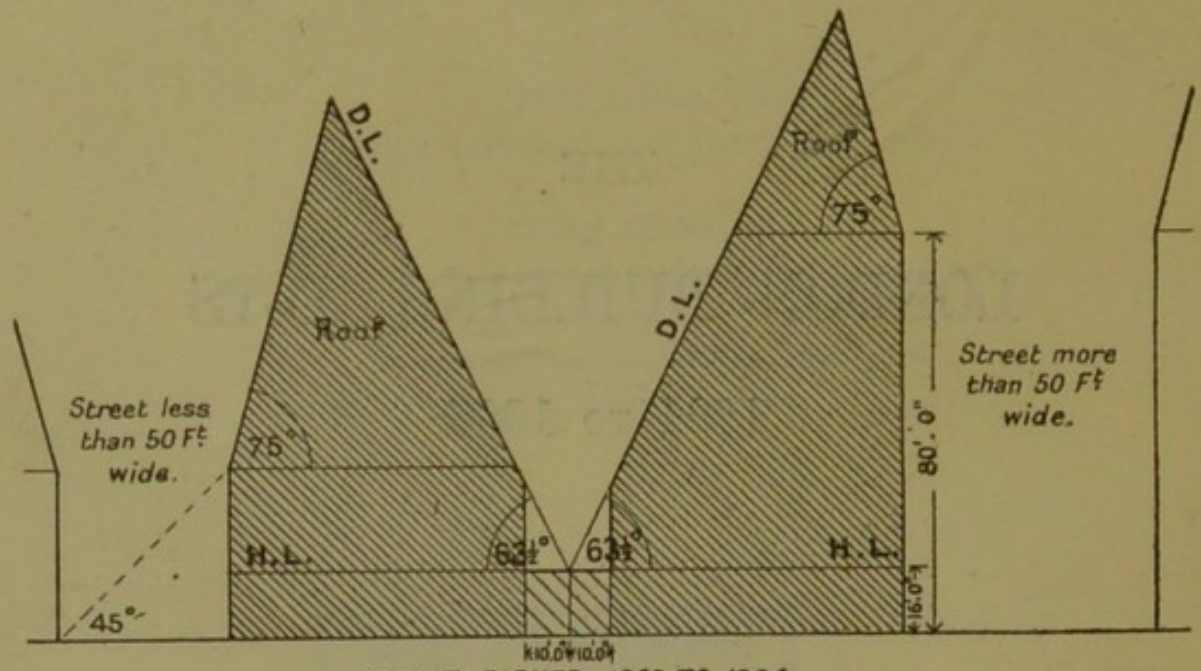
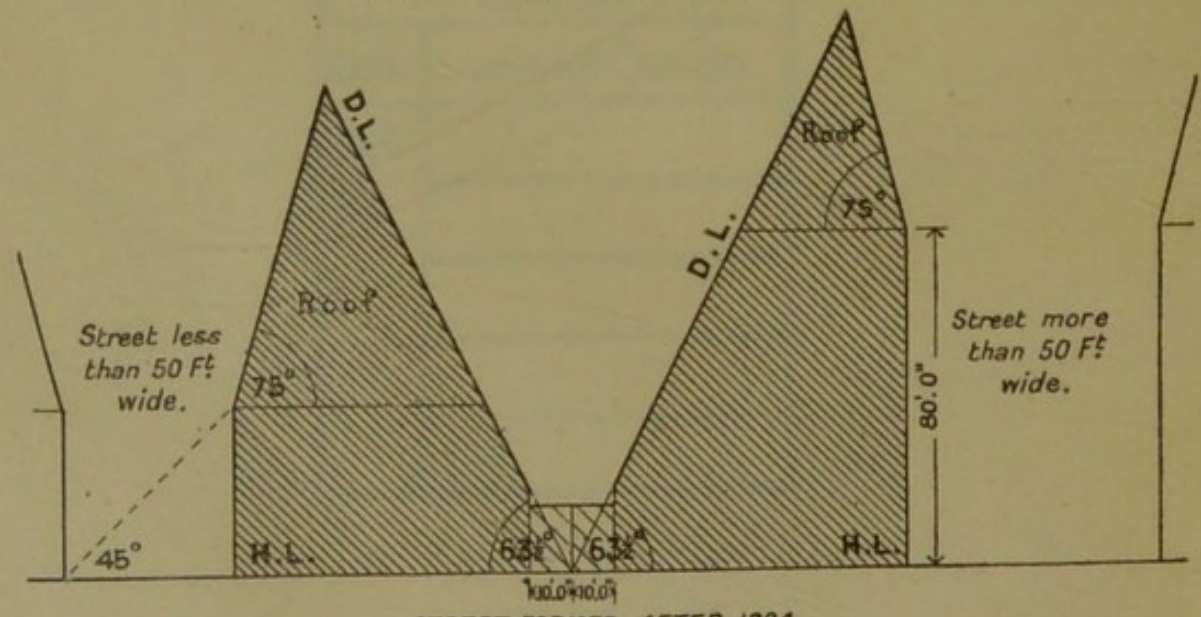


STREET FORMED 1862 TO 1894



STREET FORMED AFTER 1894

DIAGRAM ILLUSTRATING MAXIMUM HEIGHTS OF BUILDINGS, SECS. 41, 47 AND 49

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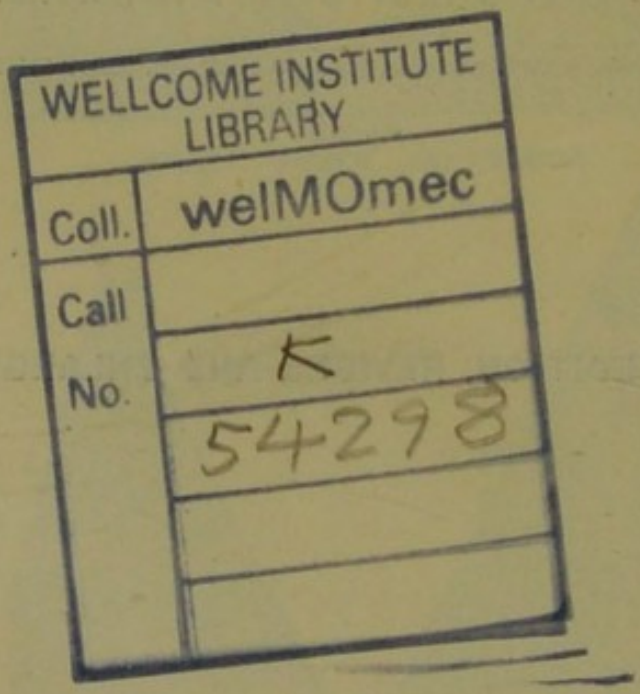

PREFACE

TO

THE SECOND EDITION

THE generous reception that, notwithstanding its many imperfections, has been accorded to the earlier edition of this book, and the fact that that edition is now out of date by reason of the passing of the subsequent Amendment Acts, particularly that of the present year, have encouraged the Editor to place this new and revised edition before the professions and the public with the hope that it may be of greater use than its predecessor to those concerned with the Building Acts.

The scope of the book has been enlarged by the inclusion of so much of the Factory and Workshop Act, 1901, as relates to the construction and amendment of buildings; which appeared to be desirable, as that Act is now closely connected with the Building Acts, by reason of the inclusion in the London Building Acts (Amendment) Act, 1905, of like provisions in respect of buildings other than factories.

Some alteration in the form of the present edition has been found necessary; italics are no longer employed to denote portions of the Acts that were not contained in the former and superseded Acts; such portions are now included within square brackets [ ], and italics are employed to indicate portions of the Act that have been repealed by subsequent amendment.

The various decisions of the High Court up to the

present date have been digested and annotated under the sections to which they have special reference, and in a more detailed form than in the earlier edition, which it is hoped will make them of greater use.

For more convenient reference the schedule of thicknesses of walls has, as in the earlier edition, been set out in tabular form, but the old and repealed tables of the Metropolitan Building Act, 1855, have now been omitted.

BERNARD DICKSEE.

INTRODUCTION

In A.D. 1667 was passed 'An Act for rebuilding the City of London' (19 Car. II. cap. 3). By section 4 of that Act the Lord Mayor, Aldermen and Common Council of the City of London were required to appoint 'one or more discreet and intelligent person or persons in the Art of Building to be the Surveyors or Supervisors to see the said rules and scantlings well and truly observed,' and such Surveyors or Supervisors were required to take oath that they would properly perform their duties. This Act, which remained in force until repealed in 1772, contained, among other requirements, provisions for the separation of buildings by party walls. By 6 Annæ, cap. 31, section 4, party walls, as therein described, were required to be provided to all houses in London and Westminster, and within the area of the Weekly Bills of Mortality. Outside the City no Surveyor or Supervisor appears to have been appointed; there was, however, a penalty of £50 for the non-observance of the law, and possibly the common informer was relied upon to enforce it. 7 Annæ, cap. 18, amended the Act of the previous year, among other things exempting the buildings on London Bridge, but left the administration of the law as before. 11 Geo. I. cap. 28 (A.D. 1725) further amended the law, and extended it to the parishes of St. Pancras, St. Marylebone, Paddington and Chelsea, at the same time providing rules for the rebuilding of party walls. 33 Geo. II. cap. 31, increased the thickness of party walls.

Up to this time no procedure for enforcing the Acts outside the City can be traced, but in the next statute,

4 Geo. III. cap. 14 (A.D. 1764), it was enacted, in section 7 that master builders were to have the building, on roofing-in, surveyed by one or more surveyors, who were required to take oath before the Justices of the Peace in Westminster or Middlesex that the building had been erected in accordance with the Act. Apparently, as 19 Car. II. cap. 3, had not been repealed, the 'Surveyor or Supervisor' remained in authority within the City. The 1764 Act was the first to demand the party parapet (section 3), which was required to be carried 18 inches above the roof. 6 Geo. III. cap. 27 (A.D. 1766), extended only to the City, and related to streets and party walls.

All the above-mentioned Acts remained in force until 1772, when 12 Geo. III. cap. 73, was passed, applying to the same area as the 1725 Act, and repealing so much of the previous Acts 'as relates to buildings and party walls.'

This Act only survived two years, and was repealed by 14 Geo. III. cap. 78 (A.D. 1774); by section 62 of which Act the Lord Mayor and Aldermen in the City of London (the Common Council were dropped out) and the Justices of the Peace in their respective General Quarter Sessions, subject to the consent of the Secretary of State, were required to appoint the 'Surveyors or Supervisors,' who were to take oath to observe and enforce the Act. This was the first establishment of the District Surveyor outside the City of London. A provision in this Act worthy of note is contained in section 63, which enacted that if any builder neglected to give notice to the 'Surveyor or Supervisor' he should forefeit and pay to such Surveyor treble fees. This Act was far more comprehensive than any of its predecessors: it divided buildings into seven rates, each with its own set of rules, and contained a scale of fees to be paid to the Surveyor or Supervisor according to the rate. This Act remained in force until superseded by the Metropolitan Building Act, 1844 (7 & 8 Vict. cap. 84), in which the District Surveyor received his present title of 'District Surveyor.' By section 65 he

was appointed, as in the Act of 1774, by the Lord Mayor and Aldermen and the Justices of the Peace respectively, with the consent of the Secretary of State ; and by section 56 he had to be qualified by examination by a special Board of Examiners consisting of not less than three architects. Section 70 enacted that Surveyors then in office under the Act of 1774 should continue to be District Surveyors under the Act, 'and every provision in this Act applicable to District Surveyors, so far as relates to the exercise of the office of Surveyor and to their remuneration in that behalf, shall apply to them.' The remuneration as in the previous Act was by way of fees, which varied according to the 'rate' and to a certain extent the size of the building. Section 76 provided that, where the District Surveyor acted professionally on a building in his own district, the building was to be 'surveyed by another District Surveyor.'

The Metropolitan Building Act, 1855 (18 & 19 Vict. cap. 122), which repealed the Act of 1844, confirmed the District Surveyors in their position, transferring the appointment of new surveyors to the newly created Metropolitan Board of Works and establishing the Royal Institute of British Architects as the examining body.

CONTENTS

TABLE OF CASES

Unless otherwise indicated, the sections quoted refer to the London Building Act, 1894

ABBREVIATIONS

Q.B. or Q.B.D. . .	Law Reports, Queen's Bench.
K.B.	,, King's Bench.
Ch.	,, Chancery Division.
App. C.	,, Court of Appeal.
C.P.	,, Common Pleas.
Exq.	,, Exchequer Court.
L. J.	Law Journal Reports.
L. T.	Law Times Reports, New Series.
L. T. (O.S.) . . .	,, ,, Old Series.
J.P.	Justice of the Peace.
W. R.	Weekly Reporter.
R.	The Reports.
L. G. R.	Local Government Reports.
T. L. R.	Times Law Reports.
A. L. R.	Architects' Law Reports.
B. & S.	Best & Smith's Reports.
Cox C.C.	Cox's Criminal Cases.
Wm. Bl.	William Blaxstone's Reports.
E. B. & E. . . .	Ellis, Blackburn & Ellis's Reports
C.B. (N.S.) . . .	Common Bench Reports, New Series.
E. & E.	Ellis & Ellis's Reports.
Jur.	Jurist Reports.
B.	Builder.
B. N.	Building News.

THE

LONDON BUILDING ACT, 1894

(57 & 58 Victoria, Cap. CCXIII)

ARRANGEMENT OF SECTIONS

PART III

LINES OF BUILDING FRONTAGE

PART IV

NAMING AND NUMBERING OF STREETS

PART V

OPEN SPACES ABOUT BUILDINGS AND HEIGHT OF BUILDINGS

PART VI

CONSTRUCTION OF BUILDINGS

PART VII

SPECIAL AND TEMPORARY BUILDINGS AND WOODEN STRUCTURES

PART VIII

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PART IX

DANGEROUS AND NEGLECTED STRUCTURES

Dangerous Structures

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PART X

DANGEROUS AND NOXIOUS BUSINESSES

PART XI

DWELLING-HOUSES ON LOW-LYING LAND

PART XII

SKY SIGNS

PART XIII

SUPERINTENDING ARCHITECT AND DISTRICT SURVEYORS

SCHEDULES

THE

LONDON BUILDING ACT, 1894

57 & 58 VICTORIA

CHAPTER CCXIII

An Act to consolidate and amend the Enactments relating to Streets and Buildings in London. [25th August, 1894.]

WHEREAS enactments relative to streets and buildings in the administrative county of London are contained in the following Acts, viz. :—

The Metropolitan Building Act, 1844	Public Act.
The Metropolis Management Act, 1855	Public Act.
The Metropolitan Building Act, 1855	Public Act.
The Metropolitan Building Act (Amendment), 1860	Public Act.
The Metropolitan Building Amendment Act, 1861	Public Act.
The Metropolis Management Amendment Act, 1862	Public Act.
The Metropolitan Building Act, 1869	Public Act.
The Metropolitan Building Act, 1871	Public Act.
The Metropolis Management and Building Acts Amendment Act, 1878	Public Act.
The Metropolis Management and Building Acts (Amendment) Act, 1882	Public Act.
The London Council (General Powers) Act, 1890	Local and Personal Act.
The London Sky Signs Act, 1891	Local and Personal Act.
The London County Council (General Powers) Act, 1893	Local and Personal Act.

And whereas the existing provisions of the said Acts are complicated, and in some respects doubtful, and are insufficient to secure the construction and maintenance of streets and buildings in a satisfactory manner :

And whereas it will conduce to the public convenience that the said Acts should be repealed to the extent set forth in this Act, and that further provisions should be made and powers conferred in order to secure a proper width and direction of streets, the sound construction of buildings, the diminution of the danger arising from fire, the securing of more light, air, and space round buildings, and generally with respect to the control and regulation of streets and buildings, and otherwise as in this Act set forth :

And whereas the purposes aforesaid cannot be effected without the authority of Parliament :

May it therefore please your Majesty that it may be enacted, and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, as follows (that is to say) :—

PART I

INTRODUCTORY

Short title.

1. This Act may be cited as the London Building Act, 1894.

Division of Act into Parts.

2. This Act shall be divided into Parts as follows :—

Part I. Introductory.
" II. Formation and Widening of Streets.
" III. Lines of Building Frontage.
" IV. Naming and Numbering of Streets.
" V. Open Spaces about Buildings and Height of Buildings.
" VI. Construction of Buildings.
" VII. Special and Temporary Buildings, and Wooden Structures.
" VIII. Rights of Building and Adjoining Owners.
" IX. Dangerous and Neglected Structures.
" X. Dangerous and Noxious Businesses.
" XI. Dwelling-houses on Low-lying Land.
" XII. Sky Signs.

Part XIII. Superintending Architect and District Surveyors. S. 2

„ XIV. Byelaws.

„ XV. Legal Proceedings.

„ XVI. Miscellaneous.

Commencement of Act.

3. This Act shall come into operation on, and shall take effect from, the first day of January next after the passing thereof, which date is in this Act referred to as the commencement of this Act.

Extent of Act.

4. This Act shall, save so far as is otherwise provided, extend to London and no further :

Provided always that, in addition to any exemption referring to the Commissioners of Sewers contained in this Act, nothing in this Act contained shall in any way take away, alter, prejudice, or affect any of the powers, privileges, exemptions, jurisdictions, or authorities given to or vested in the Commissioners of Sewers by or under any Act of Parliament, and existing immediately before the passing of this Act, notwithstanding the repeal of the Acts specified in the Fourth Schedule hereto.

The extent of the Act has been varied under the London Government Act, 1899 (62 & 63 Vict. cap. 14), by the exclusion of Penge and the detached portions of Clerkenwell and Wandsworth and the inclusion of South Hornsey.

The duties of the Commissioners of Sewers are now transferred to the Corporation of the City of London ; the Acts referred to are the City of London Sewers Act, 1848 (11 & 12 Vict. cap. 163) and the City of London Sewers Act, 1851 (14 & 15 Vict. cap. 91).

Definitions.

5. In this Act, unless the context otherwise requires—

(1.) The expression ' street ' means and includes any highway, and any road, bridge, lane, mews, footway, square, court, alley, passage, whether a thoroughfare or not ; and a part of any such highway, road, bridge, lane, mews, footway, square, court, alley, or passage.

This definition of ' street ' is practically the same as that in Met. Man. Act, 1855, sec. 250.

[(2.) The expression ' way ' includes any public road, way, or footpath (not being a street) ; and any private road, way, or footpath which it is proposed to convert into a highway, or to form, lay out, or adapt as a street.]

(3.) The expression ' roadway,' in relation to any street or way, means and includes the whole

space open for traffic, whether carriage traffic and foot traffic, or foot traffic only.

This definition is the same as that in Met. Man. & Bldg. Am. Act, 1878, sec. 4 (repealed).

(4.) The term 'centre of the roadway' means—

(*a*) In relation to any street or way of which the centre of the roadway has been ascertained or defined by the Council or the Superintending Architect previously to or after the commencement of this Act, the centre of the roadway as so ascertained or defined;

(*b*) In relation to any street or way of which the centre of the roadway shall not have been ascertained or defined by the Council or the Superintending Architect, where the roadway opposite the site of the building in question shall, since the twenty-second day of July, one thousand eight hundred and seventy-eight, have been widened, the centre of the roadway as existing immediately before the date of such widening; or where it shall not have been so widened, the actual centre of the existing roadway:

This definition takes the place of that in Met. Man. & Bldg. Am. Act, 1878, 41 & 42 Vict. cap. 32, sec. 4 (repealed).

For the purpose of any enactment in this Act referring to the centre of the roadway, [the Superintending Architect] may, at any time, define the line constituting the centre of the roadway, in the case of a street formed or laid out after the eighteenth day of August, one thousand eight hundred and ninety; and the line so defined shall continue to be deemed the centre for such purpose, notwithstanding that the actual centre of the roadway may have become altered by reason of the roadway having been widened, either on one side only, or on both sides to an unequal extent.

L. C. C. Gen. Powers Act, 1890, 53 & 54 Vict. cap. 243, sec. 30 (repealed), empowered the Council to define the centre of the roadway; this power is now by the above subsection transferred to the Superintending Architect.

(5.) The expression 'the prescribed distance' means 20 feet from the centre of the roadway, where

such roadway is used for the purpose of carriage traffic; and 10 feet from the centre of the roadway, where such roadway is used for the purposes of foot traffic only. S. 5

This definition is a re-enactment of that in Met. Man. & Bldg. Am. Act, 1878, sec. 4.

(6.) The expression 'new building' means and includes—

Any building erected after the commencement of this Act;

Any building which has been taken down for more than one half of its cubical extent, and re-erected, or commenced to be re-erected, wholly or partially on the same site, after the commencement of this Act;

Any space between walls and buildings which is roofed, or commenced to be roofed, after the commencement of this Act.

Met. Bldgs. Act, 1855 (repealed), secs. 8 & 10.

'8. A building shall be deemed to be new whenever the enclosing walls thereof have not been carried higher than the footings previously to the said first day of January, one thousand eight hundred and fifty-six; any other building shall be deemed to be an old building.'

'10. Whenever any old building has been taken down to an extent exceeding one half of such building, such half to be measured in cubic feet, the rebuilding thereof shall be deemed to be the erection of a new building; and every portion of such old building that is not in conformity with the regulations of this Act shall be forthwith taken down.'

C. A. 1895 (Esher, M.R., Kay and Smith, L.JJ.) (Q. B. Wright and Wills, JJ., divided). The second paragraph of this subsection, being merely a definition and not an enacting section, will not regulate the construction of the external and party walls of the building, which are dealt with in sec. 208 (*Crow* v. *Redhouse*, 59 J.P. 551, 663).

Compare Met. Bldg. Act, 1855, secs. 10 & 11 and sec. 208 of this Act.

No definition of 'building' appears in the Act; the following definition, which was included in the Act as it left the House of Commons, was struck out in Committee of the House of Lords: '"Building" means an erection comprising a cubical space defined by walls, piers, posts, columns, or other supports or enclosures, and a roof, whether the erection is wholly enclosed or not, and whether it is fixed on permanent foundations or not, and of whatever material the supports, enclosures, or roof may be composed.'

Every roofed erection enclosing space must now be considered to be a building, as by sec. 201 (10) erections not exceeding in area 30 square feet and not exceeding in height 5 feet to the eaves or roof plate are referred to as buildings.

A timber stage of two storeys, the lower of which was fitted

S. 5

with revolving shutters, has been held to be a building (*Legg* v. *Smith*, North London P. C., 'Building News,' 2 September, 1892).

A timber stage of three floors, used for storing cut timber, enclosed on each side by a party wall, but open at the front and back, the floors being supported upon timber uprights and approached by an internal staircase, the whole being covered with a zinc flat, was held by Mr. Newton at Marlborough Street P. C., on 26 January, 1893, to be a building, and was ordered to be enclosed on the front and back by proper walls (*Wallen* v. *Glückstein*; 'Building News,' 3 February, 1893).

K. B. 1902 (Wills and Channell, JJ.). A wooden erection about 20 feet × 20 feet and 12 feet high, to be used as a stable, on private ground, enclosed by a fence excluding the public, has been held to be a new building within the Public Health Act, 1875, and must therefore comply with the local byelaws (*Mayor of South Shields* v. *Wilson*, 84 L. T. 267; 66 J. P. 199; 19 Cox C.C. 667).

[(7.) The expression 'bressummer' means a wooden beam or a metallic girder which carries a wall.]

[(8.) The expression 'level of the ground' means the mean level of the ground, as determined by the District Surveyor, or, in the event of disagreement, by the Superintending Architect; or on appeal by the Tribunal of Appeal.]

(9.) The expression 'foundation,' [applied to a wall having footings,] means the solid ground, [or artificially formed support,] on which the footings of the wall rest; [but, in the case of a wall carried by a bressummer, means such bressummer.]

Met. Man. & Bldg. Am. Act, 1878, sec. 14 (repealed), defines 'foundation' as 'the space immediately beneath the footings of a wall.'

(10.) The expression 'base,' applied to a wall, means [the underside of] the course immediately above the footings, [if any; or, in the case of a wall carried by a bressummer, above such bressummer.]

The Met. Bldg. Act, 1855, sec. 3 (repealed), defined the base of the wall to be 'the course immediately above the footings.'

[(11.) The expression 'ground storey' means that storey of a building to which there is an entrance from the outside, on or near the level of the ground; and, where there are two such storeys, then the lower of the two:

Provided that no storey, of which the upper surface of the floor is more than 4 feet below

the level of the adjoining pavement, shall be deemed to be the ground storey.] S. 5

[(12.) The expression 'basement storey' means any storey of a building which is under the ground storey.]

[(13.) The expression 'first storey' means that storey of a building which is next above the ground storey; the successive storeys above the first storey being the second storey, the third storey, and so on to the topmost storey.]

(14.) The expression 'topmost storey' means the uppermost storey in a building, whether constructed wholly or partly in the roof or not.

The previous Acts contained no definition of 'topmost storey'; the definition here given is in accordance with the decision of the Court of Queen's Bench in *Foote* v *Hodgson* (25 Q. B. D. 160; 59 L. J., Q. B. 343). This is of importance when determining the thickness of walls (*see* First Schedule, Prelim. 7).

(15.) The expression 'external wall' means an outer wall or vertical enclosure of any building, not being a party wall.

This definition is the same as that in Met. Bldg. Act, 1855, sec. 3 (repealed).

For thickness of external walls, *see* First Schedule.

(16.) The expression 'party wall' means—

(*a*) A wall [forming part of a building,] and used, or constructed to be used, for separation of adjoining buildings [belonging to different owners,] or occupied, or constructed or adapted to be occupied, by different persons; or

[(*b*) A wall forming part of a building, and standing, to a greater extent than the projection of the footings, on lands of different owners.]

Met. Bldg. Act, 1855 (repealed), sec. 3.

'"Party wall" shall apply to every wall used, or built in order to be used, as a separation of any building from any other building, with a view to the same being occupied by different persons.'

This definition is limited by sec. 58 to a party wall for 'such part of its length as it is so used.'

(*b*) would apply to such cases as those mentioned in secs. 87 & 88 (12).

For thickness of party walls, *see* First Schedule.

Ch. 1879 (Fry, J.). The question whether a wall was a 'party wall' under sec. 3 of Met. Bldg. Act, 1855, was held to depend upon the mode of user rather than the right of ownership. A wall built entirely on the plaintiff's land, against which he had built some closets, and upon which the defendant, on his side of the

S. 5 wall, had built a more substantial structure, was held to be a party wall to the extent laterally to which it was used for both plaintiff's and defendant's buildings (*Knight* v. *Pursell*, 11 Ch. D. 412; 40 L. T. 391; 48 L. J. (Ch.) 395; 43 J. P. 622; 27 W. R. 817).

Ch 1893. Under the Met. Bldg. Act, 1855, it was held that the part of a flank wall of a house projecting beyond the front of the next house is not a party wall (*Johnstone* v. *Mayfair Property Co.*, 1893, W. N. 73).

(17.) The expression 'cross wall' means a wall used, or constructed to be used, [in any part of its height, as an inner wall of a building,] for separation of one part from another part of the building; that building being wholly in, [or being constructed or adapted to be wholly in,] one occupation.

Met. Bldg. Act, 1855 (repealed), sec. 3.

'Cross Wall' shall apply to every wall used, or built in order to be used, as a separation of one part of any building from another part of the same building, such building being wholly in one occupation.

For thickness of cross walls, *see* First Schedule, Misc. Rules 1 & 2.

[(18.) The expression 'party fence wall' means a wall used, or constructed to be used, as a separation of adjoining lands of different owners, and standing on lands of different owners, and not being part of a building; but does not include a wall constructed on the land of one owner the footings of which project into the land of another owner.]

[(19.) The expression 'party arch' means an arch separating adjoining buildings, storeys, or rooms belonging to different owners; or occupied or constructed or adapted to be occupied, by different persons; or separating a building from a public way, or a private way leading to premises in other occupation.]

(20.) The expression 'party structure' means a party wall, and also a partition floor or other structure, separating [vertically or horizontally] buildings, storeys, or rooms approached by distinct staircases, or separate entrances from without.

Met. Bldg. Act, 1855 (repealed), sec. 3.

'"Party structure" shall include party walls, and also partitions, arches, floors, and other structures separating buildings, storeys, or rooms which belong to different owners, or which are approached by distinct staircases or separate entrances from without.'

S. 5

(21.) The expression 'height,' in relation to any building, means the measurement taken from the level of the footway (if any) immediately in front of the centre of the face of the building; or, (where there is no such footway) from the level of the ground before excavation, to the level of the top of the parapet; [or, where there is no parapet, to the level of the top of the external wall, or, (in the case of gabled buildings) to the base of the gable.]

For method of measuring the height of external and party walls, *see* First Schedule, Prelim. 7.

For height of rooms, *see* sec. 70, and First Schedule, Prelim. 6, and Parts I. & II.

The level of the ground has to be determined by the District Surveyor, *see* subsec. 8 of this section.

The previous Acts contained no definition of 'height,' but the method of taking the height of buildings, Met. Man. Am. Act, 1862 (25 & 26 Vict. cap. 120), sec. 85 as regards that section, and was measured up to the parapet or eaves.

The height, as defined in this subsection, does not include the two storeys in the roof permitted by sec. 62 (1).

(22.) The expression 'area,' applied to a building, means the superfices of a horizontal section thereof, made at the point of its greatest surface, inclusive of the external walls, and of such portions of the party walls as belong to the building.

Met. Bldg. Act, 1855 (repealed), sec. 3.

'The "area" of every building shall be deemed to be the superfices of a horizontal section of such building made at the point of its greatest surface, including the external walls and such portion of the party walls as belong to the building, but excluding any attached building the height of which does not exceed the height of the ground storey.'

For 'area' when calculating District Surveyor's fees, *see* Third Schedule, Reg. 5.

[(23.) The expression 'square,' applied to the measurement of the area of a building, means the space of 100 superficial feet.]

[(24.) The expression 'cubical extent,' applied to the measurement of a building, means the space contained within the external surfaces of its walls and roof, and the upper surface of the floor of its lowest storey.]

[(25.) The expression 'dwelling-house' means a building used, or constructed or adapted to be used, wholly or principally for human habitation.]

[(26.) The expression 'domestic building' includes a

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dwelling-house, and any other building, not being a public building, or of the warehouse class.]

For the purposes of Part V. 'domestic building' does not include buildings constructed or used as offices ; *see* sec. 39.

(27.) The expression 'public building' means a building used, [or constructed or adapted to be used,] as a church, chapel, or other place of public worship ; or as a [school,] college, or place of instruction [(not being merely a dwelling-house so used)] ; or as a hospital, [workhouse,] public theatre, public hall, public concert-room, public ball-room, public lecture-room, [public library,] or public exhibition-room ; [or as a public place of assembly ; or used, or constructed or adapted to be used,] for any other public purpose ; [also a building used, or constructed or adapted to be used, as an hotel, lodging-house, home, refuge, or shelter, where such building extends to more than 250,000 cubic feet, or has sleeping accommodation for more than 100 persons.]

Met. Bldg. Act, 1855 (repealed), sec. 3.

'"Public buildings" shall mean every building used as a church, chapel, or other place of public worship ; also every building used for purposes of public instruction ; also every building used as a college, public hall, hospital, theatre, public concert room, public ball room, public lecture room, public exhibition room, or for any other public purposes.'

Q. B. 1885 (Coleridge, C.J., Mathew, J.) An ambulance station built by the Met. Asylums Board and paid for out of the rates, and not attached to or worked in any way in connection with a hospital, to which it adjoined, from which it was separated by a brick wall 8 feet high in which there were no doors, was held under Met. Bldg. Act, 1855, not to be a public building (*Josolyne* v. *Meeson*, 53 L. T. 319 ; 49 J. P. 805).

Q. B. 1900 (Bruce and Phillimore, JJ.) An ordinary dwelling-house of less than 50,000 feet cubical extent, acquired, used and staffed by the London School Board for the housing of 12 or 14 children of defective intellect or physical infirmity in connection with the education of the children at the Board Schools, was held not to be a public building (*Moses* v. *Marsland* (1901), 1 K. B. 668 ; 83 L. T. 740 ; 65 J. P. 183 ; 70 L. J. (K. B.) 261 ; 49 W. R. 217).

The buildings of the Stock Exchange are now by Lond. Bldg. Am. Act, 1898, sec. 8, public buildings within the meaning of this Act.

[(28.) The expression 'building of the warehouse class' means a warehouse, factory, manufactory, brewery, or distillery, and any other building exceeding in cubical extent 150,000

cubic feet, which is neither a public building, S. 5
nor a domestic building.]

(29.) The expression 'owner' shall apply to every person in possession, or receipt, either of the whole or of any part of the rents or profits of any land or tenement; or in the occupation of any land or tenement, otherwise than as a tenant from year to year, or for any less term, or as a tenant at will.

This definition is a re-enactment of that contained in the Met. Bldg. Act, 1855, sec. 3.

For the purposes of secs. 15 & 23 the word 'owner' has the same meaning as in the Land Clauses Act, *see* note to sec. 15.

For 'owner of sky sign,' *see* sec. 134.

'Owner' has a different and wider meaning in the Public Health (London) Act, 1891.

The expression 'owner' as here defined has been held to include:—

In respect of dangerous structures: A person who has a long lease of a house at a small ground rent and sub-lets it in portions to different tenants at rack rents either on lease or as tenancy from year to year (C. P. 1865, *Hunt* v. *Harris*, 12 L. T. 421; 34 L. J. (C. P.) 249; 19 C. B. (N. S.) 13; 13 W. R. 742; 11 Jur. N. S. 485).

In the case of recovery of expenses of dangerous structures: The lessee of a chapel for 21 years, in preference to the freeholder (Q. B. 1861, *Mourilyan* v. *Labalmondiere*, 25 J. P. 340; 30 L. J., M. C. 99; 1 E. & E. 533; 7 Jur. N. S. 627).

In respect of party structures: A person who was tenant of a portion of a house for a term of 3 years renewable for another 3 years, holding from another person who, himself occupying another part of the house, was in receipt of the rents of the rest of the house (Ch. 1891, *Fillingham* v. *Wood*, (1891) 1 Ch. 51; 60 L. J. Ch. 232; 64 L. T. 46; 39 W. R. 282).

An intending lessee who had entered into a building agreement which expressly provided that it was not to operate as a demise at law so as to vest any estate in him (Ch. 1897, *List* v. *Sharp*, (1897) 1 Ch. 260; 76 L. T. 45; 61 J. P. 248; 66 L. J. Ch. 175; 45 W. R. 243).

A lessee for a term of years (Q. B. 1892, *Wigg* v. *Lefevre*, 'Times,' 8 April 1892).

In respect of liability for fees: The owner at the time the fees become due (Q. B. 1870, *Tubb* v. *Good*, L. R. 5, Q. B. 443; 22 L. T. 885; 39 L. J. (M. C.) 135).

But not to include:—

In respect of liability for fees: The owner in fee simple in receipt only of a peppercorn rent (Q. B. 1858, *Evelyn* v. *Whichcord*, E. B. & E. 126; 27 L. J., M. C. 211; 31 L. T. (O. S.) 96; 6 W. R. 468; 22 J. P. 658; 4 Jur. N. S. 808).

In respect of party structures: A person who has entered into an agreement for a lease under which he agrees to be tenant at will until the execution of the lease (Ch. 1904, *Orf.* v. *Payton*, 69 J. P. 103; 3 L. G. R. 126).

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[(30.) The expression 'occupier' does not include a lodger; and 'occupy' and 'occupation' do not refer to occupation by a lodger.]

(31.) The expression 'building owner' means such one of the owners of adjoining land as is desirous of building, or such one of the owners of buildings, storeys, or rooms separated from one another by a party wall or party structure, as does or is desirous of doing a work affecting that party wall or party structure.

(32.) The expression 'adjoining owner' means the owner or one of the owners, and 'adjoining occupier' means the occupier or one of the occupiers of land, buildings, storeys or rooms adjoining those of the building owner.

Met. Bldg. Act, 1855 (repealed), sec. 82.

'In the construction of the following provisions relating to party structures, such one of the owners of the premises separated by or adjoining to any party structure as is desirous of executing any work in respect to such party structure shall be called the building owner, and the owner of the other premises shall be called the adjoining owner.'

(33.) The expression 'builder' means the person who is employed to build or to execute work on a building [or structure; or, where no person is so employed, the owner of the building or structure.]

Met. Bldg. Act. 1855 (repealed), sec. 3.

'"Builder" shall apply to and include the master builder or other person employed to execute, or who actually executes, any work upon any building.'

[(34.) The expression 'Superintending Architect' means the Superintending Architect of Metropolitan Buildings for the time being.]

(35.) The expression 'District Surveyor' means every such surveyor who is appointed in pursuance of this Act, or whose appointment is hereby confirmed, and shall include any deputy or assistant surveyor appointed under this Act.

Met. Bldg. Act, 1855, sec. 3, definition re-enacted.

[(36.) *The expression 'fire-resisting material' means any of the materials and things described in the Second Schedule to this Act.*]

This definition has been repealed by Lond. Bldg. Am. Act, 1905, and sec. 5 and the Third Schedule of that Act have been substituted.

(37.) The expression 'inhabited,' applied to a room, means a room in which some person passes the night, [or which is used as a living room; including a room with respect to which there is a probable presumption (until the contrary is shown) that some person passes the night therein, or that it is used as a living room.] S. 5

By Met. Bldg. Act, 1855, sec. 23, any room in which any person passed the night was deemed to be inhabited. Living rooms—*i.e.* rooms in which persons pass the day—are now included in the expression 'inhabited.'

[(38.) The expression 'habitable,' applied to a room, means a room constructed or adapted to be inhabited.]

[(39.) The expression 'the Metropolis Management Acts' means the Metropolis Management Act, 1855, and the Acts amending the same, or any one or more of those Acts.]

[(40.) The expression 'London' means the administrative county of London.]

[(41.) The expression 'the Council' means the London County Council.]

[(42.) The expression 'local authority' means the Vestry or District Board of Works under the Metropolis Management Acts within whose parish or district the building, structure, place, land, or thing referred to is or will be; or, in the City, the Commissioners of Sewers; or, in the parish of Woolwich, the Woolwich Local Board of Health.]

[(43.) The expression 'the City' means all parts now within the jurisdiction of the Commissioners of Sewers.]

[(44.) The expression 'Corporation' means the mayor, aldermen, and commons of the City of London.]

[(45.) The expression 'Guildhall' means the land, offices, courts, and buildings, commonly called the Guildhall; and the offices, courts, and buildings, adjoining or appurtenant thereto, which now are used by, or may hereafter be erected for the use of, the Corporation, or of any committee, commission, or society appointed by them.]

[(46.) The expression 'Commissioners of Sewers' means the Commissioners of Sewers of the City of London.]

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[(47.) The expression 'the Tribunal of Appeal' means the Tribunal of Appeal constituted by this Act.]

H. L. 1884 (per Lord Selborne, L.C.) An interpretation clause will not prevent the word defined receiving its ordinary popular and natural meaning (*Robinson* v. *Barton-Eccles*, 8 App. C. 798; 50 L. T. 57; 48 J.P. 276; 53 L. J. Ch. 226; 32 W. R. 249).

PART II

FORMATION AND WIDENING OF STREETS

As to making streets.

[**6.** From and after the commencement of this Act, streets shall not be made, and ways shall not be widened, altered, or adapted so as to form streets, otherwise than subject to, and in accordance with, the provisions set forth in this Part of this Act. Provided that this Act shall not affect the powers of any local authority to widen, alter, or improve any street.]

For provisions as to laying out new streets on a cleared area, *see* sec. 44.

The law relating to the formation and widening of streets, now comprised in secs. 6 to 12 of this Act, was before the passing of this Act dealt with in the following Acts and sections, all of which are now repealed.

Metrop. Man. Act, 1855 (18 & 19 Vict. cap. 120) sec. 202 conferred on the M. B. W. the power to make, alter, and repeal byelaws (*inter alia*) for regulating the plans, level, width, surface, and inclination of new streets and roads. This power has been substantially re-enacted by sec. 164 of the present Act.

Metrop. Man. Am. Act, 1862 (25 & 26 Vict. cap. 102) sec. 98 enacted that no existing road, passage or way less than 40 feet in width should be laid out for building as a street for the purposes of carriage traffic, or less than 20 feet in width for foot traffic, unless widened to 40 feet and 20 feet respectively, and open at both ends from the ground upwards; and that any road, passage or way formed or laid out for either purpose should be deemed a new street and be constructed according to the byelaws. Sec. 99 enacted that the M. B. W. might permit streets of less width, or with one opening only.

Metrop. Man. & Bldg. Am. Act, 1878 (41 & 42 Vict. cap. 32) sec. 9 enacted that no street, road, passage or way (being a highway) formed or laid out for foot traffic only after the passing of that Act should, without the consent of the M. B. W., be used for carriage traffic unless of the full width of 40 feet; penalty on infringement, £50. Sec. 10 enacted that no street, road, passage or way (being a highway) formed or laid out for foot traffic only before the passing of that Act should, without the consent of a justice, be used for carriage traffic unless of the full width of 40 feet, and that the justice might grant the consent subject to conditions; 28 days' notice of the application to the justice was required to be given to the Board, who were to be heard thereon: penalty on infringement, £20.

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Metrop. Man. & Bldg. Am. Act, 1882 (45 Vict. cap. 14) sec. 7 enacted that any person forming or laying out for building as a street any road, passage or way for the purposes of carriage traffic or foot traffic only, so as not to afford direct communication between two streets, should give 3 months' notice to the M. B. W. with plans and particulars, and the Board might within 3 months decline to sanction such road, passage, or way, or sanction on conditions. An appeal from the Board's decision was given to a police magistrate; penalty on infringement, 40*s*., and a daily penalty of 20*s*. Sec. 8 contained a similar provision, applicable to the formation of any road, passage or way for foot traffic. Neither of these sections applied within the City.

Lond. C. C, (Gen. Powers) Act, 1890 (53 & 54 Vict. cap. 243), sec. 35 enacted that no road, passage or way not communicating directly at both ends with a public carriage way should be formed or laid out as a public carriage way without the consent in writing of the Council. An appeal from the Council's decision was given to the Secretary of State; penalty on infringement, 40*s*., and a daily penalty of 20*s*.

Sanction to formation of new streets.

7. Before any person commences to form or lay out any street, whether intended to be used for carriage traffic or for foot traffic only, such person shall make an application in writing to the Council for their sanction to the formation or laying out of such street, either for carriage traffic or for foot traffic (as the case may be):

Every such application shall be accompanied by plans and sections, with such particulars in relation thereto as may be required by printed regulations issued by the Council, and the Council shall forthwith communicate every such application to the local authority:

And no person shall commence to form or lay out any street for carriage traffic or for foot traffic, without having obtained the sanction of the Council.

See Met. Man. Am. Act, 1862, sec. 98 (repealed); also Met. Man. & Bldg. Am. Act, 1882, sec. 7.

Notice to the Council is now required in every case before commencing to lay out a new street.

For penalty (£10 and 40*s*. a day), *see* sec. 200 (1) *a*.

The Council have by sec. 164 (1) power to make byelaws as to the regulation of plans, level, width, surface, and inclination of new streets. No such byelaws have, in fact, been made, but those made in 1857 by the M. B. W. under Met. Man. Act, 1855, are by sec. 216 of this Act retained in force.

Q. B. 1884 (Hawkins and Smith, JJ.) Where a building for which notice had been given to the district surveyor had been erected under the Met. Bldg. Act, 1855, fronting upon an existing lane less than 40 feet wide, and the builder had been summoned by the M. B. W. for laying out a street of less width than 40 feet, it was held that the proceedings were out of time, as the date of notice to the district surveyor was the date of discovery by the Board; the main issue was therefore not decided (*M. B. W.* v. *Laihey*, 49 J. P. 245).

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Q. B. 1885 (Mathew and A. L. Smith, JJ.) Artisans' dwellings, comprising six buildings, having been commenced, each with a separate entrance from a court or passage 100 feet long and 16 feet wide, intended only for the use of the tenants, and approached only at one end from an existing street and through an archway over which one of the buildings extended; and a private roadway and gateway having previously existed, the new archway being wider than and including the site of the former gateway, it was held, under Met. Man. and Bldg. Am. Act, 1882, that 'a street for foot traffic only,' within the meaning of the Act, had not been formed (*M. B. W.* v. *Nathan*, 54 L. T. 423; 50 J. P. 502; 34 W. R. 164).

Q. B. 1895 (Pollock, B., and Wright, J.) Where there were being erected on vacant land two blocks of buildings to be used as artisans' dwellings, containing 40 separate tenements or sets of rooms sufficient to accommodate 150 persons; and between the blocks of buildings there had been formed, for the convenience of, and as a means of access for, those living in the buildings, a new space or court 200 feet long and 20 feet wide, which was a *cul-de-sac* shut off from the street by means of gates; and all the tenements had separate entrances from the space or court (those on the ground floor by separate doors into it, and those on the upper floors by a common staircase to each block, and a balcony to which separate doors opened), it was held that the magistrate could properly hold that the space was not a 'road, passage or way laid out as a street for foot traffic' within the meaning of Met. Man. and Bldg. Am. Act, 1882, secs. 7 and 8 (*L. C. C.* v. *Davis*, 64 L. J. (M. C.) 212; 59 J. P. 583; 43 W. R. 574; 15 R. 509).

Q. B. 1895 (Grantham and Lawrence, JJ.) The quadrangle of a large block of mansions (comprising 42 flats), intended for the use of the tenants of the flats, and tradesmen and others visiting them on business or pleasure, with or without carriages, and laid out as a garden with a foot and carriage way around it, giving access to the various flats, and approached from the public thoroughfare by one entrance only, and through an archway closed at the outer end by lofty gates, was held not to be a street within sec. 7 of the present Act (*Carter Wood* v. *L. C. C.*, 73 L. T. 313; 64 L. J. (M. C.) 276; 59 J. P. 615; 44 W. R. 144; 15 R. 569).

Q. B. 1899 (Russell, C.J., and others) Where the owners of a piece of land, bounded on one side by a public street, being a carriage way, and on the other side by Parliament Hill and by land in other ownerships, after giving notice to the district surveyor, commenced to erect 20 new buildings, each containing 8 flats, of which 16 buildings were to be erected around a quadrangle with an ornamental garden in the centre; and a private carriage way (40 feet wide and 600 feet long, affording access to the buildings, each of which was to have a separate entrance), was to run round the garden, and to communicate with the public street by a straight piece of road having two or more of the buildings on each side; and it was proposed to close the carriage way with entrance gates attended by a porter, thus reserving it for the exclusive use of tenants and their visitors; it was held that the owner was rightly convicted of commencing to lay out a street without the sanction of the Council, whose

consent had previously been applied for and refused (*Armstrong* v. *L. C. C.*, 64 J. P. 197; 69 L. J. (Q. B.) 267; (1900) 1 Q. B. 416; 81 L. T. 638; 48 W. R. 367). S. 7

Q. B. 1899 (Lawrence and Channell, JJ.) Where a builder, not being the freeholder, had erected 6 shops in a line along a street, and between the last shop and other houses on the same side there had been left a space of 40 feet (the minimum regulation width of a street), the property of the freeholder, which was used for the passage of carts to and from a brickfield owned by the freeholder; and the last shop next the space had been built as a corner house, with stables and coach-house in the rear, the only access to which was over the said space, it was held that the builder had not commenced to form or lay out a street, because, although the house was so built as to be available in case the open space was turned into a street by the freeholder, it was also built so as to be available otherwise (*L. C. C.* v. *Dixon*, (1899) 1 Q. B. 496; 63 J. P. 390; 68 L. J. (Q. B.) 526; 80 L. T. 232; 47 W. R. 521).

K. B. 1903 (Alverstone, C.J., Wills and Channell, JJ.) Where a person had been convicted of infringing the Public Health Act, 1875, by 'laying out or constructing' a new street contrary to the byelaws, it was held that 'laying out' and 'constructing' were two separate offences, and that there could not be one conviction for more than one offence (*Rex* v. *Slater, ex parte Bowler*, 67 J. P. 299).

K. B. 1904 (Alverstone, C.J., Kennedy and Phillimore, JJ.) Where a site fronting to an existing street, and backing to an existing footway, had been excavated to basement level; and, fronting to the existing street, a row of buildings had been erected, leaving in the rear an open paved space, to which, on the side occupied by the row of new buildings, 24 shops had been constructed, and on the other side under the existing footway (reconstructed for the purpose) 55 shops had been constructed; the said open space and the shops fronting to it being used as a bazaar, and being approached by a main flight of steps leading from the street between the blocks of buildings, and 6 flights of steps leading from, and through, and constructed within the said blocks of buildings, also by two flights of steps leading to the footway above the 55 shops, and so to the adjoining streets, all these approaches being controlled by gates; it was held that the arrangement constituted a commencing to lay out a street (*L. C. C.* v. *Davis*, 68 J. P. 521; 91 L. T. 555; 2 L. G. R. 1065; 1 A. L. R. 103).

[**8.** For the purposes of this Part of this Act a person shall be deemed to commence to form or lay out a street Evidence of commencement of street.

if he erect a fence or other boundary, or lay down lines of kerbing, or level the surface of the ground so as to define the course or direction of a street;

or, if he form the foundations of a house in such manner, and in such position, as that such house will or may become one of three or more houses abutting on or erected beside land on

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which a street is intended to be, or may be thereafter, laid out or formed.

Provided that no person shall be deemed to commence to form or lay out a street, if he do any of the acts in this section mentioned for some purpose other than that of forming or laying out a street.]

Grounds for refusal to sanction plans of streets.

9. In any of the cases following, but in no other case (that is to say) :—

(1.) Where any street is proposed to be formed or laid out for carriage traffic without being of, or being widened to, the full width of 40 feet clear, [or such other width as may be required under the provisions of this Act ;]

(2.) Where any street is proposed to be formed or laid out for foot traffic only, without being of, or being widened to, the full width of 20 feet clear ;

(3.) Where any street [exceeding 60 feet in length, or any street not exceeding 60 feet in length of which the length is greater than the width], is proposed to be formed or laid out without being open at both ends from the ground upwards ;

(4.) Where any street, not being within the City, is proposed to be formed or laid out in such manner that such street will not [at and from the time of forming and laying out the same] afford direct communication between two streets, such two streets being (where it is intended to form or lay out such street for carriage traffic) streets formed and laid out for carriage traffic ;

(5.) Where it is proposed to form or lay out any street, not being within the City, for foot traffic only, and it appears to the Council that such street should not be formed or laid out for foot traffic only, or that such street should be formed or laid out for foot traffic only, subject to conditions ;

[(6.) Where the street is proposed to be formed or laid out for carriage traffic with any gradient steeper than 1 in 20 ;]

(7.) Where it is proposed to form or lay out any street in such manner as to be in contravention of any byelaw of the Council ;

it shall be lawful for the Council, by order at any time within the period of [2 months] after the receipt of the

application, to refuse to sanction, or to sanction subject to such conditions as they may by such order prescribe, the formation or laying out of such street for carriage traffic or for foot traffic only as the case may be. Provided that the Council shall, within such period, give notice to the applicant of such order, stating fully all their reasons for such refusal, or the imposition of such conditions, as the case may be : S. 9

[Provided that if, within the said period of 2 months, the Council fail to give notice of their refusal to sanction the formation or laying out of such street, or of their disapproval of any such plan or section, they shall be deemed to have given their sanction thereto.]

See Met. Man. Act, 1862 (25 & 26 Vict. cap. 102), secs. 98 & 99 (repealed).

See Met. Man. & Bldg. Am. Act, 1882 (45 Vict. cap. 14), secs. 7 & 8 (repealed).

See L. C. C. Gen. Powers Act, 1890 (53 & 54 Vict. cap. 243), sec. 35 (repealed).

Subsec. (1). Q. B. 1890 (Coleridge, C.J., and Mathew, J.) Where a private house and grounds had been turned into a street 60 feet in width, approached at each end from an existing street, and at one end gates, piers and arches had been erected, so that, although the collective widths between the piers and fences amounted to 40 feet, but no space was continuously 40 feet in width; and where appellant had been convicted under 25 & 26 Vict. cap. 102, of not having his street the full width, and since conviction had removed the arches but left the piers; it was held that appellant was bound to keep open the street at both ends for the required width of 40 feet, and that the width meant a continuous width (*Daw* v. *L. C. C.*, 62 L. T. 937; 54 J. P. 502; 59 L. J. (M. C.) 112). The judgment of Coleridge, C. J., in this case seems to indicate that the building upon the grounds of an old house of a number of houses arranged round a space in the centre was not of necessity the laying out of a street.

Subsec. (4). Q. B. 1898 (Day and Phillimore, JJ.) It was held that the question whether the communication between two streets is 'direct' or not is a question of fact, and the Court refused to interfere with the decision of the Council, endorsed by the Tribunal of Appeal, that a proposed new street, with one turn at right angles in its length, did not afford direct communication between the two carriage ways to which its ends opened (*Woodham* v. *L. C. C.* (1898), 1 Q. B. 863; 62 J. P. 342; 78 L. T. 553; 67 L. J. (Q. B.) 707).

Subsec. (4), Q. B. 1892 (Lawrence and Wright, JJ.) It was held that a new street might communicate at both ends with the same existing public carriage way, and comply with section 35 of L. C. C. Gen. P. Act, 1890 (*L. C. C.* v. *Edmondson & Co.*, 66 L. T. 200; 56 J. P. 343).

It should be observed, however, that the proceedings were taken only under the Act of 1890, and not under Met. Man. & Bldg. Am. Act, 1882, in sec. 7 of which Act direct communication was required to two streets; as the same drafting is adopted in

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the present Act as in the Act of 1882, the decision quoted has probably now no authority.

Adaptation of ways for streets.

10. (1.) Before any person commences—

(*a*) To adapt for carriage traffic any street or way not previously so adapted, or to use or permit to be used for carriage traffic any street or way not previously so adapted ;

(*b*) To adapt as a street for foot traffic only, or as a public footway, any way not previously so adapted ;

such person shall make an application in writing to the Council for their sanction thereto ; and such application shall be accompanied by plans and sections, and such particulars in relation thereto, as may be required by printed regulations issued by the Council, and the Council shall forthwith communicate every such application to the local authority ; and no person shall commence to execute any such work without having obtained the sanction of the Council.

(2.) Within 2 months after the receipt of any such application, the Council shall either sanction the plans and sections, or give notice to the applicant of their disapproval thereof, stating fully all their reasons for such disapproval.

Provided that, if within the said period of 2 months the Council fail to give notice of their disapproval of any such plan or section, they shall be deemed to have given their sanction thereto.

(3.) A person shall be deemed, for the purposes of this Part of this Act, to commence to execute a work within the meaning of this section :

if he erect a fence or other boundary, or lay down lines of kerbing, or level the surface of the ground so as to define the course or direction of a work within the meaning of this section :

or if he form the foundations of a house in such manner and in such position as that such house will or may become one of 3 or more houses abutting on, or erected beside, land on which a street is intended to be, or may be thereafter, laid out or formed.

Provided that no person shall be deemed to commence to execute a work within the meaning of this section, if he do any of the acts in this subsection mentioned for some purpose other than that of executing a work within the meaning of this section.

(4.) Before any person commences to widen on either

side to a less extent than the prescribed distance any part of a street or way which (being adapted for carriage traffic) is less than 40 feet in width, or (being adapted for foot traffic only) is less than 20 feet in width, he shall give notice in writing to the Council, accompanied by a plan showing the extent of the proposed widening, and no person shall commence to execute any such widening until after the expiration of 2 months from the date of such notice, unless with the previous sanction of the Council.

See Met. Man. & Bldg. Am. Act, 1878 (41 & 42 Vict. cap. 32), secs. 9 & 10 (repealed).
For penalty (£10 and 40*s*. a day), *see* sec. 200 (1) *a*.

Grounds for refusing to sanction adaptation of ways for streets.

11. In any of the cases following, but in no other case (that is to say) :—

(1.) Whenever it is proposed to adapt for carriage traffic any street or way (not previously so adapted) where there are houses or buildings either on both sides thereof, or only on one side thereof, without a distance of at least 20 feet clear being left between the centre of the roadway and the nearest external wall of the houses or buildings on the side of the street or way to which the measurement is taken ; or (if there be forecourts or other spaces left between such external wall and the roadway) without there being a distance of at least 20 feet clear between the centre of the roadway and the external fences or boundaries of such forecourts or other spaces ;

(2.) Where it is proposed to adapt as a street for foot traffic only, or as a public footway, any way not previously adapted, without the same being of, or being widened to, the full width of 20 feet clear measured as aforesaid ;

(3.) Where any such adaptation would result in the formation of a street [exceeding 60 feet in length, or a street not exceeding 60 feet in length, of which the length is greater than the width, and in either case] not being open at both ends from the ground upwards ;

(4.) Where any such adaptation would result in the formation of a street, not being within the City, and not affording direct communication between two streets, such two streets being (where it is intended to form or lay out such

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street for carriage traffic) streets formed and laid out for carriage traffic ;

(5.) Where the adaptation will result in the formation or laying out of a street, not being within the City, for foot traffic only, and it appears to the Council either that such street should not be formed or laid out for foot traffic only, or that such street should be formed or laid out for foot traffic only subject to conditions ;

(6.) Where the adaptation would result in the formation of a street for carriage traffic, with any gradient steeper than 1 in 20 ;

(7.) Where the adaptation is proposed to be made in such a manner as to be in contravention of any byelaw of the Council ;

it shall be lawful for the Council, by order, at any time within the said period of [2 months] after the receipt of the application, to refuse to sanction, or to sanction (subject to such conditions as they may by such order prescribe) the adaptation proposed by the application ;

[Provided that the Council shall, within such period, give notice to the applicant of such order, stating fully all their reasons for such refusal, or the imposition of such conditions, as the case may be ;]

Provided also that if, within the said period of 2 months, the Council fail to give notice of their refusal to sanction such adaptation, or of their sanction of the adaptation subject to the conditions, they shall be deemed to have given their sanction thereto.

See Met. Man. &. Bldg. Act, 1878, secs. 9 & 10 (repealed).
See Met. Man. & Bldg. Act, 1882, secs. 7 & 8 (repealed).

Greater width of street may be required in certain cases.

[**12.** In any case where it is intended—

(*a*) To form or lay out any street (not being within two miles of St. Paul's Cathedral) for carriage traffic ;

(*b*) To adapt or permit to be used for carriage traffic any street or way (not being within 2 miles of St. Paul's Cathedral) not previously so adapted ;

and the Council shall deem it expedient in the public interest that the street or way should (by reason of its length or importance, or in consequence of its forming, or being so situate as to be likely to form, part of an important line of communication, or for other sufficient reason) be of a greater width than 40 feet clear, they

may make it a condition of their sanction that the street or way shall be throughout, or in such part as they may direct, of a greater width than 40 feet; but nothing in this section shall authorise the Council to require a greater width than 60 feet: S. 12

And before requiring that any street or way shall be wider than 40 feet, the Council shall give notice of their intention to the local authority, in order that the local authority, if they think fit, may make a representation to the Council.]

For compensation to owner in certain cases, *see* sec. 15.

Position of new buildings with reference to streets.

13. (1.) No person shall erect any new building or [new structure], or any part thereof,

or extend any building or structure, or any part thereof,

in such manner that any external wall of any such building [or structure],

or (if there be a forecourt or other space between such external wall and the roadway) any part of the external fence or boundary of such forecourt or other space,

shall (without the consent in writing of the Council) be in any direction at a distance less than the prescribed distance from the centre of the roadway of any street or way (being a highway).

This subsection is substantially a re-enactment of Met. Man. & Bldg. Am. Act, sec. 6, first portion, the words 'new building or new structure' being substituted for 'house or building.'

Q. B. 1892 (Wright and Collins, JJ.) Where the London School Board had under statutory powers compulsorily acquired land for school accommodation, and some portion of the land and the fence were within the prescribed distance of the centre of the street, it was held that the statutory powers, being inconsistent with the Met. Man. & Bldg. Am. Act, 1878, amounted to an exemption from the provisions of that Act, and that consequently the fence was not required to be set back to the prescribed distance (*L. C. C.* v. *Lond. Sch. Board* (1892), 2 Q. B. 606; 56 J. P. 791; 62 L. J. (M. C.) 30; 40 W. R. 604; 5 R. 1).

Q. B. 1900 (Ridley and Darling, JJ.) It was held that a gas company erecting buildings upon lands specified in the schedule to their private Act, which entitled them to 'erect such gasworks as they think fit,' are subject to the provisions of this section, as their private Act contained nothing that was inconsistent (*L. C. C.* v. *Wandsworth and Putney Gas Co.*, 82 L. T. 562; 64 J. P. 500; 10 T. L. R. 652; 1894, W. N. 166).

In the case of a building erected on a corner site, it was held by Mr. Marsham at Woolwich P. C., 5 Feb. 1892, that the corresponding section of Met. Man. & Bldg. Am. Act, 1878, applied not only to the front but also to the flank wall, and that the flank fence

S. 13 wall must be set back to the prescribed distance (*L. C. C.* v. *Pollock*, 'Builder,' 20 Feb. 1892).

[(2.) Where the Council, after consulting the local authority, shall deem it expedient in the public interest, either by reason of the length or importance of the street or way, or by reason of the street or way forming, or being so situate as to be likely to form, part of an important line of communication, or for other sufficient reason, that the prescribed distance from the centre of the roadway of any such street or way should, where such roadway is used for the purpose of carriage traffic, be greater than 20 feet, it shall be lawful for the Council to determine that the prescribed distance shall be such greater distance, not exceeding 30 feet, from the centre of the roadway of such street or way on either side or both sides, as the Council shall see fit to determine ;

This subsection shall not apply to any street or way within 2 miles of St. Paul's Cathedral.]

For compensation *see* sec. 15.

[(3.) In case the person intending to erect, form, or extend any such building, structure, forecourt, or space shall be dissatisfied with the determination of the Council that the prescribed distance shall be greater than 20 feet from the centre of the roadway, he may appeal to the Tribunal of Appeal against such determination of the Council.]

(4.) The Council may in any case where they think it expedient consent to the [erection], formation, or extension of any building [structure], forecourt, or space, at a distance less than the prescribed distance from the centre of the roadway of any such street or way, and at such distance from the centre of such roadway, and subject to such conditions and terms (if any) as they may think proper to sanction.

[Provided that the giving of such consent by the Council shall not in any way affect any rights of the owners of adjoining land.]

[Before giving such consent, the Council shall communicate to the local authority their intention to give the same.]

[Any person dissatisfied with the determination of the Council, under this subsection, may appeal to the Tribunal of Appeal.]

Q. B. 1897 (Hawkins and Wright, JJ.) Mandamus will not be to the Council to compel them to hear and determine an application for their consent to the erection of a building within

the prescribed distance, when such application has not been made until after the building has been erected within the prescribed distance without such consent (*Reg.* v. *L. C. C., ex parte Webster*, 61 J. P. 439; 76 L. T. 472; 66 L. J. (Q. B.) 516; 45 W. R. 605). S. 13

[(5.) Provided that where any person intends to alter or re-erect a building or structure, existing either at the commencement of this Act, or at any time within seven years previously, and which shall not be, or shall not have been, in conformity with the provisions of this section relating to new buildings and structures, such person may cause to be prepared plans showing the extent of such building or structure (or in the event of such building or structure having ceased to exist before the commencement of this Act, or having been accidentally destroyed, the best plans available under all the circumstances of the case) and the extent of the forecourt or other open space (if any) between any external wall of such building or structure and the roadway, and may cause such plans to be submitted to the District Surveyor, who shall (if reasonably satisfied with the evidence of their accuracy) certify the same under his hand, and such certificate shall be taken to be conclusive evidence of the correctness of the plans. Thereupon it shall be lawful for such person to alter or re-erect such building or structure, but so that no land within the prescribed distance shall be occupied by the re-erected building or structure or the forecourt, or such other open space as aforesaid (if any), except that which was occupied within the prescribed distance by the previously existing building, structure, forecourt, or open space :

If such person should fail to submit such plans to the District Surveyor, or the District Surveyor or the Tribunal of Appeal should refuse to certify the accuracy of the same, such person shall, in altering or rebuilding the said building or structure, be bound by the preceding provisions of this section in all respects as though no building or structure had previously existed upon the land within the period aforesaid :]

This subsection is in substitution for the proviso to sec. 6 of the Met. Man. & Bldg. Am. Act, 1878 (41 & 42 Vict. cap. 32), and for sec. 34 of L. C. C. (Gen. Powers) Act, 1890 (53 & 54 Vict. cap. 243), neither of which have been re-enacted. The case of *Ellis* v. *L. C. C.* (Q. B. 1892), 57 J. P. 24; 67 L. T. 558; 37 S. J. 28), decided under the first-named section, will therefore now have no authority.

Q. B. 1897 (Hawkins and Channell, JJ.) Where a site

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previously occupied by a number of buildings had been cleared, and a different number of new buildings had been erected on the site, such buildings were held to be 're-erected' within the meaning of the subsection, although the boundaries of each building differed from those of the former buildings. It was also held that the new buildings need not necessarily be of the same class or character as the previous buildings in order to constitute a re-erection (*L. C. C.* v. *Davis*, and *L. C. C.* v. *Rowton Houses, Ltd.*, 77 L. T. 693 ; 62 J. P. 68).

K. B. 1903 (Alverstone, C.J., Wills and Channell, JJ.) Where a factory about 52 feet in height had been commenced to be erected within the prescribed distance upon the site of 6 dwelling-houses, plans of which had been certified by the District Surveyor, it was held that the factory could be erected within this subsection, that sec. 13 dealt with the ground area, and the ground area only, without limitation of height other than in the proviso, and that the plan to be certified is one that will show the extent of the building and the extent of the forecourt (*L. C. C.* v. *Patman and Fotheringham*, 67 J. P. 285 ; 1 L. G. R. 519). *L. C. C.* v. *Davis* and *L. C. C.* v. *Rowton Houses* followed on the question of 're-erection.'

The Council have obtained a conviction under subsec. (1) when a plan had been submitted to and certified by the District Surveyor after the new buildings had been commenced (*L. C. C.* v. *W. J. Bush & Co., Ltd.*, N. Lond. P. C., 'Builder,' 16 March 1901).

Provided always that no dwelling-house to be inhabited or adapted to be inhabited by persons of the working class shall, without the consent of the Council, be erected or re-erected within *the prescribed distance* to a height exceeding the distance of the front or nearest external wall of such building from the opposite side of such street, and that no building or structure shall be converted into such dwelling-house within *the prescribed distance* so as to exceed such height :

The height herein allowed is measured from the level of the footway to the top of the parapet or eaves, or the base of the gable [*see* sec. 5 (21)], and does not include the two storeys in the roof permitted by sec. 62 (1), the surface of which roof may be inclined at an angle of 75° with the horizon, *see* sec. 61 (4).

The above proviso has now been amended for buildings not within the City by the Lond. Bldg. Am. Act, 1898 (61 & 62 Vict. cap. 137), sec. 4, 'a distance of 20 feet from the centre of the roadway' being substituted for 'the prescribed distance.'

Q. B. 1898 (Hawkins and Channell, JJ.) A 'Rowton House,' a large building adapted to provide lodging for single men by the night or week, with recreation rooms and other conveniences for the use of the inhabitants, and sleeping accommodation for about 800 men, erected on the site of 13 old cottages, duly certified by the District Surveyor, and within the prescribed distance, was held not to be a building 'to be inhabited or adapted to be inhabited by persons of the working class' within the meaning of this subsection (*L. C. C.* v. *Rowton Houses, Ltd.*, 77 L. T. 693 ; 62 J. P. 68).

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Q. B. 1898 (Hawkins and Channell, JJ.) Where 11 houses had been erected in Spitalfields on the site of 10 old houses, the site having been certified by the District Surveyor, and when completed each house was let to one tenant, who, while occupying the shop and rooms behind it, let (with the knowledge of the landlord, who was defendant) each upper floor to artisans and their families, it was held that the houses were not ' to be inhabited or adapted to be inhabited by persons of the working class ' within the meaning of this subsection (*L. C. C.* v. *Davis*, 77 L. T. 693 ; 62 J. P. 68).

K. B. 1903 (Alverstone, C.J., Wills and Channell, JJ.) The expression, ' persons of the working class,' means a class of persons who live in two or three rooms, or who would be likely to take two or three rooms in a house for the purpose of doing for themselves in those rooms without having any connection with the rest of the house, and includes persons who are liable to the same difficulties in respect to overcrowding. Where a building is practically certain to be occupied only by persons of the working class it will come within the description, no matter what was the intention of the person erecting it (*Crow* v. *Davis*, *No.* 1, 67 J. P. 319 ; 89 L. T. 407 ; 19 T. L. R. 505 ; 1 A. L. R. 69).

K. B. 1904 (Alverstone, C.J., Wills and Kennedy, JJ.) Where a person proposes to erect houses in a locality almost entirely inhabited by persons of the working class, which are constructed in such a way that it is practically certain that when constructed they will be inhabited by persons of the working class, such buildings are to be deemed ' dwelling-houses inhabited or adapted to be inhabited by persons of the working class ' within the Building Acts (*Crow* v. *Davis*, *No.* 2, 68 J. P. 447 ; 91 L. T. 88 ; 2 L. G. R. 1034 ; 1 A. L. R. 97).

Provided that this section shall not prevent the re-erection of any such dwelling-house erected previously to the passing of this Act by a local authority.

(6.) Nothing in this section shall affect the exercise of any powers conferred upon any railway company by any special Act of Parliament for railway purposes.

For penalty for infringing this section (from 40*s.* to £5 and 10*s.* to 40*s.* a day) *see* sec. 200 (2) ; which, however, does not appear to fix the penalty for an infringement of the height specified in subsec. (5) ; as no special penalty is mentioned for this offence sec. 200 (11) *j* appears to apply.

Notice to comply with preceding section.

14. *In every case where any new building,* [*or new structure,*] *is erected at a distance* [*in any direction*] *from the centre of the roadway of any street or way less than the distance* [*permitted under this Part of this Act,*] *or contrary to the conditions and terms* (*if any*) *subject to which the Council, or* [*the Tribunal of Appeal,*] *has sanctioned the erection of such building, the Council may serve a notice upon the owner or occupier of the said building,* [*or structure*], *or upon the builder requiring him to cause such building,* [*structure,*] *forecourt*

S. 14 *or space, or any part thereof to be set back, so that every part of any external wall of such building or* [*structure*], *or of the external fence, or boundary, of such forecourt or space, shall be at a distance,* [*in every direction,*] *from the centre of the roadway of such street or way not less than the distance so permitted, and shall be in accordance with such conditions and terms* (*if any*) *as the Council,* [*or the Tribunal of Appeal, may have prescribed.*]

See Met. Man. & Bldg. Am. Act, 1878, sec. 6 (repealed).
For penalty (40*s.* to £5 and 10*s.* to 40*s.* a day) *see* sec. 200 (2).
This section has been repealed by Lond. Bldg. Am. Act, 1898 (61 & 62 Vict. cap. 137) and sec. 4 of that Act enacted in place in consequence of the following decision.
Q. B. 1897 (Wright and Kennedy, JJ.) It was held that this section does not empower the Council to serve notice requiring an owner to set back the old boundary wall of a piece of land upon part of which he has under this Act erected new buildings, leaving a space between the wall and the new buildings, though the old wall itself be within the prescribed distance (*L. C. C.* v. *Aylesbury Dairy Co.* (1898) 1 Q. B. 106; 77 L. T. 440; 61 J. P. 759; 67 L. J. (Q. B.) 24). Such a case is prohibited by sec. 13 (1), but not covered by the power to serve notice.

As to compensation in certain cases.

[**15.** In any case where—
(1.) The Council under this Part of this Act make it a condition of their sanction to—
(*a*) the formation or laying out of any street for carriage traffic over land which, either at the commencement of this Act, or at any time within 7 years previously, has or shall have been occupied by buildings or by market garden, or
(*b*) the adaptation or use for carriage traffic of any street or way not previously so adapted or used,
that the street or way shall be throughout or in any part of a greater width than 40 feet; or
(2.) The Council determine that the prescribed distance from the centre of the roadway shall be greater than 20 feet;
the Council shall be liable to pay to the owner of land or buildings required for such greater width or such greater prescribed distance compensation for the loss or injury (if any) sustained by him by such requirement. The amount of such compensation, if not agreed within two months from the time of such condition being made or determination arrived at, may (unless the Council waive the condition or determination) be recovered in a summary manner; except where the

amount of compensation claimed exceeds 50 pounds, in which case the amount thereof shall be settled by arbitration according to the provisions contained in the Lands Clauses Acts which are applicable where questions of disputed compensation are authorised or required to be settled by arbitration; and for that purpose those Acts, so far as applicable, shall be deemed to be incorporated with this Act: S. 15

Provided always, that within 2 months from the time of such condition or determination being made or arrived at, if the amount of such compensation has not been settled before the expiration of such time, it shall be lawful for the Council to waive such condition or determination. Provided also, that if the Council waive such condition or determination, they shall pay to the owner the reasonable costs, charges, and expenses incurred by him in consequence of such condition or determination, and in connection with the negotiations for the settlement of the amount of compensation:

For the purpose of this section the expression 'owner' has the same meaning as in the Lands Clauses Acts.]

See secs. 12, 13 (2).

See Land Clauses Act, 1845 (8 Vict. cap. 18), sec. 3, 'the word "owner" shall be understood to mean any person or corporation who under the provisions of this Act or the Special Act would be enabled to sell and convey Lands to the promoters of the undertaking.' 'The word "Lands" shall extend to Messuages, Lands, Tenements and Hereditaments of any Tenure.'

16. Where after the commencement of this Act— As to erection of buildings at less than prescribed distance from centre of ways, not being highways.

(i.) any [new] building [or structure] is erected or commenced in such manner that—

(*a*) [any part of any] external wall of any such building [or structure]; or

If there be between such external wall and the roadway any forecourt or other space—

(*b*) [any part of] the external fence or boundary of such forecourt or space

is [or will be in any direction] distant from the centre of the roadway of any way (not being a highway) less than the prescribed distance, or less than such other distance as may have been sanctioned by the Council or the Tribunal of Appeal; or

(ii.) Any conditions or terms, subject to which the sanction of the Council [or the Tribunal of Appeal] in relation to any such building, structure, forecourt, or space was obtained, have not been complied with; or

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(iii.) the time during which such sanction was limited to continue has expired ;

the way shall not become a highway except subject to the following provisions :—

(i.) A written notice shall be served upon the Council of the proposal to make the way a public highway ;

(ii.) The Council may at any time within 2 months after the receipt of such notice serve a notice upon the owner of such building, structure, forecourt, or space, or the builder, requiring him to cause the same or any part thereof to be set back so that [every part of any] external wall of such building [or structure], or of the external fence or boundary of such forecourt or space, shall be in every direction at a distance not less than the prescribed distance from the centre of the roadway of such way, or at such distance and according to such conditions and terms (if any) as the Council [or the Tribunal of Appeal] may have sanctioned [and prescribed ;]

(iii.) Unless and until such first-mentioned notice has been given to the Council, and such last-mentioned notice (if any) has been complied with, the way shall not become a highway :

Provided that this section shall not affect the erection or extension of any building [or structure] within the limits of any area which may have been lawfully occupied by any building or structure at any time within two years before the twenty-second day of July, one thousand eight hundred and seventy-eight, or the erection or extension of any building or structure lawfully in course of erection or extension on the said twenty-second day of July.

See Met. Man. & Bldg. Am. Act, 1878, sec. 7 (repealed).

For penalty (from 40*s.* to £5 and 10*s.* to 40*s.* a day) *see* sec. 200 (2).

Sanction to construction of new buildings at less than prescribed distance.

17. The Council may sanction the erection of any new building [or structure] at any less distance than the prescribed distance from the centre of the roadway of any way (not being a highway) to be specified in such sanction, or the continuance of any new building [or new structure] erected at such less distance, or the continuance thereof for a limited time only to be specified in such sanction, in such cases and subject to such terms and

conditions (if any) as they may think proper. [And any such sanction may be framed in such manner as to apply to all new buildings in any such way or any part thereof. Provided that the giving of such sanction by the Council shall not in any manner affect any rights of the owners of adjoining land.] S. 17

See Met. Man. & Bldg. Am. Act, 1878, sec. 7 (repealed), par. 2.

Regulations to be printed and supplied.

[**18.** Copies of the printed regulations of the Council issued for the purposes of this Part of this Act shall be kept at the county hall, and supplied at all reasonable times without charge to any applicants for the same.]

Appeal.

19. Whenever any applicant under Part II. of this Act for the sanction of the Council to the formation or laying out of a street, or the adaptation of a street or way for carriage or foot traffic, [or for the certificate of a District Surveyor,] is dissatisfied with the refusal or conditional grant of such sanction, or with any condition imposed by the Council, or with the refusal of such certificate as aforesaid, he may appeal to [the Tribunal of Appeal.]

This appeal takes the place of appeals, in the case of Met. Man. & Bldg. Am. Act, 1882, sec. 7, to a magistrate, and in the case of the L. C. C. Gen. P. Act, 1890, sec. 35, to the Secretary of State.

As to private roads laid out by a railway company.

20. Nothing in this [Part of this Act] shall extend or apply to any [private] road formed or laid out by a railway company, and used as an approach to a [station or] station yard, or as an approach to land used for railway purposes.

L. C. C. (Gen. Powers) Act, 1890, sec. 35 contained a similar provision (the words in brackets now being added) applicable to the provisions of that section only.

Exempting certain School Board buildings.

[**21.** Notwithstanding anything in this Act, any buildings to be erected upon any lands now belonging to the School Board for London, or over which they have powers of compulsory purchase, or may acquire such powers in the present session of Parliament, may be erected in accordance with the provisions of any Act in force immediately before the passing of this Act.]

Q. B. 1900 (Kennedy and Darling, JJ.) Where new buildings were erected subsequently to the commencement of this Act upon lands belonging to the School Board, acquired before the commencement of the Act, it was held that the District Surveyor was entitled only to the fees under the former Acts (*Marsland* v. *Wallis & Sons*, 65 J. P. 166; 83 L. T. 761). This

S. 21 decision is contrary to the intention of the Act; it applies only to the erection of new buildings and does not extend to alterations or additions.

PART III

LINES OF BUILDING FRONTAGE

Mode of proceeding with regard to buildings beyond line of street.

22. (1.) No building or structure shall, without the consent in writing of the Council, be erected beyond the general line of buildings in any street, [or part of a street,] place, or row of houses in which the same is situate in case the distance of such line of buildings from the highway does not exceed 50 feet, or within 50 feet of the highway when the distance of the line of buildings therefrom amounts to or exceeds 50 feet, notwithstanding there being gardens or vacant spaces between the line of buildings and the highway.

Such general line of buildings shall, [if required,] be defined by the Superintending Architect [by a certificate, such certificate to be issued within 1 month from the date of the application therefor.]

This subsection is a re-enactment of portion of sec. 75 of the Met. Man. Am. Act, 1862, the words in brackets being added.

Met. Man. Act, 1855 (18 & 19 Vict. cap. 120), [sec. 143, established the 'regular' (now 'general') line of buildings and prohibited building in advance and within 30 feet of the highway, giving power to the Vestry or District Board to pull down any building erected within the prohibited limit. This section was repealed by Met. Man. Am. Act, 1862 (25 & 26 Vict. cap. 120), sec. 75, which extended the 30 feet to 50 feet and empowered the Vestry or District Board to take proceedings before a magistrate for an order for demolition. This power to take proceedings was extended to the M. B. W. by Met. Man. & Bldg. Am. Act, 1882 (45 Vict. cap. 14), sec. 10. Both these sections have now been repealed by the present Act, and no power to take any proceedings has been conferred on the Vestries or District Boards, nor on their successors, the Borough Councils, who have therefore no authority to take proceedings.

See sec. 138 for power of District Surveyor as to general line of buildings.

No proper provision having been made in this Act for enforcing the provisions of Part III., owing to the defective drafting of the penalty section (200 (3)), the necessary amendment was enacted in sec. 7 of the Lond. Bldg. Am. Act, 1898. Proceedings will now be taken by the Council for penalties under that section and, on conviction, in addition to imposing a penalty, the Court may make an order to demolish; neglect to obey which will render the offender liable to the penalty of £20 a day (sec. 200 (3) *a*).

Bay and oriel windows may, under certain conditions, be

erected without the sanction of the Council beyond the general line of frontage (*see* sec. 73). S. 22

Q. B. 1867 (Cockburn, C.J., Mellor and Shee, JJ.) The Superintending Architect is to decide *pro re nata* what is the general line. The magistrate has no jurisdiction to act upon the offence committed until the Superintending Architect has given his certificate ; but the offence is the act of building beyond the general line of buildings without consent irrespective of the certificate (*Bauman* v. *St. Pancras Vestry*, L. R. 2 Q. B. 528 ; 15 W. R. 904). Followed in *L. C. C.* v. *Cross*, *post*.

C. P. 1871 (Brett, J.) Until there is a general line in existence it is clear that the section does not apply (*Simpson* v. *Smith*, 19 W. R. 355).

C. A. 1872 (James and Mellish, L.JJ., upholding Ch. Malins, V.C.). Where a person had purchased from a railway company land that the company had acquired for the purposes of their railway, and, having taken down the houses on the site and constructed their railway, had restored the surface of the ground, it was held under Met. Man. Am. Act, 1862, that the purchaser had the same right of building on the site as if he had bought the land with the houses still standing, and that the M. B. W. had no power to require him to set back his new building to the general line as certified, without compensating him as required by sec. 74 of that Act. It was also held that when defining the general line the Superintending Architect ought to have regard to any buildings previously existing on the site, although they may have been removed before the line was defined (*Lord Auckland* v. *Westminster D. B. W.*, L. R. 7 Ch. 597 ; 26 L. T. 961 ; 41 L. J. (Ch.) 723 ; 20 W. R. 845).

Q. B. 1872 (Cockburn, C.J., Mellor, Lush and Quain, JJ.) There must be a line and a building beyond that line before a magistrate has authority (*Reg.* v. *Vulliamy*, unreported, *see* 68 J. P. 492).

H. L. 1885 (Lord Selborne, L.C., Lords Watson, Bramwell and Fitzgerald). The Superintending Architect's decision as to what is the general line is conclusive, and the magistrate has no jurisdiction to review it (*Spackman* v. *Plumstead B. W.*, L. R. 10, App. C. 229 ; 53 L. T. 157 ; 54 L. J. (M. C.) 81 ; 48 J. P. 613 ; 49 J. P. 132, 420 ; 33 W. R. 661) upholding *Bauman* v. *St. Pancras Vestry* (*supra*), and *Paddington Vestry* v. *Snow*, 45 L. T. 475, and reversing C. P. *St. George's Hanover Sq. Vestry* v. *Sparrow*, 33 L. J. (C. P.) 118, 216 ; 12 W. R. 832 ; *Wandsworth B. W.* v. *Hall*, L. R. 4 C. P. 85 ; 17 W. R. 256, and *Simpson* v. *Smith*, 19 W. R. 355. In consequence of this decision the Tribunal of Appeal was established.

H. L. 1885. Before the offence of building beyond the general line can be made the subject of proceedings, and in order to determine whether an offence has been committed, the general line must be defined by the Superintending Architect, but the certificate may be issued before or after the building is erected. Before issuing his certificate the Superintending Architect must give the parties notice before proceeding, and must act honestly and impartially and not under dictation. There must be an existing general line, otherwise there can be no transgression (*Spackman* v. *Plumstead B. W.*, *supra*).

H. L. 1886 (Lord Herschell, L.C., Lords Watson, Bramwell, Fitzgerald and Halsbury). It is for the Superintending Architect,

S. 22 and not for the magistrate, to determine not only what is the general line of buildings but also the extent of the space along which a line is to be laid down, and the street, place or row of houses in which the building is situated. The general line may vary in different parts of the same street, and the building will have to conform to the line of the row of houses in which it is situated. Sec. 75 of Met. Man. Am. Act, 1862, only applies to buildings in a row of houses or buildings in a line of buildings and, if the Superintending Architect puts a house in a row in which it is not, he exceeds his jurisdiction (*Barlow* v. *St. Mary Abbotts Kensington Vestry*, 11 App. C. 263 ; 55 L. T. 221 ; 55 L. J. Ch. 680 ; 50 J. P. 691 ; 34 W. R. 551).

Q. B. 1888 (Coleridge, C.J., and Cave, J.) Where a house built at the corner of two streets complied with the general line of buildings in the street in which the front of the house was situated, but not with that in the return street, it was held that a house may be in two streets and must comply with the line of both (*Gilbart* v. *Wandsworth B. W.*, 60 L. T. 190 ; 53 J. P. 229 ; 5 T. L. R. 31).

C. A. 1892 (Fry and Lopes, L,JJ., affirming Q. B.) Where a railway company had power under a special Act to take and use certain lands for a railway station, and had erected the station in advance of the general line of buildings, it was held that the special Act was inconsistent with the Met. Man. Am. Act, 1862, and that consequently sec. 75 of that Act did not apply (*City & S. London Ry.* v. *L. C. C.* (1891), 2 Q. B. 513; 65 L. T. 362 ; 55 J. P. 277 ; 56 J. P. 6 ; 60 L. J. (M. C.) 149 ; 40 W. R. 166).

C. A. 1892 (Lindley and Kay, L,JJ., reversing Q. B. Denman and Smith, JJ.). Proceedings must be taken within 6 months of the commencement of the building beyond the line, and that although the Superintending Architect's certificate of the line of frontage was not issued till afterwards (*L. C. C.* v. *Cross*, 66 L. T. 731 ; 36 S. J. 414, 486. The Q. B. decision is also reported 61 L. J. (M. C.) 160 ; 50 J. P. 550).

Ch. 1892 (North, J.) Where a former owner had purchased certain houses, pulled them down and thrown the site into a garden attached to a new house, it was held that this constituted an abandonment of the old building sites, and brought the case within Met. Man. Am. Act, 1862, sec. 75, also that the certificate of the Superintending Architect is final, unless appealed against, in which case the decision of the Tribunal of Appeal is final (*Worley* v. *St. Mary Abbotts Kensington Vestry*, (1892) 2 Ch. 404 ; 66 L. T. 747 ; 61 L. J. (Ch.) 601 ; 40 W. R. 566).

Q. B. 1893 (Coleridge, C.J., and Cave, J.) Where the owner of one of 5 houses, the general line of which was within 50 feet of the street, had built a 14-inch wall, 20 feet long and 7 feet 8 inches high, almost at right angles to the general line, starting 7 inches from the front wall and in a straight line with the flank wall (this wall being in place of one 13 feet high, and directly connected with the building, ordered to be removed as the result of previous proceedings), it was held under the Met. Man. Am. Act, 1862, sec. 75, that that section did not prohibit the erection of a garden or fence wall in advance of the line for the purpose of enclosing or protecting the property, but that the wall was not put up with the *bona fide* intention of protecting his property from trespass, and that it was a building structure or

erection within the section (*Ellis* v. *Plumstead B. W.*, 68 L. T. 291; 57 J. P. 359; 41 W. R. 496; 5 R. 237). S. 22

Q. B. 1894 (Day and Lawrence, JJ.) Where the Superintending Architect had certified the general line of buildings in a side street in respect of a corner building flanking to that street, and the certificate had been confirmed by the Tribunal of Appeal, it was held that the building owner was not entitled to build in advance of the general line certified (*Nixey* v. *L. C. C.*, 60 J. P. 217). In this case a decision was also given upon sec. 33 of L. C. C. (Gen. Powers) Act, 1890, which section has been repealed by this Act but not re-enacted; it is doubtful, therefore, how far this decision will now apply.

C. A. 1894 (Esher, M.R., Lopes and Davey, L.JJ., upholding Q. B. Wills and Wright, JJ.) Where a building was commenced on a corner plot and discontinued when a wall 12 ft. high had been erected; and subsequently a building line was established in the side street by the erection of a row of houses the fronts of which were set further back in the side street than the flank of the suspended building on the corner site; it was held that the completion of the corner building was the erection of a new building beyond the line of frontage in the side street; because in this particular case the erection made upon the corner site, before the frontage line in the side street was established was not in itself at that time a building; but the continuing of the erection of the wall and making it into a building was the erection of a new building (*Wendon* v. *L. C. C.*, (1894) 1 Q. B. 227, 812; 70 L. T. 94; 63 L. J. (M. C.) 55; 58 J. P. 282, 606; 42 W. R. 370).

C. A. 1895 (Lindley, Lopes and Rigby, L.JJ., affirming Q. B. Day and Wright JJ.). Where a dwarf wall with iron railing upon it, bounding the forecourt of a building, had been taken down and a 14-inch wall 11 feet high, used for the display of advertisements, had been erected in its place, it was held that the wall was a 'building structure or erection' in advance of the general line of buildings and contrary to sec. 75 of Met. Man. Am. Act, 1862; also that, although the Superintending Architect's certificate defining the line must be given before a conviction can be obtained, it need not be given before the issue of the summons (*Lavy and Upjohn* v. *L. C. C.* (1895) 2 Q. B. 577; 73 L. T. 106; 59 J. P. 519, 630; 43 W. R. 677; 64 L. J. (M. C.) 262; 14 R. 634).

C. A. 1895 (Lindley, Lopes and Rigby L.JJ., affirming Q. B. Wills and Wright, JJ.) For the purpose of sec. 75 of Met. Man. Am. Act, 1862, it is the function of the Superintending Architect, and not the magistrate, to determine in what 'street, place, or row of houses' a building is situated. To justify an order for demolition the following circumstances must co-exist: First, there must be a 'building, structure or erection' of some sort; second, such 'building, structure or erection' must have been erected without the consent of the Council; third, such building, etc. must be in some 'street, place, or row of houses'; fourth, such 'street, place, or row of houses' must have a general line of buildings; fifth, such general line must have been decided by the Superintending Architect; sixth, the building, etc. must have been erected beyond the line so decided (*Allen* v. *L. C. C.* (1895) 2 Q. B. 587; 59 J. P. 568, 644; 43 W. R. 674; 73 L. T. 101 64 L. J. (M. C.) 228; 14 R. 749).

S. 22

C. A. 1896 (Esher, M.R., Lopes and Rigby, L.JJ., affirming Q. B. Lawrence and Collins, JJ.) Where, to make an entrance to a new street, a building situated in an existing street, at right angles, had been taken down, and, after a sufficient number of houses had been built in the new street to establish a general line of buildings in that street, a new building was commenced at the corner of the two streets, partly upon the site of the old building and partly upon garden ground that adjoined it, and in advance of the general line of buildings in the new street, as certified by the Superintending Architect; it was held that the garden ground was not part of the curtilage of the old building so as in point of law to form part of that building, and that the old building had been taken down in order to form the new street, and, as the new building only partially covered the site of the old, the intention of building upon the site of the old building had been abandoned, and that the building fell within sec. 75 of Met. Man. Am. Act, 1862 (*L. C. C.* v. *Pryor*, (1896) 1 Q. B. 465; 60 J. P. 215, 292; 65 L. J. (M. C.) 89; 74 L. T. 234); *Lord Auckland* v. *Westminster B. W.* distinguished.

Q. B. 1899 (Ridley and Darling, JJ.) Where an iron and glass shelter, bracketed out from the building, had been fixed in advance of the general line of buildings, projecting about 4 feet over the public way, it was held to be a 'building or structure' within sec. 22 (sec. 73 notwithstanding) of the present Act, and that it could not be erected without the consent of the Council (*Coburg Hotel* v. *L. C. C.*, 63 J. P. 805; 81 L. T. 450).

K. B. 1903. Where a rule was applied for, calling on a magistrate to state a case under this section, it was refused on the ground that what is a building or structure is a question of fact (*Civil Service Co-operative Society* v. *L. C. C.*, unreported; 'Builder,' July 11, 1903).

K. B. 1904 (Alverstone, C.J., Kennedy and Wills, JJ.) A number of advertisements, consisting of metal cases with wood and canvas fronts, arranged to be lit by electric light and fixed by iron supports to the front wall of a house, from which they projected 10 inches beyond the general line, were held (Wills *dissentiente*) not to be structures within the meaning of sec. 22 (*L. C. C.* v. *Illuminated Advertisement Co.* (1904) 2 K. B. 886; 68 J. P. 445; 91 L. T. 352; 73 L. J. K. B. 1034; 20 T. L. R. 527; 2 L. G. R. 905: 1 A. L. R. 91). In giving judgment the Court expressed considerable doubt as to the correctness of the decision in *Hull* v. *L. C. C.*; *see* note to sec. 73 (8).

K. B. 1904 (Wills and Kennedy, JJ.) It was held that it is the duty of the Superintending Architect (1) to choose a length of street for the definition of the general line of buildings, and (2) to define the line for that length; but the Tribunal of Appeal, under sec. 183, can confirm, reverse or vary his decision upon both or either matters, taking either a greater or less length of street (*In re London Bldg. Act*, 1894, *and in re the L. C. C.*, 91 L. T. 501; 68 J. P. 490; 2 L. G. R. 1265).

Ch. 1903 (Farwell, J.) Sec. 3 of Public Health Act, 1888, which prohibits the erection (without the consent of the urban authority) of a building beyond the main front wall of the building on either side, was held not to be a general prohibitory clause creating a new offence for which an indictment would lie, but a prohibitory clause forbidding the doing of a particular act and

specifying a particular penalty for doing the act and continuing it after written notice from the urban authority. It was also held that the section does not create rights in individuals, but general rights for the benefit of the public; and when the urban authority, who alone can enforce the section, declines to take proceedings the individual has no right of action (*Mullis* v. *Hubbard*, (1903) 2 Ch. 431; 67 J. P. 281; 72 L. J. (Ch.) 593; 88 L. T. 661; 51 W. R. 571; 1 L. G. R. 769). This decision, though under another Act, will probably have some bearing on this section of this Act. S. 22

This section has been held only to apply to buildings put up in an already existing street, and not to a new street (*Watt* v. *Mecson*, N. Lond. P. C.; 'Builder,' July 9, 1898).

[(2.) This section shall not apply to any building or structure erected after the commencement of this Act upon land which, either at the commencement of this Act or at any time within seven years previously, has or shall have been lawfully occupied by a building or structure.]

C. A. 1872 (James and Mellish, L.JJ.) Under the provisions of Met. Man. Am. Act, 1862, it was held that the restriction only applied to such portions of the site not previously built upon, except where buildings had been taken down without any intention of building again in the same situation (*Lord Auckland* v. *Westminster B. W.*, L. R. 7 Ch. 597; 26 L. T. 961; 41 L. J. (Ch.) 723; 20 W. R. 845).

C. A. 1900 (Smith, Rigby and Collins, L.JJ., affirming Q. B. Ridley and Darling, JJ.) Where two buildings, the main front walls of which stood more than 50 feet back from the road, had each a one-storey projection upon the forecourt extending close up to the street, and one of these projecting portions had been erected in 1858 contrary to the Marylebone Improvement Act, 1756, and to sec. 140 of 7 Geo. IV. cap. 142 (subsequently repealed by sec. 75 of Met. Man. Am. Act, 1862) which provided that no building should be erected within 50 feet of the street; and the other projecting portion had been erected in 1877 to a limited height only, under a licence from the M. B. W. granted under sec. 76 of Met. Man. Am. Act, 1862. It was held that the owner could not without the consent of the L. C. C. re-erect the buildings to a height of three storeys upon the site of the forecourts, which would be beyond the general line of buildings, because in the case of the former building the land was not legally occupied by the building, though no means existed of enforcing the removal of the building put up in 1858; and in the latter case the land was not legally occupied except to the extent of the licence of the M. B. W. (*Scott* v. *Carritt*, 81 L. T. 454; 82 L. T. 67; 63 J. P. 772). It should be observed that proceedings in this case were taken by way of appeal from a Notice of Objection served by the District Surveyor under sec. 150.

See note to subsec. (1) and the decisions of the cases of *Worley* v. *St. Mary Abbotts Kensington* and *L. C. C.* v. *Pryor* concerning abandonment of previous rights; these decisions will possibly be modified by this subsection.

Buildings projecting beyond general line when taken down to be set back.

23. (1.) In case any building [or structure] which shall in any part thereof project beyond the general line of buildings in a street, or beyond the front of the building, wall or railing on either side thereof, shall at any time be taken down to an extent exceeding one half [of the cubical extent] of such building or structure, or shall be destroyed by fire or other casualty, or demolished, pulled down or removed from any other cause to the extent aforesaid, it shall be lawful for the Council to require the same building or structure, or any new building or structure proposed to be erected on the site, or any part of the site thereof, to be set back to such a line and in such a manner as the Council shall direct.

(2.) The Council shall make compensation to the owner of such building for any damage and expenses which he may sustain and incur thereby, [and the amount of such compensation, if not agreed between the Council and the parties concerned, shall be recovered in a summary manner; except where the amount of compensation claimed exceeds 50 pounds, in which case the amount thereof shall be settled by arbitration according to the provisions contained in the Lands Clauses Acts which are applicable where questions of disputed compensation are authorised or required to be settled by arbitration, and for that purpose those Acts, so far as applicable, shall be deemed to be incorporated with this Act.

For the purpose of this section the expression 'owner' has the same meaning as in the Lands Clauses Acts.]

This section is a re-enactment of Met. Man. Am. Act, 1862, sec. 74, the words in brackets being added. The repealed section did not apply to Sched. C of the Met. Man. Act, 1855, viz.: the Close of the Collegiate Church of St. Peter's, Westminster; the Charter House, Inner and Middle Temples, and Lincoln's, Gray's, Staple's, and Furnival's Inns: of these the Inner and Middle Temples and Lincoln's and Gray's Inns are by sec. 204 of this Act exempt from the whole Act, except from the provisions of this Part, so far as they abut upon any public street, public place or public way. With the above exceptions, the exemptions of Schedule C above mentioned are now repealed.

See note to sec. 22 and the decisions *Lord Auckland* v. *Westminster B. W.* and *L. C. C.* v. *Pryor*.

For meaning of 'owner' in Lands Clauses Acts *see* note to sec. 15.

Notices of definition of general line.

24. The Superintending Architect shall, within 14 days after the issue of the certificate defining the general line of buildings in any street, [or part of a street], place or row of houses, cause a notice of his certificate to be served on the local authority, and on the owner of the

building or land to which the certificate relates, and on the owner of the houses [in the same block or row within a distance not exceeding 50 yards] on either side of the building or land to which the certificate relates, or, where there is no such block or row, upon the owner of the adjoining land on either side of the building or land to which the certificate relates. [Certificates made by the Superintending Architect under this Part of this Act shall be preserved by the Council, and be open to inspection at all reasonable times by all persons desiring to inspect the same.] S. 24

L. C. C. Gen. P. Act, 1890, sec. 28, first paragraph, re-enacted, the words in brackets being added.

Appeal against certificate of architect as to general line.

25. The local authority, or any person deeming himself aggrieved by the certificate of the Superintending Architect, may appeal to the Tribunal of Appeal.

A similar power of appeal was granted in L. C. C. Gen. P. Act, 1890, sec. 28.

Conditions may be attached to consent to building in front of general line.

26. In giving their consent for the erection of any building [or structure] beyond the general line of buildings in any street, [or part of a street], place or row of houses, the Council may attach any conditions to such consent, and such conditions may include any or all of the conditions following, viz. :—

(1.) That land in front of the building or structure, to such an extent as the Council may think proper, shall be dedicated to [and] left open for the use of the public :

[(2.) That the building or structure shall be used only for such purposes as may be specified in the consent, or shall not be used for any particular purposes specified in the consent, unless with the further consent of the Council, obtained when a change of purpose is desired :]

And generally any other condition which the Council may deem it expedient to impose [in the public interest.]

By Met. Man. Am. Act, 1862, sec. 76 (repealed), the Council could 'annex any conditions to their consent,' and by Met. Man. Bldg. Act, 1882, they could require land to be given up to the public. This section re-enacts these powers ; subsec. (2) now occurs for the first time, though the power to 'annex any condition,' mentioned above, would probably include that granted in this subsection.

For penalty (£20 a day) *see* sec. 200 (3) *a*.

Q. B. 1893 (Mathew and Wright, JJ.) Subsec. (1). It has been held that the Council have no power to require the owner to make more than a dedication of the surface to the public ; the owner may construct cellar flaps in the strip of land so dedicated (*L. C. C.* v. *Best & Co.*, 9 T. L. R. 499.

Consent not to affect rest of general line.

[**27.** The consent by the Council to the erection of any building or structure beyond the general line of buildings in any part of a street, or the erection of such building or structure, shall not be deemed to affect or alter in that or any other part of the street the general line of buildings as existing at the time of such consent.]

See decision in the case of *In re Lond. Bldg. Act*, 1894 *and in re L. C. C.* (91 L. T. 501 ; 68 J. P. 490 ; 2 L. G. R. 1265).

Register of conditional consents to be kept and open for inspection.

[**28.** The Council shall keep a register of all conditional consents given by them under this Part of this Act, and shall keep the same open for inspection by all persons interested at all reasonable times.]

Defining in what street a building or structure is situate.

[**29.** The Superintending Architect shall, if required by the Council, the local authority, or any person interested for the purposes of this Part of this Act, determine in any case in what street or streets a building or structure is situate, such determination to be evidenced by his certificate.

Any person aggrieved by such certificate may appeal to the Tribunal of Appeal.]

This section was enacted in place of sec. 33 of the L. C. C. (Gen. Powers) Act, 1890, which was enacted in consequence of the decision of H. L. in the case of *Barlow* v. *St. Mary Abbotts Kensington* (*see* sec. 22), but is repealed by this Act and not re-enacted.

Part of Act not to apply in City.

30. This Part of this Act shall not apply within the City.

See sec. 4 of this Act.

Certain powers of railway companies not affected by this Part of Act.

[**31.** Nothing in this Part of this Act shall affect the exercise of any powers conferred upon any railway company by any special Act of Parliament for railway purposes.]

PART IV [1]

NAMING AND NUMBERING OF STREETS

Notice of new name of street.

32. Before any name is given to any street, notice of the intended name shall be given to the Council, and the Council may, by notice in writing given to the person by whom notice of such intended name has been given to them, at any time within 1 month after receipt of

[1] Part IV. takes the place of Met. Man. Am. Act, 1862, sec. 87 (repealed), and Met. Man. & Bldg. Am. Act, 1882, sec. 5 (repealed). *See* City of London Sewers Act, 1848, secs. 145 and 146, for naming streets and numbering houses in the City ; these sections are unaffected by Part IV., *see* sec. 4 of this Act.

such notice, object to such intended name ; and it shall not be lawful to set up any name to any street in London until the expiration of 1 month after notice thereof has been given as aforesaid to the Council, or to set up any name objected to as aforesaid. S. 32

For penalty (40*s.* and 40*s.* a day) *see* sec. 200 (11) *j*.

Affixing names of streets by local authority.

33. The local authority shall and may cause the name of every street to be painted or affixed on a conspicuous part of some house or building at or near each end or entrance to such street, or some other convenient part of the street, and shall renew such name whenever it may be obliterated or defaced.

Altering names of streets.

34. The Council may, [by order], alter the name of any street to any other name which to the Council may seem fit.

Notice of altering names of streets.

35. One month before making an order altering the name of a street, the Council shall notify their intention of making such alteration to the local authority, and shall also cause notice of their intention to be posted at each end of the street, or in some conspicuous position in the street, or, at the option of the Council, to be notified by circular delivered at every house in the street.

[Every such notice shall state that the order altering the name of the street may be issued on or after a day to be therein named, if no objection in writing to the proposed alteration be given to the Council.]

Numbering houses.

36. (1.) The Council may order that any houses or buildings in any street [or way, or any part thereof], shall, for the purpose of distinguishing the same, be marked with such numbers as they shall deem convenient for that purpose, and which they shall specify in their order in that behalf.

(2.) Whenever the Council have made any such order, they shall transmit a copy thereof to the local authority, and it shall be the duty of the local authority to perform all necessary acts, and to take all requisite proceedings for carrying the order of the Council into execution.

(3.) The local authority shall give notice to the owners or occupiers of the houses and buildings in such street or way to mark their several houses and buildings with such numbers as the Council shall have ordered, and to renew the numbers of such houses or buildings as often as they are obliterated or defaced.

(4.) If any occupier of any such house or building neglect for one week after notice from the local authority to mark such house or building with such number as

S. 36 shall be mentioned and required in such notice, the local authority may [and shall] cause such number to be so marked or renewed, and recover the expenses thereof from the owner or occupier of such house or building in a summary manner.

Power to Council to name and number streets in default of local authority complying with order.

37. Whenever the Council have transmitted a copy of any order made by them in pursuance of the provisions of this Part of this Act to any local authority, and such local authority have for the space of 3 months after the receipt of such order failed to perform all or any of the necessary acts, or to take all or any of the requisite proceedings for carrying such order into execution, then and in every such case the Council may perform all or any of such necessary acts, or take all or any of such necessary proceedings, which the local authority have failed to perform or take; and the Council may exercise all the rights, powers, authorities and jurisdiction of a local authority with respect thereto, including the recovery of expenses from owners of houses and buildings.

Register to be kept of alterations in names of streets.

38. The Council shall keep a register of all alterations made by them in the names of streets and in the numbers of the houses therein, and such register shall be kept in such form as to show the date of every such alteration and the name of the street previous to such alteration, as well as the new name thereof. [It shall be lawful for any person to inspect such register, and to take a copy of any portion thereof, upon payment of such reasonable fee as the Council may from time to time determine.]

For scale of fees charged *see* Regulations of the Council, No. 13.

PART V[1]

OPEN SPACES ABOUT BUILDINGS AND HEIGHT OF BUILDINGS

Meaning of 'domestic building' in this Part of Act.

[**39.** For the purposes of this Part of this Act, the expression 'domestic building' shall not include any buildings, used or constructed or adapted to be used, wholly or principally as offices or counting-houses.]

Hotels, lodging-houses, and similar buildings exceeding 250,000 cubic feet, being public buildings, would probably be excluded from the expression 'domestic building' for the purposes of this Part, though Hawkins, J., expressed doubt on this point

[1] For penalties for failure to comply with any of the requirements of this Part (£20 a day), *see* sec. 200 (3) *b*.

when giving judgment in the case of *L. C. C.* v. *Rowton Houses, Ltd.* 77 L. T. 693 ; 62 J. P. 68 ; *see* definitions of ' domestic building ' and ' public building,' sec. 5 (26) and (27). S. 39

[**40.** In the case of domestic buildings erected after the commencement of this Act which shall have a habitable basement, there shall, for the purpose of giving light and air to such basement, be provided in the rear of the building, and exclusively belonging thereto, an open space of an aggregate extent of not less than 100 square feet, free from any erection thereon, above the level of the adjoining pavement ; which open space, notwithstanding anything hereinafter contained, need not necessarily adjoin the rear boundary of the premises.]

Light and ventilation of habitable basements.

For penalty (£20 a day) *see* sec. 200 (3) *b*.
See definitions of ' habitable,' sec. 5 (38).
See Diagrams I. and II., pages 52 and 54.

[**41.** (1.) With respect to domestic buildings erected after the commencement of this Act, and abutting upon a street formed, or laid out, after the commencement of this Act, the following provisions shall have effect :—

Space at rear of domestic buildings. (Domestic buildings abutting on new streets.)

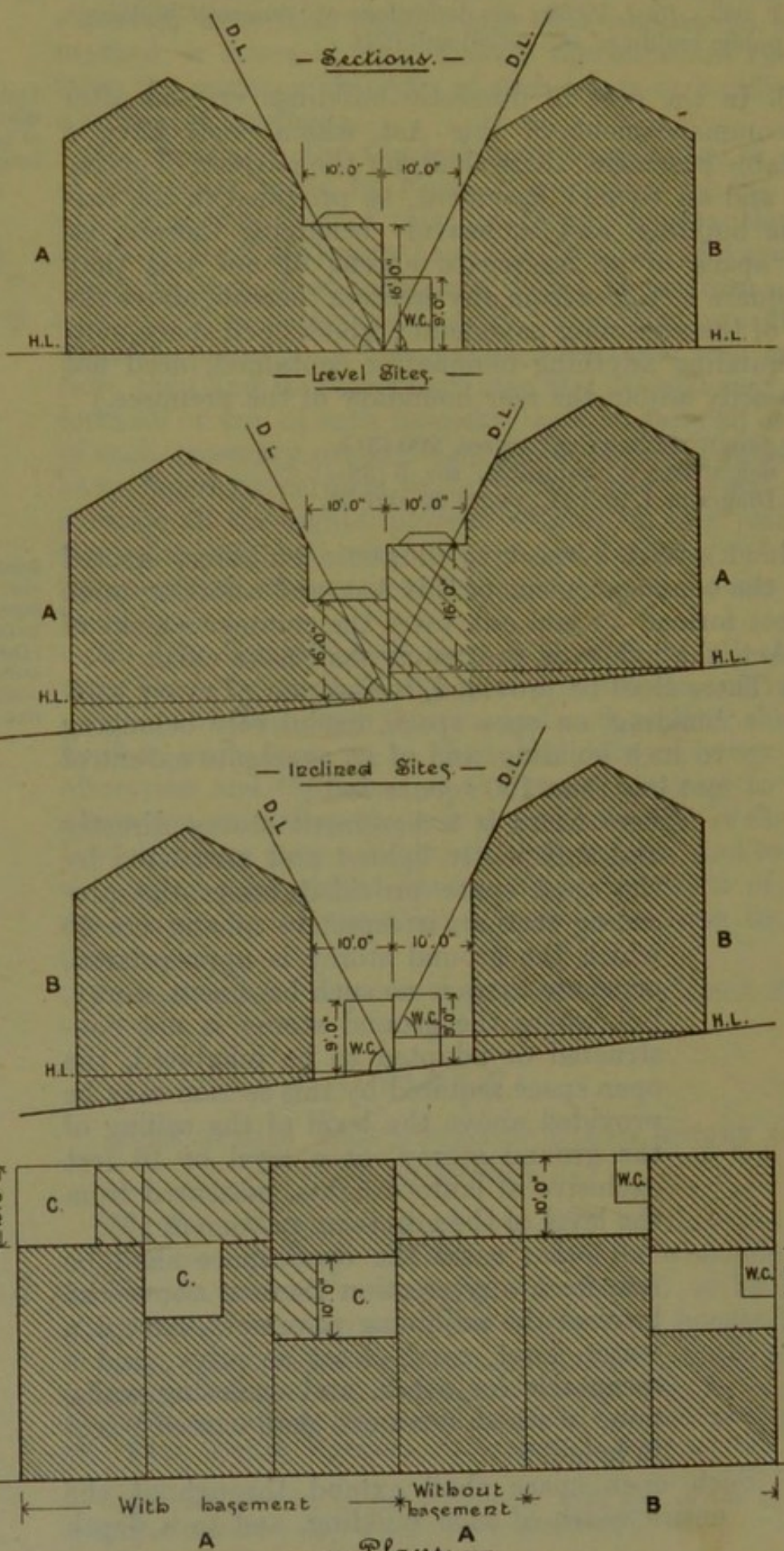
(i.) There shall be provided, in the rear of every such building, an open space, exclusively belonging to such building, and of an aggregate extent of not less than 150 square feet ;

Where there is a basement storey directly and sufficiently lighted and ventilated by the open space provided under the preceding section, irrespective of any use to which the ground storey is appropriated, or where there is no such basement storey, but where the ground storey is not constructed or adapted to be inhabited, the open space required by this section may be provided above the level of the ceiling of the ground storey, or a level of 16 feet exclusive of lantern lights, measured from the level of the adjoining pavement ;

In all other cases the open space shall be free from any erection thereon above the level of the adjoining pavement, except a water-closet, earth-closet or privy, and a receptacle for ashes, and enclosing walls, none of which erections shall exceed 9 feet in height :

(ii.) Such open space shall extend throughout the entire width of such building, and to a depth

DIAGRAM I.—DOMESTIC BUILDINGS ON NEW STREETS
Secs. 40 & 41 (i.).



A. Domestic buildings, the ground floor of which is not inhabited, the basement, if any, being ventilated as required by sec. 40.

B. Domestic buildings other than as A.

H. L. Horizontal line. Sec. 41 (1) (iii.) *b*, *c*.

D. L. Diagonal line, drawn at 63½ degrees to horizontal line Sec. 41 (1) (iii.) *d*.

The closely hatched portions indicate the main buildings.

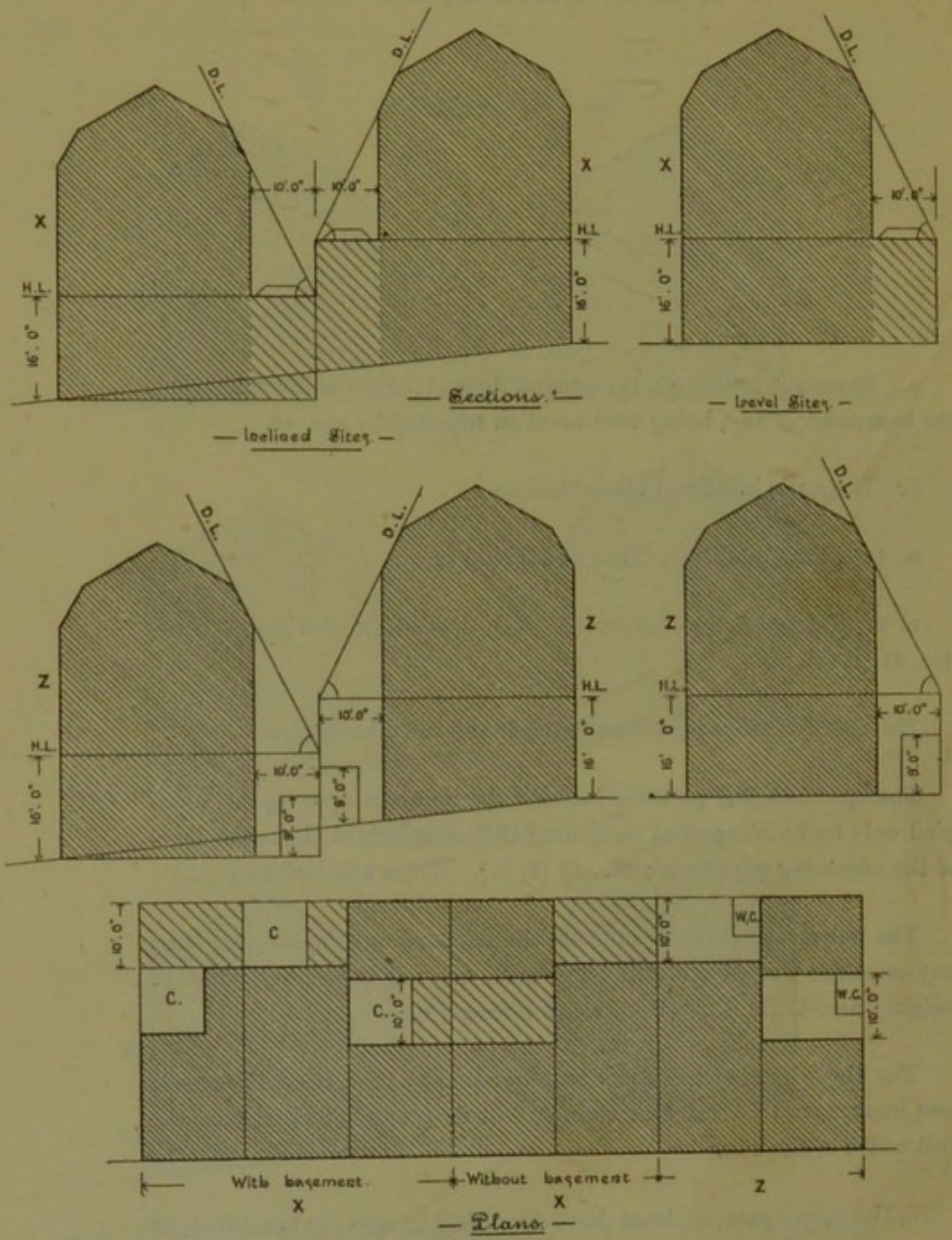
The open hatched portions indicate the required open space, occupied only by buildings not exceeding 16 feet in height above the level of the adjoining pavement; sec. 41 (1) (i.). (Domestic buildings, A.)

The unhatched portions indicate the required open space, free from any erections except w.c. and fence wall, &c., not exceeding 9 feet in height; sec. 41 (1) (i.). (Domestic buildings, B.)

The above open spaces must together amount to at least 150 square feet in area, and be not less than 10 feet deep and extend across the full width of the site.

C, the open space, at least 100 square feet in area, to basement, as required by sec. 40.

Diagram II.—Domestic Buildings on Old Streets
Secs. 40 & 41 (2).



X. Domestic buildings not inhabited by persons of the working class.

Z. Domestic buildings inhabited by persons of the working class.

H. L. Horizontal line drawn 16 feet above the level of the pavement; sec. 41 (1) (iii.) *b*, *c*.

D. L. Diagonal line, drawn at 63½ degrees to horizontal line; sec. 41 (1) (iii.) *d*.

The closely hatched portions indicate the main buildings.

C. The open space, at least 100 square feet in area, to basement as required by sec. 40.

The open hatched portions indicate the required open space (occupied only by buildings not exceeding 16 feet in height above the level of the pavement). It must be at least 150 square feet in area, and extend across the full width of the site, nowhere less than 10 feet in depth. (Non-working-class buildings, X.)

The unhatched portions indicate the required open space (free from any erections except w.c. and fence wall, &c., not exceeding 9 feet in height). It must be at least 150 square feet in area, and extend across the full width of the site, nowhere less than 10 feet in depth. (Working-class buildings, Z.)

in every part of at least 10 feet from such building.] S. 41

Met. Bldg. Act, 1855 (repealed), sec. 29.

'Every building used, or intended to be used, as a dwelling-house, unless all the rooms can be lighted and ventilated from a street or alley adjoining, shall have in the rear or on the side thereof an open space exclusively belonging thereto of the extent at least of 100 square feet.'

Met. Man. & Bldg. Am. Act, 1882 (repealed), sec. 14.

'Every building begun to be erected upon a site not previously occupied in whole or in part by a building, after the passing of this Act, intended to be used wholly or in part as a dwelling-house, shall, unless the Board otherwise permit, have directly attached thereto, and in the rear thereof, an open space exclusively belonging thereto of the following extent:—

'Where such building has a frontage not exceeding 15 feet, the extent of the open space shall be 150 square feet at least.

'Where such building has a frontage exceeding 15 feet, but not exceeding 20 feet, the extent of the open space shall be 200 square feet at least.

'Where such building has a frontage exceeding 20 feet, and not exceeding 30 feet, the extent of the open space shall be 300 square feet at the least; and

'Where such building has a frontage exceeding 30 feet, the extent of the open space shall be 450 square feet at the least.

'Every such open space shall be free from any erection thereon above the level of the ceiling of the ground-floor storey, and shall extend throughout the entire width (exclusive of party or external walls) of such building, at the rear thereof.

'The provisions of this enactment shall be in addition to, and shall form part of, the rules of the Met. Bldg. Act, 1855, and the said Act shall be construed accordingly.'

It will be noted that the open space has to be provided 'in the rear' of the building [subsec. (1) (i.)], but this does not necessitate it adjoining the rear boundary; but the diagonal 'line' must be drawn through the point where the 'horizontal line' intersects the rear boundary of the open space (subsec. (1) (iii.) *d*), which will not necessarily be the rear boundary of the site.

See Diagrams I. and II., pages 52 and 54.

The 'level of the adjoining pavement' presumably refers to the level of the footway in front of the building—*see* sec. 41 (1) (iii.) *c*.

Some doubt seems to exist as to how the height of 9 feet for erections permitted on the open space is to be measured, whether above the footway of the street in front of the main building (*see* definition sec. 5 (21)) or above the yard or ground adjoining.

[(iii.) The height of any such building in relation to the space required in the rear thereof shall be fixed and ascertained as follows:—

(*a*) An imaginary line (hereafter referred to as 'the horizontal line') shall be drawn at right angles to the roadway formed,

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or to be formed, in front of the building, and through or directly over a point in front of the centre of the face of the building;

(*b*) The horizontal line shall be produced to intersect the boundary of the open space furthest from the said roadway;

(*c*) The horizontal line shall be drawn throughout at the level of the pavement formed, or to be formed, in front of the centre of the building; unless the site of the building incline towards the roadway or site of the roadway, in which case the horizontal line shall be drawn directly over the said point in front of the centre of the face of the building, at the level throughout of the ground at the boundary of the space furthest from such roadway where such boundary is intersected by the horizontal line;

(*d*) A second imaginary line (in this Part of this Act called 'the diagonal line') shall be drawn in the direction of the building, above and in the same vertical plane with the horizontal line, and inclined thereto at an angle of 63½ degrees, and meeting the horizontal line where it intersects the boundary of the space furthest removed from such roadway;

(*e*) No part of such building shall extend above the diagonal line except chimneys, dormers, gables, turrets or other architectural ornaments, aggregating in all to not more than one-third of the width of the rear elevation of such building, and except any building which, under the provisions of this section, is permitted on the open space;

(*f*) When the pavement in front of a building is not all on one level, then for the purpose of compliance with this section the mean level of such pavement shall be deemed to be the level thereof;

And where the boundary of the space at the rear of such building is not parallel with the rear wall of the building, then, for the purpose of this section, the horizontal

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line shall be drawn to a point distant from such rear wall the mean distance from such wall of the boundary of the space at the rear of such building, whether such point be beyond the said boundary or not ;

(*g*) When the boundary of the space at the rear of any such building shall be so irregular in shape that a doubt arises as to how the measurement shall be taken, application shall be made to the Council ; and the applicant, if dissatisfied with the determination of the Council, may appeal to the Tribunal of Appeal ;

(*h*) When the land at the rear of any such building, and exclusively belonging thereto, abuts immediately upon a street, or upon an open space which is dedicated to the public, or the maintenance of which as an open space is secured permanently, or to the satisfaction of the Council, by covenant or otherwise, the horizontal line shall be produced and the diagonal line may be drawn from the horizontal line at the centre of the roadway of such street at the level of the surface thereof, or at the further boundary of such open space, and it shall not be necessary to provide any open space at the rear of such building :]

This clause (*h*) would not dispense with the requirements of sec. 40 as to light and air to basements.

The heights of buildings are regulated by secs. 13 (5), 47, and 49. *See* Diagrams I. and II., pages 52 and 54.

Par. (iii.) *c*. The words 'incline towards' should evidently read 'incline away from' or 'decline towards.'

[(iv.) The Council may—

(Corner buildings.)

(*a*) In the case of a building at a corner abutting upon two streets ;

(*b*) In the case of a building at a corner abutting on one side upon a street, and on another side upon an open space not less than 40 feet wide at any part, the maintenance of which as an open space is secured permanently, or to the satisfaction of the Council, by covenant or otherwise ;

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permit the erection of buildings, not exceeding 30 feet in height, upon such part of the space in the rear as they may think fit; provided that the Council be satisfied that such buildings shall be so placed as not to interfere unduly with the access of light and air to neighbouring buildings;

When the Council refuse any application under this subsection for permission to erect a building not exceeding 30 feet in height upon the space at the rear, the applicant, if dissatisfied with the determination of the Council, may appeal to the Tribunal of Appeal.]

(Return frontage.)

[(v.) In the case of buildings at a corner, as hereinbefore described, nothing in this Part as to the determination of height by the diagonal line shall prevent the return front of such buildings being carried up to the full height of the front elevation for a distance of 40 feet, or for such less distance as the requirements for open space at the rear may demand:]

(Irregular sites.)

[(vi.) In exceptional cases, where, owing to the irregular shape of the land, any of the preceding provisions of this section cannot be applied, the Council may allow such modifications as they may think fit; provided the Council be satisfied that such modifications shall not interfere with the due access of light or air, and all persons interested dissatisfied with any determination of the Council under this subsection may appeal to the Tribunal of Appeal.]

Domestic buildings abutting on old streets.

[(2.) With respect to domestic buildings, erected after the commencement of this Act, abutting upon a street formed or laid out before the commencement of this Act, the provisions of this section shall apply, with this modification, that the horizontal line shall be drawn throughout at a level of 16 feet above the level of the adjoining pavement, and that in any such case (except in the case of dwelling-houses to be inhabited, or adapted to be inhabited, by persons of the working class) the open space to be provided in accordance with paragraphs (i.) and (ii.) of subsection 1 of this section may be provided above the level of the ceiling of the ground storey, or above a level of 16 feet (exclusive of lantern lights) above the level of the adjoining pavement.]

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See Diagram II., page 54.

See note to, and compare with, sec. 41 (1) iii. *c*.

For the proper interpretation of 'dwelling-houses to be inhabited, or adapted to be inhabited, by persons of the working class,' *see* note to sec. 13 (5) and the cases there quoted.

[Provided always that, notwithstanding the preceding provisions of this Part of this Act, any part of any domestic building may extend above the diagonal line, provided that the Council or Tribunal of Appeal shall be satisfied that an open cubic space of air will be provided at the rear of such building equivalent to the open cubic space which would have been provided at the rear of such building if such diagonal line had been drawn from the ground level in manner provided in subsection 1 (iii.) of this section, and if no part of such building (except as permitted under the preceding provisions of this section) had extended above such diagonal line. The applicant, if dissatisfied with the determination of the Council, may appeal to the Tribunal of Appeal.]

[Nothing in this section shall apply to houses abutting in the rear on the River Thames, or on a public park, or on an open space of not less than 80 feet in depth, which is dedicated to the public, or the maintenance of which as an open space is secured permanently, or to the satisfaction of the Council, by covenant or otherwise.]

For penalty (£20 a day) *see* sec. 200 (3) *b*.

Open space to be provided about certain buildings not on the public way.

[**42.** The following provisions shall have effect with respect to dwelling-houses to be inhabited, or adapted to be inhabited, by persons of the working class, erected after the commencement of this Act, not abutting upon a street:—

(i.) At least 1 month before commencing to erect any such dwelling-house, the person intending to erect the same shall deliver, at the county hall, a sufficient plan or plans, exhibiting the extent and height of the intended dwelling-house in its several parts, and also its position in relation to every other building, either already existing or in course of erection, which is adjacent thereto.

(ii.) In any case where the Council are satisfied, taking all the circumstances of the case into consideration, that there will not be provided about such dwelling-house a sufficient open space or spaces for the admission of light and air thereto, it shall be lawful for the Council, at any time

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before the expiration of 1 month from the delivery of the said plan or plans, by order, to refuse to sanction such plan or plans, or to sanction the same, subject to such conditions as they may by such order prescribe. Provided always that nothing in this subsection shall authorise the Council to refuse sanction to such plan or plans, or to prescribe any conditions when sanctioning the same, in any case where the open space or spaces for the admission of light and air proposed to be provided about such dwelling-house is or are equivalent to the open space or spaces which would have been provided about such dwelling-house under the provisions of this Act, in case the same had been erected after the commencement of this Act, abutting upon a street or way formed or laid out before the commencement of this Act.

(iii.) No person shall commence to erect any such dwelling-house without having obtained the sanction of the Council to the plans delivered.

(iv.) Unless the Council shall, within 1 month after the delivery of the said plan or plans to them, give notice to the person delivering the same of their disapproval thereof, the Council shall be deemed to have given their sanction thereto :

(v.) In case any person, intending to erect any such dwelling-house, considers that the refusal of the Council to sanction the plans delivered by him, or any of the conditions prescribed by the Council is or are unreasonable, he may appeal to the Tribunal of Appeal.]

For penalty (£20 a day) *see* sec. 200 (3) *b*.

For the proper interpretation of 'dwelling-houses to be inhabited, or adapted to be inhabited, by persons of the working class,' *see* note to sec. 13 (5) and the cases there quoted.

Saving for certain domestic buildings on old sites.

[**43.** When any person intends to erect a domestic building (not being a dwelling-house to be inhabited, or adapted to be inhabited, by persons of the working class) abutting upon a street on the site of domestic buildings existing at the commencement of this Act, or on a site vacant at the commencement of this Act, but which has been occupied by a domestic building at any time within 7 years previous to the commencement of this Act, the following provisions shall have effect :—

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(i.) It shall be lawful for such person, before commencing to erect the intended domestic building, to cause to be prepared plans showing the extent of the previously existing domestic building in its several parts (or in the event of such building having been taken down before the commencement of this Act, or having been accidentally destroyed, the best plans available under all the circumstances of the case), and to cause such plans to be submitted to the District Surveyor, who shall (if reasonably satisfied with the evidence of their accuracy) certify the same under his hand, and such certificate shall be taken to be conclusive evidence of the correctness of the plans ;

Such person may then erect the intended domestic building, but so that no more land shall be occupied by the newly erected building than was occupied by the previously existing domestic building as so certified.

If such person fail to submit such plans to the District Surveyor, or the District Surveyor or the Tribunal of Appeal refuse to certify the accuracy of the same, such person shall in rebuilding be bound by the preceding provisions of this Part of this Act relating to domestic buildings erected after the commencement of this Act, abutting upon a street formed or laid out before that date.]

Q. B. 1898 (Wills and Kennedy, JJ.) It was held that the plans to be certified must be a complete set of plans to show what the old building was in its various floors, and that if the building owner in rebuilding wishes to in any respect alter the old building in area or outline he must obtain the sanction of the Council (*Paynter* v. *Watson*, (1898) 2 Q. B. 31 ; 62 J. P. 467 ; 67 L. J. (Q.B.) 640 ; 46 W. R. 655).

The above decision is not in accordance with the intention of the Act, which was that, provided no greater quantity of land were covered, such amount might be varied in disposition ; the drafting was amended in Committee of the House of Lords to effect this object, but paragraph (ii.) was not consequentially amended at the time, hence the difficulty the Court had in coming to a decision.

[(ii.) If a person erecting the intended domestic building shall desire to deviate in any respect from the plan or plans certified by the District Surveyor, it shall be lawful for him to apply to the Council, who shall sanction such deviations on

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such conditions as they may think fit ; provided that such conditions shall not in any case be more onerous than the conditions prescribed for domestic buildings erected after the commencement of this Act, abutting on a street formed or laid out before that date :]

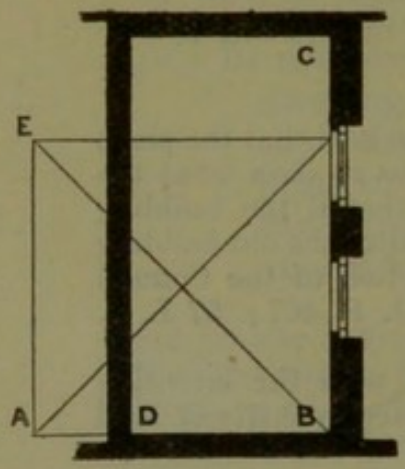
See sec. 41 (2).

[(iii.) A person dissatisfied with any decision of the Council, or of a District Surveyor, under this section may appeal to the Tribunal of Appeal.]

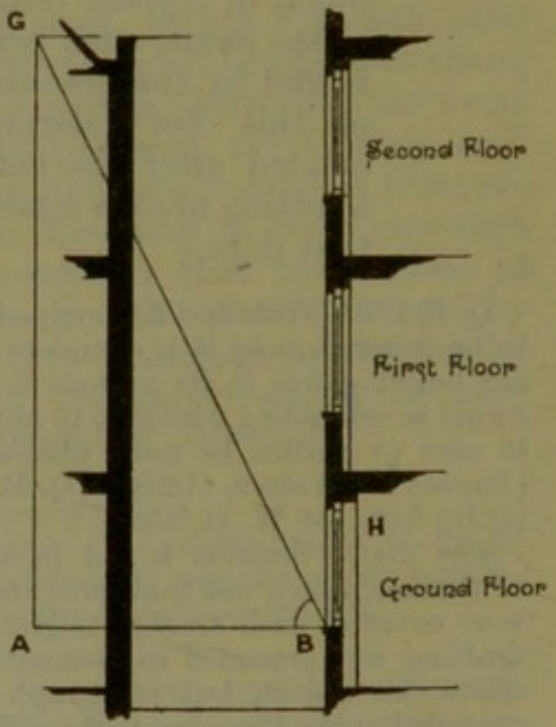
Laying out of new streets on cleared area.

[**44.** When any person desires to re-arrange a cleared area previously occupied in whole or in part by buildings by forming or laying out a new street or streets, or widening a street or streets, he may make application to the Council with such plans and sections as may be required by the Council ; and the Council may, if under all the circumstances of the case they think it desirable,

DIAGRAM III.—COURTS WITHIN A BUILDING—CLOSED ON ALL SIDES. Sec. 45 (pp. 63 and 64)



— Plan. —



— Section. —

D, B, C. Court enclosed on all sides, the length B, C being not greater than twice the width B, D.

E, A, B. Square equal in area to court, D, B, C.

H. Window on ground floor lighting habitable room from court

G, A. Height of wall opposite to windows, H, measured from level of sill, B, must not be greater than twice A, B.

The angle A, B, G equals 63½ degrees.

modify or relax any of the foregoing provisions of this Part of this Act, subject to such conditions as the Council may impose. S. 44

Within 2 months after the receipt of the application, the Council shall either sanction the plans and sections, or give notice to the applicant of their disapproval thereof, stating fully all their reasons for such disapproval.

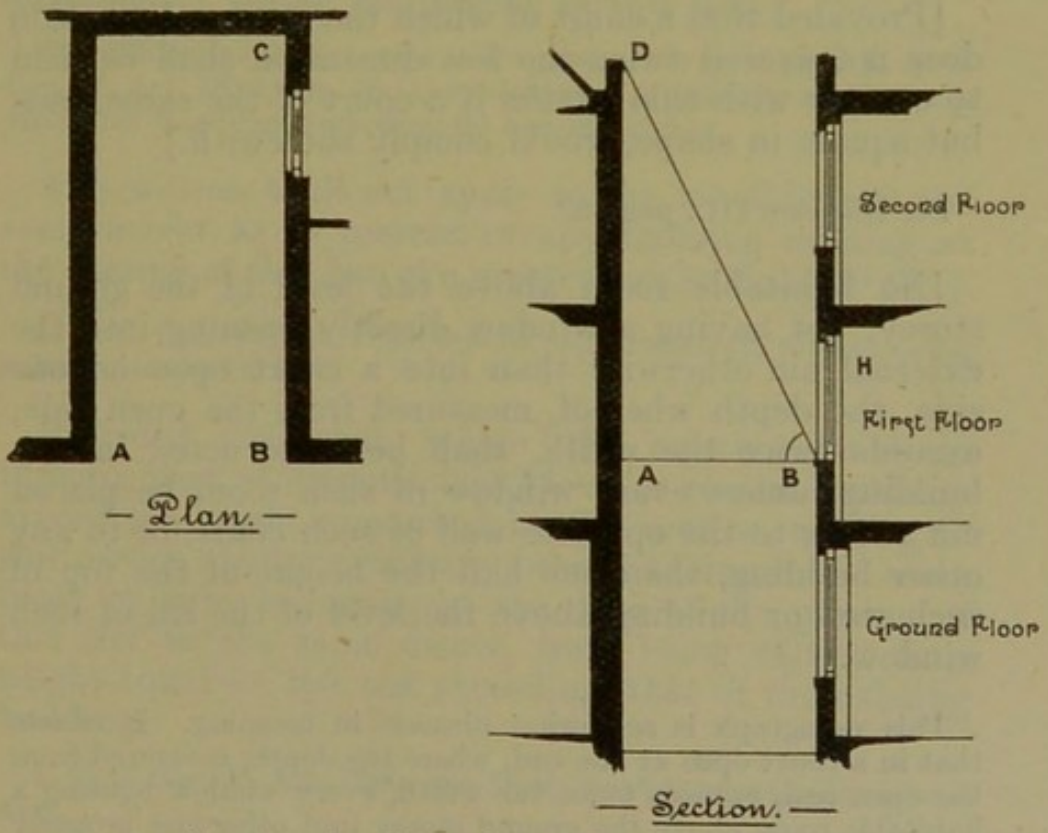
Provided that if, within the said period of 2 months, the Council fail to give notice of their disapproval of any such plan or section, they shall be deemed to have given their sanction thereto.

Any applicant dissatisfied with the determination of the Council may appeal to the Tribunal of Appeal.]

[**45.** Where a court wholly, or in part, open at the top, but enclosed on every side, and constructed or used for admitting light or air to a domestic building, is constructed in connection with such domestic building, and

Courts within a building.

DIAGRAM IV.—COURTS WITHIN A BUILDING—OPEN ON ONE SIDE
Sec. 45 (p. 64)



A, B, C. Court enclosed on three sides, the depth B, C being greater than twice the width A, B.

H. Window lighting habitable room (above the ground storey) from court.

D, A. Height of wall opposite to window, H, measured from level of sill, B, must not be greater than twice A, B.

The angle A, B, D equals 63½ degrees.

S. 45 the depth of such court from the eaves or top of the parapet to the ceiling of the ground storey exceeds the length or breadth of such court, adequate provision for the ventilation of such court shall be made and maintained by the owner of the building by means of a communication between the lower end of the court and the outer air.

No habitable room not having a window directly opening into the external air, otherwise than into a court enclosed on every side, shall be constructed in any building unless the width of such court, measured from such window to the opposite wall, shall be equal to half the height measured from the sill of such window to the eaves or top of the parapet of the opposite wall.]

This paragraph is somewhat obscure in meaning. It enacts that in a court enclosed on every side, every window lighting a habitable room (not otherwise properly lit from the open air, *see* sec. 70 (1) *c*) shall be constructed so that the wall on the opposite side of the court shall not exceed in height, above the sill of the window, twice the width of the court measured from the window to the opposite wall.

[Provided that a court of which the greater dimension does not exceed twice the less dimension shall be held to comply with this section if a court of the same area, but square in shape, would comply therewith.]

See Diagram III., page 62.

[No habitable room above the level of the ground storey, not having a window directly opening into the external air otherwise than into a court open on one side, the depth whereof, measured from the open side, exceeds twice the width, shall be constructed in any building, unless every window of such room be placed not nearer to the opposite wall of such court, or to any other building, than one half the height of the top of such wall or building above the level of the sill of such window.]

This paragraph is somewhat obscure in meaning. It enacts that in a court open at one end, where the depth, measured from the open end, exceeds twice the width, every window lighting a habitable room above the ground storey (not otherwise properly lit from the open air, *see* sec. 70 (1) *c*), shall be constructed so that the wall on the opposite side of the court shall not exceed in height, above the sill of the window, twice the width of the court, measured from the window to the opposite wall.

See Diagram IV., page 63.

For penalty (£20 a day) *see* sec. 200 (3) *b*.

[**46.** In any case, when it may be necessary, the Superintending Architect shall determine which is the front and which is the rear of a building, such determination to be evidenced by his certificate. Superintending Architect may define front or rear of buildings.

Any person dissatisfied with such certificate may appeal to the Tribunal of Appeal.]

47. A building (not being a church or chapel) shall not be erected of, or be subsequently increased to, a greater height than [80 feet] (exclusive of two storeys in the roof, and of ornamental towers, turrets, or other architectural features or decorations) without the consent of the Council. Height of buildings limited.

L. C. C. Gen. P. Act, 1890, sec. 36 (1) (repealed) fixed the maximum height at 90 feet; this is now reduced to 80 feet.

Provided that, where a contract shall have been lawfully made, previously to the passing of this Act, for the erection or increase of a building to a greater height than [80 feet], nothing in this section shall prevent the erection or increase of such building to any height to which it might have been lawfully erected or increased immediately before the passing of this Act.

The above provision is new in its present form, though L. C. C. Gen P. Act, 1890, sec. 36 (1) contained a practically similar provision for buildings exceeding 90 feet in height.

This section shall not apply to the rebuilding to the same height as at present of any building existing at the passing of this Act of a greater height than [80 feet].

L. C. C. Gen. P. Act, 1890, sec. 36 (4), re-enacted, 80 feet being substituted for 90 feet.

Provided also that, where any existing buildings forming part of a continuous block or row of buildings exceed the height prescribed by this section, nothing in this section shall prevent any other building in the same block or row, belonging at the date of the passing of this Act to the same owner, from being carried to a height equal to, but not exceeding, that of the existing buildings.

L. C. C. Gen. P. Act, 1890, sec. 36 (1), contained a similar provision.

Nothing in this section shall affect the exercise of any powers conferred upon any railway company by any Special Act of Parliament for railway purposes.

L. C. C. Gen. P. Act, 1890, sec. (5), re-enacted.

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By sec. 13 (5) of this Act, no dwelling-house for the working classes shall be erected or re-erected, within the prescribed distance, to a greater height than the distance from the front wall to the opposite side of the street.

For method of measuring height *see* sec. 5 (21).

See sec. 49 for height of buildings erected in streets formed after August 7, 1862.

For penalty (£20 a day) *see* sec. 200 (3) *b*.

Procedure where greater height allowed.

48. (1.) Whenever the Council consent to the erection of any building of a greater height than that prescribed by this Act, notice of such consent shall, within 1 week after such consent has been given, be published and served in such manner as the Council may direct; and the consent shall not be acted on until 21 days after such publication or service, or, in the event of any appeal against such consent, until after the determination of such appeal.

(2.) (*a*) The owner or lessee of any building or land within 100 yards of the site of any intended building who may deem himself aggrieved by the grant of such consent in respect of the last-mentioned building; or

(*b*) Any applicant for consent which has been refused;

may respectively, within 21 days after the publication of notice of the consent, or after the date of the refusal (as the case may be), appeal to the Tribunal of Appeal.

[(3.) Whenever such consent has been refused, and the applicant to whom it has been refused intends to appeal against such refusal, such applicant shall give notice within 21 days of such refusal, in such manner as the Council may direct, to the owner or lessee of any building or land within 100 yards of the site of the building to which such refusal relates, that he intends to appeal from such refusal.]

[(4.) In the case of an appeal against the refusal of consent, any owner or lessee of any building or land within 100 yards of the site of the intended building may appear, and be heard, before the Tribunal of Appeal against any application to reverse or vary the refusal.]

L. C. C. Gen. P. Act, 1890, sec. 36 (3) re-enacted, verbally altered.

Heights of buildings in certain cases.

49. After the commencement of this Act no existing building (other than a church or chapel) on the side of a street formed or laid out after the seventh day of August, one thousand eight hundred and sixty-two, and of a less width than 50 feet, shall, without the con-

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sent of the Council, be raised, and no new building shall, without the consent of the Council, be erected on the side of any such street so that the height of such building shall exceed the distance of the front or nearest external wall of such building from the opposite side of such street:

The above is a re-enactment, verbally altered, of sec. 85 of the Met. Man. Am. Act, 1862.

For penalty (£20 a day) *see* sec. 200 (3) *b*.

Compare with sec. 47.

[Where such building is erected, or intended to be erected, on a corner plot, so as to abut upon more than one street, the height of the building shall (unless the Council otherwise consent) be regulated by the wider of such streets so far as it abuts or will abut upon such wider street, and also so far as it abuts, or will abut, upon the narrower of such streets to a distance of 40 feet from the wider street.]

Q. B. 1893 (Mathew, Wright and Collins, JJ.) Where a new building was erected at the corner of a street laid out before August 7, 1862, the return external wall of which abutted on a street laid out after that date, it was held that the height of the building could not exceed the limit laid down in the Met. Man. Am. Act, 1862, sec. 85, and that notwithstanding the house also abutted on the older street (*L. C. C.* v. *Lawrence*, (1893) 2 Q. B. 228; 69 L. T. 344; 62 L. J. M. C. 176; 57 J. P. 617; 41 W. R. 688; 9 T. L. R. 521).

This case subsequently came into Court again under proceedings for recovery of penalties against the owner (*L. C. C.* v. *Worley*, (1894) 2 Q. B. 826; 71 L. T. 489; 63 L. J. (M. C.) 218; 59 J. P. 263; 43 W. R. 11; 18 Cox C. C. 37; 10 R. 510).

This decision will now be superseded by the above paragraph inserted in this Act for that purpose.

[Provided that any building erected or raised before the commencement of this Act to a height to which no objection could have been taken under any law then in force, although exceeding the height provided in this section, may be re-erected to its existing height.]

[Nothing in this section shall affect the exercise of any powers conferred upon any railway company by any special Act of Parliament for railway purposes.]

Raising of buildings so as to comply with provisions of Act as to habitable rooms.

[**50.** Nothing in this Part of this Act contained shall prevent the raising of any building by increasing the height of the topmost storey thereof, to such an extent only as may be necessary for the purpose of bringing any habitable rooms constructed in such topmost storey into conformity with the provisions of this Act relating to habitable rooms.]

As to re-erection of certain working-class dwellings of local authority.

[**51.** Nothing in this Part of this Act contained shall prevent the re-erection on the same site, and of not greater dimensions, of any dwelling-house inhabited, or adapted to be inhabited, by persons of the working class, erected by a local authority previously to the passing of this Act.]

Saving for certain domestic buildings with stables in the rear.

[**52.** In the case of domestic buildings, and buildings erected or adapted for use as stables, such domestic buildings and such stable buildings being upon sites abutting in the front upon a street and in the rear upon mews, and such sites being of a depth of not more than 150 feet, measured from street to mews, the following provisions shall in certain cases have effect :—

If the stable buildings be limited to a depth of 50 feet, measured from the mews frontage, and to a height of 25 feet, measured from the level of the mews, and if the open space required for the domestic building under section 41 of this Act be provided between the domestic building and the stable building, the domestic building and the stable building may, for all other purposes of the said section, whether in one occupation or not, be deemed to be one domestic building with the rear abutting upon a street.]

See sec. 41 (1) iii. *h*.

If the depth of the site be more than 150 feet, or the stables be more than 25 feet high, the house and stable will be deemed to be separate buildings, and each will have to be separately provided with the required open space, *see* sec. 41.

PART VI [1]

CONSTRUCTION OF BUILDINGS

Structure and thickness of walls.

53. [Subject to any byelaws of the Council, made in pursuance of this Act] walls shall be constructed of the substances and in the manner, and of not less than the thickness [prescribed by this Act], or mentioned in the First Schedule to this Act.

Met. Bldg. Act, 1855 (repealed), sec. 12.

'Walls shall be constructed of such substances and of such thickness and in such manner as are mentioned in the first schedule annexed hereto.'

By Met. Bldg. Act, 1855, sec. 55, the thickness of walls could

[1] For penalties for failure to comply with any of the requirements of this Part (£20 a day), *see* sec. 200 (3) *c*, (11) *f*.

be altered by the Met. Board of Works with the consent of the Privy Council. S. 53

For power of the Council to make byelaws, *see* sec. 164 (1).

The District Surveyor has power to allow certain sheds to be constructed of such materials as he thinks fit ; *see* First Schedule, Prelim. 1.

For construction of walls of public buildings *see* sec. 78.

Rules as to recesses and openings.

54. (1.) Recesses and openings may be made in external walls, provided—

(*a*) That the backs of such recesses are not of less thickness than 8½ inches ; and,

(*b*) That the area of such recesses and openings [above the ground storey] do not, taken together, exceed one half of the whole area of the wall [above the ground storey] in which they are made.

Met. Bldg. Act, 1855, sec. 13, subsecs. 1 and 2 re-enacted, the words in brackets being added : the ground floor and basement are not now taken into account in calculating the openings, and may be entirely open, thus providing for shop fronts.

(2.) Recesses may be made in party walls, provided—

(*a*) That the backs of such recesses are not of less thickness than 13 inches ; and,

(*b*) That over every recess so formed an arch [of at least 2 rings of brickwork of the full depth of the recess be turned on every storey (except in the case of recesses formed for lifts), but where such recess does not exceed 5 inches in depth, corbelling in brick or stone may be substituted for the arching ; and,]

(*c*) That the area of such recesses do not, taken together, exceed one half of the whole area of the wall of the storey in which they are made ; and,

(*d*) That such recesses do not come within [13½ inches] of the inner face of the external walls.

(3.) An opening shall not be made in any party wall, except in accordance with the provisions of this Act in relation thereto.

[Provided that it shall be lawful for the Superintending Architect, on application made to him in accordance with any rules made in that behalf by the Council, to give consent in writing to any modification or relaxation of the requirements of this section with respect to the area of recesses and openings in any special cases where he may think proper.]

The word ' area,' as used in this section, shall mean the

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area of the vertical face or elevation of the wall or recess to which it refers.

Met. Bldg. Act, 1855, sec. 13 (repealed).

'Recesses may be made in party walls, provided that—

'(1) The backs of such recesses are not of less thickness than 13 inches; and

'(2) That every recess so formed is arched over, and that the area of such recesses do not, taken altogether, exceed one half of the whole area of the wall of the storey in which they are made; and

'(3) That such recesses do not come within 1 foot of the inner face of the external walls.

'But no opening shall be made in any party wall except in accordance with the rules of this Act.

'The word "area" as used in this section shall mean the area of the vertical face, or elevation, of the wall, pier, or recess to which it refers.'

Openings in party walls are dealt with in sec. 77 (3); *see* also note to sec. 58, subsec. (3). For window openings in the 'party walls' subdividing a warehouse, *see* note to sec. 75.

Rules as to timber in external walls.

55. All woodwork fixed in any external wall, except bressummers and storey posts under the same and frames of doors and windows of shops on the ground storey of any building, shall be set back 4 inches at the least from the external face of such wall. [But loophole frames and frames of doors and windows may be fixed flush with the face of any external wall.]

[Provided that it shall be lawful for the Council, by byelaw or otherwise, to exempt from the provisions of this section oak, teak or other wood, provided the work be constructed to the satisfaction of the District Surveyor.]

Met. Bldg. Act, 1855 (repealed), sec. 14.

'Loophole frames may be fixed within 1½ inch of the face of any external wall; but all other woodwork fixed in any external wall, except bressummers and storey posts under the same and frames of doors and windows of shops on the ground storey of any building, shall be set back 4 inches at the least from the external face of such wall.'

Door and window frames are now allowed flush with the face of the wall, instead of being recessed 4 inches.

See sec. 164 (1) for power to make byelaws.

For rules for woodwork of shop fronts, *see* sec. 73 (3), (4).

Rules as to bressummers.

56. (1.) Every bressummer [whether of wood or metal], shall have a bearing in the direction of its length of 4 inches at least at each end, upon a sufficient pier of brick or stone, or upon a timber or iron storey post fixed on a solid foundation, in addition to its bearing upon any party wall [or external wall; and the District

Surveyor shall have power in his discretion to require that every bressummer shall have such other storey posts, iron columns, stanchions, or piers of brick or stone, or corbels, as may be sufficient to carry the superstructure], and the ends of such bressummer, [if of wood], shall not be placed nearer to the centre line of the party walls than [4 inches]. S. 56

Met. Bldg. Act, 1855 (repealed), sec. 15 (1).
'Every bressummer must have a bearing in the direction of its length of 4 inches at the least at each end, upon a sufficient pier of brick or stone, or upon a timber or iron storey post fixed on a solid foundation, in addition to its bearing upon any party wall; and the ends of such bressummer shall not be placed nearer to the centre line of the party walls than 4½ inches.'
The District Surveyor is now for the first time given this discretionary power.
See also subsec. (5).

[(2.) At each end of every metallic bressummer a space shall be left equal to one quarter of an inch for every 10 feet, and also for any fractional part of 10 feet of the length of such bressummer to allow for expansion.]

(3.) A bond timber or woodplate shall not be built into any party wall, and the ends of any wooden beam or joist bearing on such walls shall be at least [4 inches] distant from the centre line of the party walls.

Met. Bldg. Act, 1855, sec. 15 (2), re-enacted.

(4.) Every bressummer bearing upon a party wall shall be borne by a templet or corbel of stone or iron tailed through at least half the thickness of the wall and of the full breadth of the bressummer.

Met. Bldg. Act, 1855, sec. 15 (3), re-enacted.

[(5.) The end of any timber not permitted to be placed in, or to have a bearing on, a party wall, may be carried on a corbel or templet of stone or iron or vitrified stoneware tailed into the wall to a distance of at least 8½ inches, or otherwise supported to the satisfaction of the District Surveyor.]

This subsection, being permissive, does not practically alter the previous law.

57. If any gutter, any part of which is formed of combustible materials, adjoin an external wall, such wall shall be carried up so as to form a parapet 1 foot at the least above the highest part of the gutter, and the

Height and thickness of parapets to external walls.

S. 57 thickness of the parapet so carried up shall be at least 8½ inches throughout.

Met. Bldg. Act, 1855, sec. 16, re-enacted, verbally altered. Compare with sec. 73 (1) as to eaves gutters.

Cases in which a wall to be deemed a party wall.

[**58.** In either of the following cases :—

(*a*) When a wall is, after the commencement of this Act, built as a party wall in any part ; or

(*b*) Where a wall built before or after the commencement of this Act becomes, after the commencement of this Act, a party wall in any part ;

the wall shall be deemed a party wall for such part of its length as is so used.]

This section follows the decision in the case of *Knight* v. *Pursell* (11 Ch. D. 412 ; 40 L. T. 391 ; 48 L. J. (Ch.) 395 ; 43 J. P. 622 ; 27 W. R. 817). It is apparently intended to limit the definitions of ' party wall ' for the purposes of this Part ; consequently, a wall standing on the land of both owners, but occupied by a building on one side only, need not comply with the requirements of this Part as to the construction of a party wall.

Q. B. 1890 (Mathew, J.) It has been held that a wall occupied for part only of its height by buildings on both sides, and for the remainder of its height by a building upon one side only, is a party wall for the whole of its height, including the part occupied upon one side only (*Williams* v. *Bull* ; ' Times,' February 15, 1890 ; ' Building News,' March 7, 1890 (not otherwise reported).

C. A. 1874 (James and Mellish, L.JJ.) It has been held, in a case under the Bristol Improvement Acts, 1840 and 1847, that where a wall, for a few feet from the ground, was the dividing wall between two houses, and above that was the enclosing wall of one house only, the lower part might be a party wall and the upper part an external wall to the house it enclosed (*Weston* v. *Arnold*, L. R. 8 Ch. App. 1084 ; 22 W. R. 284). This, however, was a Bristol case, and does not appear to be applicable to London law. Moreover it was not an action to enforce the observance of the Act, but an action between adjoining owners where one owner sought to compel the removal of an existing right of light. If, however, this decision ever had any force in London, as is sometimes claimed, it must now be overruled by the subsequent decision of *Williams* v. *Bull*, decided on the Met. Bldg. Act, 1855, and by secs. 59 and 101 of this Act. Section 101 allows the reconstruction of an existing ancient light in a party wall. It is therefore clear that the wall is a party wall for the full height, including the portion of the wall above the roof of the lower building, in which portion the window is ; the window being constructed *in the party wall*, the portion of the wall in which the window is constructed must be a party wall. Section 59 (1) of this Act requires the party wall to be carried up above the roof of the *highest* building adjoining.

Q. B. 1896 (Wright and Collins, J.J.) In the case of a ' party

wall' dividing compartments of a building of the warehouse class in order to comply with sec. 75 it was held that the wall ceased to be a 'party wall' 3 feet above the lower roof (*Drury* v. *Army & Navy Aux. Co*, (1896) 2 Q. B. 271; 60 J. P. 421; 74 L. T. 621; 65 L. J. (M. C.) 169; 44 W. R. 560); *see* note to sec. 75.

Height of party walls above roof.

59. (1.) Every party wall shall be carried up [of a thickness in a building of the warehouse class equal to the thickness of such wall in the topmost storey, and in any other building of 8½ inches] above the roof, flat or gutter of the highest building adjoining thereto, to such a height as will give a distance [(in a building of the warehouse class exceeding 30 feet in height) of at least 3 feet and (in any other building)] of 15 inches, measured at right angles to the slope of the roof, or 15 inches above the highest part of any flat or gutter, as the case may be.

(2.) Every party wall shall be carried up [of the thickness aforesaid] above any turret, dormer, lantern light or other erection of combustible materials fixed upon the roof or flat of any building within 4 feet from such party wall, and shall extend at the least 12 inches higher and wider on each side than such erection; and every party wall shall be carried up above any part of any roof opposite thereto, and within 4 feet therefrom.

Met. Bldg. Act, 1855 (repealed), sec. 17.

'Every party wall shall be carried up above the roof, flat, or gutter of the highest building adjoining thereto to such height as will give a distance of 15 inches, measured at right angles to the slope of the roof, or 15 inches above the highest part of any flat or gutter, as the case may be; and every party wall shall be carried up above any turret, dormer, lantern light or other erection of combustible materials, fixed upon the roof or flat of any building within 4 feet from such party wall, and shall extend, at the least, 12 inches higher and wider on each side than such erection; and every party wall shall be carried up above any part of any roof opposite thereto, and within 4 feet from such party wall.'

The height of the party parapet above the roof of warehouse buildings more than 30 feet high is now required to be 3 feet instead of 15 inches as heretofore.

Subsec. (1) is ambiguously worded; it is open to the contention that in the case of a warehouse building exceeding 30 feet high, covered with a flat, a parapet 15 inches high is all that is required; the second '15 inches' should have been omitted.

Rules as to chases in party walls.

60. In a party wall, a chase shall not be made wider than 14 inches, nor more than 4½ inches deep from the face of the wall, nor soas to leave less than 8½ inches in thickness at the back or opposite side thereof, and a

S. 60 chase shall not be made within a distance of 7 feet from any other chase on the same side of the wall [or within 13 inches from an external wall.]

[No chase shall be made in a wall of less thickness than 13 inches.]

Met. Bldg. Act, 1855, sec. 18, re-enacted, the words in brackets being added.

Rules as to construction of roofs.

61. (1.) The flat, gutter and roof of every building, and every turret, dormer, lantern, skylight or other erection placed on the flat or roof thereof, shall be externally covered with slates, tiles, metal or other incombustible materials; except [wooden cornices and barge boards to dormers, not exceeding 12 inches in depth], and the doors, door frames, windows and window frames of such dormers, turrets, lantern lights, skylights or other erections.

Met. Bldg. Act, 1855, sec. 19 (1), re-enacted, the words in brackets being added.

For provision as to overhanging eaves, *see* sec. 73 (1).

Q. B. 1892 (Mathew and Smith, JJ.) The material called 'Duroline,' composed of wire gauze coated with an oleaginous substance, was held not to be an incombustible material, and consequently not allowable as a roof covering (*Payne* v. *Wright*, (1892) 1 Q. B. 104; 65 L. T. 612; 61 L. J. (M. C.) 7; 40 W. R. 191; 56 J. P. 120). On appeal it was held (Esher, M. R., and Fry, L. J.) that the subject of the proceedings was 'a criminal cause or matter' and that the decision of Q. B. was final (66 L. T. 148; 61 L. J. (M. C.) 114; 56 J. P. 564; 36 S. J. 230).

[(2.) *Every building exceeding 30 feet in height, used wholly or in part as a dwelling-house or factory, and having a parapet, shall be provided either—*

(a) *with a dormer window, or a door opening on to the roof; or*

(b) *with a trap door furnished with a fixed or hinged step ladder leading to the roof; or*

(c) *with other proper means of access to the roof.*]

This subsection has been repealed by Lond. Bldg. Am. Act, 1905, and sec. 12 of that Act substituted.

(3.) The plane of the surface of the roof of a building of the warehouse class shall not incline from the external or party walls upwards at a greater angle than 47 degrees with the horizon. [Provided that this subsection shall not apply to towers, turrets or spires.]

Met. Bldg. Act, 1855, sec. 19 (2), re-enacted, verbally altered, the words in brackets being added: the expression 'building of

the warehouse class' is substituted for 'warehouse or other building used either wholly or in part for the purpose of trade or manufacture.' S. 61

[(4.) The plane of the surface of the roof of any other building shall not incline from the external or party walls upwards at a greater angle than 75 degrees with the horizon. Provided that this subsection shall not apply to towers, turrets or spires.]

Storeys in roofs.

[**62.** (1.) Not more than 2 storeys shall be constructed in the roof of any domestic building.

(2.) Any storey constructed in the roof of any domestic building, the upper surface of the floor of which storey is at a height of above 60 feet from the street level, shall be constructed of fire-resisting materials throughout.]

This section would not apply to an hotel exceeding 250,000 cubic feet, which is a 'public building,' not a 'domestic building.' *See* definitions, sec. 5 (26) and (27) and sec. 78.

Subsec. (2) would of course not apply to the necessary woodwork of doors, sashes, floors, &c.

Means of escape at top of high buildings.

[**63.** *Every new building exceeding* 60 *feet in height shall be provided, on the storeys the upper surface of the floor whereof is above* 60 *feet from the street level, with such means of escape in the case of fire for the persons dwelling or employed therein as can be reasonably required under the circumstances of the case; and no such storeys of such building shall be occupied until the Council shall have issued a certificate that the provisions of this section have been complied with in relation thereto.*]

The Council have power to make byelaws on this subject, *see* sec. 164 (1).

This section has been repealed by Lond. Bldg. Am. Act, 1905, and sec. 7 of that Act substituted

Rules as to chimneys and flues.

64. (1.) Chimneys built on corbels of brick, stone or other incombustible materials may be [erected] if the work so corbelled out do not project from the wall more than the thickness of the wall [measured immediately below the corbel]; but all other chimneys shall be built on solid foundations, and with footings similar to the footings of the wall against which they are built, [unless they are carried upon iron girders with direct bearings upon party, external or cross walls to the satisfaction of the District Surveyor.]

Met. Bldg. Act, 1855 (repealed), sec. 20 (1).

'Chimneys built on corbels of brick, stone or other incombustible materials may be introduced above the level of the ceiling

S. 64 of the ground storey if the work so corbelled out does not project from the wall more than the thickness of the wall, but all other chimneys shall be built on solid foundations, and with footings similar to the footings of the wall against which they are built.'

(2.) Chimneys and flues having proper soot doors of not less than [40 square inches] may be constructed at any angle, but in no other case shall any flue be inclined [at a less angle than 45 degrees to the horizon], and every angle shall be properly rounded :

[All soot doors shall be at least 15 inches distant from any woodwork.]

Met. Bldg. Act, 1855 (repealed), sec. 20 (2).

'Chimneys and flues having proper doors of not less than 6 inches square may be constructed at any angle, but in every other chimney or flue the angles shall be constructed of an obtuseness of not less than 130 degrees, and shall be properly rounded.'

Openings in flues for ventilating valves must not be nearer than 12 inches to any woodwork; *see* sec. 64 (20) *c*.

(3.) An arch of brick or stone, or a bar of wrought iron of sufficient strength, shall be built over the opening of every chimney to support the breast thereof ; and if the breast project more than [4 inches] from the face of the wall, and the jamb on either side be of less width than 17½ inches, the abutments shall be tied in by an iron bar or bars of sufficient strength, turned up and down at the ends, and built into the jambs for at least 8½ inches on each side.

Met. Bldg. Act, 1855, sec. 20 (3) re-enacted.

[(4.) A flue shall not be adapted to or used for any new oven, furnace, cockle, steam-boiler or close fire used for any purpose of trade or business, or to or for the range or cooking apparatus of any hotel, tavern or eating-house, unless the flue be surrounded with brickwork at least 8½ inches thick from the floor on which such oven, furnace, cockle, steam-boiler or close fire is situate, to the level of the ceiling of the room next above the same.]

[(5.) A flue shall not be used in connection with a steam-boiler or hot-air engine unless the flue is at least 20 feet in height, measured from the level of the floor on which such engine is placed.]

(6.) The inside of every flue [and also the outside where passing through any floor or roof, or behind or against any woodwork] shall be rendered, pargeted or lined with fire-resisting piping [of stoneware].

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Met. Bldg. Act, 1855 (repealed), sec. 20 (4).
'The inside of every flue, and the back or outside, unless forming part of the outer face of an external wall, must be rendered, pargeted or lined with fireproof piping.'

[(7.) The position and course of every flue shall be distinguished on the outside of the work, as it is carried up, by outline marks in some durable manner; except when the exterior face of the flue forms part of the outer face of an external wall not likely to be built against.]

(8.) The jambs of every fireplace opening shall be at least 8½ inches wide on each side of the opening thereof.

Met. Bldg. Act, 1855, sec. 20 (5), re-enacted.

(9.) The breast of every chimney and [the brickwork surrounding every smoke flue] shall be at least 4 inches in thickness.

Met. Bldg. Act, 1855 (repealed), sec. 20 (6).
'The breast of every chimney, and the front, withe, partition, and back of every flue, must at the least be 4 inches in thickness.'

(10.) The back of every fireplace opening in a party wall from the hearth up to the height of 12 inches above the mantel shall be at least 8½ inches thick.

Met. Bldg. Act, 1855 (repealed), sec. 20 (7).
'The back of every chimney opening, from the hearth up to the height of 12 inches above the mantel, must at the least be 8½ inches thick if in a party wall, or 4½ inches thick if not in a party wall.'

(11.) The thickness of the upper side of every flue, when its course makes with the horizon an angle of less than 45 degrees, shall be at least 8½ inches.

Met. Bldg. Act, 1855, sec. 20 (8), re-enacted.

(12.) Every chimney shaft [or smoke flue] shall be carried up in brick or stone work at least 4 inches thick throughout, to a height of not less than 3 feet above the roof, flat or gutter adjoining thereto, measured at the highest point in the line of junction with such roof, flat or gutter.

Met. Bldg. Act, 1855, sec. 20 (9), re-enacted.

[(13.) The highest 6 courses of every chimney stack or shaft shall be built in cement.]

(14.) The brickwork or stonework of any chimney shaft, except that of the furnace of any steam engine, brewery, distillery or manufactory, shall not be built higher above the roof, flat or gutter adjoining thereto

S. 64 than a height equal to 6 times the least width of such chimney shaft at the level of such highest point in the line of junction, unless such chimney shaft is built with, and bonded to, another chimney shaft not in the same line with the first, or otherwise rendered secure.

Met. Bldg. Act, 1855, sec. 20 (10), re-enacted.

(15.) There shall be laid level with the floor of every storey, before the opening of every chimney, a slab of stone, slate or other incombustible substance, at the least [6 inches longer on each side] than the width of such opening, and at the least 18 inches wide in front of the breast thereof.

Met. Bldg. Act, 1855 (repealed), sec. 20 (11).
'There shall be laid, level with the floor of every storey, before the opening of every chimney, a slab of stone, slate, or other incombustible substance, at the least 12 inches longer than the width of such opening, and at the least 18 inches wide in front of the breast thereof.'

(16.) On every floor, except the lowest floor, such slab shall be laid wholly upon stone or iron bearers, or upon brick trimmers [or other incombustible materials]; but on the lowest floor it may be bedded on [concrete covering the site, or on solid materials placed on such concrete.]

Met. Bldg. Act, 1855 (repealed), sec. 20 (12).
'On every floor, except the lowest floor, such slab shall be laid wholly upon stone or iron bearers, or upon brick trimmers; but on the lowest floor it may be bedded on the solid ground.'

(17.) The hearth or slab of every chimney shall be bedded wholly on brick, stone or other incombustible substance, and shall [together with such substance] be solid for a thickness of [6 inches] at least, beneath the upper surface of such hearth or slab.

Met. Bldg. Act, 1855 (repealed), sec. 20 (13).
'The hearth or slab of every chimney shall be bedded wholly on brick, stone or other incombustible substance, and shall be solid for a thickness of 7 inches at the least beneath the upper surface of such hearth or slab.'

(18.) A flue shall not be built [in or] against any party structure, unless it be surrounded with new brickwork at least 4 inches in thickness [properly bonded].

Met. Bldg. Act, 1855 (repealed), sec. 20 (14).
'No flue shall be built against any party structure, unless a withe is properly secured thereto, at the least 4 inches in thickness.'

Ch. 1897 (North, J.). The expression 'new brickwork' means brickwork new at the time of construction of the flue and not sound work previously existing (*Aerated Bread Co.* v. *Shepherd*; 'Builder,' March 27, 1897, otherwise unreported). S. 64

(19.) A chimney breast or shaft, built with or in any party wall, shall not be cut away unless the District Surveyor certifies that it can be done without injuriously affecting the stability of any building.

Met. Bldg. Act, 1855, sec. 20 (15), re-enacted.

(20.) A chimney shaft, jamb, breast or flue shall not be cut into, except for the purpose of repair or doing some one or more of the following things :

(*a*) Letting in, or removing, or altering flues, pipes or funnels, for the conveyance of smoke, hot air or steam, or letting in, removing, or altering smoke jacks ;

(*b*) Forming openings for soot doors, such openings to be fitted with a close iron door and frame ;

(*c*) Making openings for the insertion of ventilating valves, subject to the following restriction, that an opening shall not be made nearer than 12 inches to any timber or combustible substance.

Met. Bldg. Act, 1855, sec. 20 (16), re-enacted.

(*b*) Soot doors must be at least 15 inches distant from any woodwork; *see* sec. 64 (2).

(21.) Timber or woodwork shall not be placed—

(*a*) In any wall or chimney breast nearer than 12 inches to the inside of any flue or chimney opening ;

(*b*) Under any chimney opening within [10 inches] from the upper surface of the hearth of such chimney opening ;

(*c*) Within 2 inches from the face of the brickwork or stonework about any chimney or flue, where the substance of such brickwork or stonework is less than $8\frac{1}{2}$ inches thick, unless the face of such brickwork or stonework is rendered.

Met. Bldg. Act, 1855, sec. 20 (17), re-enacted, with the exception that 10 inches is substituted for 18 inches in paragraph (*b*) for distance of woodwork under a chimney opening.

(22.) Wooden plugs shall not be driven nearer than 6 inches to the inside of any flue or chimney opening,

S. 64 nor any iron holdfast, or other iron fastening, nearer than 2 inches thereto.

Met. Bldg. Act, 1855, sec. 20 (17) (last clause), re-enacted.

Furnace chimney shafts.

[**65.** Unless the Council otherwise permit, every chimney shaft for the furnace of a steam engine, brewery, distillery or manufactory shall be constructed in conformity with the following rules :—

(1.) Every shaft shall be carried up throughout in brickwork and mortar of the best quality, and, if detached, shall taper gradually from the base to the top of the shaft at the rate of at least $2\frac{1}{2}$ inches in 10 feet of height :

(2.) The thickness of brickwork at the top of the shaft, and for 20 feet below the top, shall be at least $8\frac{1}{2}$ inches, and shall be increased at least one half brick for every additional 20 feet, measured downwards :

(3.) Every cap, cornice, pedestal, plinth, string course or other variation from plain brickwork, shall be provided as additional to the thickness of brickwork required under this Act, and every cap shall be constructed and secured to the satisfaction of the District Surveyor :

(4.) The foundation of the shaft shall always be made, to the satisfaction of the District Surveyor, on concrete or other sufficient foundation :

(5.) The footings shall spread all round the base by regular offsets to a projection equal to the thickness of the enclosing brickwork at the base of the shaft, and the space enclosed by the footings shall be filled in solid as the work progresses :

(6.) The width of the base of the shaft, if square, shall be at least one-tenth of the proposed height of the shaft; or, if the same is round, or of any other shape, then one-twelfth of the height :

(7.) Any fire bricks built inside the lower portion of the shaft shall be provided as additional to, and independent of, the thickness of brickwork prescribed by these rules, and shall not be bonded therewith.]

Chimney shafts were formerly dealt with under sec. 56 of Met. Bldg. Act, 1855, as buildings to which the rules of the Act did not apply, and the County Council was required to sanction each chimney shaft before it could be erected.

For provisions as to the consumption of smoke, *see* the Public Health (London) Act, 1891, secs. 23 & 24.

Rules as to close fires and pipes for conveying vapour &c.

66. (1.) The floor under every oven, copper, steam-boiler or stove [which is not heated by gas], and the floor around the same, shall for a space of 18 inches be formed of materials of an incombustible and non-conducting nature [not less than 6 inches thick].

Met. Bldg. Act, 1855 (repealed), sec. 21 (1).

'The floor under every oven or stove used for the purpose of trade or manufacture, and the floor around the same for a space of 18 inches, shall be formed of materials of an incombustible and non-conducting nature.'

This subsection would not apply to ordinary chimney openings, which are dealt with in sec. 64 (15), (16) and (17).

A special fee is chargeable by the District Surveyor in respect of this subsection; *see* Third Sched., Part III.

(2.) A pipe for conveying smoke [or other products of combustion], heated air, steam or hot water shall not be fixed against any building on the face adjoining to any street or public way.

Met. Bldg. Act, 1855, sec. 21 (2), re-enacted.

(3.) A pipe for conveying smoke or other products of combustion shall not be fixed nearer than 9 inches to any combustible materials.

Met. Bldg. Act, 1855, sec. 21 (5), re-enacted.

(4.) A pipe for conveying heated air or steam shall not be fixed nearer than 6 inches to any combustible materials.

Met. Bldg. Act, 1855, sec. 21 (3), re-enacted.

(5.) A pipe for conveying hot water shall not be placed nearer than 3 inches to any combustible materials.

Met. Bldg. Act, 1855, sec. 21 (4), re-enacted.

Provided that the restrictions imposed by this section with respect to the distance at which pipes for conveying hot water or steam may be placed from any combustible materials shall not apply in the case of pipes for conveying hot water or steam at low pressure.

[For the purposes of this section hot water or steam shall be deemed to be at low pressure when provided with a free blow off.]

Met. Man. & Bldg. Am. Act, 1882, sec. 16, re-enacted, the definition of 'low pressure' being added.

A special fee is chargeable by the District Surveyor in respect of fixing pipes for heating at high pressure; *see* Third Sched., Part III.

Floors above furnaces and ovens.

[**67.** The floor over any room or enclosed space in which a furnace is fixed, and any floor within 18 inches from the crown of an oven, shall be constructed of fire-resisting materials.]

There is no explanation as to how the measurement is to be taken; presumably no woodwork is to be allowed within 18 inches of the crown of the oven.

Rules as to accesses and stairs in certain buildings.

68. In every public building, and in every other building of more than 125,000 feet in cubical extent, and [which is constructed or adapted to be] used as a dwelling-house for separate families, the floors of the lobbies, corridors, passages and landings, and also the flights of stairs, shall be of [fire-resisting] material, and carried by supports of a [fire-resisting] material.

Met. Bldg. Act, 1855, sec. 22, re-enacted, the words in brackets being added and the word 'fire-resisting' being substituted for 'fire-proof.'

See Lond. Bldg. Am. Act, 1905, First Schedule, II. (2) for 'fire-resisting' materials in the case of staircases.

For construction of staircases and corridors of public buildings *see* sec. 80, also Regulations of the Council for the Construction of Theatres &c., made under the Met. Man. & Bldg. Am. Act, 1878, sec. 12.

Ventilation of staircases.

[**69.** (1.) In every building constructed or adapted to be occupied in separate tenements by more than two families, the principal staircase used by the several families in common shall be ventilated upon every storey above the ground storey by means of windows or skylights opening directly into the external air, or shall be otherwise adequately ventilated.]

[(2.) The principal staircase in every building, being a dwelling-house, and not subject to the provisions of subsection 1 of this section, shall be ventilated by means of a window or skylight opening directly into the external air.]

Rules as to habitable rooms.

70. (1.) (*a*) Every habitable room, except rooms wholly or partly in the roof, shall be in every part at least [8 feet 6 inches] in height from the floor to the ceiling;

Met. Bldg. Act, 1855 (repealed), sec. 23 (1).

'Every habitable room hereafter constructed in any building, except rooms in the roof thereof and cellars and underground rooms, shall be in every part at the least 7 feet in height from the floor to the ceiling.'

Compare First Sched., Prelim. 6.

(*b*) Every habitable room [wholly or partly] in the

roof of any building shall be at least [8 feet] in height from the floor to the ceiling, throughout not less than one-half the area of such room ; S. 70

Met. Bldg. Act, 1855 (repealed), sec. 23 (2).
'Every habitable room hereafter constructed in the roof of every building shall be at the least 7 feet in height from the floor to the ceiling, throughout not less than one half the area of such room.'

[(*c*) Every habitable room shall have one or more windows opening directly into the external air, or into a conservatory, with a total superfices clear of the sash frames, free from any obstruction to the light, equal to at least one-tenth of the floor area of the room, and so constructed that a portion equal to at least one-twentieth of such floor area can be opened, and the opening in each case shall extend to at least 7 feet above the floor level ; but a room having no external wall, or a room constructed wholly or partially in the roof, may be lighted through the roof by a dormer window with a total superfices, clear of the sash frames, free from any obstruction to the light, equal to at least one-twelfth of the floor area of the room, and so constructed that a portion of such window equal to at least one twenty-fourth of such floor area can be opened, and the opening in each case shall extend to at least 5 feet above the floor level ; or such room may be lighted by a lantern light, of which a portion equal to at least one-twentieth of the floor area can be opened.]

No consideration appears to have been given to rooms having an external wall in which no window is possible, such as a room built over the yard in the rear of a house where the external walls stand on the boundary of the site. Any windows in these walls would obtain their light from the adjoining owner's yard, and could therefore not be constructed ; yet, this not being 'a room having no external wall,' or 'constructed, wholly or partially, in the roof,' is required to be lit by a window.

By the byelaws made by the Council under the Public Health (Lond.) Act, 1891, sec. 39 (1), every water-closet must be provided with a window, so that at least 2 square feet in area shall be made to open directly into the external air.

[(*d.*) In a building, being a dwelling-house, every basement room having a wooden floor, other than a floor constructed of solid wood bedded

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on concrete, shall have a sufficient space between the ground and the floor surfaces to admit of ventilation by means of air-bricks or otherwise ;]

This clause as worded would not apply to the ground floor with no basement under ; *see* definition of ' basement.'

[(*e*) Every habitable room constructed over a stable shall be separated from the stable by a floor which shall have, in every part not occupied by a joist or girder, a layer of concrete pugging of good quality, or of other solid construction, 3 inches in thickness, finished smooth upon the upper surface and properly supported ; and the under side of such floor shall be ceiled with lath and plaster of good quality or of other solid construction ;

Any staircase or gallery or structure by which such rooms shall be approached shall be separated from any stable to which it may adjoin by a brick wall not less than 9 inches in thickness ;]

Presumably as openings are not prohibited in the wall above mentioned they are permitted.

A special fee is chargeable by the District Surveyor in respect of this clause ; *see* Third Sched., Part III.

[(*f*) Nothing in this Act shall affect, alter or repeal any of the provisions of the Public Health (London) Act, 1891, relating to underground rooms.]

See Public Health (Lond.) Act, 1891, secs. 96, 97 & 98.

(2.) If any person knowingly suffer any room, constructed after the commencement of this Act, that is not constructed in conformity with this section, to be inhabited, he shall, in addition to any other liabilities to which he may be subject, be liable to a penalty for every day during which such room is inhabited.

A similar provision was made in Met. Bldg. Act, 1855, sec. 23 (3).

For penalty (40*s*. and 40*s*. a day), *see* sec. 200 (11) *j*.

Rules as to party arches over public ways.

71. (1.) Every party arch [or party floor], and every arch or floor over any public way or any passage leading [through or under a building or part of a building] to premises in other occupation, shall be formed of brick, stone or other incombustible materials.

(2.) If an arch of brick or stone be used it shall be

of the thickness of [8½ inches] at least, [and the centre of such arch shall be higher than the springing at the rate of 1 inch at least for every foot and also for any fractional part of a foot of span.] S. 71

(3.) If an arch or floor of other incombustible material be used, it shall be constructed in such manner as may be approved by the District Surveyor.

Met. Bldg. Act, 1855 (repealed), sec. 24.

'Every party arch, and every arch or floor over any public way or any passage leading to premises in other occupation, shall be formed of brick, stone or other incombustible materials. If an arch of brick or stone is used, it shall, in cases where its span does not exceed 9 feet, be of the thickness of 4½ inches at the least, but when its span exceeds 9 feet, be of the thickness of 8½ inches at the least: If an arch or floor of iron or other incombustible material is used, it shall be constructed in such manner as may be approved by the District Surveyor.'

Q. B. 1901 (Grantham and Kennedy, JJ.) Where the local authority within the meaning of the Electric Lighting Acts, 1882 & 1888, had obtained a provisional order, confirmed by statute, under which they had constructed boxes in the street in connection with the supply of electric current, it was held that such boxes must comply with this section (*Whitechapel B. W.* v. *Crow*, 84 L. T. 595; 65 J. P. 549).

K. B. 1903 (Alverstone, C.J., Wills and Channell, JJ.) The above quoted decision was followed in the case of a limited liability company (*Charing Cross and Strand Electricity Supply Corpn.* v. *Woodthorpe*, 67 J. P. 286; 88 L. T. 772; 1 L. G. R. 551).

Ch. 1903 (Joyce, J.) For the right to construct vaults under streets laid out upon land acquired under Act of Parliament for the construction of a street, *see Mappin Bros.* v. *Liberty & Co.*, (1903) 1 Ch. 118; 67 J. P. 91; 87 L. T. 523; 72 L. J. (Ch.) 63.

Rules as to arches under public ways.

72. (1.) Every arch [or other construction under any passage leading to premises in other occupation], or under any public way [or intended public way], shall be formed of brick, stone or other incombustible materials.

(2.) If an arch of brick or stone be used, it shall—

(*a*) Where its span does not exceed 10 feet, be of the thickness of 8½ inches at least;

(*b*) Where its span [exceeds 10 but] does not exceed 15 feet, be of the thickness of 13 inches at least; and

(*c*) Where its span exceeds 15 feet, be of such thickness as may be approved by the District Surveyor.

(3.) If an arch or other construction of other incombustible material be used, it shall be constructed in such manner as may be approved by the District Surveyor.

Met. Bldg. Act, 1855, sec. 25, re-enacted, the words in brackets being added.

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Vaults under any street can only be made with the consent of the Borough Council; *see* Met. Man. Act, 1855, sec. 101; or in the City with the consent of the Corporation; *see* City of London Sewers Act, 1848 (11 & 12 Vict. cap. 163), sec. 125.

Rules as to projections.

73. The following provisions shall (except with the consent of the Council) apply to projections from buildings :—

(1.) Every coping, cornice, [string course], facia, window dressing, portico, [porch], balcony, verandah, balustrade, [outside landing, outside stairs and outside steps], and architectural projection or decoration whatsoever, and also the eaves, [barge boards] and cornices to any overhanging roof (except the cornices and dressings to the window fronts of shops, and except the eaves, [barge boards] and cornices to [detached and semi-detached dwelling-houses, and to other dwelling-houses in which the party walls are corbelled out so as to project 4 inches beyond such eaves, barge boards or cornices]) shall be of brick, tile, stone, artificial stone, slate, cement or other fireproof material :

[For the purpose of this subsection a pair of semi-detached houses shall be deemed to be one building.]

Met. Bldg. Act, 1855 (repealed), sec. 26.

The following rules shall be observed as to projections :—

'Every coping, cornice, facia, window dressing, portico, balcony, verandah, balustrade, and architectural projection or decoration whatsoever, and also the eaves or cornices to any overhanging roof (except the cornices and dressings to the window fronts of shops, and except the eaves and cornices to detached and semi-detached dwelling-houses distant at least 15 feet from any other building, and from the ground of any adjoining owner) shall, unless the Metropolitan Board otherwise permit, be of brick, tile, stone, artificial stone, slate, cement or other fireproof material.'

It is doubtful whether the barge boards, eaves and cornices (if of wood) of semi-detached houses are allowed to adjoin, as by sec. 59 (2), every party wall must be carried up above any part of any roof within 4 feet of the party wall, and by sec. 59 (1), 15 inches above the slope of the roof; this appears to require that the party wall shall be corbelled out as far as the face of the woodwork.

There is no definition of 'fireproof' material in the Act. Evidently 'fire-resisting' is intended here, as that term has in all other cases been substituted for the term 'fireproof' in the Met. Bldg. Act, 1855.

The First Schedule, II. (5) of Lond. Bldg. Am. Act, 1905, specifies

what are to be considered 'fire-resisting' materials in the case of certain of these projections. S. 73

[(2.) Every balcony, cornice or other projection shall be tailed into the wall of the building, and weighted or tied down to the satisfaction of the District Surveyor; and no cornice shall exceed in projection 2 feet 6 inches over the public way.]

(3.) In a street or way of a width [not greater than] 30 feet, any shop front may project beyond the external wall of the building to which it belongs, to any extent not exceeding 5 inches, and any cornice of any such shop front may project to any extent not exceeding 13 inches;

and in any street or way of a width greater than 30 feet, any shop front may project to any extent not exceeding 10 inches; and any cornice of any such shop front may project to any extent not exceeding 18 inches;

[beyond the external wall of the building to which it belongs, over the ground of the owner of the building,]

[Provided that this provision shall not authorise in any such street the projection of any part of any such shop front, other than the cornice, on or over the public way, or any land to be given up to the public way.]

Met. Bldg. Act 1855 (repealed), sec. 26 (2).

'In streets or alleys of a less width than 30 feet, any shop front may project beyond the external wall of the building to which it belongs for 5 inches and no more, and any cornice of any such shop front may project 13 inches and no more; and in any street or alley of a width greater than 30 feet, any shop front may project 10 inches and no more, and the cornice may project for 18 inches from the external walls, but no more.'

Q. B. 1889 (Hawkins and Denman, JJ., Coleridge, C.J., dissenting). Where the stone pilasters of 5 shops had been projected to the extent of 6 inches on the public way it was held that the corresponding section of Met. Bldg. Act, 1855, did not authorise such projections over the public way, and that that Act did not impliedly repeal the provisions of Michael Angelo Taylor's Act (57 Geo. III. cap. 29, sec. 72) (*St. Mary, Islington, Vestry* v. *Goodman*, 23 Q. B. D. 154; 61 L. T. 44; 54 J. P. 52; 58 L. J. (M. C.) 122).

Q. B. 1891 (Coleridge, C.J., Charles, Mathew, Cave and Smith, JJ.) Where six pilasters, part of shop fronts, had been erected projecting about 9 inches over the footway of a street more than 30 feet wide, it was held (overruling the decision above quoted) that the corresponding section of the Met. Bldg. Act, 1855, permitted such extension not only over the owner's own soil,

S. 73 but also over the public footway, and that sec. 72 of Michael Angelo Taylor's Act was impliedly repealed (*Fortescue* v. *St. Matthew, Bethnal Green, Vestry*, (1891) 2 Q. B. 170 ; 65 L. T. 256 ; 55 J. P. 758 ; 60 L. J. (M. C.) 172).

In consequence of this latter decision the law has been amended so that the cornice is now the only part allowed to project over the public way. There is even now some ambiguity as to whether such projection may be over the public way or over the ground of the owner.

[(4.) No part of the woodwork of any shop front shall be fixed higher than 25 feet above the level of the pavement of the public footpath in front of the shop.]

No part of the woodwork of any shop front shall be fixed nearer than [4 inches to the centre of the party wall where the adjoining premises are separated by a party wall, or nearer than 4 inches to the face of the wall of the adjoining premises where the adjoining premises have a separate wall], unless a pier or corbel of stone, brick, or other [incombustible] material [4 inches] wide at the least be placed as high as such woodwork, and projecting [throughout] an inch at the least in front thereof [between such woodwork and the centre of the party wall, or the separate wall, as the case may be :]

Met. Bldg. Act, 1855 (repealed), sec. 26 (3).

'No part of the woodwork of any shop front shall be fixed nearer than 4½ inches from the line of junction of any adjoining premises, unless a pier or corbel of stone, brick, or other fireproof material, 4½ inches wide at the least, is built or fixed next to such adjoining premises as high as such woodwork is fixed, and projects an inch at the least in front of the face thereof.'

[(5.) In a street of a width not less than 40 feet ;

or, to a building the front wall of which is not at a less distance than 40 feet from the opposite boundary of the street ;

bay windows to dwelling-houses may be erected on land belonging to the owner of the building, notwithstanding the provisions of this Act relating to buildings beyond the general line of buildings in streets, provided that such bay windows—

(*a*) Do not exceed 3 storeys in height above the level of the footway ;

(*b*) Do not project more than 3 feet from the main wall of the building to which they are attached ;

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(*c*) Do not project, in any part, within the prescribed distance of the centre of the roadway ;

(*d*) Are in no part nearer to the centre of the nearest party wall than the extreme amount of their projection from the main wall of the building to which they are attached ;

(*e*) Do not, taken together, exceed in width three-fifths of the frontage of the building towards the street to which such bays face ;

(*f*) Are not constructed upon any part of the public way, or upon any land agreed to be given up to the public way ; and

(*g*) Shall not be used for trade purposes :

Bay windows to which the foregoing rules do not apply shall not be erected without the consent of the Council after consulting the local authority.]

Previously all projections beyond the general line of buildings required the special sanction of the Council.

The above restrictions would not apply to bay windows attached to buildings erected in new streets where no general line of buildings had been set up ; nor would they apply to bay windows attached to buildings where the general line of buildings is not less than 50 feet from the highway, unless the bays themselves approached nearer than 50 feet to the highway ; *see* sec. 22.

These projecting bay windows are not now required to be constructed with piers of brick or stone ; as, by sec. 55, window frames may now be fixed flush with the face of the external wall in which they are fixed, and bay windows are not included in the list of projections in sec. 73 (1) that are to be constructed of fireproof materials.

[(6.) In a street of a width not less than 40 feet,

or to a building the front wall of which is not at a less distance than 40 feet from the opposite boundary of the street,

projecting oriel windows or turrets may be constructed, provided that—

(*a*) No part of any such projection extend more than 3 feet from the face of the front wall of the building, or more than 12 inches over the public way ;

(*b*) No part of any such projection be less than 10 feet above the level of the footway of the street ;

(*c*) No part of any such projection (where it

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overhangs the public way) be within a distance of 4 feet of the centre of the nearest party wall ;

(*d*) On no floor shall the total width of any such projections taken together exceed three-fifths of the length of the wall of the building on the level of that floor ;

(*e*) Every such projection be constructed to the satisfaction of the District Surveyor, or, in the event of disagreement, to the satisfaction of the Superintending Architect, whose determination shall be final :

Oriel windows or turrets to which the foregoing rules do not apply shall not be erected without the consent of the Council after consulting the local authority.]

The notes to the last subsection apply equally to this.

For special fees payable to the District Surveyor for oriel windows, *see* Third Sched., Part III.

(7.) The roof, flat or gutter of every building, and every balcony, verandah, shop front or other [similar] projection [or projecting windows] shall be so arranged and constructed, and so supplied with gutters and pipes, as to prevent the water therefrom from dropping upon or running over any public way.

Met. Bldg. Act, 1855, sec. 26 (4), re-enacted, the words in brackets being added.

(8.) Except in so far as is permitted by this section in the case of shop fronts [and projecting windows], and with the exception of water pipes and their appurtenances, copings, [string courses], cornices, facias, window dressings and other like architectural decorations, no projection from any building shall extend beyond the general line of buildings in any street, except with the permission of the Council [after consulting the local authority.]

Met. Bldg. Act, 1855, sec. 26 (5), re-enacted, the words in brackets being added.

By Met. Man. Act, 1855, certain projections may, if an annoyance and obstruction to a street, be ordered by the Borough Council to be removed.

Q. B. 1901 (Bruce and Phillimore, JJ.) A wooden case with glass front for advertising purposes, fixed to the front of a building on iron brackets, was held not to come within this subsection,

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as the whole sec. 73, including this subsection, applies only to projections actually forming part of the building from which they project (*Hull* v. *L. C. C.*, (1901) 1 K. B. 580 ; 84 L. T. 160 ; 65 J. P. 309 ; 49 W. R. 396 ; 70 L. J. (K. B.) 364 ; 17 T. L. R. 270 ; 1 A. L. R. 63). Compare *L. C. C.* v. *Illuminated Advertisement Co.*, where doubts were expressed as to the correctness of this decision ; *see* note to sec. 22.

K. B. 1903 (Alverstone, C.J., Wills and Channell, JJ.) It has been held that the removal of reflectors hung out over the public way cannot be enforced under sec. 65 of Michael Angelo Taylor's Act (57 Geo. III. cap. 29) (*Winsborrow* v. *Lond. Joint Stock Bank, Ltd.*, 67 J. P. 289 ; 88 L. T. 803 ; 1 L. G. R. 531).

Separation of buildings.

74. (1.) Every building shall be separated, either by an external wall, or by a party wall [or other proper party structure], from the adjoining building [(if any) and from each of the adjoining buildings (if more than one).]

Met. Bldg. Act, 1855 (repealed), sec. 27 (1).

'Every building shall be separated by external or party walls from any adjoining building.'

'Proper party structure' is not specifically defined in the Act, but 'party structure,' by sec. 5 (20), includes a floor, which would therefore be a 'party floor,' and as such must be constructed, in accordance with sec. 71 of 'brick, stone or other incombustible material.' The First Schedule II. (4) of Lond. Bldg. Am. Act, 1905, specifies what are to be considered 'fire-resisting' materials for floors.

Ch. 1903 (Eady, J.) In an action for breach of a covenant not to erect more than one house on each plot of an estate, where two separate and distinct tenements without internal communication were proposed to be constructed under one roof, one on the ground floor and one on the first floor, each with its own front door, which were to be placed side by side under a common archway and recessed porch facing the street ; it was held that such an arrangement constituted two houses divided horizontally, and none the less two houses, because the division was not vertical, and was therefore a breach of the covenant (*Ilford Estate Co.* v. *Jacobs*, (1903) 2 Ch. 523 ; 89 L. T. 295 ; 72 L. J. (Ch.) 699).

[(2.) In every building exceeding 10 squares in area, used in part for purposes of trade or manufacture and in part as a dwelling-house, the part used for the purposes of trade or manufacture shall be separated from the part used as a dwelling-house by walls and floors constructed of fire-resisting materials ; and all passages, staircases, and other means of approach to the part used as a dwelling-house shall be constructed throughout of fire-resisting materials. The part used for purposes of trade or manufacture shall (if extending to more than 250,000 cubic feet) be subject to the provisions of

S. 74 this Act relating to the cubical extent of buildings of the warehouse class :

Provided, that there may be constructed in the walls of such staircases and passages such doorways as are necessary for communicating between the different parts of the building, and there may be formed in any walls of such building openings fitted with fire-resisting doors.]

This subsection appears to require a separate entrance to the dwelling-house portion.

See sec. 75 for the division of the warehouse portion.

The First Schedule II. (4) of Lond. Bldg. Am. Act, 1905, specifies what materials are to be considered 'fire-resisting' for floors, II. (1) for doors, II. (2) for staircases and landings, II. (6) for enclosures of staircases and passages.

Q. B. 1899 (Day and Lawrence, JJ.) A public-house with dwelling-rooms over has been held not to be a building 'used in part for the purposes of trade or manufacture, and in part as a dwelling-house' within the section, because a licensed victualler is at liberty to carry on the business of a licensed victualler throughout the building (*Carritt* v. *Godson*, (1899) 2 Q. B. 193 ; 80 L. T. 771 ; 63 J. P. 644 ; 68 L. J. (Q. B.) 799 ; 19 Cox C. C. 355).

C. A. 1901 (Smith, M.R., Vaughan Williams and Stirling, L.JJ., reversing K. B. Alverstone, C.J., and Lawrence, J.) Where a building was proposed to be erected for a beerhouse, the trade being carried on in the ground floor and basement, the two upper floors being used by the licensee as a dwelling for himself and family, and the magistrate had found as a fact that the building was intended to be used in part for the purposes of trade and in part as a dwelling-house, but considering himself bound by the authority of *Carritt* v. *Godson*, *supra*, held that the building did not fall within the subsection, and the Divisional Court had affirmed his decision ; it was held by the C. A. that the finding of fact by the magistrate was conclusive, and that the building fell within the subsection, but at the same time the Court stated that, though bound by the finding of fact by the magistrate, they did not agree with it (*Dicksee* v. *Hoskins*, (1901) 2 K. B. 122, 660 ; 65 J. P. 612 ; 70 L. J. (K. B.) 851 ; 85 L. T. 205 ; 49 W. R. 693).

In the case of a building as yet not actually in use the word 'used' is to be read as 'intended to be used' (*ibidem*).

(3.) In every building exceeding [25 squares] in area, containing separate sets of chambers or offices or rooms, tenanted, or constructed or adapted to be tenanted, by different persons, the floors [and principal staircases] shall be of fire-resisting materials :

[But this provision shall not entitle the District Surveyor to charge for the inspection of each set of chambers as a separate building.]

Met. Bldg. Act, 1855 (repealed), sec. 27 (2).

'Separate sets of chambers or rooms tenanted by different

REPEAL

Sections 75, 76, and 77 of the London Building Act 1894 have been repealed by Section 16 of the London County Council (General Powers) Act 1908, and Part III. of that Act has been enacted in substitution (see pages 343 to 352).

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persons shall, if contained in a building exceeding 3,600 square feet in area, be deemed to be separate buildings, and be divided accordingly, so far as they adjoin vertically by party walls, and so far as they adjoin horizontally by party arches or fireproof floors.'

This alteration in the law was made to accommodate the case of blocks of buildings constructed as offices, where the subdivision into tenancies varies from time to time according to the requirements of the tenants.

For construction of stairs, staircases and corridors in these buildings when used as dwellings, *see* sec. 68.

C. A. 1891 (Esher, M.R., Fry and Lopes, L,JJ.), upholding Q. B. Coleridge, C.J., and Mathew, J.) Separate sets of chambers under one roof, to be separately occupied, and having no communication with each other except by means of a common staircase within the building, were held, under Met. Bldg. Act, 1855, not to entitle the District Surveyor to charge his fee upon each flat as a separate building (*Moir* v. *Williams*, (1892) 1 Q. B. 264 ; 61 L. J. (M. C.) 33 ; 66 L. T. 215 ; 56 J. P. 120 ; 40 W. R. 69). The insertion of words to the same effect in this section would therefore appear to be unnecessary.

Cubical extent of buildings.

75. Except as in this section provided, no building [of the warehouse class] shall extend to more than [250,000 cubic feet] unless divided by party walls in such manner that no division thereof extend to more than [250,000 cubic feet.]

[No addition shall be made to any building of the warehouse class, or to any division thereof, so that the cubical extent of any such building or division shall exceed 250,000 cubic feet.]

Met. Bldg. Act, 1855 (repealed), sec. 27 (4).

'Every warehouse or other building used, either wholly or in part for the purposes of trade or manufacture, containing more than 216,000 cubic feet, shall be divided by party walls in such manner that the contents of each division thereof shall not exceed the above-mentioned number of cubic feet.'

For method of measurement see definition of 'cubical extent.'

The second paragraph was inserted to counteract the decision of C. A. that the corresponding section in Met. Bldg. Act, 1855, did not prevent an addition being made to an existing building so as to extend it beyond the limit (*Scott* v. *Legg*, 10 Q. B. D. 236 ; 36 L. T. 456 ; 46 L. J. (M. C.) 267 ; 41 J. P. 773 ; 25 W. R. 594) ; *see* sec. 77.

'Buildings of the warehouse class' regulated by this section are not identical with 'every warehouse or other building used either wholly or in part for the purpose of trade or manufacture' regulated by the corresponding section of Met. Bldg. Act, 1855, but the discrepancy is largely corrected by the application of the provisions of this section to buildings coming within sec. 74 (2).

Q. B. 1894 (Mathew and Cave, JJ.) It was held that the division by fireproof floors of a building, so that each division contained between the floors did not exceed the maximum permitted cubic space, was not a compliance with the corresponding

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section of Met. Bldg. Act, 1855, because a fireproof floor is not a party wall (*Holland and Hannen* v. *Wallen*, 70 L. T. 376; 58 J. P. 132; 10 R. 583).

Q. B. 1896 (Wright and Collins, JJ.) In the case of a building of the warehouse class that was intended to be erected in conformity with sec. 75 of this Act by being divided vertically by five walls, two of such walls being arranged to separate a portion of the building only one storey in height on one side of such walls from a portion of the building five storeys in height on the other side of such walls, and it was proposed to construct such walls only for the lower storey, and for 3 feet above the roof of such storey in accordance with the rules of the Act relating to party walls; but it was proposed to form in the upper portion of such walls openings for windows to the storeys, above the lowest, of the five-storey portion of the building; it was held that in this section the words 'party wall' are not used in their technical sense, but merely as a convenient phrase for subdividing walls, and that the walls in question ceased to be party walls after they had ceased to divide the two portions of the building, and had been carried up 3 feet above the roof of the lower portion of the building, and need not, above that level, be constructed in accordance with the requirements of the statute as to party walls (*Drury* v. *Army and Navy Auxiliary Co., Ltd.*, (1896) 2 Q. B. 271; 65 L. J. (M. C.) 169; 60 J. P. 421; 74 L. T. 621; 44 W. R. 560).

The restriction contained in this section upon the cubical extent of a building shall not apply to any building which, being at a greater distance than 2 miles from St. Paul's Cathedral, is used wholly for the manufacture of the machinery and boilers of steam vessels, or for a retort house, [or the manufacture of gas, or for generating electricity,] provided that such building consist of one floor only, and be constructed of brick, stone, iron, or other incombustible material throughout, and shall not be used for any purpose other than such as hereinbefore specified. Every such building shall, for the purpose of the provisions of this Act with respect to special buildings, be deemed to be a building to which the general rules of this Act are inapplicable.

Met. Bldg. Am. Act, 1860, sec. 2, re-enacted.
Compare sec. 203 of this Act.

Consent to larger dimensions.

76. Where the Council are satisfied, on the report of the Superintending Architect and of the chief officer of the fire brigade, that additional cubical extent is necessary for any building to be used for any trade or manufacture, and are satisfied that proper arrangements have been, or will be, made and maintained for lessening, so far as reasonably practicable, danger from fire, the Council may consent to such building containing additional cubical extent:

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Provided that such building shall not—

(i.) Extend to a number of cubic feet exceeding 450,000, or any less number allowed by the Council, without being divided by party walls in such manner that the cubical extent of each division do not exceed that number ;

(ii.) Exceed 60 feet in height ;

(iii.) Be used for the purpose of any trade or manufacture involving the use of explosive or inflammable materials.

Such consent shall continue in force only while the said building is actually used for the purpose of the trade or manufacture in respect of which the consent was granted.

L. C. C. Gen. P. Act, 1890, sec. 29, re-enacted, verbally altered.

Rules as to uniting buildings.

77. (1.) Buildings shall not be united except where they are wholly in one occupation [or are constructed or adapted to be so.]

Met. Bldg. Act, 1855, sec. 28 (1), re-enacted, the words in brackets being added.

Q. B. 1899 (Channell and Lawrence, JJ.) The words 'or are constructed or adapted to be so' have reference to the state of affairs at the time of uniting, and not of original construction (*Woodthorpe* v. *Spencer and Husbands*, 63 J. P. 246).

(2.) Buildings shall not be united if, when so united, and considered as one building only, they would not be in conformity with this Act.

Met. Bldg. Act, 1855, sec. 28 (2), re-enacted, verbally altered.

When uniting shop premises the provisions of sec. 74 (2) must therefore be observed, and the premises altered accordingly.

C. A. 1877 (James, Baggallay, Bramwell and Brett, L.JJ., reversing Court of Appeal from Inferior Courts, Cleasby, B., and Grove, J.) Under the corresponding section of Met. Bldg. Act, 1855, it was held that the addition of a new portion to an old building was not 'uniting' within the meaning of the section, which only applied to the uniting of two already existing buildings (*Scott* v. *Legg*, 10 Q. B. D. 236 ; 36 L. T. 456 ; 46 L. J. (M. C.) 267 ; 41 J. P. 773 ; 25 W. R. 594).

Q. B. 1899 (Channell and Lawrence, JJ.) Where buildings not wholly in one occupation were, in fact, already united by an opening or doorway in the party wall, although such opening may have been irregularly made, and without notice to the District Surveyor ; it was held that the formation of a second opening in the party wall was not a uniting of the buildings, as they were, in fact, united before (*Woodthorpe* v. *Spencer and Husbands*, 63 J. P. 246).

K. B. 1903 (Alverstone, C.J., Wills and Channell, JJ.) Where several blocks of flats, originally intended to be erected as so many distinct buildings, were subsequently erected each with

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its own staircase and external entrance from an open space within the curtilage, but with a passage way under the roofs from end to end, and also connected in pairs by means of a door connecting the bath-rooms of adjacent blocks; it was held that this constituted the erection of one building, and not a uniting of several buildings; and that sec. 77 applied only to the union of buildings having a separate existence before the union, and did not apply to additions built on to and connected with a previously existing building (*Goodchild* v. *Matthews*, 67 J. P. 296; 89 L. T. 369; 1 L. G. R. 523).

(3.) An opening shall not be made in any party wall [or in two external walls] dividing buildings, which, if taken together, would extend to more than [250,000 cubic feet], except under the following conditions:—

(*a*) Such opening shall not exceed in width 7 feet or in height 8 feet [and such opening or openings taken together shall not exceed one half the length of such party wall on each floor of the building in which they occur.]

(*b*) Such opening shall have the floor, jambs and head formed of brick, stone or iron, and be closed by two wrought iron doors each one-fourth of an inch thick in the panel, at a distance from each other of the full thickness of the wall, fitted to rebated frames without woodwork of any kind; [or by wrought iron sliding doors or shutters, properly constructed, fitted into grooved or rebated iron frames.]

[(*c*) If the thickness of the wall be not less than 24 inches, or the doors be placed at a distance from each other of not less than 24 inches, such opening may be 9 feet 6 inches in height.]

Met. Bldg. Act, 1855 (repealed), sec. 28 (3).

'No opening shall be made in any party wall dividing buildings, which, if taken together, would contain more than 216,000 cubic feet, except under the following conditions:—

'Such opening shall not exceed in width 7 feet, or in height 8 feet;

'Such opening shall have the floor, jambs and head formed of brick, stone or iron, and be closed by two wrought iron doors, each one fourth of an inch thick in the panel, at a distance from each other of the full thickness of the wall, fitted to rebated frames, without woodwork of any kind.'

Compare secs. 54 (3) & 58, and *see* notes to those sections.

For window openings in 'party walls' subdividing a warehouse *see* note to sec. 75 on the case of *Drury* v. *Army & Navy*

Aux. Co. This decision does not apply to party walls proper, dividing two buildings in different occupations, as the Court specially excluded such a case from their judgment, but it appears to have some bearing on such a case. S. 77

Sec. 101 allows the reconstruction of certain previously existing windows in party walls.

(4.) Whenever any buildings which have been united cease to be in one occupation, all openings made for the purpose of uniting the same in any party wall between the buildings, or in any external wall, shall be stopped up with brick or stone work, not less than 13 inches in thickness [(except in the case of a wall 8½ inches in thickness, in which case 8½ inches shall be sufficient)] and properly bonded with such wall, [and any timber not in conformity with this Act placed in the wall shall be removed.]

Met. Bldg. Act, 1855 (repealed), sec. 28 (4).

'Whenever any buildings which have been united cease to be in the same occupation, any openings made in the party walls dividing the same shall be stopped up with brick or stone work of the full thickness of the wall itself, and properly bonded therewith.'

[(5.) Whenever any buildings which have been united cease to be in one occupation, the owner thereof shall forthwith give notice to the District Surveyor, and shall cause any openings made in the party wall to be stopped up and bonded as aforesaid.]

Construction of public buildings.

78. Notwithstanding anything in this Act every public building, including the walls, roofs, floors, galleries and staircases, [and every structure and work constructed or done in connection with or for the purposes of the same], shall be constructed in such manner as may be approved by the District Surveyor; or, in the event of disagreement, may be determined by the [Tribunal of Appeal]; and, save so far as respects the rules of construction, every public building shall, throughout this Act, be deemed to be included in the term 'building,' and be subject to all the provisions of this Act in the same manner as if it were a building erected for a purpose other than a public purpose.

[No public building shall be used as such until the District Surveyor or the Tribunal of Appeal shall have declared his or their approval of the construction thereof.

After the District Surveyor shall have so declared his approval, or shall certify that it has been constructed as directed by the Tribunal of Appeal, any work affecting, or likely to affect, the building shall not be done to, in or

S. 78 on the building without the approval of the District Surveyor, or such certificate as aforesaid.]

Met. Bldg. Act, 1855 (repealed), sec. 30.

'Notwithstanding anything herein contained, every public building, including the walls, roofs, floors, galleries and staircases, shall be constructed in such manner as may be approved by the District Surveyor, or, in the event of disagreement, may be determined by the Metropolitan Board; and save in so far as respects the rules of construction, every public building shall throughout this Act be deemed to be included in the term 'building,' and be subject to all the provisions of this Act, in the same manner as if it were a building erected for a purpose other than a public purpose.'

The appeal against the requirements of the District Surveyor is by this Act transferred from the Council to the Tribunal.

Theatres and music halls, and other similar buildings for public entertainment holding music or dancing licences, must also be constructed in accordance with the regulations made by the Council under the power conferred by the Met. Man. & Bldgs. Am. Act, 1878, sec. 12, which, together with some other sections of the said Act, are not repealed by the Fourth Schedule of this Act; in these byelaws the walls are required to be of the thickness prescribed by Met. Bldgs. Act, 1855, for buildings of the warehouse class.

The thickness of the walls of public buildings is in the discretion of the District Surveyor.

For construction of staircases of public buildings, *see* secs. 68 & 80 of this Act.

Q. B. 1864 (Cockburn, C.J., Blackburn and Mellor, JJ.) Where the District Surveyor had served a notice of irregularity on the builder of a new church requiring him to comply as to the walls with certain rules of construction of the Met. Bldg. Act, 1855, and the magistrate had made an order requiring the builder to comply with the requisitions of the notice; it was held that the order was bad because in public buildings the construction is independent of the provisions contained in the Act for the construction of buildings of a private character, but is controlled by the discretion of the District Surveyor, subject to appeal (*Reg.* v. *Carruthers*, 9 L. T. 825; 33 L. J. (M. C.) 107; 4 B. & S. 804; 11 Jur. N. S. 767).

Q. B. 1897 (Wills and Wright, JJ.) Removable temporary seating at the Royal Agricultural Hall has been held not to come within the jurisdiction of the District Surveyor on refixing (*Venner* v. *M'Donell* (1897) 1 Q. B. 421; 66 L. J. (Q. B.) 273; 61 J. P. 181; 76 L. T. 152; 45 W. R. 267).

K. B. 1903 (Wills and Channell). A removable temporary floor in a public swimming bath has been held not to come within the jurisdiction of the District Surveyor on refixing, because the magistrate had found as a fact that the floor did not affect and was not likely to affect the building or the swimming bath in which it was constructed (*Handover* v. *Meeson*, 67 J. P. 313).

Conversion of houses, &c., into public buildings.

79. Where it is proposed to convert or alter any building erected for a purpose other than a public purpose into a public building, such conversion or alteration

shall be carried into effect, and the public building thereby formed, including the walls, roofs, floors, galleries, and staircases thereof, shall be constructed in such manner as may be approved by the District Surveyor, or, in the event of disagreement, may be determined by the [Tribunal of Appeal] ; and the provisions of this Act shall apply to such alteration or conversion as though it were the construction of a public building. S. 79

Met. Man. & Bldg. Am. Act. 1882 (45 Vict. cap. 14), sec. 15 re-enacted ; the appeal against the requirements of the District Surveyor being transferred from the Council to the Tribunal of Appeal.

Staircases in churches and chapels.

[**80.** The following rules shall be observed with respect to new churches, chapels, meeting-houses, public halls, public lecture rooms, public exhibition rooms, and public places of assembly, or additions or alterations by which increased accommodation is to be provided to existing churches, chapels and meeting-houses, public halls, public lecture rooms, public exhibition rooms or public places of assembly :—

(*a*) Every staircase for the use of the public shall be supported and enclosed by brick walls not less than 9 inches thick. The treads of each flight of stairs shall be of uniform width :

(*b*) No staircase, internal corridor or passage way for the use of the public shall be less than 4 feet 6 inches wide.

Provided that, where not more than 200 persons are to be accommodated in such church, chapel, meeting-house, hall, lecture room, exhibition room or place of assembly, such staircase, internal corridor, or passage way may be of the width of 3 feet 6 inches :

Compare (c) second proviso.

(*c*) Every staircase, corridor or passage way for the use of the public, and which communicates with any portion of the building intended for the accommodation of a larger number of the public than 400, shall be increased in width by 6 inches for every additional 100 persons, until a maximum width of 9 feet be obtained.]

[Provided always, that, in every case where the staircases are 6 feet wide and upwards, they shall be divided by a hand-rail.]

[Provided also, that, in lieu of a single stair-

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case, corridor or passage way of the width in this subsection prescribed, it shall be lawful to substitute two staircases, corridors or passage ways, each being of a width at least equal to two-thirds of the width in this subsection prescribed for the single staircase, corridor or passage way; but so that neither of such two substituted corridors, staircases or passage ways shall be less than 3 feet 6 inches wide :

(*d*) In all cases where a portion of the public is to be accommodated over at a higher level than others of the public, a separate means of exit of the width above prescribed for staircases, internal corridors or passage ways, and communicating directly with the street or open space, shall be provided from each floor or level :

(*e*) All doors and barriers shall be made to open outwards, and no outside locks or bolts are to be affixed thereto.]

The enactments of this section are not to be found in any previous Act, but are in part an incorporation with this Act of some of the Regulations of the Construction of Theatres, &c., made by the Council under the Met. Man. & Bldg. Am. Act of 1878.

See also secs. 68 & 78 for the construction of these buildings.

Application of Act to buildings under railway arches.

[**81.** Where a building, erected after the commencement of this Act under, or in, or by inclosure of, a railway arch, or abutting thereon, is constructed or adapted to be used for human habitation, this Act shall apply to the building and to every work done to, in or on the same in like manner and to the like extent, as far as may be, as if the building were built in any other position.]

This section would also apply to any alteration to this class of building. *See* Sec. 209.

PART VII[1]

SPECIAL AND TEMPORARY BUILDINGS AND WOODEN STRUCTURES

Application to Council for buildings to which rules of Act are inapplicable.

82. (1.) Where a builder is desirous of erecting an iron building or structure, or any other building or structure, to which the general provisions of Part VI.

[1] For penalties (£20 a day) incurred by any infringement of this Part, *see* sec. 200 (3) *d* and *e*.

See also Lond. Bldg. Am. Act, 1898, sec. 7.

of this Act are inapplicable, [or, in the opinion of the Council, inappropriate, having regard to the special purpose for which the building or structure is designed and actually used], he shall make an application to the Council, accompanied by a plan of the proposed building, with such particulars as to the construction thereof as may be required by the Council. S. 82

(2.) The Council, if satisfied with such plan and particulars, shall signify their approval of the same [in writing], and thereupon the building may be constructed according to such plan and particulars ; but the Council shall not authorise any building of the warehouse class to be erected of greater cubical extent than [250,000 cubic feet], except in accordance with the foregoing provisions of this Act.

Met. Bldg. Act, 1855 (repealed), sec. 56.

' Whenever any builder is desirous of erecting any iron building, or any other building to which the rules of this Act are inapplicable, he shall make an application to the Metropolitan Board of Works, stating such desire, and setting out a plan of the proposed building, with such particulars as to the construction thereof as may be required by the said board ; and the latter, if satisfied with such plan and particulars, shall signify their approval of the same, and thereupon such building may be constructed according to such plan and particulars ; but it shall not be lawful for such board to authorise any warehouse, or other building used either wholly or in part for the purposes of trade or manufacture, to be erected of greater dimensions than 216,000 cubic feet, unless it is divided by party walls in manner hereinbefore required.'

(3.) The Council may, for the purpose of regulating the procedure in relation to such applications, issue such general rules as they think fit as to the time and manner of making applications, and as to the plans to be presented, the expenses to be incurred, and any other matter or thing connected therewith.

Met. Bldg. Act, 1855, sec. 57, re-enacted, with verbal alterations.

(4.) All expenses incurred in and about the obtaining the approval of the Council shall be paid by the builder to the Superintending Architect, or to such other person as the Council may appoint, and in default of payment may be recovered in a summary manner.

Met. Bldg. Act, 1855, sec. 60, re-enacted.

(5.) A copy of any plans and particulars approved by the Council shall be furnished to the District Surveyor within whose district the building to which such plans

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and particulars relate is situate, and it shall be his duty to ascertain that the same is built in accordance with the said plans and particulars.

Met. Bldg. Act, 1855, sec. 61, re-enacted.

Control by Council of certain temporary buildings.

83. Where an application is made to the Council by any person stating his desire to erect in any place an iron or other building [or structure] of a temporary character to which the general provisions of Part VI. of this Act are inapplicable, the Council may, if they approve of the plan and particulars of the building [or structure], limit the period during which it shall be allowed to remain in that place, and may make their approval subject to such conditions as to the removal of the building or structure or otherwise as they think fit; and if, at the expiration of that period, the building or structure be not removed in accordance with those conditions, the Council may serve a notice on the occupier or owner of such building or structure requiring him to remove it within a reasonable time specified in the notice; and if the occupier or owner fail to remove such building or structure within the time named, the Council may (notwithstanding the imposition and recovery of any penalty) cause complaint thereof to be made before a Petty Sessional Court, who shall thereupon issue a summons requiring such occupier or owner to appear to answer such complaint; and, if the said complaint is proved to the satisfaction of the Court, the Court may make an order in writing authorising the Council to enter upon the land upon which such building is situated, and to remove or take down the same, and do whatever may be necessary for such purpose, and also to remove the materials of which the same is composed to a convenient place, and (unless the expenses of the Council be paid to them within 14 days after such removal) sell the same as they think proper.

[1] This section is practically a re-enactment of Met. Man. & Bldg. Am. Act, 1882, sec. 12, which became necessary in consequence of the decision of Q. B. 1879 (Lush and Manisty, JJ.) that under Met. Bldg. Act, 1855, no means existed of compelling the removal of a building at the expiration of the term for which it was licensed (*Parsons* v. *Timewell*, 44 J. P. 296).

Wooden structures not to be erected without licence of Council.

84. (1.) No person shall set up in any place any wooden structure (unless it be exempt from the operation of this Part of this Act), [except hoardings enclosing vacant land and not exceeding in any part 12 feet in height], without having first obtained for that purpose

a licence from the Council, and the licence may contain such conditions with respect to the structure and the time for which it is to be permitted to continue in the said place as the Council think expedient. S. 84

This subsection is a re-enactment of Met. Man. & Bldg. Am. Act, 1882, sec. 13. The words after 'wooden structure'—viz. 'or erection of a movable or temporary character'—being omitted and the words in brackets being added; there are also a few verbal alterations.

The restriction, therefore, now applies not only to temporary erections, but also to all permanent erections, including hoardings, with the exceptions herein mentioned.

The District Surveyor has power to allow certain sheds to be constructed of such materials as he thinks fit; *see* First Sched., Prelim. 1.

This section only regulates 'structures' as distinct from buildings,' which are regulated by secs. 82 & 83.

The powers and duties of the County Council under this section are by sec. 5 of the London Government Act, 1899 (62 & 63 Vict. cap. 14), transferred to the Metropolitan Borough Councils created by that Act to supersede the Vestries and District Boards.

Q. B. 1884 (Mathew and Day, JJ.) Where a temporary structure had been erected without licence of M. B. W., but no complaint had been made until after the expiration of six months from its completion; it was held under Met. Man. & Bldg. Am. Act, 1882, that the offence was a continuous one so long as the structure remained, and that proceedings for the recovery of penalties might be taken within 6 months of the time within which it continued to exist (*M. B. W.* v. *Anthony*, 49 J. P. 229; 54 L. J. (M. C.) 39; 33 W. R. 166).

Q. B. 1894 (Wills and Kennedy, JJ.) It was held that a corrugated iron and wood building erected not for use upon the spot, but placed there merely for the purposes of sale, and as a specimen of wares sold by the defendant, though a structure of a movable and temporary character, required no licence from the Council under the Met. Man. & Bldg. Am. Act, 1882, sec. 13 (*L. C. C.* v. *Humphreys Limited* (1894) 2 Q. B. 755; 58 J. P. 476; 71 L. T. 201; 63 L. J. (M. C.) 215; 43 W. R. 13; 10 R. 533).

Q. B. 1897 (Wright and Kennedy, JJ.) Where a person had before the commencement of this Act erected a temporary structure without licence of the Council, and therefore had rendered himself liable to penalties under Met. Man. & Bldg. Am. Act, 1882, for erecting it and also for each day he continued it, and the structure was continued until within six months before the Council applied for a summons against him under sec. 13 of that Act; it was held that the magistrate was right to refuse to convict on the ground that the only liabilities saved by sec. 215 of the present Act are liabilities actully incurred on or before January 1, 1895, and that proceedings for these were barred by sec. 11 of the Summary Jurisdiction Act, 1848 (*Reg.* v. *Cluer, ex parte L. C. C.* 77 L. T. 439; 67 L. J. (Q. B.) 36). *See* sec. 6 of Lond. Bldg. Am. Act, 1898, enacted to meet this case.

K. B. 1902 (Alverstone, C.J., Darling and Channell, JJ.) A stand made entirely of wood, except for the nails and fastenings, erected to enable persons to view a public procession was

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held to be a 'wooden structure' within this section; and the power to license such stands and to take proceedings in default of obtaining a licence or observing the conditions thereof was held to be transferred by sec. 5 (1) of Lond. Gov. Act, 1899, from the L. C. C. to the respective Borough Councils (*City of Westminster* v. *L. C. C.* (1902) 1 K. B 326; 66 J. P. 199; 71 L. J. (K. B.) 244; 86 L. T. 53; 50 W. R. 429).

K. B. 1902 (Alverstone, C.J., Darling and Channell, JJ.) It was held that the powers, duties and liabilities of the District Surveyors in respect of the supervision and inspection of wooden structures falling under this section have not been transferred to the Borough Councils and their officers, that the District Surveyors retain their powers, duties and liabilities under the statute, but that they now have no powers, duties or liabilities arising under the licences granted by the Borough Councils (*City of Westminster* v. *Watson and others* (1902) 2 K. B. 717; 87 L. T. 326; 51 W. R. 300; 71 L. J. (K. B.) 603; 25 T. L. R. 621; 46 S. J. 514).

(2.) Provided that a licence shall not be required in the case of any wooden structure of a movable or temporary character erected by a builder for [his] use during the construction, alteration or repair of any building, unless the same is not taken down or removed immediately after such construction, alteration or repair.

Provided that this section shall not extend to or apply within the City, [or to any hoarding duly licensed by the local authority under any statutory powers in that behalf.]

Met. Man. Bldg. Am. Act, 1882, sec. 13, second paragraph, and sec. 26 re-enacted, the words in brackets being added. This includes a builder's movable office of wood.

Q. B. 1891 (Grantham and Smith, JJ.) A temporary erection for the use of the tenant as a public-house bar during reconstruction of the building was held not to come within the proviso to Met. Man. & Bldg. Am. Act, 1882, but to require a licence from the Council (*L. C. C.* v. *Candler*, 55 J. P. 277, 679; 60 L. J. (M. C.) 114). This decision is supported and strengthened by the slightly altered drafting of this subsection.

Q. B. 1892 (Pollock, B., and Williams, J.) It was held that an ordinary wooden builder's office on wheels, even when not in use upon a building in course of erection, but kept upon the forecourt of the builder's own premises, formed part of the builder's plant, and that no licence was required under the Met. Man. & Bldg. Am. Act, 1882 (*L. C. C.* v. *Pearce & Heatley*, ((1892) 2 Q. B. 109; 40 W. R. 543; 56 J. P. 790; 66 L. T. 685.

Piles of loose timber not regarded as structures.

[**85.** This Part of this Act shall not apply in the case of a pile, stack or store of timber not being a structure affixed or fastened to the ground.]

For regulations as to stacks of timber *see* sec 197.

As to structures of railway companies.

86. Structures or erections erected or set up upon the premises of any railway company and used for the purposes of, or in connection with, the traffic of such railway company, shall be exempt from the operation of this Part of this Act.

This section is new in its present form. Compare sec. 201 (8). 'Buildings belonging to any . . . railway company and used for the purposes of such . . . railway' were exempt from Part I. of Met. Bldg. Act, 1855.

It will be seen that this section only exempts the buildings herein named from Part VII., but by sec. 201 (8) they are exempt from Parts VI. & VII.

Q. B. 1899 (Day and Lawrence, JJ.). Where a firm of coal merchants had erected on the premises of a railway company and with the company's permission, but without the licence of the Council, a wooden structure or erection used as an office in connection with the sale of coal conveyed over the system of the railway company, it was held that the structure or erection was one used for the purposes of or in connection with the traffic of the railway company, and as such no licence was required (*Elliott* v. *L. C. C.* (1899) 2 Q. B. 277 ; 81 L. T. 155 ; 63 J. P. 645 ; 68 L. J. (Q. B.) 837).

PART VIII

RIGHTS OF BUILDING AND ADJOINING OWNERS

Rights of owners of adjoining lands respecting erection of walls on line of junction.

[**87.** Where lands of different owners adjoin and are unbuilt on at the line of junction, and either owner is about to build on any part of the line of junction, the following provisions shall have effect :—

(1.) If the building owner desire to build a party wall on the line of junction, he may serve notice thereof on the adjoining owner describing the intended wall :

(2.) If the adjoining owner consent to the building of a party wall, the wall shall be built half on the land of each of the two owners, or in such other position as may be agreed between the two owners :

(3.) The expense of the building of the party wall shall be from time to time defrayed by the two owners in due proportion, regard being had to the use made, and which may be made, of the wall by the two owners respectively .

See note to sec. 95 (2).

(4.) If the adjoining owner do not consent to the building of a party wall, the building owner

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shall not build the wall otherwise than as an external wall placed wholly on his own land :

This subsection confirms the decision of *Barlow* v. *Norman*, 2 Wm. Bl. 959.

(5.) If the building owner do not desire to build a party wall on the line of junction, but desires to build an external wall placed wholly on his own land, he may serve notice thereof on the adjoining owner, describing the intended wall :

(6.) Where in either of the cases aforesaid the building owner proceeds to build an external wall on his own land, he shall have a right, at his own expense, at any time after the expiration of 1 month from the service of the notice, to place on the land of the adjoining owner, below the level of the lowest floor, the projecting footings of the external wall, with concrete or other solid substructure thereunder, making compensation to the adjoining owner or occupier for any damage occasioned thereby ; the amount of such compensation, if any difference arise, to be determined in the manner in which differences between building owners and adjoining owners are hereinafter directed to be determined :

Where an external wall is built against another external wall, or against a party wall, it shall be lawful for the District Surveyor to allow the footing of the side next such other external or party wall to be omitted.]

For penalty (£10) for obstructing any person entitled under this section, *see* sec. 200 (4).

The last paragraph should have been included in Part VI. ; *see* also First Schedule, Prelim. 9.

Ch. 1904 (Eady, J.). Where two adjoining plots of land were let by auction to two persons and the conditions of letting, besides conferring certain rights, contained a clause that, until the granting of the lease, the intending lessee was to be deemed a tenant at will ; a party wall had been erected upon the boundary between the two plots by one of the parties, and the other party without paying any portion of the cost of the wall had commenced erecting his building, utilising and cutting into the party wall ; an injunction was applied for, and while the case was pending an award as to the payment for the share of the wall was made and the amount paid, the matter therefore came before the Court on a question of costs ; it was held that the party that had erected the wall was not an owner within sec. 5 (29)

and therefore had no rights as building owner under sec. 87 (*Orf* v. *Payton*, 69 J. P. 103; 3 L. G. R. 126). S. 87

Compare this decision with that in the case of *List* v. *Sharp* (*see* note to sec. 90 (1)) which appears to be conflicting.

Subsec. (6), Ch. 1897 (Romer, J.). Where building and adjoining owners had each an external wall of an existing building on their own land adjacent to the boundary line, it was held that the Act does not give the right to place footings on the adjoining land (*Thornton* v. *Hunter*, unreported; 'Builder,' February 4, 1898).

Rights of building owner.

88. The building owner shall have the following rights in relation to party structures (that is to say):—

(1.) A right to make good, [underpin] or repair any party structure which is defective or out of repair;

(2.) A right to pull down and rebuild any party structure which is so far defective or out of repair as to make it necessary or desirable to pull it down;

A party wall that is a dangerous structure can also be dealt with under Part IX. of this Act.

(3.) A right to pull down any timber or other partition which divides any buildings and is not conformable with the regulations of this Act, and to build instead a party wall conformable thereto;

(4.) In the case of buildings having rooms or storeys the property of different owners intermixed, a right to pull down such of the said rooms or storeys, or any part thereof, as are not built in conformity with this Act, and to rebuild the same in conformity with this Act;

(5.) In the case of buildings connected by arches or communications over public ways, or over passages belonging to other persons, a right to pull down such of the said buildings, arches or communications, or such parts thereof, as are not built in conformity with this Act, and to rebuild the same in conformity with this Act:

(6.) A right to raise [and underpin] any party structure permitted by this Act to be raised [or underpinned,] or any external wall built against such party structure, upon condition of making good all damage occasioned thereby to the adjoining premises, or to the internal finishings and decorations thereof, and of carrying up to

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the requisite height all flues and chimney stacks belonging to the adjoining owner, on or against such party structure or external wall;

Q. B. 1867 (Cockburn, C. J., Blackburn and Lush, JJ.). A building owner when raising a party wall had no power under Met. Bldg. Act, 1855, to obstruct the ancient lights of an adjoining owner. The obligation to make good all damage occasioned requires the restoration of all things to the condition in which they were previous to the commencement of the work, not only as regards damage to the structure itself, but also as regards damage to the adjoining rights of light. Compensation by money is not sufficient (*Crofts* v. *Haldane*, L. R. 2 Q. B. D. 194; 16 L. T. 116; 36 L. J. (Q. B.) 85; 8 B. & S. 194); *see* also sec. 101 of this Act.

(7.) A right to pull down any party structure which is of insufficient strength for any building intended to be built, and to rebuild the same of sufficient strength for the above purpose, upon condition of making good all damage occasioned thereby to the adjoining premises, or to the internal finishings and decorations thereof;

See decision in *Foot* v. *Hodgson* (25 Q. B. D. 160; 59 L. J. Q. B. 343), under Met. Bldg. Act, 1855.

(8.) A right to cut into any party structure upon condition of making good all damage occasioned to the adjoining premises by such operation:

(9.) A right to cut away any footing or any chimney breasts, jambs or flues projecting, [or other projections,] from any party wall [or external walls,] in order to erect an external wall against such party wall, or for any other purpose, upon condition of making good all damage occasioned to the adjoining premises by such operation;

By sec. 64 (19) no chimney breast built with any party wall may be cut away without the certificate of the District Surveyor that it can be done without affecting the stability of any building.

(10.) A right to cut away or take down such parts of any wall or building of an adjoining owner as may be necessary in consequence of such wall or building overhanging the ground of the building owner, in order to erect an upright wall against the same, on condition of making good any damage sustained by the wall or

building by reason of such cutting away or taking down ; S. 88

(11.) A right to perform any other necessary works incident to the connection of a party structure with the premises adjoining thereto ;

But the above rights shall be subject to this qualification, that any building which has been erected previously to the date of the commencement of this Act shall be deemed to be conformable with the provisions of this Act if it be conformable with the provisions of the Acts of Parliament regulating buildings in London before the commencement of this Act ;

[(12.) A right to raise a party fence wall, or to pull the same down and rebuild it as a party wall.]

This section is a re-enactment of Met. Bldg. Act, 1855, sec. 83, the words in brackets being added.

The qualification after subsec. (11) should have been placed at the end of the section, as it applies to all the section, not subsec. (11) only.

For penalties incurred by infringing this section (£20 and £20 a day), *see* sec. 200 (5).

Notice must be given before exercising any of these rights ; *see* sec. 90.

For provisions for apportionment of expenses *see* sec. 95.

Ch. 1879 (Jessel, M. R.). At common law one co-owner of a party wall cannot maintain an action against another co-owner for underpinning the wall to substitute a new foundation where the work can be done without injury to the structure ; but in London the work can only be done under proper notice and in the manner prescribed by the Met. Bldg. Act, 1855 (*Standard Bank of S. Africa* v. *Stokes*, 9 Ch. 68 ; 38 L. T. 692 ; 47 L. J. (Ch.) 544 ; 43 J. P. 91 ; 26 W. R. 492).

Although the right to underpin was not specifically given in the Met. Bldg. Act, 1855, such right was held to be included upon the principle of *omne majus continet in se minus* (*Ibidem*).

Ch. 1879 (Fry, J.). The rights of the building owner under the corresponding section of Met. Bldg. Act, 1855, were held to apply equally to a party wall belonging entirely to the adjoining owner (*Knight* v. *Pursell*, 11 Ch. D. 412 ; 40 L. T. 391 ; 43 J. P. 622 ; 48 L. J. (Ch.) 395 ; 27 W. R. 817).

Rights of adjoining owner.

89. (1.) Where a building owner proposes to exercise any of the foregoing rights with respect to party structures, the adjoining owner may, [by notice,] require the building owner to build on any such party structure such chimney [copings,] jambs, or breasts, or flues, or such piers, or recesses, or any other like works [as may fairly be required] for the convenience of such adjoining owner, [and may be specified in the notice] ; and it shall be the duty of the building owner to comply with such requisition in all cases where the execution

S. 89 of the required works will not be injurious to the building owner, or cause to him unnecessary inconvenience or unnecessary delay in the exercise of his right.

(2.) Any difference that arises between a building owner and adjoining owner in respect of the execution of any such works shall be determined in manner in which differences between building owners and adjoining owners are hereinafter directed to be determined.

Met. Bldg. Act, 1855, sec. 84, re-enacted, the words in brackets being added.

Rules as to exercise of rights by building and adjoining owners.

90. (1.) A building owner shall not, except with the consent [in writing] of the adjoining owner, [and of the adjoining occupiers,] or in cases where any [wall or] party structure is dangerous (in which cases the provisions of Part IX. of this Act shall apply), exercise any [of his] rights under this Act in respect of any [party fence wall unless at least 1 month, or exercise any of his rights under this Act in relation to any party wall or] party structure [other than a party fence wall], unless at least [two months] before doing so he has served on the adjoining owner a party wall or party structure notice, stating the nature and particulars of the proposed work, and the time at which the work is proposed to be commenced.

Met. Bldg. Act, 1855 (repealed), sec. 85.

'(1.) No building owner shall, except with the consent of the adjoining owner, or in cases where any party structure is dangerous, in which cases the provisions hereby made as to dangerous structures shall apply, exercise any right hereby given in respect of any party structure, unless he has given at the least 3 months' previous notice to the adjoining owner by delivering the same to him personally, or by sending it by post in a registered letter addressed to such owner at his last-known place of abode.

'(2.) The notice so given shall be in writing or printed, and shall state the nature of the proposed work, and the time at which such work is proposed to be commenced.'

No notice to the adjoining owner or occupier under this section is necessary when any work is done to a party wall under a Dangerous Structure notice under sec. 106; *see* also sec. 107.

See sec. 5 (31) for definition of 'adjoining owner.'

Exq. 1859 (Crompton and Hill, JJ., Watson and Bramwell, BB., affirming C. P. Cockburn, C. J., Wills and Byles, JJ.). Where the defendant, the owner of two adjoining houses, one of which was let to plaintiff as tenant from year to year, entered, without notice and without leave of plaintiff, upon the premises so occupied by the plaintiff for the purpose of doing necessary repairs to the party wall; it was held, 1st, that the defendant being himself the adjoining owner and the only person entitled to notice

under sec. 83 of Met. Bldg. Act, 1855, was justified in so doing; 2nd, that the omission to give notice to the District Surveyor under sec. 38 did not deprive the defendant of the protection of the statute (*Wheeler* v. *Gray*, 27 L. J. (C. P.) 267; 28 L. J. (C. P.) 200; 22 J. P. 434; 25 J. P. 453; 6 W. R. 676; 7 W. R. 325; 4 C. B. N. S. 584; 6 C. B. N. S. 606). S. 90

The obligation under the present Act to also give notice to the 'adjoining occupier' will overrule the first part of this decision.

Ch. 1866 (Wood, V.C.). Where defendants had given notice under Met. Bldg. Act, 1855, of their intention to pull down and rebuild a wall supposed to be a party wall but found to be an external wall of the plaintiffs' premises, and the defendants, though repeatedly asked to withdraw the notice, had declined to do so, but said that they did not intend to act upon it; *it was held* that the plaintiffs were justified in filing a bill to restrain the defendants from proceeding on the notice (*Sims* v. *The Estate Co. Ld.*, 14 L. T. 55; 14 W. R. 419).

Ch. 1866 (Wood, V. C.). Under the corresponding section of Met. Bldg. Act, 1855, no notice was required to be given to an adjoining owner by a person pulling down his house, unless it formed part of the 'party structure,' a breastsummer let into the party structure does not form part of it (*Major* v. *Park Lane Company*, L. R. 2 Exq. 453; 14 L. T. 543; 30 J. P. 743).

Ch. 1891 (Chitty, J.). Where a person was tenant of a house for a term of 3 years, renewable for another 3 years, holding from another person who himself occupied another part of the house and was in receipt of the rents of the rest of the house; and the adjoining owner, having served party wall notice on the latter but not the former, commenced to pull down the party wall exposing rooms occupied by the former; it was held that the former was an owner within the meaning of sec. 3 of Met. Bldg. Act, 1855, and entitled to party wall notice under that Act and an injunction was accordingly granted (*Fillingham* v. *Wood* (1891) 1 Ch. 51; 60 L. J. (Ch.) 232; 64 L. T. 46; 39 W. R. 282).

Ch. 1897 (Chitty, L. J.). Where a person had entered upon land and erected buildings thereon under a building agreement, which expressly provided that it was not to operate as a demise at law so as to vest any estate in him, and an adjacent building owner, desiring to execute certain works to the wall dividing the respective premises, had served the notice required by this section upon the intending lessee only, *it was held* that the intending lessee was an owner within the meaning of the Act and that the adjacent building owner was bound before commencing work to serve a party wall notice, and an injunction was accordingly granted (*List* v. *Sharp* (1897) 1 Ch. 260; 76 L. T. 45; 66 L. J. (Ch.) 175; 45 W. R. 243; 61 J. P. 248). Compare with the decision of the case of *Orf* v. *Payton* (*see* note to sec. 87) which appears to be in conflict.

C. A. 1898 (Lindley, M. R., Chitty and Williams, L.JJ., varying Ch. Channell, J.). It was held that a party wall notice under this section ought to be so clear and intelligible that the adjoining owner may be able to see whether he ought to serve a counter notice and what the nature of such notice should be; accordingly a notice that was practically a verbatim copy of sec. 88 was insufficient as wanting in the details of the works actually

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proposed (*Hobbs, Hart & Co.* v. *Grover* (1899) 1 Ch. 11 ; 79 L. T. 454 ; 68 L. J. (Ch.) 84).

C. A. 1904 (Collins, M. R., Stirling and Mathew, L.JJ., affirming Ch. Phillimore, J.). Where a lessee, in rebuilding a house A, had also rebuilt the party wall, and the adjoining owners intending subsequently to rebuild their house B, had served a notice of requirements, and the three surveyors had awarded that the party wall should be thicker than originally intended and that the adjoining owners of B should be entitled to raise the height of the wall at any time they might think fit ; and subsequently, the lease of A having been surrendered to the freeholders, the owners of B sought to take advantage of such award and to raise the wall without notice to the freeholders of A, *it was held* that the party wall could not be raised without notice to the freeholders of A, and that the award of the surveyors that the owners of B should be entitled to raise the party wall at any time they might think fit was *ultra vires* (*Leadbittter* v. *Marylebone B. C.* (1894) 2 K. B. 893 ; 73 L. J. (K. B.) 1013 ; 91 L. T. 639 , 53 W. R. 118 ; 68 J. P. 566 ; 20 T. L. R. 778).

[(2.) When a building owner, in the exercise of any of his rights under this Part of the Act, lays open any part of the adjoining land or building, he shall, at his own expense, make and maintain for a proper time a proper hoarding and shoring, or temporary construction, for protection of the adjoining land or building and the security of the adjoining occupier.]

C. P. 1870 (Bovill, C. J., Wills and Keating, JJ.). Under Met. Bldg. Act, 1855, sec. 83 and 85, a building owner was under no obligation to protect the rooms of an adjoining owner by hoarding or tarpaulin during the pulling down and rebuilding of a party wall (*Thompson* v. *Hill*, L. R. 5 C. P. 564 ; 22 L. T. 820 ; 39 L. J. (C. P.) 264 ; 18 W. R. 1070). This decision is now overruled by this subsection.

(3.) A building owner shall not exercise any right by this Act given to him, in such manner or at such time as to cause unnecessary inconvenience to the adjoining owner or to the adjoining occupier.

Met. Bldg. Act, 1855, sec. 85 (3), re-enacted.

C. P. 1865 (Erle, C. J., Willes, Byles, and Keating, JJ.). No notice under sec. 108 of Met. Bldg. Act, 1855, was required to be given before commencing an action for damages (*Williams* v. *Golding*, L. R. 1 C. P. 69 ; 13 L. T. 291 ; 35 L. J. (C. P.) 1 ; 14 W. R. 60 ; 11 Jur. N. S. 952). Sec. 108 was repealed by the Public Authorities Protection Act, 1893 (56 & 57 Vict. cap. 61).

Ch. 1862 (Hall, V. C.) Under the Prescription Act (2 & 3 Will. IV. cap. 71), it was decided that a person cannot free himself from his liability to an adjoining owner by saying that he has employed a contractor and that the damage arose from his default (*Lemaitre* v. *Davis*, 19 Ch. 281 ; 46 L. T. 463 ; 51 L. J. (Ch.) 173 ; 46 J. P. 324 ; 30 W. R. 360).

H. L. 1883 (Lords Blackburn, Watson, and Fitzgerald).

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Where, in rebuilding a house, the owner employed a competent architect and a competent contractor, and the party wall was so interfered with that, as a result of some improper act of the contractor's workmen, it fell causing injury to the adjoining house; it was held that the owner could not get rid of his responsibility by delegating the performance of it to a third person (*Hughes* v. *Percival*, 8 App. C. 443; 49 L. T. 189; 52 L. J. (Q. B.) 719; 47 J. P. 772; 31 W. R. 725).

Ch. 1888 (Kay, J.). Where an action for damages was brought against the builders for injury caused to the adjoining building resulting from works to a party wall, *it was held* that the Met. Bldg. Act, 1855, did not exonerate the builder from liability for damage arising from his negligence, and that where the damage arises from the negligent execution of the work and is not a natural consequence therefrom the maxim *Respondeat superior* does not apply, but that the builder is liable (*White* v. *Peto Bros.* 58 L. T. 710).

C. A. 1894 (Lindley, Lopes, and Davey, L,JJ., upholding Q. B. Grantham, J.). It was held that the building owner cannot get rid of his responsibility to the adjoining owner under this subsection by employing a competent contractor, but he is himself liable for any negligence or delay on the part of the contractor (*Joliffe* v. *Woodhouse*, 38 S. J. 378).

[(4.) A party wall or structure notice shall not be available for the exercise of any right unless the work to which the notice relates is begun within 6 months after the service thereof and is prosecuted with due diligence.]

(5.) [Within one month after] receipt of such notice the adjoining owner may serve on the building owner a notice requiring him to build on any such party structure any works to the construction of which he is hereinbefore declared to be entitled.

Met. Bldg. Act, 1855, sec. 85 (4), re-enacted, the time limit being added.

(6.) The last-mentioned notice shall specify the works required by the adjoining owner for his convenience, and shall, if necessary, be accompanied by explanatory plans and drawings.

Met. Bldg. Act, 1855, sec. 85 (5), re-enacted.

(7.) If either owner do not, within 14 days after the service on him of any notice, express his consent thereto, he shall be considered as having dissented therefrom, and thereupon a difference shall be deemed to have arisen between the building owner and the adjoining owner.

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Met. Bldg. Act, 1855, sec. 85 (6), re-enacted.

Q. B. 1892 (Mathew, J.). The Courts will award damages to the adjoining owner against the building owner for overloading a party wall, and so causing damage (*Hart* v. *Monarch Land Co., Limited* ; 'Building News,' March 11, 1892, otherwise unreported).

Settlement of difference between building and adjoining owners.

91. (1.) In all cases not specially provided for by this Act where a difference arises between a building owner and adjoining owner in respect of any matter arising [with reference to any work to which any notice given] under [this Part of] this Act relates, unless both parties concur in the appointment of one surveyor, they shall each appoint a surveyor, and the two surveyors so appointed shall select a third surveyor ; and such one surveyor or three surveyors, or any two of them, shall settle any matter [from time to time during the continuance of any work to which the notice relates] in dispute between such building and adjoining owner ; with power, by his or their award, to determine the right to do, and the time and manner of doing, any work and generally any other matter arising out of or incidental to such difference ; but any time so appointed for doing any work shall not, [unless otherwise agreed,] commence until after the expiration of the period by this Part of this Act prescribed for the notice in the particular case.

Met. Bldg. Act, 1855, sec. 85 (7), re-enacted, the words in brackets being added.

Q. B. 1867 (Cockburn, C. J., Blackburn and Lush, JJ.). The surveyors are not the proper persons to adjudicate upon the interference with ancient rights of light arising out of the raising of a party wall (*Crofts* v. *Haldane*, L. R. 2 Q. B. 194 ; 36 L. J. (Q. B.) 85 ; 16 L. T. 116 ; 8 B. & S. 194).

Ch. 1879 (Jessel, M. R.). An injunction will be granted to restrain the building owner proceeding with work to a party wall until the surveyors have given their award (*Standard Bank of S. Africa* v. *Stokes*, 9 Ch. 68 ; 38 L. T. 692 ; 47 L. J. (Ch.) 544 ; 43 J. P. 91 ; 26 W. R. 492).

C. A. 1904 (Collins, M. R., and Mathews, L. J., affirming Walton, J.). The surveyors have no power to award to a tenant lessee a money payment for an increased use of a party wall previously raised by the lessor owner (*Stone* v. *Hastie*, (1903) 2 K. B. 463 ; 72 L. J. (K. B.) 846 ; 68 J. P. 44 ; 89 L. T. 353 ; 19 T. L. R. 654 ; 52 W. R. 130 ; 1 A. L. R. 80).

C. A. 1904 (Collins, M. R., Stirling and Mathew, JJ., affirming Ch. Phillimore, J.). The surveyors have no power to provide in their award that the adjoining owner should subsequently be entitled to raise the party wall at any time he might think fit (*Leadbitter* v. *Marylebone B. C.* (1904) 2 K. B. 893 ; 73 L. J. K. B. 1013 ; 91 L. T. 639 ; 53 W. R. 118 ; 68 J. P. 566 ; 20 T. L. R. 778).

(2.) Any award given by such one surveyor, or by such three surveyors, or by any two of them, shall be conclusive, and shall not be questioned in any Court; with this exception, that either of the parties to the difference may appeal therefrom to the County Court within 14 days from the date of the delivery of the award; and the County Court may, subject as hereafter in this section mentioned, rescind the award or modify it in such manner as it thinks just. S. 91

Met. Bldg. Act, 1855, sec. 85 (8), re-enacted.

City of London Ct. 1903. Where one owner, in rebuilding his building, instead of rebuilding a party wall, erected a new external wall alongside on his own ground, and the owners of the adjoining building subsequently pulled down his building for the purpose of rebuilding, which resulted in the condemnation of the said party wall as a dangerous structure; it was held that the cost of rebuilding the party wall must be borne by both parties in due proportion, and that the owner who had erected his own wall was not relieved of his responsibility in the party wall (*Fifoot* v. *Apperley*; 'Building News,' Sept. 18, 1903, otherwise unreported).

(3.) If either party to the difference make default in appointing a surveyor for 10 days after notice has been served on him by the other party to make such appointment, the party giving the notice may make the appointment in the place of the party so making default.

Met. Bldg. Act, 1855, sec. 85 (9), re-enacted.

(4.) The costs incurred in making or obtaining the award shall be paid by such party as the surveyor or surveyors determine.

Met. Bldg. Act, 1855, sec. 85 (10), re-enacted.

(5.) If the appellant from any such award, on appearing before the County Court, declare his unwillingness to have the matter decided by that Court, and prove to the satisfaction of the judge of that Court that, in the event of the matter being decided against him, he will be liable to pay a sum, exclusive of costs, exceeding 50 pounds, and gives security to be approved by the judge duly to prosecute his appeal, and to abide the event thereof, all proceedings in the County Court shall thereupon be stayed, and the appellant may bring an action in the High Court against the other party to the difference.

(6.) The plaintiff in such action shall deliver to the

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defendants an issue whereby the matters in difference between them may be tried ; and the form of such issue, in case of dispute, or in case of the non-appearance of the defendant, shall be settled by the High Court ; and such action shall be prosecuted, and issue tried in the same manner, and subject to the same incidents in, and subject to which, actions are prosecuted and issues tried in other cases within the jurisdiction of the High Court, or as near thereto as circumstances admit.

Subsections 5 & 6 are a re-enactment of Met. Bldg. Act, 1855, sec. 85 (11).

(7.) If the parties to any such action agree as to the facts, a special case may be stated for the opinion of the High Court ; and any case so stated may be brought before the Court in like manner, and subject to the same incidents in, and subject to which, other special cases are brought before such Court, or as near thereto as circumstances admit ; and any costs that may have been incurred in the County Court by the parties to such action as is mentioned in this section shall be deemed to be costs incurred in such action, and be payable accordingly.

Met. Bldg. Act, 1855, sec. 85 (12), re-enacted.

(8.) Where both parties to the difference have concurred in the appointment of one surveyor for the settlement of such difference, then if such surveyor refuse or for 7 days neglect to act, or die, or become incapable to act, before he has made his award, the matters in dispute shall be determined in the same manner as if such single surveyor had not been appointed.

(9.) Where each party to the difference has appointed a surveyor for the settlement of the difference, and a third surveyor has been selected, then if such third surveyor refuse or for seven days neglect to act, or, before such difference is settled, die, or become incapable to act, the two surveyors shall forthwith select another third surveyor in his place ; and every third surveyor so selected as last aforesaid shall have the same powers and authorities as were vested in his predecessor.

(10.) Where each party to the difference has appointed a surveyor for the settlement of the difference, then, if the two surveyors so appointed refuse, or for 7 days after request of either party neglect, to select a third

surveyor, or another third surveyor in the event of the refusal or neglect to act, death, or incapacity of the third surveyor for the time being, a Secretary of State may, on the application of either party, select some fit person to act as third surveyor; and every surveyor so selected shall have the same powers and authorities as if he had been selected by the two surveyors appointed by the parties. S. 91

(11.) Where each party to the difference has appointed a surveyor for the settlement of the difference, then, if before such difference is settled, either surveyor so appointed die, or become incapable to act, the party by whom such surveyor was appointed may appoint, in writing, some other surveyor to act in his place; and if for the space of 7 days after notice served on him by the other party for that purpose, he fail to do so, the other surveyor may proceed *ex parte*, and the decision of such other surveyor shall be as effectual as if he had been a single surveyor in whose appointment both parties had concurred; and every surveyor so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former surveyor at the time of his death, or disability, as aforesaid.

(12.) Where each party to the difference has appointed a surveyor for the settlement of the difference, then, if either of the surveyors refuse, or for 7 days neglect, to act, the other surveyor may proceed *ex parte*; and the decision of such other surveyor shall be as effectual as if he had been a single surveyor in whose appointment both parties had concurred.

Subsecs. 8–12 are a re-enactment, with slight verbal alterations, of Met. Man. & Bldg. Am. Act, 1882, sec. 21.

Power for building owner to enter premises.

92. A building owner, his servants, agents and workmen, at all usual times of working, may enter and remain on any premises for the purposes of executing, and may execute, any work which he has become entitled or is required, in pursuance of this Act, to execute; removing any furniture, or doing any other thing which may be necessary; and if the premises are closed, he and they may, accompanied by a constable or other officer of the peace, break open any [fences or] doors, in order to effect such entry:

[Provided that, before entering on any premises for the purposes of this section, the building owner shall, except in the case of emergency, give 14 days' notice of his intention so to do to the owner and occupier, and in

S. 92 case of emergency shall give such notice as may be reasonably practicable.]

Met. Bldg. Act, 1855, sec. 86., re-enacted, the words in brackets being added.

For penalty (£10) *see* sec. 200 (4).

Building owner to underpin adjoining owner's building.

[**93.** Where a building owner intends to erect, within 10 feet of a building belonging to an adjoining owner, a building or structure any part of which, within such 10 feet, extends to a lower level than the foundations of the building belonging to the adjoining owner; he may, and if required by the adjoining owner shall, (subject as hereinafter provided), underpin or otherwise strengthen the foundations of the said building, so far as may be necessary, and the following provisions shall have effect:

(1.) At least 2 months' notice in writing shall be given by the building owner to the adjoining owner, stating his intention to build, and whether he proposes to underpin or otherwise strengthen the foundations of the said building; and such notice shall be accompanied by a plan and sections showing the site of the proposed building, and the depth to which he proposes to excavate;

(2.) If the adjoining owner shall, within 14 days after being served with such notice, give a counter notice in writing that he disputes the necessity of or require such underpinning or strengthening, a difference shall be deemed to have arisen between the building owner and the adjoining owner;

(3.) The building owner shall be liable to compensate the adjoining owner and occupier for any inconvenience, loss or damage which may result to them by reason of the exercise of the powers conferred by this section;

(4.) Nothing in this section contained shall relieve the building owner from any liability to which he would otherwise be subject, in case of injury caused by his building operations to the adjoining owner.]

See notes to sec. 90 (3).

Security to be given by building owner and adjoining owner.

94. An adjoining owner may, if he think fit, by notice in writing, require the building owner (before commencing any work which he may be authorised by [this Part of] this Act to execute) to give such security as

may be agreed upon, or in case of difference may be settled by the Judge of the County Court, for the payment of all such expenses, costs, and compensation in respect of the work as may be payable by the building owner. S. 94

[The building owner may, if he think fit (at any time after service on him of a party wall or party structure requisition by the adjoining owner, and before beginning a work to which the requisition relates, but not afterwards), serve a counter requisition on the adjoining owner requiring him to give such security for payment of the expenses, costs and compensation for which he is or will be liable, as may be agreed upon, or in case of difference may be settled as aforesaid.

If the adjoining owner do not, within 1 month after service of that counter requisition, give security accordingly, he shall, at the end of that month, be deemed to have ceased to be entitled to compliance with his party wall or party structure requisition, and the building owner may proceed as if no party wall or party structure requisition had been served on him by the adjoining owner.]

Met. Bldg. Act, 1855, sec. 87, re-enacted, the words in brackets being added.

Rules as to expenses in respect of party structures.

95. (1.) As to expenses to be borne jointly by the building owner and adjoining owner :—

(*a*) If any party structure be defective or out of repair; the expense of making good, [underpinning] or repairing the same shall be borne by the building owner and adjoining owner in due proportion, regard being had to the use that each owner makes, [or may make,] of the structure ;

See note at end of subsec. (2) of this section.

(*b*) If any party structure be pulled down and rebuilt by reason of its being so far defective, or out of repair, as to make it necessary or desirable to pull it down; the expense of such pulling down and rebuilding shall be borne by the building owner and adjoining owner in due proportion, regard being had to the use that each owner may make of the structure ;

(*c*) If any timber or other partition dividing a building be pulled down in exercise of the right by this Part of this Act vested in a building

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owner, and a party structure be built instead thereof; the expense of building such party structure, and also of building any additional party structures that may be required by reason of the partition having been pulled down, shall be borne by the building owner and adjoining owner in due proportion, regard being had to the use that each owner may make of the party structure, and to the thickness required for [support of] the respective buildings parted thereby;

(*d*) If any rooms or storeys, or any parts thereof, the property of different owners, and intermixed in any building, be pulled down in pursuance of the right by this Part of this Act vested in a building owner, and be rebuilt in conformity with this Act; the expense of such pulling down and rebuilding shall be borne by the building owner and adjoining owner in due proportion, regard being had to the use that each owner [may] make of such rooms or storeys;

(*e*) If any arches or communications [over public ways, or over passages belonging to other persons than the owners of the buildings connected by such arches or communications,] or any parts thereof, be pulled down in pursuance of the right by this Part of this Act vested in a building owner, and be rebuilt in conformity with this Act; the expense of such pulling down and rebuilding shall be borne by the building owner and adjoining owner in due proportion, regard being had to the use that each owner [may] make of such arches or communications.

The above subsection is a re-enactment, with a few verbal alterations, of Met. Bldg. Act, 1855, sec. 88, subsecs. 1–5.

See note to sec. 109 (*Hunt* v. *Harris*).

Par. (b.) C. P. 1870 (Bovill, C.J., Willes and Keating, JJ.). Where a party wall was pulled down and rebuilt by reason of its being so defective as to make it necessary to pull down, and where damage had been occasioned to the adjoining owner's premises by such pulling down and rebuilding; it was held under the corresponding section of Met. Bldg. Act, 1855, that the building owner was not liable to make good such damage but that such expense fell on the adjoining owner (*Bryer* v. *Willis*, 23 L. T. 463; 19 W. R. 102).

(2.) As to expenses to be borne by the building owner :—

(*a*) If any party structure, or any external wall built against another external wall, be raised [or underpinned] in pursuance of the power by this Part of this Act vested in a building owner; the expense of raising [or underpinning] the same, and of making good all damage [occasioned thereby,] and of carrying up to the requisite height all such flues or chimney stacks [belonging to the adjoining owner on or against any such party structure or external wall,] as are by this Part of this Act required to be made good and carried up, shall be borne by the building owner; S. 95

(*b*) If any party structure which is of proper materials and sound, or not so far defective or out of repair as to make it necessary or desirable to pull it down, be pulled down and rebuilt by the building owner; the expense of pulling down and rebuilding the same, and of making good any damage by this Part of this Act required to be made good, [and a fair allowance in respect of the disturbance and inconvenience caused to the adjoining owner,] shall be borne by the building owner;

(*c*) If any party structure be cut into by the building owner; the expense of cutting into the same, and of making good any damage by this Part of this Act required to be made good, shall be borne by the building owner;

(*d*) If any footing, chimney breast, jambs or floor be cut away in pursuance of the powers by this Part of this Act vested in a building owner; the expense of such cutting away, and of making good any damage by this Part of this Act required to be made good, shall be borne by the building owner;

[(*e*) If any party fence wall be raised for a building; the expense of raising such wall shall be borne by the building owner;

(*f*) If any party fence wall be pulled down and built as a party wall; the expense of pulling down such party fence wall and building the same as a party wall shall be borne by the building owner.]

This subsection is a re-enactment of Met. Bldg. Act, 1855, sec. 88, subsecs. 6–9, the words in brackets, including clauses (*e*) and (*f*), being added.

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[If at any time the adjoining owner make use of any party structure or external wall (or any part thereof) raised or underpinned as aforesaid, or of any party fence wall pulled down and built as a party wall (or any part thereof), beyond the use thereof made by him before the alteration; there shall be borne by the adjoining owner from time to time a due proportion of the expenses (having regard to the use that the adjoining owner may make thereof) :—

(i.) Of raising or underpinning such party structure or external wall, and of making good all such damage occasioned thereby to the adjoining owner, and of carrying up to the requisite height all such flues and chimney stacks belonging to the adjoining owner, on or against any such party structure or external wall, as are by this Part of this Act required to be made good and carried up ;

(ii.) Of pulling down and building such party fence wall as a party wall.]

It is to be presumed that the above paragraph applies only to party walls built or raised after the commencement of and under the rules of this Act, and that it in no way affects the decision of *Williams* v. *Bull* and the law then laid down with regard to party walls as they existed at the commencement of this Act ; in this case it was held that the plaintiff having rebuilt the party wall, under the powers conferred by Met. Bldg. Act, 1855, to a height greater than it was previously, the defendant was entitled when rebuilding his premises to use the party wall, not only for the portion of the height originally occupied by his building, but also for the newly raised portion above the roof of the premises he had pulled down, and that the plaintiff could not claim any payment for the use of the raised portion, the wall being a party wall for the full height (*Williams* v. *Bull*, 'Times,' Feb. 15, 1890).

C. A. 1904 (Collins, M. R., Mathew, L,J., affirming K. B., Walton, J.). Where the owner of one house had raised a party wall between it and the adjoining house, and subsequently let the house on lease to a tenant, and the owner of the adjoining house subsequently carried out alterations to that house involving the use of the raised party wall to a greater extent than before, the three surveyors had awarded the tenant a sum of money in respect of the increased use of the party wall ; it was held that the tenant was not a person entitled to any payment in respect of the increased use of the party wall, and the award of the surveyors was to that extent invalid (*In re an arbitration between Stone and Hastie*, (1903) 2 K. B. 463 ; 72 L. J. (K. B.) 846 ; 68 J. P. 44 ; 89 L. T. 353 ; 52 W. R. 130 ; 19 T. L. R. 654).

Account of expenses to be delivered to adjoining owner.

96. Within 1 month after the completion of any work which a building owner is by this Part of this Act authorised or required to execute, and the expense of which is in whole or in part to be borne by an adjoin-

ing owner, the building owner shall deliver to the adjoining owner an account in writing of the [particulars and] expense of the work, specifying any deduction to which such adjoining owner or other person may be entitled in respect of old materials, or in other respects; and every such work shall be estimated and valued at fair average rates and prices, according to the nature of the work and the locality and the market price of materials and labour at the time. S. 96

Met. Bldg. Act, 1855, sec. 89, re-enacted.

97. At any time within 1 month after the delivery of the said account, the adjoining owner, if dissatisfied therewith, may declare his dissatisfaction to the building owner by notice in writing, [served] by himself or his agent, and specifying his objection thereto, and thereupon a difference shall be deemed to have arisen between the parties, and shall be determined in manner hereinbefore in this Part of this Act provided for the settlement of differences between building and adjoining owners. Adjoining owner may object to account.

Met. Bldg. Act, 1855, sec. 90, re-enacted.

98. If, within the said period of 1 month, the adjoining owner do not declare in the said manner his dissatisfaction with the account, he shall be deemed to have accepted the same, and shall pay the same on demand to the party delivering the account, and if he fail to do so the amount so due may be recovered as a debt. Building owner may recover if no appeal made.

Met. Bldg. Act, 1855, sec. 91, re-enacted.

99. Where the adjoining owner is liable to contribute to the expenses of building any party structure, then, until such contribution is paid, the building owner at whose expense the same was built shall stand possessed of the sole property in the structure. Structure to belong to building owner until contribution paid.

Met. Bldg. Act, 1855, sec. 92, re-enacted.

100. The adjoining owner shall be liable for all expenses incurred on his requisition by the building owner, and in default payment of the same may be recovered from him as a debt. Adjoining owner liable to expenses incurred on his requisition.

Met. Bldg. Act, 1855, sec. 93, re-enacted, verbally altered.

[**101.** Nothing in this Act shall authorise any interference with an easement of light or other easements in or relating to a patry wall, or take away, abridge or Saving for lights in party walls, &c.

S. 101 prejudicially affect any right of any person to preserve or restore any light or other thing in or connected with a party wall, in case of the party wall being pulled down or rebuilt.]

This section permits the reconstruction only of previously existing windows in party walls.

For construction of openings in party walls *see* secs. 54 (3), 77 (3).

Compare with sec. 58 and notes thereon.

See note to sec. 98 and the decision in the case of *Crofts* v. *Haldane*.

The Chancery Court will grant an order for partition of a party wall (*Mayfair Property Co., Limited* v. *Johnston*; L. R. (1894) 1 Ch. 508).

PART IX

DANGEROUS AND NEGLECTED STRUCTURES

Dangerous Structures

Meaning of structure.

102. In this Part of this Act the expression 'structure' includes any building, wall, or other structure, and anything affixed to or projecting from any building, wall or other structure.

Survey to be made of dangerous structures.

103. (1.) Where it is made known to the Council that any structure is in a dangerous state, the Council shall require a survey of such structure to be made by the District Surveyor, or by some other competent surveyor.

[(2.) For the purposes of this Part of this Act the expression 'District Surveyor' shall be deemed to include any surveyor so appointed.]

(3.) The District Surveyor shall make known to the Council any information which he may receive with respect to any structure being in a dangerous state.

[(4.) It shall be lawful for the District Surveyor to enter into any structure, or upon any land upon which any structure is situate, for the purpose of making a survey of such structure.]

Met. Bldg. Act, 1855, sec. 69 re-enacted, subsecs. (2) and (4) being added.

For penalty for obstructing the District Surveyor (40*s*. and 40*s*. a day) *see* sec. 200 (11) *c*.

Q. B. 1897 (Wills and Wright, JJ.). It has been held that the duties of the Council under this section are administrative, that they have no option in the matter, and that they may delegate

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to one of their officers by general resolution their authority to require a survey to be made and notice to be served on the owner to do the necessary work without the particular case having come specially before a meeting of the Council for consideration (*L. C. C.* v. *Hobbis*, 61 J. P. 85 ; 75 L. T. 687 ; 45 W. R. 270).

Effect of this Part of Act within the City.

104. In cases where any such structure is situate within the City, this Part of this Act relating to dangerous structures shall be read as if the *Commissioners of Sewers* were named therein instead of the Council, and all costs and expenses of, and all payments hereby directed to be made by or to, such *Commissioners* shall be made by or to the Chamberlain of the City out of, or to the consolidated rate made by such *Commissioners*, in the same manner as payments are made by or to such Chamberlain in the ordinary course of his business.

This section is a re-enactment of the previously-existing law comprised in Met. Bldg. Act, 1855, sec. 70.

The duties of the Commissioners of Sewers are now transferred to, and exercised by, the Corporation of the City of London.

Surveyor to give certificate.

105. Upon the completion of his survey the District Surveyor employed shall certify to the Council his opinion as to the state of the structure.

Met. Bldg. Act, 1855, sec. 71, re-enacted.

Notice to be given to owner in respect of certificate.

106. If the certificate be to the effect that the structure is not in a dangerous state no further proceedings shall be had in respect thereof; but if it is to the effect that the same is in a dangerous state the Council [may] cause the same to be shored up or otherwise secured, and a proper hoard or fence to be put up for the protection of passengers, and shall cause notice to be served on the owner or occupier of the structure requiring him forthwith to take down, secure or repair the same, as the case requires.

Met. Bldg. Act, 1855, sec. 72, re-enacted, 'may' being substituted for 'shall.'

For proceedings when the building is dangerous to the inmates *see* sec. 114.

Q. B. 1894 (Cave and Collins, JJ.). It has been held that it is not necessary for a structure to be dangerous to passengers or passers-by in order that it may be dealt with as a dangerous structure, being dangerous to any person is sufficient ; the section uses the expression 'in a dangerous state' (*L. C. C.* v. *Herring*, (1894) 2 Q. B. 522 ; 58 J. P. 721 ; 63 L. J. (M. C.) 230 ; 10 T. L. R. 509).

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Q. B. 1899 (Wills, J.). It was held that the Council are not bound to give notice to the local authority under secs. 109 or 122 of Met. Man. Act, 1855, of their intention to remove pavement for the purpose of erecting hoarding and shoring when they are about to remove a dangerous structure under sec. 107 of this Act; and under such circumstances if they remove the pavement they are not bound to reinstate it on the removal of the hoarding and shoring, and are consequently not liable for injuries caused to a person by its non-reinstatement (*Crisp* v. *L. C. C.* (1899), 1 Q. B. 720; 68 L. J. (Q. B.) 499; 80 L. T. 654; 63 J. P. 484).

C. A. 1903 (Vaughan Williams, Romer, and Cozens Hardy, L,JJ., affirming Ch. Kekewich, J.). Where a bay window had been condemned as dangerous, and because it could not be re-erected as before without contravening this Act, though it could be constructed in another way to comply with the Act, the lessee had replaced the bay window by a new window set back in the front wall of the house; it was held that the lessor could not compel the lessee to reconstruct the bay window (*Wright* v. *Lawson*, 68 J. P. 34).

C. A. 1904 (Collins, M. R., Stirling, and Mathew, L,JJ., reversing K. B., Grantham, J.). In an action for damages for personal injury caused by the fall of a balcony; it was held that the landlord is not liable to his tenant for personal injuries caused by the defective condition of the demised premises unless the landlord has agreed to repair and has received notice of the want of repair (*Tredway* v. *Machin*, 91 L. T. 310; 53 W. R. 136; 20 T. L. R. 726).

Proceedings to enforce compliance with notice.

107. (1.) If the owner or occupier on whom the notice is served fail to comply as speedily as the nature of the case permits with the notice, a Petty Sessional Court, on complaint by the Council, may order the owner to take down, repair or otherwise secure to the satisfaction of the District Surveyor, the structure, or such part thereof as appears to the Court to be in a dangerous state, within a time to be fixed by the order; and if the same be not taken down, repaired or otherwise secured within the time so limited the Council may, with all convenient speed, cause all or so much of the structure as is in a dangerous condition to be taken down, repaired or otherwise secured in such manner as may be requisite:

Met. Bldg. Act, 1855, sec. 73 (first portion), re-enacted.

For penalty for refusing admittance to District Surveyor (40*s.* and 40*s.* a day) *see* sec. 200 (11) *g*.

An order will be made upon the owners of both sides of a dangerous party wall; *see* notes to sec. 173.

[Provided that, if the owner of the structure dispute the necessity of any of the requisitions comprised in the notice, he may, by notice in writing to the Council

within 7 days from the service of the notice upon himself, require that the subject shall be referred to arbitration.] S. 107

[(2.) In case the owner require arbitration, he may, at the time of giving such notice, appoint an independent surveyor to report on the condition of the structure in conjunction with the District Surveyor, within 7 days of the receipt by the Council of the notice of appointment of the owner's surveyor; and all questions of fact or matters in dispute which cannot be agreed between the owner's surveyor and the District Surveyor shall be referred for final decision to a third surveyor, who shall (before the owner's surveyor and the District Surveyor enter upon the discussion of the question in dispute) have been appointed to act as arbitrator by such two surveyors, or, in the event of their disagreeing, by a Petty Sessional Court on the application of either of them:

Such arbitrator shall make his award within 14 days.]

Q. B. 1897 (Wright and Hawkins. JJ.). The true construction of this subsection has been held to be as follows: If the surveyors meet and report within the 7 days, or if they disagree and the arbitrator report within 14 days, the matter is at an end. But if the owner, having given notice of arbitration, fail to appoint a surveyor, or if the surveyor that he has appointed fail to concur in the appointment of an arbitrator, or in any way fail to report within the 7 days, then the owner's counter requisition for arbitration drops if no arbitrator has been appointed; but if an arbitrator has been duly appointed, then, upon the surveyors disagreeing or failing to report within the 7 days, the whole matters in dispute go to the arbitrator to be dealt with by him, and if the arbitrator is unable from any cause to report within the 14 days the Court has power, under the Arbitration Act, 1889, to extend the time, or otherwise cure any defects (*L. C. C.* v. *Bernstein*, 61 J. P. 630).

[(3.) The notice served by the Council shall be discharged, amended or confirmed in accordance with the decision of the two surveyors, or the arbitrator, as the case may be.

(4.) Unless the arbitrator otherwise direct, the costs of and incident to the determination by the two surveyors or the arbitrator of the question in dispute shall be borne and paid, in the event of such determination being adverse to the contention of the District Surveyor, by the Council; or in the event of such determination being adverse to the contention of the owner's surveyor, by the owner.]

Court may make order notwithstanding arbitration.

[**108.** Notwithstanding any such notice requiring arbitration as aforesaid, a Petty Sessional Court, on complaint by the Council, may, if of opinion that the structure is in such a dangerous condition as to require immediate treatment, make any order which such Court may think fit with respect to the taking down, repairing, or otherwise securing the structure.]

Expenses.

109. (1.) All expenses incurred by the Council in [relation to the obtaining of any order as to] a dangerous structure, [and carrying the same into effect,] under this Part of this Act, shall be paid by the owner of the structure; but without prejudice to his right to recover the same from any person liable to the expenses of repairs.

Met. Bldg. Act, 1855, sec. 73 (second portion), re-enacted.

For expenses allowed by this Act *see* Third Sched., Parts II. & IV.

For recovery by owners of proportion of expenses due by other owners *see* sec. 173.

Q. B. 1858 (Campbell, C. J., Wightman and Hill, JJ.). Where the Commissioners (who were then the authority) had after condemning a dangerous structure taken it down, the owner having neglected to do so, and had demanded payment of the expenses, which had been refused; it was held that the matter of complaint was the non-payment of the expenses after demand, and that the time of limitation commenced to run from the date of the demand, and not from the completion of the works (*Labalmondiere* v. *Addison*, 28 L. J. (M. C.) 25; 1 E. & E. 41; 5 Jur. N. S. 431).

C. P. 1865 (Erle, C. J., Byles and Smith, JJ.). A person who has a long lease of a house at a small ground rent, and sublets it in portions to different tenants at rack rents either on lease or as tenants from year to year, is the owner within the meaning of the dangerous structure sections of Met. Bldg. Act, 1855, and the plaintiff who had rebuilt the party wall was entitled to recover against such owner (*Hunt* v. *Harris*, 12 L. T. 421; 34 L. J. (C. P.) 249; 13 W. R. 742; 19 C. B. (N. S.) 13; 11 Jur. (N. S.) 485).

Q. B. 1880 (Coleridge, C. J., and Field, J.). It was held that the magistrate has no power to reduce the expenses and make his order for the reduced amount, but it must be made for the full amount of expenses incurred (*Debenham* v. *M. B. W.*, 6 Q. B. D. 112; 43 L. T. 596; 50 L. J. (M. C.) 29; 45 J. P. 190; 29 W. R. 353)

Q. B. 1897 (Wills and Wright). It was held that an owner may become liable for expenses under this section where the duties of the Council had been exercised by its officers acting on general resolution of the Council without the particular matter having ever come before a meeting of the Council for consideration (*L. C. C.* v. *Hobbis*, 61 J. P. 85; 75 L. T. 687; 45 W. R. 270).

(2.) If the owner cannot be found, or if on demand

he refuse or neglect to pay the said expenses, the Council, after serving on him 3 months' notice of their intention to do so, may, if in their discretion they think fit, sell the structure; but they shall, after deducting from the proceeds of the sale the amount of all expenses incurred by them, pay the surplus (if any) to the owner [on demand.] S. 109

Met. Bldg. Act, 1855 (repealed), sec. 74.

'If such owner cannot be found, or if, on demand, he refuses or neglects to pay the aforesaid expenses, the said Commissioners, after giving 3 months' notice of their intention to do so by posting a printed or written notice in a conspicuous place on the structure in respect of which, or of part of which, they have incurred expense, or on the land whereon it stands, may sell such structure, and they shall, after deducting from the proceeds of such sale the amount of all expenses incurred by them, restore the surplus (if any) to the owner.'

Provisions respecting sale of dangerous structures.

110. Where, under this Part of this Act, any dangerous structure is sold for payment of the expenses incurred in respect thereof by the Council, the purchaser, his agents and servants may enter upon the land whereon the structure is standing, for the purpose of taking down the same, and of removing the materials of which it is constructed.

A similar power was granted by Met. Man. & Bldg. Am. Act, 1878, sec. 19, now repealed.

For penalty for refusing to admit purchaser (£10 and £5 a day) *see* sec. 200 (6).

If proceeds insufficient, land not to be built on till balance paid.

111. Where the proceeds of the sale of any such structure are insufficient to repay to the Council the amount of the expenses incurred by them in respect of such structure, no part of the land whereon the structure stands or stood shall be built upon until after the balance due to the Council in respect of the structure has been paid.

A similar power was granted by Met. Man. & Bldg. Am. Act, 1878, sec. 19, and Met. Man. & Bldg. Am. Act, 1882, sec. 18, both now repealed.

Compare sec. 116 of this Act.

Recovery of expenses.

112. If the materials are not sold by the Council, or if the proceeds of the sale are insufficient to defray the said expenses, the Council may recover the expenses, or the balance thereof, from the owner of the building, together with all costs in respect thereof, in a summary manner.

A similar power was granted by Met. Man. & Bldg. Am. Act, 1882, sec. 18, now repealed.

Fees to surveyor.

113. (1.) There shall be paid to the District Surveyor, in respect of his services under this Part of this Act, in relation to any dangerous structures, the fees specified in Part II. of the Third Schedule to this Act.

Met. Bldg. Act, 1855, sec. 77, re-enacted, verbally altered.

(2.) Provided that, if any special service is required to be performed by the District Surveyor under this Part of this Act for which no fee is specified in the said Schedule, the Council may order such fee to be paid for that service as they think fit.

Met. Bldg. Act, 1855, sec. 78, re-enacted.

(3.) All fees paid to any surveyor by virtue of this section shall be deemed to be expenses incurred by the Council in the matter of the dangerous structure in respect of which such fees are paid, and shall be recoverable by them from the owner accordingly.

Met. Bldg. Act, 1855, sec. 79, re-enacted.

Power to remove inmates from dangerous structure.

114. Where a structure has been certified by a District Surveyor to be dangerous to its inmates, a Petty Sessional Court may, if satisfied of the correctness of the certificate, upon the application of the Council, by order direct that any inmates of such structure be removed therefrom by a constable or other peace officer, and if they have no other abode he may require that they be received into the workhouse for the place in which the structure is situate.

Met. Bldg. Act, 1855, sec. 80, re-enacted.

Neglected Structures

Removal of dilapidated and neglected buildings.

115. (1.) Where a structure is ruinous, or so far dilapidated as thereby to have become and to be unfit for use or occupation, or is from neglect or otherwise in a structural condition prejudicial to the property in, or the inhabitants of, the neighbourhood, a Petty Sessional Court, on complaint by the Council, may order the owner to take down, or repair, or rebuild such structure (in this Act referred to as a neglected structure), or any part thereof, or to fence in the ground upon which it stands, or any part thereof, or otherwise to put the same, or any part thereof, into a state of repair and good condition, to the satisfaction of the Council, within a reasonable time to be fixed by the order, and may

also make an order for the costs incurred up to the time of the hearing.

(2.) If the order is not obeyed the Council may, with all convenient speed, enter upon the neglected structure, or such ground as aforesaid, and execute the order.

(3.) Where the order directs the taking down of a neglected structure, or any part thereof, the Council in executing the order may remove the materials to a convenient place, and (unless the expenses of the Council under this section in relation to such structure are paid to them within 14 days after such removal) sell the same [if and] as they [in their discretion] think fit.

(4.) All expenses incurred by the Council under this section in relation to a neglected structure may be deducted by the Council out of the proceeds of the sale, and the surplus (if any) shall be paid by the Council on demand to the owner of the structure, and if such neglected structure, or some part thereof, is not taken down and such materials are not sold by the Council, or if the proceeds of the sale are insufficient to defray the said expenses, the Council may recover such expenses, or such insufficiency, from the owner of the structure, together with all costs in respect thereof, in a summary manner; but without prejudice to his right to recover the same from any lessee or other person liable to the expenses of repairs.

This section is a re-enactment, with verbal alterations, of Met. Man. & Bldg. Am. Act, 1882, sec. 17.

For penalty for refusing admittance (40*s.* and 40*s.* a day), *see* sec. 200 (11) *g*.

Supplemental as to Dangerous and Neglected Structures

Provision for enforcing repayment of expenses incurred by Council.

116. (1.) Where the Council have incurred any expenses in respect of any dangerous or neglected structure, and have not been paid or have not recovered the same, a Petty Sessional Court, on complaint by the Council, may make an order fixing the amount of such expenses and the costs of the proceedings before such Petty Sessional Court, and directing that no part of the land upon which such dangerous or neglected structure stands or stood shall be built upon, or that no part of such dangerous or neglected structure, if repaired or rebuilt, shall be let for occupation, until after payment to the Council of the said amount; and thereupon, and until payment to the Council of the said amount, no part of such land shall be built upon, and no part of

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such dangerous or neglected structure so repaired or rebuilt shall be let for occupation.

(2.) Every such order shall be made in duplicate ; and one copy of such order shall be retained by the proper officer of the Court, and the other copy shall be kept at the county hall.

(3.) The Council shall keep at the county hall a register of all orders made under this section, and shall keep the same open for inspection by all persons at all reasonable times, and any such order not entered in such register within 10 days after the making thereof shall cease to be of any force. [No property shall be affected by any such order unless and until such order is entered in such register.]

This section is a re-enactment, with certain verbal alterations, of Met. Man. & Bldg. Am. Act, 1882, sec. 18.

Compare with sec. 111 of this Act.

Fees on dangerous or neglected structures to Council.

117. The fees specified in Part IV. of the Third Schedule to this Act as payable to the Council, shall be payable to and may be recovered in a summary way by the Council.

PART X [1]

DANGEROUS AND NOXIOUS BUSINESSES

Regulations for building near dangerous business.

118. (1.) No person shall erect any building nearer than 50 feet to a building used for any dangerous business to which this section applies.

(2.) Provided that, where a building erected before the ninth day of August, one thousand eight hundred and forty-four, within 50 feet from any building for the time being used for any such dangerous business, is pulled down, burnt or destroyed by tempest, such building may be rebuilt.

(3.) No person shall establish or carry on a dangerous business to which this section applies in any building or vault, or in the open air, at a less distance than 40 feet from any public way, or than 50 feet from any other building or any vacant ground belonging to any person other than his landlord.

(4.) The following businesses shall be deemed to be

[1] Part X. is substantially a re-enactment of Met. Bldg. Act, 1844, secs. 54–63.

For penalties incurred under this Part (£50 and £50 a day), *see* sec. 200 (7).

dangerous businesses within the meaning of this section, that is to say: the business of the manufacture of matches, ignitable by friction or otherwise, or of other substances liable to sudden explosion, inflammation or ignition, or of turpentine, naphtha, varnish, [tar, resin or Brunswick black,] and any other manufacture dangerous on account of the liability of the materials or substances employed therein to cause sudden fire or explosion.

Regulations for building near noxious business.

119. (1.) No person shall erect any dwelling-house nearer than 50 feet to a building used for any noxious business to which this section applies.

(2.) Provided that where a dwelling-house erected before the ninth day of August, one thousand eight hundred and forty-four, within 50 feet from any building for the time being used for any such noxious business is pulled down, burnt or destroyed by tempest, such dwelling-house may be rebuilt.

(3.) Subject to the provisions of the next following section, no person shall establish or carry on a noxious business to which this section applies in any building or vault, or in the open air, at a less distance than 40 feet from any public way, or than 50 feet from any dwelling-house.

(4.) The following businesses shall be deemed to be noxious businesses within the meaning of this section, that is to say: the business of a blood boiler or bone boiler, and any other like business which is offensive or noxious; but nothing in this section shall apply to any of the following businesses, namely, the businesses of a soap boiler, tallow melter, knacker, fellmonger, tripe boiler and slaughterer of cattle or horses.

Provisions as to certain old noxious businesses.

120. The following provisions shall apply to any noxious business existing before the ninth day of August, one thousand eight hundred and forty-four:—

(1.) If any party charged with carrying on such business show that in carrying on such business all the means known to be available for mitigating the effect of such business have been adopted, then it shall be lawful for the Petty Sessional Court to [remit or] mitigate the penalty. Provided further, that if it shall appear to the said Court, or to the Court of Quarter Sessions, whether on appeal or on trial by jury as hereinafter provided, that the person carrying on any such business shall have made due endeavours to carry on the same with a

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view to mitigate so far as possible the effects of such business; then, although he have not adopted all or the best means available for the purpose, yet it shall be lawful for the Court to suspend the execution of their order, upon condition that within a reasonable time, to be named, the party convicted do adopt such other or better means as to the Court shall seem fit; or before passing final sentence, and without consulting the prosecutor, to make such other order touching the carrying on of such business as the Court shall think fit for preventing the nuisance in future. Provided always, that if the matter come before any superior Court, it shall be lawful for such Court to exercise such power of mitigating [or remitting] such penalty, or of suspending the execution of any judgment, order, or determination in the matter, or to make such order touching the carrying on of such business as to the Court shall seem fit;

(2.) Any person dissatisfied with the decision of the Petty Sessional Court may appeal to the Court of Quarter Sessions [in manner provided by the Summary Jurisdiction Acts;]

(3.) If, before conviction by the Petty Sessional Court, the person complained against desire to have the matter tried by a jury, and enter into a recognisance to try such matter without delay and to pay all costs of trial if a verdict be found against him, then such matter shall be tried at the next practicable Court of Quarter Sessions, or whensoever that Court shall appoint; and if that Court shall think fit, it shall be lawful for them to authorise the jury to view the place in question in such manner as they shall direct, and the jury shall inquire and try and determine by their verdict whether the business in question be offensive or noxious, and whether the party in question have done any act whereby the penalty imposed by this Act in respect thereof has been incurred; and, subject to the power hereinbefore conferred of mitigating such penalty or suspending their judgment, order or determination thereon, or making such order touching the carrying on of the business, the said Court shall give judgment

according to such verdict, and shall award the penalty (if any) incurred by the defendant, and shall and may (if they see fit) award to either of the parties such costs as they may deem reasonable; which verdict and the judgment award, order or determination thereon, shall be binding and conclusive. S. 120

Saving for gasworks and distilleries.

121. The provisions of this Part of this Act relating to dangerous and noxious businesses shall not apply to any public gasworks, nor to any premises used for the purpose of distillation, or the rectification of spirits under the survey of the Commissioners of Inland Revenue or their officers.

PART XI [1]

DWELLING-HOUSES ON LOW-LYING LAND

Dwelling-houses on low-lying land.

122. It shall not be lawful for any person upon land of which the surface is below the level of Trinity high-water mark, and which is so situate as not to admit of being drained by gravitation into an existing sewer of the Council, to erect any building to be used wholly or in part as a dwelling-house, or to adapt any building to be used wholly or in part as a dwelling-house; except with the permission of the Council, and subject to and in accordance with such regulations as the Council may from time to time prescribe with reference to the erection of buildings on such land:

And the Council may by such regulations (subject to appeal as hereinafter provided)—

(i.) Prohibit the erection of dwelling-houses or the adaptation of any buildings for use as dwelling-houses on such land, or any defined area or areas of such land;

(ii.) Regulate the erection of dwelling-houses, or the adaptation of any buildings for use as dwelling-houses, on such land, or any defined area or areas of such land;

(iii.) Prescribe the level at which the under side of the lowest floor of any permitted building shall be placed on such land, or any defined area or areas of such land, and as to the provision to be made and maintained by the owner for securing

[1] Part XI. is a re-enactment of L. C. C. Gen. P. Act, 1893, secs. 5-9.

S. 122

efficient and proper drainage of the buildings, either directly or by means of a local sewer, into a main sewer of the Council :

Any person seeking to erect any dwelling-house, or any building, any part of which is to be used as a dwelling-house, or to adapt any building, or any part of a building, for use as a dwelling-house on any of such land, shall make application to the Council for a licence to erect the same, and the matter shall thereupon be referred to the Chief Engineer of the Council, who shall decide whether, and if so upon what conditions, such erection or adaptation may be permitted ; and any such decision shall be given by the said engineer by a certificate in writing under his hand. Any person objecting to the refusal of the Council to permit on such land, or any defined area or areas of such land, the erection of any dwelling-house, or the adaptation for use as a dwelling-house of any building, or to any regulation made by the Council under this Part of this Act, or to any decision of the said engineer, or as to the reasonableness of any requirement or condition made by him, may appeal to the Tribunal of Appeal.

For special fee to District Surveyor, *see* Third Sched., Part III.

For penalty (£100 and £50 a day), *see* sec. 200 (9).

For regulations under this section made in 1895, *see* Regulations of the Council, No. 14, *post*.

Trinity High Water Mark is a mark at the Hermitage entrance to London Docks, 12 feet 6 inches above Ordnance datum—*i.e.*, the mean level of the tides at Liverpool ; *see* London Docks Act, 1799 (39 & 40 Geo. III. cap. 47), sec. 55.

K. B. 1903 (Alverstone, C. J., Lawrence and Kennedy, JJ.). Where upon land, the surface of which was below Trinity H. W. mark, a person had commenced to erect houses drained into a sewer, the property of the Borough Council, which discharged into the main outfall sewer of the County Council, to which it was connected by a flap valve to prevent back flow ; and it was proved that at times of flood or moderate rainfall the outfall sewer became so fully charged as to prevent sewage passing into it from the borough sewer ; it was held that the houses did 'admit of being drained by gravitation into an existing sewer of the Council,' and consequently did not come within this section (*Ellis* v. *L. C. C.* (1904) 1 K. B. 283 ; 68 J. P. 99 ; 73 L. J. (K. B.) 151 ; 90 L. T. 206 ; 52 W. R. 381 ; 2 L. G. R. 1034 ; 1 A. L. R. 86).

Power to make regulations.

123. The Council may, with the concurrence of the Tribunal of Appeal, from time to time make regulations prescribing the procedure to be followed by persons making applications under this Part of this Act.

For Regulations under this section made 1895, *see* Regulations of the Council, No. 14, *post*.

Publication and copies of regulations.

124. (1.) Regulations made by the Council under this Part of this Act shall have no force until a copy thereof shall have been published in the 'London Gazette,' and it shall be the duty of the Council to give notice of every such regulation by publishing a copy thereof in two or more London daily newspapers, and if there be a local newspaper circulating in the parish or district to which such regulation applies, then also in such local newspaper.

(2.) Printed copies of every regulation from time to time in force under this Part of this Act shall be kept at the county hall, and shall be supplied free of charge to any person concerned who may apply for the same.

PART XII[1]

SKY SIGNS

Sky signs.

125. In this Part of this Act the expression—

'Sky sign' means any word, letter, model, sign, device or representation in the nature of an advertisement, announcement or direction, supported on or attached to any post, pole, standard, framework or other support wholly, or in part, upon, over or above any building or structure which, or any part of which, sky sign shall be visible against the sky from any point in any street or public way, and includes all and every part of any such post, pole, standard, framework or other support. The expression 'sky sign' shall also include any balloon, parachute or similar device employed wholly, or in part, for the purposes of any advertisement or announcement on, over or above any building, structure or erection of any kind, or on or over any street or public way, but shall not be deemed to include—

(i.) Any flagstaff, pole, vane or weathercock, unless adapted or used, wholly or in part, for the purposes of any advertisement or announcement;

(ii.) Any sign on any board, frame or other contrivance securely fixed to or on the top of the wall or parapet of any building, on the cornice or

[1] Part XII. is practically a re-enactment of Lond. Sky Signs Act, 1891 (54 & 55 Vict. cap. 78), as amended by L. C. C. Gen. P. Act, 1893 (56 & 57 Vict. cap. 221), sec. 21, both repealed by this Act.

S. 125

blocking course of any wall, or to the ridge of a roof; provided that such board, frame, or other contrivance be of one continuous face and not open work, and do not extend in height more than 3 feet above any part of the wall or parapet or ridge to, against or on which it is fixed or supported; or

(iii.) Any such word, letter, model, sign, device, or representation as aforesaid which relates exclusively to the business of a railway company, and which is placed, or may be placed, wholly upon or over any railway, railway station, yard, platform or station approach, or premises belonging to a railway company, and which is also so placed that it could not fall into any street or public place.

The powers and duties of the Council under this Part were by Sec. 5 of the Lond. Govt. Act, 1899, transferred to the Metropolitan Borough Councils.

Q. B. 1892 (Mathew and Bruce, JJ.). An open tower or framework of timber (fixed on the top of a building used as a flour merchant's premises), on the top of which was a windmill having a rudder with the merchant's name and business painted thereon, around which tower on a gallery was a fence consisting of large letters 3 feet 6 inches high, forming the merchant's name visible against the sky, was erected before the passing of Lond. Sky Signs Act, 1891, and the windmill was used to grind wheat and drive a dynamo; it was held that the letters constituted a sky-sign within the meaning of the Act, though the rudder was primarily for trade purposes (*L. C. C.* v. *Carwardine*, 57 J. P. 181; 62 L. J. (M. C.) 40; 68 L. T. 761; 5 R. 70).

Q. B. 1892 (Pollock, B., and Hawkins, J.). Detached letters fixed upon an iron trellis supported on a palisade that surmounted one of the end walls of a large building behind which was a dome some 30 feet higher than and separated from the letters, which were visible against the dome except at one small part of the street, where the sky could be seen through the letters; were held not to be sky signs within the meaning of Lond. Sky Signs Act, 1891 (*Tussaud* v. *L. C. C.*, 57 J. P. 184).

Q. B. 1896 (Cave and Wills, JJ.). Detached letters 5 feet high fixed above and secured to the flat roof of an hotel, and visible against the sky, behind which a series of boards had subsequently been fixed so that the letters were not visible against the sky, but against the boards, were held to be sky signs within the present Act (*L. C. C.* v. *Savoy Hotel, Ltd.*, 60 J. P. 457).

District Surveyor to act for purposes of this Part of Act.

126. For the purpose of giving effect to the provisions of this Part of this Act, the District Surveyor of each district, acting under this Act, shall inspect and survey sky signs in his district, and report from time to time to the Council.

The expression, 'the surveyor,' in this Part of this Act, means the District Surveyor so acting within his district. S. 126

127. From and after the commencement of this Act, it shall be unlawful to erect any sky sign as defined in this Act. Prohibition of future sky signs.

For penalty (40*s.*, and 40*s.* a day), *see* sec. 200 (11) *a*.

128. From and after the commencement of this Act, it shall be unlawful to retain any sky sign as defined in this Act which previously to the passing of this Act shall have been erected, except in pursuance of, and in accordance with, the terms of a licence granted or renewed before the passing of this Act, by the Council or by the Commissioners of Sewers as the case may be, under the provisions of the London Sky Signs Act, 1891, as amended by section 17 of the London County Council (General Powers) Act, 1893, or renewed, after the passing of this Act, as hereinafter provided. Regulation of existing sky signs.

For penalty (40*s.*, and 40*s.* a day), *see* sec. 200 (11) *a*.

129. (1.) A licence granted under the provisions of the London Sky Signs Act, 1891, and renewed under the same Act, may, on the expiration of the period for which such renewal was granted, be renewed for one further period of 2 years, but not longer. Renewal of licence.

(2.) A licence granted under the provisions of the London Sky Signs Act, 1891, as amended by section 17 of the London County Council (General Powers) Act, 1893, after the twenty-fourth day of August, one thousand eight hundred and ninety-three, may be renewed from the expiration of a period of 2 years from the date of issue of such licence for a further period of 2 years, and on the expiration of that period for one other period of 2 years, making with the original term of the licence 6 years in all, but not longer.

(3.) Every person desirous of obtaining a renewal of a licence to retain a sky sign for any such period as aforesaid may make application to the surveyor for an inspection and survey of such sky sign, and such application shall be dealt with as hereinafter provided ; and any person who shall have obtained a certificate from the surveyor after any such inspection and survey in accordance with the provisions hereinafter contained may, at any time within 14 days from the issue thereof, forward the same to the Council with an application for a licence from the Council to retain the same sky sign ;

S. 129 and every such application for a licence shall be accompanied by a fee of five shillings, which shall be paid to the Council for and in respect of the registration of the licence ; and the Council shall thereupon grant to such person a licence for the retention of such sky sign for a period of 2 years from the date of the issue of such licence.

(4.) Every such application to the surveyor for the inspection and survey of a sky sign shall be accompanied by a payment of 2 guineas to such surveyor, which shall be his fee for the inspection and survey, and for the grant or refusal of the certificate, as the case may be ; and it shall not be lawful for the surveyor to demand or receive any further fee or payment in respect thereof.

(5.) The surveyor shall either grant a certificate that in his opinion the sky sign is so placed, constructed and supported as not to be likely to involve danger to the public, or he shall refuse to grant such certificate, in which case he shall state the grounds of such refusal ; and such certificate or refusal shall be in the form set out in this section, with such modifications, if any, as the circumstances may require :—

FORM OF CERTIFICATE

LONDON BUILDING ACT, 1894

District of .

Whereas *A. B.* of has made application to me pursuant to the London Building Act, 1894, to inspect and survey a sky sign erected at , I hereby certify that I have inspected and surveyed the same, and in my opinion the said sky sign may be retained as now constructed for 2 years from the date hereof without being likely to cause danger to the public.

Dated this day of 189 .

(Signed) *C. D.*

Surveyor.

FORM OF REFUSAL OF CERTIFICATE S. 129

LONDON BUILDING ACT, 1894

District of .

Whereas *A. B.* of has made application to me pursuant to the London Building Act, 1894, to inspect and survey a sky sign erected at , I hereby certify that I have inspected and surveyed the same, and I refuse to certify that the said sky sign is so constructed as not to be likely to cause danger to the public, for the following reasons—

Dated this day of 189 .

(Signed) *C. D.*

Surveyor.

Alteration of sky signs to meet surveyor's requirements.

130. (1.) Where the surveyor refuses to grant a certificate applied for under this Act, the applicant may, if he think fit and can lawfully do so, execute such repairs to, or alterations in, or modifications of, the sky sign as shall meet the objections thereto as stated in the form of refusal, and may thereupon make a further application to the surveyor to inspect and survey the sky sign.

(2.) If the surveyor, on re-inspection and re-survey, be of opinion that the sky sign has been so repaired, altered, or modified that it is not likely to involve danger to the public, he shall grant a certificate under this Act with respect to such sky sign, and an application for licence thereof may be made as in this Act provided.

(3.) Every such application to the surveyor to re-inspect and re-survey a sky sign, and for a certificate in respect thereof, shall be accompanied by a payment of one guinea to such surveyor, which shall be his fee for such re-inspection and re-survey, and for the grant or refusal of a certificate thereupon, as the case may be; and it shall not be lawful for the surveyor to demand or receive any further fee or payment in respect thereof.

Notice of refusal of certificate to be sent to the Council.

131. Where the surveyor refuses to grant a certificate applied for under this Act, it shall be the duty of the surveyor forthwith to forward a copy of his refusal to the Council.

Appeal against refusal of certificate.

132. Where the surveyor refuses to grant a certificate under this Act, it shall be lawful for the applicant, at any time within 14 days after the date of such refusal, to make application to the Tribunal of Appeal by way

S. 132 of appeal against such refusal, and such appeal shall be accompanied by a copy of the form of refusal by the surveyor.

Forfeiture of licence.

133. In any of the following cases a licence under this Act shall become void, viz. :—

(i.) If any addition to any sky sign be made, except for the purpose of making it secure under the direction of the surveyor ;

(ii.) If any change be made in the sky sign, or any part thereof ;

(iii.) If the sky sign, or any part thereof, fall, either through accident, decay or any other cause ;

(iv.) If any addition or alteration be made to or in the house, building or structure on, over or to which any sky sign is placed or attached, if such addition or alteration involves the disturbance of the sky sign or any part thereof ;

(v.) If the house, building or structure over, on or to which the sky sign is placed or attached become unoccupied, or be demolished or destroyed.

Removal of sky signs.

134. If any sky sign be erected, or retained, contrary to the provisions of this Act, or after the licence for the maintenance or retention thereof for any period shall have become void, it shall be lawful for the Council to take proceedings for the taking down and removal of the sky sign, in the same manner in all respects as if it were a structure certified to be in a dangerous state under Part IX. of this Act, except that the provisions of the said Part with respect to arbitration shall not apply ; and it shall be lawful for the Council, or any officers, servants or workmen appointed by them for that purpose (after obtaining the order of a Petty Sessional Court for the taking down of the sky sign, and after the expiration of the period, if any, fixed by such order for taking down the same), to enter upon the land, building or premises on or over which the sky sign is erected, and to take down and remove the sky sign, and to execute and do any works which may be necessary for that purpose, and for leaving any building to which the same was attached in a condition of safety ; and all the expenses of and incidental to any such work shall be repaid, and be recoverable as though the same were a penalty imposed by this Act.

For the purpose of any such proceeding, the expression 'the owner' in the said Part of this Act shall mean the occupier of the house, building or structure on or to which the sky sign is erected or attached ; or,

if the house, building, or structure is unoccupied, then the person who would be the owner thereof within the meaning of this Act.

Application of this Part of Act within the City.

135. As regards the City, this Part of this Act shall be read and have effect as if the Commissioners of Sewers were named therein instead of the Council, and all costs and expenses of such Commissioners in the execution of this Part of this Act shall be paid out of their consolidated rate, as part of the expenses of such Commissioners.

PART XIII

SUPERINTENDING ARCHITECT AND DISTRICT SURVEYORS

Power for Council to appoint Superintending Architect.

136. (1.) The Council may, for the purpose of aiding in the execution of this Act, appoint some fit person, to be called 'the Superintending Architect of Metropolitan Buildings,' together with such number of clerks as they think fit.

(2.) Such architect and clerks shall be removable by the Council, and perform such duties as the Council direct.

(3.) The Superintending Architect shall not practise as an architect, or follow any other occupation.

Subsecs. (1), (2), and (3) are a re-enactment of Met. Bldg. Act, 1855, sec. 62.

(4.) There shall be paid to the Superintending Architect and clerks such salaries as the Council may direct.

Met. Bldg. Act, 1855, sec. 64, re-enacted.

(5.) Subject to the foregoing provisions of this section, the person who, at the commencement of this Act, is the Superintending Architect of Metropolitan Buildings, shall continue to be the Superintending Architect under this Act.

Power of Superintending Architect to appoint deputy.

137. If the Superintending Architect is prevented by illness, infirmity or any other unavoidable cause from attending to the duties of his office, he may, with the consent of the Council, appoint some other person as his deputy to perform all his duties for such time as he may be temporarily prevented from executing them.

Met. Bldg. Act, 1855, sec. 63, re-enacted.

Buildings to be supervised by District Surveyors.

138. Subject [to the provisions of this Act, and] to the exemptions in this Act mentioned, every building [or structure,] and every work done to, in or upon any building [or structure, and all matters relating to the width and direction of streets, the general line of buildings in streets, the provision of open spaces about buildings, and the height of buildings,] shall be subject to the supervision of the District Surveyor appointed to the district in which the building or structure is situate.

Met. Bldg. Act, 1855 (repealed), sec. 31.

'With the exemptions hereinbefore mentioned, every building and every work done to, in or upon any building shall be subject to the supervision of the District Surveyor appointed to the district in which the building is situate.'

See Parts II., III., V., VI., VII., IX., XI., XII., XIII., XIV., XV., and XVI. of this Act.

K. B. 1902 (Alverstone, C. J., Darling and Channell, JJ.). The District Surveyors are persons having statutory position and having a statutory duty cast upon them and they are not servants of the County Council (*Westminster City Council* v. *Watson and others*, (1902) 2 K. B. 717; 87 L. T. 326; 71 L. J. (K. B.) 603; 51 W. R. 300; 46 S. J. 514; 25 T. L. R. 621).

Powers of Council as to surveyors and districts.

139. (1.) The Council shall have the following powers with regard to the District Surveyors and their districts (that is to say):—

(*a*) They may alter the limits of the district of any District Surveyor, or unite any two or more such districts, and place any such altered district under the supervision of any District Surveyor, and do all such matters and things as are necessary for carrying into effect the power hereby given.

(*b*) They may dismiss or suspend any District Surveyor, and in case of any suspension or during any vacancy may appoint a temporary substitute; provided that their dismissal of a District Surveyor who held such office before the fourteenth day of August, one thousand eight hundred and fifty-five, shall be subject to the consent of a Secretary of State.

(*c*) On a vacancy occurring in the office of a District Surveyor, they may appoint another qualified person in his place.

(*d*) They may pay such amount of compensation as they think fit [or as in case of disagreement shall be determined by the Tribunal of Appeal,] to any District Surveyor who is deprived of his

office in pursuance of the power hereby given of altering the limits of districts. S. 139

Met. Bldg. Act, 1855 (repealed), sec. 32.

'The following things may be done by the Metropolitan Board of Works, established by the said Act for the better local management of the Metropolis, by order, at their discretion, that is to say:—

'1. They may alter the limits of any district, or unite any two or more districts together, and in any such case place such altered district under the supervision of any existing or of any future District Surveyor, with power from time to time to alter any district so made, and do all such matters and things as are necessary for carrying into effect the power hereby given;

'2. They may dismiss any existing District Surveyor, with the consent of one of her Majesty's principal Secretaries of State; they may suspend any such surveyor as last aforesaid; they may dismiss or suspend any future District Surveyor; and, in case of any suspension, or during any vacancy, they may appoint a temporary substitute;

'3. Whenever any vacancy occurs in the office of any existing or future District Surveyor, they may appoint another qualified person in his place;

'4. They may pay such amount of compensation as they think fit to any District Surveyor who may be deprived of his office, in pursuance of the power hereby given of altering the limits of districts.'

(2.) Subject to the foregoing provisions of this section, the districts existing at the commencement of this Act shall continue to be districts for the purposes of this Act; and the several persons who, at the commencement of this Act, are District Surveyors shall continue to be District Surveyors under this Act.

A similar provision was contained in Met. Bldg. Act, 1855, sec. 32.

Examination of candidates for office of surveyor.

140. The Royal Institute of British Architects may cause to be examined, by such persons and in such manner as they think fit, all candidates presenting themselves for the purpose of being examined as to their competency to perform the duties of District Surveyor, and shall grant certificates of competency to the candidates found deserving of the same; and a person who has not already filled the office of District Surveyor shall not be qualified to be appointed to that office unless he has received a certificate of competency from the said institute, or has been examined in such other manner as the Council may direct, and been found competent in such examination.

Met. Bldg. Act, 1855, sec. 33, re-enacted.

Surveyor to have an office.

141. Every District Surveyor shall have and maintain an office at his own expense in such part of his district as may be approved by the Council; [and the Council shall forthwith communicate to the local authority any change in the office of such District Surveyor.]

Met. Bldg. Act, 1855, sec. 34, re-enacted, the words in brackets being added.

Power of surveyor to appoint deputy.

142. If any District Surveyor is prevented by illness, infirmity or any other unavoidable circumstance, from attending to the duties of his office, he may, with the consent of the Council, appoint some other person as his deputy to perform all his duties for such time as he may be prevented from executing them.

Met. Bldg. Act, 1855, sec. 35, re-enacted.

Power to appoint Assistant Surveyor.

143. Where it appears to the Council that, on account of the pressure of business in any district, or on any other account, the surveyor of that district cannot discharge his duties promptly and efficiently, the Council may direct any other District Surveyor to assist the surveyor of that district in the performance of his duties, or appoint some other person to give such assistance; and the Assistant Surveyor shall be entitled to receive all fees payable in respect of the services performed by him.

Met. Bldg. Act, 1855, sec. 36, re-enacted.

Surveyor not to act in case of works under his professional superintendence.

144. If any building [or structure] be executed, or any work done to, in or upon any building [or structure] by or under the superintendence of any District Surveyor acting professionally or on his own private account; that surveyor shall not survey such building or structure for the purpose of this Act, or act as District Surveyor in respect thereof, or in any matter connected therewith, but it shall be his duty to give notice to the Council, who shall then appoint some other District Surveyor to act in respect of the matter.

Met. Bldg. Act, 1855, sec. 37, re-enacted, the words in brackets being added.

Notices to be given to surveyor by builder.

145. [In the following cases, and at the following times (that is to say):—]

(*a*) Where a building or structure or work is about to be begun, then 2 clear days before it is begun; and,

(*b*) Where a building or structure or work is after the

commencement thereof suspended for any period exceeding 3 months, then 2 clear days before it is resumed ; and, S. 145

(*c*) Where, during the progress of a building or structure or work, the builder employed thereon is changed, then 2 clear days before a new builder enters upon the continuance thereof ;

the builder, or other person causing or directing the work to be executed, shall [serve on] the District Surveyor a building notice respecting the building or structure or work.

Every building notice shall state the situation, area, height, [number of storeys] and intended use of the building or structure, and the number of buildings [or structures,] if more than one, and the particulars of the proposed work, and the name and address of the person giving the notice, [and those of the owner then in possession of, and the occupier of, the building or structure, or of its site or intended site.]

All works in progress at the same time to, in or on the same building or structure may be included in one building notice.

Met. Bldg. Act, 1855, sec. 38, re-enacted verbally altered.

For penalty for omitting to give notice (40*s*., and 40*s*. a day), *see* sec. 200 (11) *b*.

Notice of thickening an old wall must be given to the District Surveyor, *see* First Sched., Prelim. 11.

For provision as to notices in cases of emergency *see* sec. 149.

Q. B. 1885 (Hawkins and Smith, JJ.). The date of a notice to the District Surveyor under Met. Bldg. Act, 1855, of the erection of a new building has been held to be the date of discovery by the M. B. W. of the laying out under Met. Man. & Bldg. Am. Act, 1862, of a new street upon which the building would abut (*M. B. W.* v. *Lathey*, 49 J. P. 245).

Q. B. 1897 (Wills and Wright, JJ.). Removable temporary staging and seating fixed inside the Royal Agricultural Hall when required for certain shows, such as the Royal Military Tournament, and so constructed that it could be taken to pieces and removed when not required, but without in any way affecting the structure of the hall itself, the columns of which had been originally constructed with sockets to receive the timbers of the seating was held not to be a ' building or structure or work ' for which notice was required to be served on the District Surveyor (*Venner* v. *McDonell* (1897) 1 Q. B. 421 ; 66 L. J. (Q. B.) 273 ; 61 J. P. 181 ; 76 L. T. 152 ; 45 W. R. 267). This case substantially decides that a ' building or structure or work ' concerning which the District Surveyor has duties to perform, is one for which notice must be given.

Q. B. 1901 (Grantham and Kennedy, JJ.). Where the local authority within the meaning of the Electric Lighting Acts, 1882 & 1888, had obtained a provisional order confirmed by

S. 145 statute, under which they had constructed boxes in the street in connection with the supply of electric current; it was held that such boxes were 'buildings, structures or works' within this section, and that notice must be served on the District Surveyor before commencement (*Whitechapel Dist. B. W.* v. *Crow*, 84 L. T. 595; 65 J. P. 549).

K. B. 1903 (Alverstone, C. J., Wills and Channell, JJ.). Where a limited company had obtained a provisional order confirmed by statute subsequently to the passing of Lond. Bldg. Act, 1894, under which they had constructed boxes in the street in connection with the supply of electric current; it was held that such boxes were 'buildings, structures or works' within this section, and that notice must be served on the District Surveyor (*Charing Cross and Strand Electricity Supply Corporation* v. *Woodthorpe*, 67 J. P. 286; 88 L. T. 772; 1 L. G. R. 551).

K. B. 1902 (Alverstone, C. J., Darling and Channell, JJ.). Wooden structures falling under sec. 84 are, notwithstanding the transfer of the licensing power from L. C. C. to Borough Council, works for which notice must be given to the District Surveyor (*Westminster City C.* v. *Watson and others* (1903) 2 K. B. 717; 87 L. T. 326; 71 L. J. (K. B.) 603; 51 W. R. 300; 46 S. J. 514; 25 T. L. R. 621).

K. B. 1903 (Wills and Channell, JJ.). Where a timber temporary floor constructed so that it could be put up or taken down as required had been re-erected in a public swimming bath so that the bath could be used as a hall, and the magistrate had convicted the builder of neglecting to give notice to the District Surveyor, but had found as a fact that the construction of the floor did not affect and was not likely to affect the building or swimming bath in which it was constructed; it was held that, in consequence of the magistrate's finding of fact, the case was governed by *Venner* v. *McDonell*, *supra*, and that notice to the District Surveyor was not necessary (*Handover* v. *Meeson*, 67 J. P. 313).

Notice to the District Surveyor has also been held to be necessary in the following cases:—

Fixing wooden advertisement framings supported on wooden brackets driven into the wall and fixed with iron holdfasts (*Meeson* v. *Anthony*, N. Lond. P. C., 'Builder,' June 21, 1890).

Fixing a lift in a public building where cutting and pinning into an external wall was necessary (*Meeson* v. *Richmond*, N. Lond. P. C., 'Builder,' Mar. 7, 1896).

Raising the chancel floor of a church upon dwarf walls and extending same further into the church (*Dicksee* v. *Bullers*, Southwark P. C., 'Builder,' March 19, 1898).

Fixing a steam boiler in a school and constructing chimney shaft in connection (*Dicksee* v. *Line*, Lambeth P. C., 'Builder,' Jan. 27, 1900).

Fixing h.p. boiler and steam pipes and oven connected therewith (*Dicksee* v. *Core*, Southwark P. C., 'Builder,' Feb. 3, 1900).

Excavating for and laying a drain through a building and under the base of a wall (*Dicksee* v. *Graham*, Southwark P. C., 'Builder,' Feb. 17, 1900).

Construction of flues from a copper (*Payne* v. *Cohen*, Worship St. P. C., 'Builder,' March 3, 1900).

A wooden addition to a house, forming a bath room (*Marsland* v. *Thompson*, Lambeth P. C., 'Builder,' Oct. 6 & 27, 1900).

Fixing a glue heating stove at a piano factory (*Goodchild* v. *Kent*, N. Lond. P. C., 'Builder,' June 13, 1903).

Taking out old and fixing new sash to shop front (*Coggin* v. *Dickeson*, South Western P. C., 'Builder,' March 5, 1904).

Excavating for and laying drain along and near to the base of a wall of a building (*Ashbridge* v. *Evans*, Marylebone P. C., 'Builder,' April 9, 1904).

Lowering the floor of a bakehouse, ordered by the sanitary authority, necessitating the underpinning of the walls (*Dicksee* v. *Pearce*, Lambeth P. C., 'Builder,' April 23, 1904).

Inserting a shop front to a new building erected by another builder (*Dicksee* v. *Maund*, Southwark P. C., 'Builder,' April 2, 1904).

The fixing of a self-contained cooking range placed on a marble slab laid on a wooden floor and with a sheet iron flue carried through roof (*Dicksee* v. *Smallbone*, Lambeth P. C., 'Builder,' Feb. 25, 1905).

Surveyor enforce execution of Act.

146. Every District Surveyor shall, upon the receipt of any such notice as aforesaid, and also upon any work being observed by or made known to him which is affected by the provisions of this Act or byelaws made thereunder, but in respect of which no notice has been given, and also from time to time during the progress of any work affected by such provisions and byelaws, as often as may be necessary for securing the due observance of such provisions and byelaws, survey any building or work hereby placed under his supervision, and cause all such provisions and byelaws to be duly observed.

Met. Bldg. Act, 1855, sec. 39, re-enacted.

A mandamus may be granted against a District Surveyor who has refused or neglected to enforce the Act (*Reg.* v. *Redman*, 6 T. L. R. 9).

Notice to be evidence of intended works.

147. Every notice [served] in pursuance of this Act shall be deemed in any question relative to any building, [structure,] or work to be *prima facie* evidence as against the builder of the nature of the building, [structure] or work proposed to be built or done.

Met. Bldg. Act, 1855, sec. 40, re-enacted.

Power of entry to inspect buildings.

148. (1.) The District Surveyor of any district, at all reasonable times, during the progress [and during 14 days next after the completion,] of any buildings, [structure] or work [in such district] affected by [any of the provisions of] this Act, [or by any byelaws made thereunder, or by any terms or conditions on which the observance of any such provisions or byelaws may have been dispensed with, may enter and inspect such building, structure or work.]

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Met. Bldg. Act, 1855 (repealed), sec. 42.
'At all reasonable times during the progress of any building or work affected by this Act, it shall be lawful for the District Surveyor to enter and inspect such building or work.'

(2.) The District Surveyor may, for the purpose of ascertaining whether any buildings erected in those premises are in such a situation, or possess such characteristics, as are required in order to exempt them from the operation of [this Part of] this Act, at all reasonable times, and after reasonable notice, enter any premises except buildings exempt [from the operation of Parts VI. and VII. of this Act,] and he may do therein all such things as are reasonably necessary for the above purpose.

Met. Bldg. Act, 1855 (repealed), sec. 43.
'The District Surveyor may at all reasonable times enter any premises, with the exception of buildings hereinbefore exempted by name, for the purpose of ascertaining whether any buildings erected in such premises are in such a situation, or possess such characteristics, as are hereinbefore required in order to exempt them from the operation of this Act, and he may do all such things as are necessary for the above purpose.'
For penalty for refusing admission to the District Surveyor (40*s.*, and 40*s.* a day), *see* sec. 200 (11) *c*.

In case of emergency works to be commenced without notice.

149. Where by reason of any emergency any act or work is required to be done immediately, or before notice can be given as aforesaid, such act or work may be done on condition that, before the expiration of 24 hours after it has been begun, notice thereof is served on the District Surveyor.

Met. Bldg. Act, 1855, sec. 44, re-enacted.
Compare sec. 145.

As to service of notice of objection on builder or building owner.

[**150.** Where it appears from the building notice served on the District Surveyor under this Act that it is proposed to erect any building or structure, or to do any work to, in or upon any building which will be in contravention of this Act, or that anything required by this Act is proposed to be omitted ; the District Surveyor shall serve upon the builder or building owner a notice of objection to such proposed erection ; and in the event of the builder or the building owner being dissatisfied with the decision of the surveyor, he may within 14 days of the date of the notice of objection, appeal to a Petty Sessional Court, who may make an order either affirming the objection or otherwise.]

Proceedings under this section are not a 'criminal cause or matter' ; appeal will therefore lie to the Court of Appeal from

a decision of the Divisional Court. The cases of *Scott* v. *Carritt* and *Dicksee* v. *Hoskins* have been before C. A. under this section. S. 150

This section does not authorise the issue of a summons against the District Surveyor, but an appeal from his notice of objection.

Notice by surveyor in case of irregularity

151. In any of the following cases (that is to say) :—

(*a*) Where in erecting any building [or structure,] or in doing any work to, in or upon any building, anything is done in contravention of this Act, or anything required by this Act is omitted to be done ; or

(*b*) Where the District Surveyor, on surveying or inspecting any building or work in respect of which notice has not been served as required by this Part of this Act, finds that the same is so far advanced that he cannot ascertain whether anything has been done in contravention of this Act, or whether anything required by this Act has been omitted to be done ;

the District Surveyor shall [serve on] the builder engaged in erecting such building or structure, or in doing such work, a notice (hereinafter referred to as a notice of irregularity) requiring him within 48 hours from the date of the notice to cause anything done in contravention of this Act to be amended, or to do anything required to be done by this Act which has been omitted to be done, or to cause so much of any building, structure, or work as prevents such District Surveyor from ascertaining whether anything has been done, or omitted to be done, as aforesaid, to be to a sufficient extent cut into, laid open, or pulled down.

Met. Bldg. Act, 1855, sec. 45, re-enacted, verbally altered.

By sec. 148 (2) the District Surveyor ' may do all such things as are reasonably necessary ' to enable him to see that the Act is complied with.

For penalty for not complying with order of the Court in reference to this notice (£20 a day), *see* sec. 200 (3) *c*.

For penalty for obstructing person carrying out the notice (40*s*., and 40*s*. a day), *see* sec. 200 (11) *g*.

As no special provision is made for proceedings in cases of contravention of the byelaws made under this Act, it is to be presumed that this section will apply also to those cases ; it would, however, have been better to have specially mentioned the byelaws as well as the Act.

In the case of the construction or conversion of a public building the District Surveyor must in the first instance serve a notice of his requirements under sec. 78 or 79, as the case may be ; from this an appeal may be made to the Tribunal of Appeal ; should no appeal be made within 14 days, or should the District Surveyor be upheld on appeal, then a notice of irregularity

S. 151 would be served under this section, the irregularity being the non-compliance with the requirements of the District Surveyor.

Notice of irregularity after completion of building.

[**152.** (1.) In order to provide for the service of a notice of irregularity after and notwithstanding that the building or structure has ceased to be in charge of, or under the control of, the builder, the following provisions shall have effect :—

(*a*) If notice in writing shall have been served upon the District Surveyor by the builder or owner of the date at which such building has ceased to be in the charge of, or under the control of, the builder ; then at any time before the expiration of 14 days after the service of such notice a notice of irregularity may, if the District Surveyor thinks fit, be served on the owner or occupier of the building or structure, or other the person causing or directing, or who has caused or directed, the work, instead of, or in addition to, the builder (if any) ;

(*b*) Where no such notice shall have been served upon the District Surveyor, a notice of irregularity may at any time within 21 days after completion of the building or structure be served on the owner or occupier of the building or structure, or other the person causing or directing, or who has caused or directed, the work instead of, or in addition to, the builder (if any).

(2.) When the owner of the building or structure does not allow the builder to comply with the requisition of a notice of irregularity served on the builder, and the builder serves notice on the District Surveyor to that effect, a notice of irregularity may, at any time within 14 days after service of the notice by the builder on the District Surveyor, be served on the owner or occupier of the building or structure, or other the person causing or directing, or who has caused or directed, the work, instead of, or in addition to, the builder (if any).

(3.) When a notice of irregularity is served under this section, the provisions of this Act as to the consequences of such a notice, so far as they relate to the builder, shall apply to the owner, occupier, or other person served.

(4.) Nothing in this section shall prejudice any remedy of an owner, occupier or other person against the builder.]

For power of builder to enter, *see* sec. 192.

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For penalty for obstructing builder, subsec. (2), (40*s.*, and 40*s.* a day), *see* sec. 200 (11) *g*.

The section was rendered necessary by the decisions quoted below (*Parsons* v. *Timewell*, *Smith* v. *Legg*, *Wallen* v. *Lister*), which it is intended to overrule.

Q. B. 1879 (Lush and Manisty, JJ.) Where an attempt was made to enforce by notice of irregularity the removal of a temporary building the licence for which had expired; it was held that sections 45 & 46 of Met. Bldg. Act, 1855, only applied to a building in course of erection (*Parsons* v. *Timewell*, 44 J. P. 296).

Q. B. 1893 (Coleridge, C.J., and Cave, J.) Where a building had been erected without notice to the District Surveyor and completed before discovery by him, it was held that a notice of irregularity served under sec. 45 of Met. Bldg. Act, 1855, could not be enforced, as proceedings could only be taken while the building was in course of erection and the builder was in a position to comply (*Smith* v. *Legg* (1893) 1 Q. B. 398; 68 L. T. 347; 57 J. P. 295; 41 W. R. 464; 9 T. L. R. 231; 5 R. 233).

Q. B. 1894 (Hawkins and Lawrence, JJ.) Where the builder engaged on a building had completed the work and left it, it was held that the magistrate had no jurisdiction to impose upon him a penalty under sec. 46 of Met. Bldg. Act, 1855, although when the notice of irregularity was served the builder was still engaged on the building (*Wallen* v. *Lister* (1894) 1 Q. B. 312; 70 L. T. 348; 58 J. P. 283).

Summary proceedings on non-compliance with notice.

153. (1.) If the person on whom the notice of irregularity is served make default in complying with that notice within the period named therein, a Petty Sessional Court, on complaint made in a summary manner as provided by the Summary Jurisdiction Acts, by the District Surveyor, may make an order on such person requiring him to comply with the notice or with any requisitions therein which may, in the opinion of the Court, be authorised by this Act, within a time to be named in the order.

Met. Bldg. Act, 1855 (repealed), sec. 46.

'If the builder to whom such notice is given makes default in complying with the requisition thereof within such period of 48 hours, the District Surveyor may cause complaint of such non-compliance to be made before a Justice of the Peace, and such justice shall thereupon issue a summons requiring the builder so in default to appear before him; and if upon his appearance, or in his absence upon due proof of the service of such summons, it appears to such justice that the requisitions made by such notice, or any of them, are authorised by this Act, he shall make an order on such builder commanding him to comply with the requisitions of such notice, or any of such requisitions that may, in his opinion, be authorised by this Act, within a time to be named in such order.'

Q. B. 1887 (Mathew and Denman, JJ.) The limit of time during which proceedings may be taken commences to run from the neglect to comply with the notice of irregularity and not from

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the date that the District Surveyor becomes aware of the irregularity (*Bovill* v. *Gibbs*, 51 J. P. 485).

K. B. 1901 (Bruce and Phillimore, JJ.) Where the tenant had erected an illuminated advertisement attached to the front of the building, it was held that had such an erection been a projection within sec. 73 the tenant could not have escaped liability on the alleged ground that he had no power to alter or control the position of the sign without trespass (*Hull* v. *L. C. C.* (1901) 1 K. B. 580; 65 J. P. 309; 70 L. J. (K. B.) 364; 84 L. T. 160; 49 W. R. 396; 17 T. L. R. 270; 1 A. L. R. 63).

K. B. 1903 (Alverstone, C.J., Wills and Channell, JJ.) In the case of a prosecution for infringement of byelaws under the Public Health Act, 1875, it was held that magistrates have power under sec. 16 of the Summary Jurisdiction Act, 1879, to dismiss the summons if they think that, though the charge be proved, the offence in the particular case to be of a trifling nature (*Salt* v. *Scott Hall* (1903) 2 K. B. 245; 72 L. J. (K. B.) 627; 88 L. T. 868; 67 J. P. 306; 52 W. R. 95; 1 L. G. R. 753; *Pomeroy* v. *Malvern U. D. C.*, 67 J. P. 375; 89 L. T. 555; 1 L. G. R. 825).

(2.) If the order be not complied with, [the Council] may, if they think fit, [after giving 7 days' notice to such person,] enter with a sufficient number of workmen upon the premises, and do all such things as may be necessary for enforcing the requisitions of the notice, and for bringing any building or work into conformity with the provisions of this Act; and all expenses incurred by the Council in so doing may be recovered in a summary way, either from the person on whom the order was made or from the owner of the premises.

Met. Bldg. Act, 1855, sec. 47, re-enacted in substance, the Council being substituted for the District Surveyor.

Compare with sec. 170, which requires the Council in certain cases to obtain an order from a Petty Sessional Court before entering to carry out the necessary works.

Payments to surveyors for ordinary and special services.

154. (1.) There shall be paid [by the builder, or in his default by the owner or occupier, as the case may be, of the building or structure in respect whereof the same are chargeable] to every District Surveyor in respect of the several matters mentioned in Parts I. and III. of the Third Schedule to this Act, the fees therein specified, or such other fees not exceeding the amounts herein specified as may be directed by the Council.

(2.) If in consequence of any reduction being made by the Council in the amount of the said fees the income of any existing District Surveyor is diminished, the Council shall grant to him compensation in respect of such diminution.

Met. Bldg. Act, 1855 (repealed), sec. 49.

'There shall be paid to the District Surveyors, in respect of the

several matters specified in the first part of the Second Schedule hereto, the fees therein specified. or such other fees, not exceeding the amounts therein specified, as may from time to time be directed by the Metropolitan Board of Works; *but one fee only shall be chargeable with respect to any such works done in, to or upon any building as are in pursuance of the provisions hereinbefore contained included in one notice*; and, if in consequence of any reduction being made by the said Metropolitan Board in the amount of the said schedule fees, the income of any existing District Surveyor is diminished, the Metropolitan Board shall grant to him compensation in respect of such diminution.'

See also Met. Bldg. Act, 1855, sec. 51, where the builder, owner and occupier were each made liable for payment of District Surveyor's fees.

For fees payable to District Surveyor in respect of duties imposed by byelaws, *see* sec. 164 (1) and Byelaws.

For recovery of fees *see* sec. 157.

See notes to Third Schedule.

K. B. 1901 (Alverstone, C.J., and Lawrence, J.) It has been held that, for the purposes of this section and sec. 157, the 'default' of the builder is a neglect or default to pay after a bill has been delivered to him (*Corbett* v. *Badger* (1901) 2 K. B. 278; 65 J. P. 552; 70 L. J. (K. B.) 640; 84 L. T. 602; 49 W. R. 539).

Council to pay District Surveyor in relation to formation of streets, &c.

[**155.** The Council shall pay to the District Surveyor such fees as the Council shall from time to time determine in respect of any service required to be performed by the District Surveyor in relation to the formation or laying out of streets, lines of building frontage, and any like service which the District Surveyor may be required to perform under this Act.]

For scale of fees under this section *see post*.

Met. Bldg. Act, 1855 (repealed), sec. 50.

'If any special service is required to be performed by the District Surveyor under the first Part of this Act, for which no fee is specified in the said schedule, the Metropolitan Board of Works may order such fee to be paid for such service as they think fit; and the District Surveyor shall have the same remedy for recovering such special fee as if the same were expressly named in the said schedule.'

Fees in relation to evidence before Tribunal.

[**156.** The Council shall pay to the District Surveyor such fees as may be from time to time appointed by the Tribunal of Appeal in respect of any work done by the District Surveyor in relation to the preparation of evidence, and giving the same before the Tribunal of Appeal.]

For scale of fees under this section *see post*.

Periods when surveyors entitled to fees.

157. (1.) At the expiration of the following periods (that is to say):—

(*a*) Of [14 days] after the roof of any building

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surveyed by a District Surveyor under this Act has been covered in ; and

(*b*) Of 14 days after the completion of any work by this Act placed under the supervision of a District Surveyor ; and

(*c*) Of 14 days after any special service [in respect of any building, structure or land] has been performed by a District Surveyor ;

the District Surveyor shall be entitled to receive the fees due to him from the builder employed in erecting such building [or structure], or in doing such work, or in doing any matter in respect of which any special service has been performed by the surveyor ; or from the owner or occupier of the building or structure so erected, or in respect of which such work has been done or service performed, [or of the land in, upon, or in respect of which such work has been done or service performed.]

(2.) If any such builder, owner or occupier refuses to pay the said fees, they may be recovered in a summary manner on its being shown to the satisfaction of the Court that a proper bill specifying the amount of the fees was delivered to him, or sent to him in a registered letter addressed to his last known residence.

Met. Bldg. Act, 1855, sec. 51, verbally altered and re-enacted, with the alteration that the District Surveyor is now entitled to receive his fee on a new building 14 days, instead of 1 month, after roofing in.

Q. B. 1858 (Campbell, C.J., Erle and Crompton, JJ.) Where the owner in fee simple had leased land at a peppercorn rent to a builder, who had covenanted to erect houses on the land, and upon the bankruptcy of the builder the District Surveyor had claimed for his fees upon the owner in fee simple ; it was held under Met. Bldg. Act, 1855, that such owner in fee simple was not an owner liable for the District Surveyor's fees, as such owner must be a person entitled to the rents and profits, whereas a peppercorn rent cannot be called a rent or profit (*Evelyn* v. *Whichcord*, E. B. & E. 126 ; 27 L. J. (M. C.) 211 ; 31 L. T. (O. S.) 96 ; 6 W. R. 468 ; 22 J. P. 658 ; 4 Jur. (N. S.) 808). From this case it would appear that had any part of the rent or profits been paid to the owner in fee simple, instead of a peppercorn, he would have been liable. The liability of the 'owner of the land' to the District Surveyor is now specifically stated in the section.

Q. B. 1870 (Blackburn, Mellor and Lush, JJ.) Where certain work, entitling the District Surveyor to fees under the corresponding section of Met. Bldg. Act, 1855, was completed in July 1866, at which time the appellant was not 'builder, occupier or owner' ; but appellant having become owner in 1869, the District Surveyor made claim on him for his fees ; it was held that the District Surveyor was not entitled to recover such fees from appellant inasmuch as he was not the owner of the premises

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at the time the fees became due (*Tubb* v. *Good*, L. R. 5 Q. B. D. 443 ; 22 L. T. 885 ; 39 L. J. (M. C.) 135).

K. B. 1901 (Alverstone, C.J., and Lawrence, J.) Where a District Surveyor had delivered to the builder accounts of fees due, and the builder had become insolvent, and the District Surveyor had subsequently delivered accounts to the owner in respect of the same matters, but more than 6 months had elapsed since they became payable by the builder ; it was held that the six months limit contained in sec. 11 of the Summary Jurisdiction Act, 1848, only commenced to run against the owner from the date the accounts were delivered to him (*Corbett* v. *Badger* (1901) 2 K. B. 278 ; 65 J. P. 552 ; 70 L. J. (K. B.) 640 ; 84 L. T. 602 ; 49 W. R. 539).

Contractual relations between builder and owner will not be allowed to affect the District Surveyor's right to recover fees (*Ibidem*).

The fee is payable to the District Surveyor on an irregular building that has been removed, instead of being altered to comply with the Act (*Fletcher* v. *Lewis*, Lambeth P. C., ' Builder,' 26 March, 1892 ; ' Building News,' 25 March, 1892).

Power of Council to pay salaries to surveyors.

158. (1.) The Council may at any time by order cause such fixed salary as they may determine to be paid to any District Surveyor by way of remuneration instead of fees, so that the amount of such remuneration be not less than the amount of the average of the fees for the last [7 completed years preceding such determination] ; and thereupon the fees which would have been payable to such District Surveyor in pursuance of this Act shall be paid to the Council, and carried to the credit of the county fund.

(2.) The Council may at any time provide, either wholly or partially, for the payment of salaries to the District Surveyors, or to any of them, out of the county fund, and may thereupon abolish or reduce any fees by this Act made payable to the District Surveyors.

Met. Bldg. Act, 1855, secs. 66 and 67, re-enacted, 7 years' average being substituted for 3 years.

Council may proceed on behalf of District Surveyor.

[**159.** The Council may, in any case where they shall think fit so to do, undertake, on behalf of a District Surveyor, any proceedings which would otherwise be undertaken by such District Surveyor, or may pay the costs incurred by any District Surveyor in any proceedings taken by him under this Act.]

Returns by District Surveyors

Monthly returns by District Surveyor to Council.

160. Every District Surveyor shall, within 7 days after the first day of every month, make a return to the Council, in such manner as they may appoint, of all

S. 160 notices and complaints received by him relative to the business of his district and the results thereof, and of all matters brought by him before any Petty Sessional Court, and of all the several works supervised and special services performed by him in the exercise of his office, within the previous month, and of all fees charged or received in respect thereof; and shall specify in such return the description and locality of every building which has been built, rebuilt, enlarged or altered, or on which any work has been done under his supervision, with the particular nature of every work in respect of which any fee has been charged or received.

Met. Bldg. Act, 1855, sec. 52, re-enacted.

Return to be a certificate that works are in accordance with Act.

161. Every such return shall be signed by the District Surveyor, and shall be deemed to be a certificate that all the works enumerated therein as completed have been done in all respects in accordance with this Act to the best of his knowledge and belief, and that they have been duly surveyed by him.

Met. Bldg. Act, 1855, sec. 53, re-enacted.

Audit of accounts of fees charged by District Surveyor.

162. The Superintending Architect, or such other officer as the Council appoint, shall examine the monthly returns of the District Surveyors; and if any fees therein specified appear to him to be unauthorised by this Act, or to exceed in amount the fees so authorised, or if any such account appears to be in any respect fraudulent or [incorrect,] he shall make his report in writing to that effect to the Council, who shall thereupon take such steps in the matter as they deem expedient.

Met. Bldg. Act, 1855, sec. 54, re-enacted.

District Surveyor to notify certain irregularities to the Council.

[**163.** Every District Surveyor shall forthwith notify to the Council any actual or probable contravention of the provisions of this Act in relation to any matter or thing with which it is not within his competency to deal, of which notice or information has been given to him, or which he has discovered.]

PART XIV

BYELAWS

Power to Council to make byelaws.

164. (1.) Subject to the provisions of this Act, the Council may make such byelaws, not repugnant or contrary to the provisions of this Act, as they may think

expedient for the better carrying into effect the objects and powers of this Act, with respect to the following matters (that is to say);— S. 164

The regulation of the plans, level, width, surface and inclination of new streets, and for regulating the plans and level of sites for new buildings [1];

The forms of notice and other documents to be used for the purposes of this Act, and other like matters of procedure [2];

Foundations and sites of buildings, and other erections [3];

The mode in which, and the materials with which, such foundations and sites are to be made, excavated, filled up, prepared, and completed for securing stability, and for purposes of health [3];

The thickness and the description and quality of the substances of which walls may be constructed for securing stability, the prevention of fires, and for purposes of health [3], [4];

[The dimensions of wooden bressummers;

The dimensions of joists of floors;

The protection of ironwork used in the construction of buildings from the action of fire;

Woodwork in external walls;]

See sec. 55.

The description and quality of the substances of which plastering may be made [5];

The mode in which, and the materials with which, any excavation made within a line drawn outside the external walls of a house, building or other erection, and at a uniform distance therefrom of 3 feet, shall be filled up [5];

[The regulation of lamps, signs or other structures overhanging the public way, not being within the City;

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[1] Re-enactment of power granted by Met. Man. Act, 1855, sec. 202.

[2] Re-enactment of power granted by Met. Bldg. Act, 1855, sec. 59 (qualified).

[3] Re-enactment of power granted by Met. Man. & Bldg. Act, 1878, sec. 16.

[4] Re-enactment of power granted by Met. Bldg. Act, 1855, sec. 55 (the necessity of the consent of the Privy Council being removed).

[5] Re-enactment of power granted by L. C. C. Gen. P. Act, 1890, sec. 31.

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Provided that any such byelaws as to the regulation of lamps, signs and other overhanging structures shall be administered by the local authority ;

The means of escape from fire in buildings exceeding 60 feet in height ;]

The power to make byelaws in respect of these buildings is extended by the Factory & Workshop Act, 1901, sec. 153 (3) to all factories and workshops under that Act whether exceeding 60 feet in height or not.

The duties of District Surveyors in relation to any byelaws made in pursuance of this section [3],[5] ;

[The deposit with District Surveyors of any plans of buildings submitted for their certificate ;]

The regulation of the amounts of the fees to be paid to District Surveyors in respect of their duties under any such byelaws [3],[5] ;

For persons liable to pay these fees, *see* sec. 157 (1).

The imposition for every offence committed against any byelaws made under this Act of a penalty not exceeding 5 pounds, and a daily penalty not exceeding 2 pounds for every day during which such offence continues after conviction. Such penalties to be recovered by summary proceedings.[3],[5]

(2.) The Council may provide by any byelaw that in any case in which the Council think it expedient they may dispense with the observance of any byelaw made under this section on such terms and conditions (if any) as they think proper.[3]

(3.) No byelaw shall have [any force or effect unless or until it shall have been submitted to and confirmed at a meeting of the Council subsequent to that at which the byelaw shall have been made, nor shall any byelaw have] any force or effect until the same shall have been allowed by [the Local Government Board.]

(4.) Not less than 2 months before applying to the [Local Government Board] for the allowance of any such byelaws, the Council shall give such notice of their intended application by advertisement [in the 'London Gazette' and otherwise as the Local Government Board

[3] Re-enactment of power granted by Met. Man. & Bldg. Act, 1878, sec. 16.

[5] Re-enactment of power granted by L. C. C. Gen. P. Act, 1890, sec. 31.

shall direct] ; and the Council shall send a copy of the proposed byelaws as approved by them to [the local authority, the Ecclesiastical Commissioners,] the Royal Institute of British Architects, the Surveyors' Institution, [the London Chamber of Commerce (Incorporated), and to the Institute of Builders,] and to such other societies and persons as [the Local Government Board] may direct ; [and for 1 month at least before any such application, a copy of the proposed byelaws shall be kept at the county hall, and shall be open during office hours thereat to inspection without charge.] S. 164

(5.) All byelaws made and confirmed and allowed as aforesaid in pursuance of this Act shall be [published in the 'London Gazette,'] and printed and hung up at the county hall, and be open to public inspection without payment ; and copies thereof shall be delivered to any person applying for the same on payment of such sum, not exceeding 2 pence, as the Council shall direct ; and such byelaws when so published shall come into operation upon a date to be fixed by [the Local Government Board] in allowing the byelaws ; and the production of a printed copy of such byelaws, authenticated by the seal of the Council, shall be evidence of the existence and of the due making, allowance and publication of such byelaws in all prosecutions [or other proceedings] under the same, without adducing proof of such seal or of the fact of such making, confirmation, allowance or publication of such byelaws.

Subsecs. (3), (4), (5) are a re-enactment of Met. Man. & Bldg. Act, 1878, sec. 16, the Local Government Board being substituted for the Secretary of State.

The byelaws made under the repealed Acts remain in force until the new byelaws are made ; *see* sec. 216.

The repealed method of enforcing the byelaws contained in Met. Man. & Bldg. Act, 1878, sec. 17, has not been re-enacted ; the byelaws under this Act are enforced in the same manner as the provisions of the Act itself.

Q. B. 1885 (Grove and Hawkins, JJ.) The proper mode of construction of a term in a byelaw is to apply the same interpretation to such term as is applied to it in the Act under which the byelaws are made (*Blashill* v. *Chambers*, 14 Q. B. D. 479 ; 53 L. T. 38 ; 49 J. P. 388).

Ch. 1902 (Joyce, J.) When land offered for sale by auction and described as a 'freehold building site . . . ripe for immediate development' was in fact land that had been filled up with refuse from roads, dustbins, &c., and under the byelaws made under Met. Man. & Bldg. Am. Act, 1878, could not be used for building purposes unless the refuse be removed, it was held that this was such a misdescription as to entitle the purchaser to have the contract rescinded (*Baker* v. *Moss*, 66 J. P. 360).

Saving for the City of London.

165. No byelaw in respect of any matter from which the City is exempted by this Act, or by any Act hereby repealed, shall have any force or effect within the City.

The City was exempt from the byelaws made under the Acts of 1878 & 1890 [notes 3 & 5 in sec. 164 (1)].

The District Surveyor has, therefore, still no power to enforce the use of good mortar and plastering within the City.

PART XV

LEGAL PROCEEDINGS

Summary proceedings for offences, &c., and recovery of penalties.

166. All offences, penalties, costs and expenses under this Act, or any byelaw made under this Act, directed to be prosecuted or recovered in a summary manner, or the prosecution or recovery of which is not otherwise provided for, may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts.

This section takes the place of Met. Bldg. Act, 1855, sec. 103.

The Summary Jurisdiction Acts are those of 1848 (11 & 12 Vict. cap. 43); 1879 (42 & 43 Vict. cap. 49); 1884 (47 & 48 Vict. cap. 43); and 1899 (62 & 63 Vict. cap. 22).

For limit of time during which proceedings may be taken *see* sec. 11 of Sum. Jur. Act, 1848, 'In all cases where no time is already or shall hereafter be specially limited for making any such complaint or laying any such information in the Act or Acts of Parliament relating to each particular case, such complaint shall be made and such information shall be laid within 6 calendar months from the time when the matter of such complaint or information respectively arose.'

The time during which proceedings may be taken has been the subject of judicial decision in the following cases:—

Q. B. 1858 (Campbell, C.J., Wightman and Hill, JJ.) In the case of the recovery of expenses incurred in respect of a dangerous structure, the time limitation commences to run from the date of the demand for payment and not from completion of the work. (*Labalmondiere* v. *Addison*, 28 L. J. (M. C.) 25; 1 E. & E. 41; 5 Jur. N. S. 431).

Q. B. 1863 (Cockburn, C.J., Wightman, Crompton and Mellor, JJ.) Where right of appeal from an apportionment is given during a certain time, the time limitation commences to run from the expiration of the time during which appeal may be exercised (*Jacomb* v. *Dodgson*, 32 L. J. (M. C.) 113; 3 B. & S. 461).

Q. B. 1881 (Coleridge, C.J., and Manisty, J.) In the case of a building beyond the general line of buildings; it was held that the time limitation commenced to run from the date of the erection and not from the date of the certificate (*Paddington V.* v. *Snow*, 45 L. T. 475).

Q. B. 1884 (Mathew and Day). In the case of a temporary structure erected contrary to Met. Man. & Bldg. Am. Act, 1882, the offence was held to be a continuous one and that proceedings might be taken within 6 months of the time during which it

continued to exist (*M. B. W.* v. *Anthony*, 54 L. J. (M. C.) 39; 49 J. P. 229; 33 W. R. 166). S. 166

Q. B. 1885 (Hawkins and Smith, JJ.) In the case of proceedings for commencing to lay out a new street, the time limitation was held to commence to run from the date of giving notice to the District Surveyor of the erection of a building situated on the side of the 'street' (*M. B. W.* v. *Lathey*, 49 J. P. 245).

Q. B. 1887 (Mathew and Denman, JJ.) In the case of proceedings to enforce compliance with a notice of irregularity, the time limitation was held to commence to run from the neglect to comply with the notice (*Bovill* v. *Gibbs*, 51 J. P. 485).

C. A. 1892 (Lindley and Kay, L,JJ., reversing Q. B. Denman and Smith, JJ.) In the case of building beyond the general line of buildings, it was held that the time limitation commenced to run from the date of commencement to build beyond the line (*L. C. C.* v. *Cross*, 66 L. T. 731; S. J. 486).

K. B. 1901 (Bruce and Phillimore, JJ.) In the case of proceedings for erecting an illuminated sign in advance of the general line of buildings contrary to sec. 73 (8), it was held that the time limitation commenced to run from the date at which the sign was completely affixed to the premises (*Hull* v. *L. C. C.* (1901) 1 K. B. 580; 65 J. P. 309; 70 L. J. (K. B.) 364; 84 L. T. 160; 49 W. R. 396; 17 T. L. R. 270; 1 A. L. R. 63).

K. B. 1901 (Alverstone, C.J., and Lawrence, J.) In the case of recovery of fees due to the District Surveyor from the builder, it was held that the time limitation commences to run from the date of delivery to such builder of a bill of the fees, and in the case of recovery from the owner from the date of delivery to such owner of a bill as required by sec. 157 (2) (*Corbett* v. *Badger* (1901) 2 K. B. 278; 65 J. P. 552; 70 L. J. (K. B.) 640; 84 L. T. 602; 49 W. R. 539).

K. B. 1903 (Alverstone, C.J., Lawrence and Kennedy JJ.). In the case of proceedings for erecting a building upon land claimed to be low-lying land it was held that the time limitation did not commence to run from the commencement, because it might be necessary to wait until the building was complete in order to ascertain whether it came within the section (*Ellis* v. *L. C. C.* (1904) 1 K. B. 283; 68 J. P. 99; 73 L. J. (K. B.) 151; 9 L. T. 206; 52 W. R. 381; 2 L. G. R. 1034; 1 A. L. R. 86).

For provisions for appeal from a decision of a Petty Sessional Court *see* Sum. Jur. Act, 1879, sec. 33 (1): 'Any person aggrieved who desires to question a conviction, order, determination or other proceeding of a court of summary jurisdiction, on the ground that it is erroneous in point of law, or is in excess of jurisdiction, may apply to the Court to state a special case setting forth the facts of the case and the grounds on which the proceeding is questioned, and, if the Court decline to state a case, may apply to the High Court of Justice for an order requiring the case to be stated.'

C. A. 1892 (Esher, M.R., and Fry L,J.) No appeal will lie from a decision of the Divisional Court in a case stated by a magistrate for the opinion of the Court upon his decision in proceedings taken to enforce compliance with a notice of irregularity, as such would be 'a criminal cause or matter' within the meaning of sec. 47 of the Judicature Act, 1873 (*Payne* v. *Wright*, 66 L. T. 148; 61 L. J. (M. C.) 114; 56 J. P. 564; 36 S. J. 230).

C. A. 1900 (Smith, Williams and Romer, L,JJ., upholding

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K. B., Channell and Bucknell, JJ.) It was held that a magistrate ought not to be ordered to state a case when he had decided in accordance with a previous decision upon the same point, from which there was no right of appeal (*Reg.* v. *Shiel*, 82 L. T. 587).

C. A. 1901 (Collins, M.R., Stirling and Mathew, L.JJ.) Where a magistrate, having convicted a person of erecting a building before the general line of buildings, had made an order for demolition and had refused to state a case, and the K. B. had refused to grant a rule nisi for a mandamus ; it was held that this was 'a criminal cause or matter' and that the C. A. had no jurisdiction to entertain the application for a mandamus (*Rex* v. *D'Eyncourt*, 85 L. T. 501).

C. A. 1903 (Collins, M.R., Romer and Cozens Hardy, L.JJ., upholding Ch. Joyce, J.) Where the legislature has pointed out a mode of proceeding before a magistrate it is not as a general rule for another Court to stop those proceedings by injunction (*Mayor &c. of Devonport* v. *Tozer*, (1903) 1 Ch. 759 ; 88 L. T. 113 ; 67 J. P. 269 ; 72 L. J. (Ch.) 411 ; 52 W. R. 6 ; 1 L. G. R. 421.

C. A. 1872 (James and Mellish, L.JJ.) Where proceedings not justified by statute were threatened, it was held to be a proper case for injunction (*Lord Auckland* v. *Westminster B. W.*, L. R. 7 Ch. 597 ; 26 L. T. 961 ; 41 L. J. (Ch.) 723 ; 20 W. R. 845).

H. L. 1886 (Lord Herschell, L.C., Lords Watson, Bramwell, Fitzgerald and Halsbury). A magistrate's order not having been reduced to writing and served until the end of 8 weeks was held not to be 'an order in writing' under sec. 75 of Met. Man. Act, 1862 (*Barlow* v. *St. Mary Abbotts Kensington V.*, 11 App. C. 263 ; 55 L. T. 221 ; 55 L. J. (Ch.) 680 ; 50 J. P. 691 ; 34 W. R. 551).

See notes to sec. 152.

Proceedings by surveyor.

[**167.** Any proceedings taken by a District Surveyor may be continued by his duly appointed deputy or successor in the office.]

For legal proceedings by the District Surveyor in case of irregularity, *see* secs. 151, 152 and 153.

Powers of and appeal from County Court.

168. Where jurisdiction is by this Act given to a County Court, that Court may settle the time and manner of executing any work, or of doing any other thing, and may put the parties to the case upon such terms as respects the execution of the work as the Court thinks fit :

Met. Bldg. Act, 1855, sec. 100, re-enacted.

Provided that any person shall have the same right of appeal from any decision of a County Court in any matter in which jurisdiction is given to such Court by this Act as he would have under the County Courts Act, 1888, from any decision of such Court in any matter.

This clause takes the place of Met. Bldg. Act, 1855, sec. 102.

For penalty for infringing this section (40*s.*, and 40*s.* a day), *see* sec. 200 (11) *d*, *e*. S. 168

Application of penalties.

169. Notwithstanding anything in any other Act [one half of] all penalties recovered [by the Council] under this Act shall be paid to the Council. Provided, that it shall be lawful for any Court by whom any penalty is imposed under this Act to direct that the whole or part thereof shall be applied in or towards payment of the costs of the proceedings.

Met. Bldg. Act, 1855 (repealed), sec. 104.

'Any justice of the peace in any case over which jurisdiction is hereby given to him may make such order as to the costs of any proceedings of which he has cognizance as he thinks just; he may also direct the whole or any part of any penalty imposed by him under this Act to be applied in or towards the payment of the costs of the proceedings; and, subject to such direction, all penalties shall be paid into the hands of the treasurer of the said Metropolitan Board, to be applied in such manner as the said board thinks fit.'

Council may demolish buildings and sell materials and recover expenses.

170. Where any person has been convicted of an offence against any of the provisions of any Part of this Act, or any byelaw made thereunder, by constructing, erecting, adapting, extending, raising, altering, uniting or separating any building or structure, or any part of any building or structure, in contravention of any provisions of any Part of this Act; it shall be lawful for the Council, [after giving 14 days' notice to such person to bring such building or structure into conformity with the said provisions, and after default shall have been made in complying with such notice, and notwithstanding the imposition and recovery of any penalty,] to cause complaint thereof to be made before a Petty Sessional Court, who may thereupon issue a summons requiring the person making such default as aforesaid to appear to answer such complaint; and, if the said complaint is proved to the satisfaction of the Court, the Court may make an order in writing authorising the Council, and it shall thereupon be lawful for the Council, to enter [upon such building or structure with a sufficient number of workmen,] and to demolish or alter such building or structure, or any part thereof, [so far as the same shall have been adjudged to be in contravention of this Act, or any byelaw under this Act,] and to do whatever other acts may be necessary for such purpose, and to remove the materials to some convenient place, and, [if in their discretion they think fit,] sell the same in such manner as they may think fit; and all

S. 170 expenses incurred by the Council in demolishing or altering such building or structure, [or any part thereof, and in doing such other acts as aforesaid,] or the balance of such expenses after deducting the proceeds of sale of the aforesaid materials (if the Council thinks fit to sell the same), may be recovered from the person committing the offence aforesaid in a summary manner.

If the proceeds of such sale shall be more than sufficient to defray such expenses, the Council shall restore the surplus of such proceeds, after deducting the amount of all such expenses, to the owner of the building or structure on demand.

A somewhat similar power with regard only to buildings beyond the general line of frontage was conferred on the vestries by Met. Man. Am. Act, 1862, sec. 75, and extended to the Met. Board Works by Met. Man. & Bldg. Am. Act, 1882, sec. 10.

Compare with sec. 153 (2), where the same power is conferred on the Council without the necessity of first obtaining an order of a Petty Sessional Court to authorise them to enter, in all cases where an order made under that section is not complied with.

It is possible that sec. 153 (2) is intended to apply to cases where the District Surveyor is empowered to take proceedings, and sec. 170 when the proceedings must be taken by the Council.

The power under this section is by sec. 5 of the Lond. Govt. Act, 1899, also exercisable by the Metropolitan Borough Councils within their boroughs, in cases where they have obtained the conviction, *see* secs. 84, 134 and 199.

Procedure by local authorities in case of buildings in advance of general line.

[**171.** The powers conferred by this Part of this Act upon the Council with respect to any building or structure, in case such building or structure has been erected, extended or raised contrary to the provisions of this Act beyond the general line of buildings in the street, place or row of houses in which the same is situate, shall extend and apply to, and may be exercised by, the local authority in like manner as by the Council.]

See note to last section: the power of the local authority to take the initial proceedings has been repealed by this Act and conferred on the Council.

Payment of surplus of proceeds into Court.

172. Where, by any provision of this Act, any surplus of the proceeds of the sale of any building, structure or materials is made payable to any owner thereof and no demand is made by any person entitled thereto within one year of the receipt of the proceeds by the Council, then the same shall be paid into the Bank of England (Law Courts Branch) to the account of the Paymaster-General for the time being, for and on behalf of the Supreme Court of Judicature; to be placed to the credit of ['*ex parte* the London County

Council, London Building Act, 1894, the account of '] S. 172
the owner (describing him so far as reasonably practicable), subject to the control of the High Court, and to be paid out to the owner on his proving his title thereto.

Met. Bldg. Act, 1855 (repealed), sec. 76.
'In cases where any surplus is hereby made payable to any owner, if no demand for the same is made by any person entitled thereto within one year, then the same shall be paid into the Bank of England in the name and with the privity of the Accountant-General of the Court of Chancery, to be placed to his account there to the credit of the owner (describing him so far as the Commissioners can), subject to the control of the Court, and to be paid out to the owner on his applying by petition, and proving his title thereto.'

Payment of expenses by owners.

173. Where it is, by any provision of this Act, declared that expenses are to be borne by, or may be recovered from, the owner of any premises (including under the term 'owner' the adjoining and building owners respectively), the following rules shall be observed with respect to the payment of those expenses :—

(1.) The owner immediately entitled in possession to the premises, or the occupier thereof, shall in the first instance pay the expenses with this limitation, that an occupier shall not be liable to pay any sum exceeding in amount the rent due, or that will thereafter accrue due from him, in respect of the premises during the period of his occupancy ;

Met. Bldg. Act, 1885, sec. 97 (1), re-enacted (*see Wigg* v. *Lefevre*, unreported ; 'Building News,' 15 April, 1892 ; also *Hunt* v. *Harris*, 12 L. T. 421 ; 19 C. B. (N. S.) 13 ; 34 L. J., C. P. 247 ; 13 W. R. 742) ; 11 Jur. (N. S.) 485).
See note to sec. 109.
Q. B. 1861 (Cockburn, C.J., Crompton and Hill, JJ.) Where a chapel condemned as dangerous was held on lease for 21 years it was held that proceedings for recovery of dangerous structure expenses must in the first instance be taken against the lessee and not the owner in fee (*Mourilyan* v. *Labalmondiere*, 25 J. P. 340 ; 30 L. J. (M. C.) 99 ; 1 E. & E. 533 ; 7 Jur. N. S. 627).
Q. B. 1880 (Coleridge, C.J., and Field, J.) Under the corresponding provisions of Met. Bldg. Act, 1855, it was held that the expenses might be recovered from one co-owner of a party wall, leaving him to recover the contributions due from other owners (*Debenham* v. *M. B. W.*, 6 Q. B. D. 112 ; 43 L. T. 596 ; 50 L. J (M. C.) 29 ; 45 J.P. 190 ; 29 W. R. 353).
K. B. 1903 (Wright, J.) Where an owner, himself occupying a ground floor and having let the upper floors on lease to another, sought to recover the costs of pulling down and rebuilding a dangerous party wall, judgment was given for the cost of pulling down but not of rebuilding, as it was held that the condition of

S. 173 the ground floor portion was the cause of the whole wall being taken down (*Cave* v. *Robinson*, unreported; 'Builder,' 28 March, 1903).

(2.) If there are [successive] owners, each of them shall be liable to contribute to the expenses in proportion to his interest;

Met. Bldg. Act, 1855 (repealed), sec. 97 (2).
'If there are more owners than one, every owner shall be liable to contribute to such expenses in proportion to his interest.'
This subsection will make every owner, from the owner of the freehold in fee simple down to any tenant holding his interest as anything more than a tenant from year to year, liable to contribute.

(3.) Any difference arising as to the amount of contribution shall be decided by arbitration;

Met. Bldg. Act, 1855, sec. 97 (3), re-enacted in part.
See Arbitration Act, 1889 (52 & 53 Vict. cap. 49).

(4.) If some of the owners liable to contribution cannot be found, the deficiency so arising shall be divided among the owners who can be found;

Met. Bldg. Act, 1855, sec. 97 (4), re-enacted.

(5.) Any occupier of premises, who has paid any such expenses, may deduct the amount so paid from any rent payable by him to any owner of the same premises, and any owner who has paid more than his due proportion of any such expenses may deduct the amount so overpaid from any rent payable by him to any other owner of the same premises;

Met. Bldg. Act, 1855, sec. 97 (5), re-enacted.
This subsection would not preclude the occupier from recovering the expenses by action at law, if he so preferred; *see* subsec. (6).
See Erle v. *Maugham*, 8 L. T. 637; 10 Jur. N. S. 208; 14 C. B. N. S. 626.

(6.) If default is made by any person in payment of any expenses payable by him in the first instance under this section, the same may be recovered in a summary way, and if default is made by any person in repaying to any other person any money recoverable under this section, such moneys may be recovered in the same manner as if the obligation to pay such moneys were a simple contract debt.

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This subsection replaces Met. Bldg. Act, 1855, sec. 97 (6).

'If default is made by any owner or occupier in payment of any expenses hereby made payable by him in the first instance, or if default is made by any owner in payment of any other expenses or moneys due from him by way of contribution or otherwise in pursuance of this Act, then, in addition to any other remedies hereby provided, such expenses and moneys, if arising in respect of any matter within the provisions of the third Part of this Act, may be recovered as a debt in due course of law, but if arising in respect of any other matter under this Act may be recovered in a summary manner.'

As to periods for giving consents, &c., expiring in vacations.

[**174.** Where the period within which, for the purposes of this Act, any sanction, consent, approval or allowance in respect of any matters arising under Parts II. or V. of this Act is to be given or refused by the Council, or within which any objection is to be made or other act done by the Council, would expire on any day between the eighth day of August and the fourteenth day of September (both inclusive), such period shall be deemed to be extended for 28 days.]

Tribunal of Appeal

Constitution of Tribunal of Appeal.

175. For the purposes of this Act a Tribunal of Appeal shall be constituted as follows :—

One member shall be appointed by [a Secretary of State ;]

One member shall be appointed by the Council of the Royal Institute of British Architects ;

One member shall be appointed by the Council of the Surveyors' Institution ;

No member or officer of the Council shall be a member of the Tribunal of Appeal.

This Tribunal was first established by L. C. C. General Powers Act, 1890, sec. 28 ; the member that was, under that Act, appointed by the Council is now appointed by the Secretary of State ; the other two members are appointed as before. The powers of this Tribunal are much extended. It originally decided only appeals from the Superintending Architect's decision as to lines of frontage ; it has now to decide all appeals for which the Act provides from the decisions of the Council, Superintending Architect, and District Surveyors, where discretion is given them by this Act. All appeals to the Council from the District Surveyor's decision are now transferred to the Tribunal.

Q. B. 1893 (Charles and Wright, JJ.) A decision of the Tribunal as first constituted was set aside by the High Court because the member appointed by the Council was a member of the Building Act Committee of that body (*Reg.* v. *The Members of the Appellate Tribunal*, 'Times,' 27 Oct. 1893).

Duration of office.

[**176.** Members of the Tribunal of Appeal shall be

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appointed for a term of 5 years, and any such member shall be eligible for re-appointment.]

Removal of members.

[**177.** It shall be lawful for the Lord Chancellor, if he think fit, to remove, for inability or misbehaviour, or other good and sufficient cause, any member of the Tribunal of Appeal.]

Vacancies to be supplied.

[**178.** Upon the occurrence of any vacancy in the Tribunal of Appeal, or during the temporary absence, through illness or other unavoidable cause, of any member thereof, a Secretary of State, the Council of the Royal Institute of British Architects, or the Council of the Surveyors' Institution (as the case may be), whichever of them shall have appointed the member of the Tribunal whose place shall be vacated, shall appoint forthwith a fit person to be a member (either temporary or permanent) of the Tribunal in lieu of the member whose place is vacated or who is temporarily absent as aforesaid.]

Remuneration of members of Tribunal.

[**179.** Each member of the Tribunal of Appeal shall be entitled to such remuneration, either by way of annual salary or by way of fees, or partly in one way and partly in the other, as a Secretary of State may from time to time fix.]

Officers, &c., of Tribunal.

[**180.** It shall be lawful for the Tribunal of Appeal to appoint such clerks, officers and servants as they may find necessary, who shall be paid such salaries as shall be determined by the Council, and to provide offices and to obtain such professional advice and assistance as they may find necessary.]

Power for Council to support decisions of officers before Tribunal.

181. It shall be lawful for the Council to defray the expenses of supporting any decision of the Council, or of the Superintending Architect, or of their engineer, or of a District Surveyor, by counsel and witnesses before the Tribunal.

Tribunal may state case for opinion of High Court.

182. It shall be lawful for the Tribunal at any time to state, and the Tribunal shall, if ordered by the High Court or a judge thereof on an application in a summary manner made by any party to the appeal, state a case for the opinion of the High Court on any question of law involved in any appeal submitted to them. [The High Court shall hear and determine the question or questions of law arising on any case stated by the Tribunal of Appeal, and shall thereupon reverse, affirm or amend the determination (if any) in respect of which the case has been stated, or remit the matter to the Tribunal of Appeal with the opinion of the Court on the case stated, or may make such other rder in relation to

the matter as the circumstances of the case require, and may make such order as to the costs of the case and in the High Court as to the Court may seem fit.]

Procedure of Tribunal.

[**183.** The Tribunal of Appeal shall, subject to the provisions of this Act, have jurisdiction and power to hear and determine appeals referred to them under this Act.]

For all the purposes of, and incidental to, the hearing and determination of any appeal, the Tribunal shall, [subject to any rules of procedure duly made,] have power to hear the Council and the parties interested, [either in person or by counsel, solicitor or agent,] as they may think fit, [and to administer oaths, and to hear and receive evidence, and to require the production of any documents or books,] and to confirm or reverse or vary any decision, and make any such order as they may think fit ; and the costs of any of the parties to the appeal, [including the Council,] shall be in the discretion of the Tribunal.

The latter part of this section is a re-enactment with amendment of part of sec. 28 of L. C. C. (Gen. Powers) Act, 1890.

Appeals under sec. 48 must be lodged within 21 days and in all other cases within 14 days after the matter appealed against ; *see* Regulations of the Tribunal of Appeal, *post*.

The appeals referred to the Tribunal of Appeal under this Act are :—from the decision of the Council, secs. 7, 9, 10, 11, 12, 13 (3) (4), 19, 41 (1) (2), 42, 43, 44, 48, 122, 123 and 139 ; from the Superintending Architect, secs. 5 (8), 25, 29 and 46 ; from the District Surveyor, secs. 5 (8), 13 (5), 19, 43, 78, 79 and 132.

Appeals are also referred to the Tribunal of Appeal under Lond. Bldg. Am. Act, 1905, secs. 7, 9, 10, 11, 12 and 13.

K. B. 1904 (Wills and Kennedy, JJ.) It was held that the Tribunal of Appeal has power to review the decision of the Superintending Architect not only as to the general line of buildings in a street, but also as to the length of street to be taken for which such line is to be defined, also that the Tribunal of Appeal has power to award a lump sum for costs (*In re London Building Act*, 1894 *& the L. C. C.* 91 L. T. 501 ; 68 J. P. 490 ; 2 L. G. R. 1265).

Regulations as to procedure and fees.

184. The Tribunal of Appeal may from time to time, subject to the approval of the Lord Chancellor, make regulations, consistent with the provisions of this Act, as to the procedure to be followed in cases of appeal to the Tribunal, including the time and notice of appeal, and as to fees to be paid by appellants and other parties.

For Regulations of the Tribunal of Appeal *see post*.

Enforcement of decision of Tribunal.

[**185.** Any order of the Tribunal of Appeal may be enforced by the High Court as if it had been an order of that Court.]

Fees, &c., to be paid to Council. Expenses.

[**186.** All fees and sums of money paid to the Tribunal of Appeal shall be paid over to the Council and carried to the county fund; and the salaries or fees payable to members of the Tribunal, and the office and establishment expenses of the Tribunal, and expenses incurred by the Tribunal and the Council in reference thereto, shall be defrayed out of the county fund]

Notices

Notices to be in writing.

187. (1.) Notices, orders and other such documents under this Act shall be in writing, and notices and documents, other than orders, when issued by the Council shall be sufficiently authenticated if signed by their clerk or by the officer by whom the same are given or served.

(2.) Orders shall be under the seal of the Council.

Service of notices.

188. [(1.) Any notice, order or other document required or authorised to be served under this Act, the service of which is not provided for by the Summary Jurisdiction Acts, the Lands Clauses Acts or the Companies Clauses Consolidation Act, 1845, may be served by delivering a copy thereof at; or by sending a copy thereof by post in a registered letter to the usual or last known residence in the United Kingdom of the person to whom it is addressed; or by delivering the same to some person on the premises to which it relates; or, if no person be found on the premises, then, by fixing a copy thereof on some conspicuous part of the building to which it relates; and, in the case of a railway company, by delivering a copy thereof to the secretary at the principal office of the said company.]

(2.) Any notice, order or other document to be served upon a builder shall be deemed to be sufficiently served if posted in a registered letter addressed to such builder at the place of address stated in his building notice (if any), or in default thereof, [at his office or any one of his principal offices,] or if a copy thereof be fixed on some conspicuous part of the building to which it relates.

[(3.) Any notice by this Act required to be given to, or served on, the owner or occupier of any premises may be addressed by the description of the 'owner' or 'occupier' of the premises (naming the premises) in respect of which the notice is given or served, without further name or description.]

(4.) Any notice required by this Act to be served on

a District Surveyor may be served on him [by post in a registered letter addressed to him at his office, or] by leaving the same at his office. S. 188

Met. Bldgs. Act, 1885 (repealed), sec. 98.

'The following rules shall be observed with respect to the giving or service of any notice, summons or order directed to be given or served under this Act in cases not hereinbefore provided for:—

'(1.) A notice, summons or order may in all cases be served personally;

'(2.) A notice, summons or order may be served on any builder by leaving the same or sending it in a registered letter addressed to him at his place of address as stated by him to the District Surveyor; or by putting up such notice, summons or order on a conspicuous part of the building or premises to which the same relates;

'(3.) A notice, summons or order may be served on the owner or occupier of any premises by leaving the same with the occupier of such premises, or with some inmate of his abode, or, if there is no occupier, by putting up such notice, summons or order on a conspicuous part of the building or premises to which the same relates; and it shall not be necessary to name the owner or occupier of such premises; nevertheless, when the owner of any such premises and his residence, or that of his agent, are known to the party by whom or on whose behalf any notice, summons or order is intended to be served, it shall be the duty of such party to send every such notice, summons or order by the post in a registered letter addressed to the residence or last known residence of such owner or of his agent;

'(4.) A notice, summons or order may be served on any District Surveyor by leaving the same at his office.'

Q. B. 1897 (Wright and Kennedy, JJ.) A summons under sec. 7 of this Act addressed merely to 'the owner' of dangerous premises (as usual under the previous Act) has been held not to be properly served by affixing it to the premises, unless reasonable efforts have ineffectually been made to ascertain who is the owner. The true construction of the section was held to be that where a person can be identified by ordinary enquiry then service should be as provided by the Summary Jurisdiction Acts; but if, after reasonable enquiry, such as a constable knows how to make in a few minutes, it cannot be discovered who is the owner, the provisions of this section are applicable (*Reg.* v. *Mead* (1898) 1 Q. B. 110; 66 L. J. (Q. B.) 874; 61 J. P. 759; 77 L. T. 462; 46 W. R. 61). In consequence of and to supersede this decision sec. 5 of Lond. Bldg. Am. Act, 1898, was enacted, making special provisions for the service of a notice, summons or order in the case of dangerous or neglected structures.

PART XVI

MISCELLANEOUS

Expenses how borne.

189. All expenses incurred by the Council in carrying this Act into execution, and not otherwise provided for, shall be deemed to be general expenses incurred by the Council, and shall be raised and paid accordingly; and the costs, charges and expenses preliminary to and of and incidental to the preparing, applying for, obtaining and passing of this Act shall be raised and paid by the Council in like manner.

Met. Bldg. Act, 1855 (repealed), sec. 68.

'All expenses of carrying into execution this Act, not hereby otherwise provided for, shall be deemed to be expenses incurred by the said Metropolitan Board in the execution of the said Act for the better local management of the Metropolis, and shall be raised and paid accordingly.'

Power for Council to annex conditions.

190. In any case where the Council are authorised under this Act to refuse their sanction, consent or allowance to the doing or omission of any act or thing, the Council may, if they think fit, instead of refusing such sanction, consent or allowance, give the same subject to such terms and conditions in relation to the subject matter of such sanction, consent or allowance as the Council think fit.

Any such term or condition, when accepted, shall be binding on the owner and occupier of the building or structure, or ground to which the sanction, consent or allowance relates; and if at any time any term or condition so accepted is not observed or fulfilled, the owner or occupier in default shall be subject to a penalty as hereinafter provided.

For penalty (£10), *see* sec. 200 (10).

As to buildings of historical interest.

[**191.** In the event of its being necessary to take down any portion of an old building of architectural or historical interest, constructed otherwise than in accordance with the regulations of this Act, or in the event of the destruction of any part of such building; the part so taken down or destroyed may, with the consent of the Council first obtained, be restored in the same material and in the same design as it formerly was.]

Power of entry to owner, &c., to execute work.

192. Any owner, builder or other person, and his servants, workmen and agents may, for the purpose of complying with any notice or order served or made on

him in pursuance of this Act in respect of any building or structure, room or place, after giving 7 days' notice to the occupier thereof, and on production of the first-mentioned notice or order, enter, and from time to time, without further notice, re-enter such building or structure, room or place, and do all necessary works and things therein, thereto or in connection therewith. S. 192

Met. Man. & Bldg. Am. Act, 1878, sec. 22, contained a similar provision, but that did not apply to the Met. Bldg. Act, 1855.

For penalty for obstructing entry (40*s*., and 40*s*. a day) *see* sec. 200 (11) *g*.

This section was rendered necessary by the decisions in the cases of *Smith* v. *Legg* and *Wallen* v. *Lister* ; *see* sec. 152 of this Act.

The following quotation from the judgment of Hawkins, J., in the latter case will be of interest here. 'After his employment as builder has ceased and he has left the premises he could only re-enter by permission of the owner. To re-enter without such permission would be a trespass which could not be justified by a plea that such re-entry was made in order to fulfil the requirements of the District Surveyor's notice. If the legislature intended to give power to the builder to enter against the will of the owner, surely it would have conferred such power in express language.'

See note to sec. 200 on the case of *Thos. Welsh & Son* v. *Corporation of West Ham* (1900) 1 Q. B. 324 ; 82 L. T. 262 ; 69 L. J. (Q. B.) 114.

Limitation of time for proceedings where notice not given.

193. Where any building has been erected or work done without due notice having been given to the District Surveyor [(in accordance with this Act or a byelaw made under this Act),] the District Surveyor may at any time within 1 month after he has discovered that such building has been erected or work done enter the premises for the purpose of seeing that the provisions of this Act [or any notice served or order made under the same,] have been complied with ; and the time during which the District Surveyor may take any proceedings, or do anything authorised or required by this Act to be done by him in respect of such building or work, shall begin to run from the date of his discovering that such building has been erected or work done.

Met. Bldg. Act, 1855 (repealed), sec. 105.

'In cases where any building has been erected or work done without due notice being given to the District Surveyor, the District Surveyor may, at any time within 1 month after he has discovered that such building has been erected or work done, enter the premises for the purpose of seeing that the regulations of this Act have been complied with ; and the time during which the District Surveyor may take any proceeding, or do anything authorised or required by this Act to be done by him in respect of such

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building or work, shall begin to run from the date of his discovering that such building has been erected or work done.'

See sec. 152 for proceedings, in case of irregularities, after the building has been completed.

Plans and documents to be property of Council.

[**194.** Applications, plans and other documents delivered at the office of the Council, or to the District Surveyor, in pursuance of this Act, or of any byelaw of the Council thereunder, shall, on delivery there, become the property of the Council.]

Mode of giving approval of Council to plans.

195. The approval by the Council of any plans or particulars for the purposes of this Act shall be signified in writing under the hand of the Superintending Architect.

By L. C. C. Gen. P. Act, 1890, sec. 27, this consent was required to be countersigned by the chairman of the Building Act Committee, or other duly appointed person, in addition to the signature of the Superintending Architect.

Consent how given, on behalf of owners not to be found.

196. Where any consent is required to be given, any notice to be served, or any other thing to be done by, on or to any owner, in pursuance of this Act, if there is no owner, or if any such owner cannot be found, the judge of the County Court may give such consent, or do or cause to be done, such thing, on such terms and conditions as he may think fit, and may dispense with the service of any notice which would otherwise require to be served.

Met. Bldg. Act, 1855, sec. 96, verbally altered and condensed.

Storing of wood and timber.

[**197.** (1.) It shall not be lawful for any person to erect or place a pile, stack or store of cut or uncut timber, lathwood, firewood, casks or barrels, whether on or above the ground, nearer to a street than the buildings forming the general line of buildings therein; except in a position wherein such a pile, stack or store stood on the first day of January, one thousand eight hundred and ninety-four.

(2.) It shall not be lawful for any person to pile, stack or store cut or uncut timber, lathwood, firewood, casks or barrels in the same yard or ground, or in any part of the same premises with any furnace; except in the following cases:—

(*a*) Where the furnace is enclosed in a building or chamber constructed of fire-resisting materials; or

(*b*) Where there is a distance of not less than 10 feet between the furnace and the pile, stack or

store of timber, lathwood, firewood, casks or barrels. S. 197

(3.) No pile, stack or store of timber, lathwood, firewood, casks or barrels shall exceed 60 feet in height from the level of the ground.

(4.) It shall not be lawful to form in any pile, stack or store of timber, lathwood, firewood, casks or barrels, any room or chamber or space (other than a passage) to be used for any purpose whatever.

(5.) Timber yards existing at the time of the passing of this Act shall comply with these provisions within 2 years from the date of the passing of the Act; but the Council shall have power in individual cases, if they think fit, to prolong this time for a term not exceeding 7 years, and shall have power to relax any of the provisions of this section.

(6.) This section shall not apply to railway companies or canal companies so far as regards timber, lathwood, firewood, casks or barrels in transit, or piled, stacked or stored on land occupied by them for the purposes of their undertakings; nor to timber, lathwood, firewood, casks or barrels piled, stacked or stored in or on any yard or other premises occupied by any dock company for the purposes of their undertaking; or to any such yard or premises, or to any person piling, or packing, or storing timber, lathwood, firewood, casks or barrels in or on any such yard or premises.]

By sec. 85 of this Act, stacks of timber, not being structures fixed to the ground, are exempted from the provisions for temporary structures.

For penalty (40*s*., and 40*s*. a day), *see* sec. 200 (11) *h*.

Timber stages have been held to be buildings (*Legg* v. *Smith*, and *Wallen* v. *Gluckstein*, *see* notes to sec. 5 (6).

Removal of roof not to affect proceedings

198. Proceedings with respect to a building shall not be affected by the removal or falling in of the roof or covering of such buildings.

Met. Man. & Bldg. Am. Act, 1882, sec. 20, verbally altered and re-enacted.

Preventing obstruction in streets.

199. No person, not being lawfully authorised, shall erect or place, or cause to be erected or placed, any post, rail, fence, bar, obstruction or encroachment whatsoever in or upon, over or under any street; and no person, not being lawfully authorised, shall alter or interfere with any street in such a manner as to impede or hinder the traffic for which such street was formed or laid out from passing over the same.

S. 199

The Council may, at the expiration of 2 days after giving notice in writing to such person to demolish or remove any such post, rail, fence, bar, obstruction or encroachment, or to reinstate or restore such street to its former condition (as the case may be), demolish or remove any such post, rail, fence, bar, obstruction or encroachment, and reinstate or restore such street to its former condition, and recover the expenses thereof from such person in a summary manner.

This section shall not apply within the City.

Met. Man. & Bldg. Am. Act, 1882, sec. 6 re-enacted.

For penalty (£10, and 40*s.* a day), *see* sec. 200 (1) *b*, *c*, *d*.

For power of Borough Councils to require the removal of certain projections when an obstruction to the street, *see* Met. Man. Act, 1855, sec. 119.

The powers and duties of the Council under this section are by sec. 5 of the Lond. Govt. Act, 1899, transferred to the Metropolitan Borough Councils.

Offences against Act

Offences against Act

200. Subject to the provisions of this Act, every person who does any of the things specified in this section shall be deemed to have committed an offence against this Act, and shall be liable upon conviction in a summary manner to a penalty not exceeding the amount hereafter specified in connection with such offence, and to a further penalty not exceeding the amount hereafter stated as the daily penalty in connection with such offence for every day on which the offence is continued after such conviction (that is to say) :—

(1.) Every person who—

(*a*) Commences to form or lay out, alter or adapt any street or way without having first obtained the sanction of the Council under this Act, or otherwise than in accordance with the conditions (if any) prescribed by the Council in giving their sanction, or by the Tribunal of Appeal, as the case may be, or commences to widen any street or way to a less extent than the prescribed distance, without giving to the Council the notice prescribed by this Act ; or

See secs. 7 & 10.

The penalty by Met. Man. & Bldg. Am. Act, 1882, sec. 7, was £2, and 20*s.* a day.

S. 200

(*b*) Unlawfully erects or places in, upon or over any street or way, any post, fence, bar, obstruction or encroachment ; or

See sec. 199, penalty unaltered, *see* Met. Man. & Bldg. Am. Act, 1882, sec. 6.

(*c*) Unlawfully permits any such post, rail, fence, bar, obstruction or encroachment in, upon or over any street or way to remain after notice served upon him by the Council to remove the same ; or

See sec. 199, penalty unaltered, *see* Met. Man. & Bldg. Am. Act, 1882, sec. 6.

(*d*) Unlawfully alters or interferes with any street in such a manner as to impede or hinder the traffic for which such street was formed or laid out ;

See sec. 199, penalty unaltered, *see* Met. Man. & Bldg. Am. Act, 1882, sec. 6.

Shall be liable to a penalty not exceeding 10 pounds for every such offence, and to a daily penalty not exceeding 40 shillings ;

(2.) Every person who neglects or refuses for 28 days after the service of any notices empowered to be served under Part II. of this Act, requiring him to set back any building or structure,[1] to comply with the requirements of such notice ; or, after the expiration of such period, fails to carry out or complete the works necessary for such compliance within the time (if any) limited in such notice, shall be liable to a penalty of not less than 40 shillings and not more than 5 pounds, and to a daily penalty of not less than 10 shillings and not more than 40 shillings. Provided always, that this subsection shall not apply to any non-compliance with such notice in the case of an intended highway, where the same shall not be opened as a highway ;

See secs. 13, 14 & 16, penalty unaltered, *see* Met. Man. & Bldg. Act, 1878, sec. 8.

[1] This subsection has been amended by Lond. Bldg. Am. Act, 1898, so as to take effect as though the words 'fence or boundary' had been originally inserted after the word 'structure.'

S. 200 (3.) Every person who—

(*a*) Erects or brings forward any building or structure in contravention of any of the provisions of Part III. of this Act, or of any conditions attached by the Council to any consent given pursuant to such provisions ; or

See secs. 22 & 26.

(*b*) Erects, alters, enlarges, rebuilds or raises, or commences to erect, alter, enlarge, rebuild or raise any building, or commences so to do, so as to contravene any of the provisions of Part V. of this Act ; or

See secs. 40–42, 45, 47, 49.

Q. B. 1894 (Mathew and Kennedy, JJ.) Where the builders of a building that contravened the provisions of Met. Man. Am. Act, 1862, had after conviction against them for the offence finished the work and left the premises, the owner of the building was held liable for penalties for continuing the offence, because the original proceedings had been taken within six months of the commission or discovery of the offence. The Court recognised two offences, that of committing and that of continuing (*L. C. C.* v. *Worley* (1894) 2 Q. B. 826 ; 63 L. J. (M. C.) 218 ; 71 L. T. 487 ; 59 J. P. 262 ; 43 W. R. 11 ; 10 R. 510 ; 18 Cox C. C. 37). It should be observed that the time during which proceedings were required to be taken was limited by sec. 107 of Met. Man. Am. Act, 1862, that section has not been re-enacted in the present Act, and the time limit in all cases is now governed by the Summary Jurisdiction Acts.

(*c*) Fails to comply with any of the provisions of Part VI. of this Act ; or

See secs. 53–81, penalty unaltered.

(*d*) Fails to comply with the requirements of any notice given to, or served upon, him under and in accordance with Part VII. of this Act within the time (if any) specified in such notice ; or

See secs. 82–86.

(*e*) Sets up, erects [1] or adapts any building or structure to which Part VII. of this Act applies, without having obtained any [1] licence required by that Part of this Act ; or makes default in observing any of the conditions contained in such [1] licence ;

See secs. 82 & 84.

[1] This paragraph has now been amended by sec. 6 of Lond.

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Bldg. Am. Act, 1898, to take effect as though the word 'retains' had been inserted after 'erects,' and as though the words 'approval or' had been inserted before 'licence.'

Pars. (*a*) (*d*) and (*e*) sec. 7 of Lond. Bldg. Am. Act, 1898, also imposes in these cases a penalty on conviction of 40*s*. and empowers the Court to make an order for demolition, thus providing an 'order of the Court,' not provided in this Act.

Shall be liable to a penalty not exceeding 20 pounds a day during every day of the continuance of the non-compliance with the order of the Court in reference to the matters aforesaid ;

(4.) Every person who hinders or obstructs any persons empowered by this Act to enter and remain on any premises for the purpose of executing and to execute any work authorised, or directed to be done, under this Act ; or wilfully damages or injures any such work ; shall be liable, for every such offence, to a penalty not exceeding 10 pounds :

See secs. 87 & 92, penalty unaltered, *see* Met. Bldg. Act, 1855, sec. 86.

(5.) Every person who, being a building owner liable under Part VIII. of this Act to make good any damage which he may occasion to the adjoining owner's [or adjoining occupier's] property by any works authorised to be executed by the building owner ; or to do any other thing upon condition of doing which his right to execute such works is by Part VIII. of this Act declared to arise, fails within a reasonable time to make good such damage, or to do such thing ; shall be liable to a penalty not exceeding 20 pounds and to a daily penalty not exceeding the like amount ;

See sec. 88, penalty unaltered, *see* Met. Bldg. Act, 1855, sec. 94.

(6.) Every person who refuses to admit the purchaser of any materials sold under this Act, his servants or agents upon the land on which the same are [at a reasonable hour] ; or impedes him or them in removing the same therefrom [at a reasonable hour] ; shall be liable to a penalty not exceeding 10 pounds and to a daily penalty of not exceeding 5 pounds ·

S. 200

See sec. 110, penalty unaltered, *see* Met. Man. & Bldg. Am. Act, 1878, sec. 19.

(7.) Every person who erects a building nearer than 50 feet to a building used for any dangerous business, or a dwelling-house nearer than 50 feet to a building used for any noxious business, shall be liable to a penalty not exceeding 50 pounds, and to a daily penalty not exceeding the like amount for every day during which such first-mentioned building or such dwelling-house shall be allowed to so remain near to such dangerous or noxious business ;

See secs. 118 (1), 119 (1), penalty unaltered, *see* Met. Bldg. Act, 1844, sec. 55.

(8.) Every person who establishes or carries on a dangerous or noxious business in contravention of any of the provisions of this Act, shall be liable to a penalty not exceeding 50 pounds, and to a daily penalty not exceeding the like amount ;

See sec. 118 (3), penalty unaltered, *see* Met. Bldg. Act, 1844, sec. 55.

(9.) Every person who erects or adapts, or commences to erect or adapt, otherwise than in accordance with the provisions of Part XI. of this Act, any building to which Part XI. of this Act relates, shall be liable to a penalty not exceeding 100 pounds and to a daily penalty not exceeding 50 pounds for every day after the conviction for the offence on which the building continues so erected or adapted without a licence, or on which default is made in observing or complying with any conditions of a licence under that Part of this Act ;

See sec. 122.

(10.) Every person not complying with any term or condition imposed by the Council under the section the marginal note of which is 'Power for Council to annex conditions,' shall be liable to a penalty not exceeding 10 pounds ;

See sec. 190.

(11.) (*a*) Any person who places, erects or retains, or suffers or permits to be placed, erected or retained,

any sky sign contrary to the provisions of this Act ; or S. 200

See secs. 127 & 128.

(*b*) Being a person who ought to serve a building notice, fails to do so, or begins to execute a work, respecting which he ought to serve a building notice, before serving such notice ; or, having served a building notice, begins to execute the work to which it relates before the expiration of 2 clear days [after the notice has ceased to operate] ; or

See sec. 145, the penalty under Met. Bldg. Act, 1855, sec. 41, was £20.

(*c*) Refuses to permit any District Surveyor at a reasonable time to enter, survey or inspect any building, work or premises which such surveyor is by this Act authorised to enter and inspect ; or refuses or neglects to afford him all reasonable assistance in such inspection ; or

See secs. 103 & 148 ; the penalty under Met. Bldg. Act, 1855, sec. 43, was £20.

(*d*) Fails to comply with any order of the County Court made in pursuance of this Act within the time named in such order ; or

See sec. 168.

(*e*) Refuses to admit at a reasonable time a builder to a building, or otherwise prevents a builder from complying with any order of the County Court made in pursuance of this Act ; or

See sec. 168.

(*f*) (Being a workman, labourer, servant or other person employed in or about any building) wilfully, and without the privity or consent of the person causing the work to be done, does anything in or about such building contrary to the provisions of this Act ; or

The penalty under Met. Bldg. Act, sec. 48, was 50*s*.

S. 200

(*g*) Refuses to admit, at a reasonable time, any owner, builder or person, or his servants, workmen or agents, into any land, building or structure, for the purpose of complying with any notice or order served or made on him in pursuance of this Act, in respect of such land, building or structure; or refuses or neglects to afford them all reasonable assistance in complying with such notice or executing such order; or

See secs. 107 (1), 115, 151 & 152.

(*h*) Acts in any manner in contravention of any of the provisions of this Act relating to the storing of wood and timber; or

See sec. 197.

Power to take proceedings in respect of this offence is by sec. 5 of Lond. Govt. Act, 1899, also exercisable by the Metropolitan Borough Councils within their borough.

(*j*) Does any other thing prohibited by this Act, or fails, neglects or omits to do any other thing which he is required to do under or in pursuance of this Act;

See secs. 13 (5), 32, 78, 207.

Shall be liable to a penalty not exceeding 40 shillings, and to a daily penalty not exceeding the like amount;

(12.) Every person who, without the consent of the Council, converts or uses a building contrary to any of the provisions of the section of this Act of which the marginal note is 'Rules as to conversion of buildings,' shall be liable to a penalty not exceeding 10 pounds, and to a daily penalty not exceeding the like amount, for every day on which the building remains so converted, or is used contrary to the provisions of the said section.

See sec. 211.

The liability to these penalties shall be without prejudice to any other proceedings, whether under this Act or any byelaw under this Act or otherwise; but so that no person shall be punished twice for the same offence.

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For penalty for infringement of bylaws, *see* sec. 164 and bylaws.

Q. B. 1900 (Darling and Channell, JJ.) Under the Public Health Act, 1875 (38 & 39 Vict. cap. 55), which makes the continued existence of work erected contrary to the bylaws a continuing offence, it was held that if the person originally committing the offence has given up possession of the premises so that he is unable to re-enter without committing a trespass, and the existence of the irregularity is afterwards continued, such person is not liable for a continuing offence (*Thos. Welsh & Son* v. *Corpn. of West Ham* (1900) 1 Q. B. 324 ; 69 L. J. (Q. B.) 114 ; 82 L. T. 262). The effect of this decision on this Act may be somewhat modiffed by sec. 192 giving power of entry.

For 'continuing offence' *see* the decisions in the cases of *M. B. W.* v. *Anthony*, 54 L. J. (M. C.) 39 ; 49 J. P. 229 ; 33 W. R. 166 ; *Daw* v. *L. C. C.*, 62 L. T. 937 ; 54 J. P. 502 ; 59 L. J. (M. C.) 112 ; *L. C. C.* v. *Worley* (1894) 2 Q. B. 826 ; 63 L. J. (M. C.) 218 ; 71 L. T. 487 ; 59 J. P. 263 ; 43 W. R. 11 ; 10 R. 510 ; 18 Cox C. C. 37 ; *Hull* v. *L. C. C.* (1901) 1 K. B. 580 ; 70 L. J. (K. B.) 364 ; 84 L. T. 160 ; 49 W. R. 396 ; 17 T. L. R. 270 ; *Blackpool Corpn.* v. *Johnson* (1902) 1 K. B. 646 ; 71 L. J. (K. B.) 485 ; 87 L. T. 28 ; *Pomeroy* v. *Malvern U. D. C.*, 67 J. P. 375 ; 89 L. T. 555 ; 1 L. G. R. 825.

Application of Act

Buildings exempt from parts of Act.

201. The following buildings and works shall be exempt from the operation of Parts VI. and VII. of this Act :—

(1.) Bridges, piers, jetties, embankment walls, retaining walls and wharf or quay walls ;

(2.) The Mansion House, Guildhall and Royal Exchange of the City ;

(3.) The offices and buildings of the Bank of England within the City ;

(4.) All buildings erected before or after the passing of this Act, by or with the sanction of the Commissioners for the Exhibition of 1851, on any lands belonging to them, and purchased in pursuance of any power vested in them by charter or Act of Parliament, except streets or blocks of buildings erected by them, or with their sanction, as private dwelling-houses ;

See Met. Bldg. Act, 1861, sec. 1.

(5.) The Sessions House at the Old Bailey, and all other sessions houses or other public buildings belonging to or occupied for public purposes by the justices of the peace of the counties of Middlesex, London and the City of London [or by the County Councils of London and Middlesex respectively ;]

S. 201 This subsection only applies to 'public buildings' belonging to the authorities named; *see* definition of 'public building.'

(6.) The erections and buildings authorised by an Act passed in the ninth year of the reign of his late Majesty King George the Fourth for the purposes of a market in Covent Garden;

(7.) The buildings of the Metropolitan Cattle Market and of the Cattle Market at Deptford [and any building within the market premises inhabited or adapted to be inhabited by any official or servant of the Corporation for the purposes of such markets or either of them;]

See Met. Bldg. Act, 1871, sec. 2.

(8.) Any building or part of a building belonging to a canal company, and used [exclusively] for the purposes of canal works, under any Act of Parliament;

Q. B. 1893 (Pollock, B., and Kennedy, J.) A building erected on a wharf belonging to the Regent's Canal Co., and let to a tenant who chopped firewood therein, was held not to be 'used for the purposes of the Canal Co.' and therefore not exempt from Met. Bldg. Act, 1855 (*Coole* v. *Lovegrove*, L. R. (1893) 2 Q. B. 44; 69 L. T. 19; 62 L. J. (M. C.) 153; 57 J. P. 647; 41 W. R. 570; 9 T. L. R. 455.

[Any building or structure situate upon the railway or within the railway or station premises, and used for the purposes of or in connection with the traffic of a railway company;]

By Met. Bldg. Act, 1855, sec. 6, buildings belonging to railway companies were exempted only in so far as they were used for the purposes of such railway company.

See note to sec. 86 and the case of *Elliott* v. *L. C. C* there quoted.

[Any building or part of a building belonging to a gas company and used exclusively for gasworks;

Any building or part of a building belonging to the Conservators of the River Thames, and used by them as a workshop or store;

The foundations and walls of buildings belonging to a railway company situate over any station or works of a railway company, or immediately adjoining any railway or works of a railway company, and upon land acquired under the powers of an Act of Parliament;

Any building within the station premises of any railway company inhabited, or adapted to be

inhabited, in whole or in part, by any official or servant of the railway company : S. 201

Provided always that nothing in this subsection shall exempt any other buildings used for the purpose of human habitation, so far as they are so used :]

(9) Any building or structure, [or part of a building or structure,] belonging to a dock company constituted by Act of Parliament, [and situate within the dock premises ;]

By Met. Bldg. Act, 1855, sec. 6, buildings belonging to a dock company were exempted from Part I. only in so far as they were used for the purposes of such dock company.

[(10.) Buildings not exceeding in area 30 square feet, and not exceeding in height 5 feet in any part, measured from the level of the ground to the under side of the eaves or roof plate, and distant at least 5 feet from any other building and from any street, and not having therein any stove, flue, fireplace, hot-air pipe, hot-water pipe or other apparatus for warming or ventilating the same ; provided that no portion of the building extends beyond the general line of buildings in any street ;]

(11.) All buildings and structures (not exceeding in height 30 feet as measured from the footings of the walls, and not exceeding in extent 125,000 cubic feet, and not being public buildings) wholly in one occupation, and distant at the least 8 feet from the nearest street or way and at the least 30 feet from the nearest buildings and from the land of any adjoining owner. [A detached dwelling-house shall not be excluded from this exemption solely by reason of its being within 30 feet of another detached building constructed as stables or offices to be used in connection with such dwelling-house :]

(12.) All buildings not exceeding in extent [250,000 cubic feet,] and not being public buildings and distant at the least 30 feet from the nearest street or way, and at the least 60 feet from the nearest buildings and from the land of an adjoining owner. [A detached dwelling-house shall not be excluded from this exemption solely by reason of its being within 60 feet of another detached building constructed as stables or

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offices to be used in connection with such dwelling-house ;]

By Met. Bldgs. Act, 1855, the limit was 216,000 cubic feet.

(13.) All party fence walls [not exceeding in height 7 feet, measured from the top of the footings of the walls :]

[(14.) Greenhouses, if not attached to other buildings ;]

(15.) Greenhouses, [if attached to other buildings,] so far as regards the necessary woodwork of the sashes, doors and frames :

[(16.) Cases of metal and glass, used solely for holding plants fastened to the woodwork of the sill and lower sash of a window, provided that no portion project over the public way or more than 12 inches beyond the external face of the wall of the building :]

(17.) Openings made into walls or flues for the purpose of inserting therein ventilating valves of a superficial extent not greater than 40 square inches, if such valves are not nearer than 12 inches to any timber or other combustible material.

The buildings enumerated in this section were (with the exceptions of the words in brackets and the subsections noted as new) exempted by Met. Bldg. Acts, 1855, sec. 6 ; 1861, sec. 1 ; 1871, sec. 2, from the operation of Part I. of the Met. Bldg. Act, 1855, which comprised the matters dealt with in this Act by Parts V., VI., VII., XIII., XV., XVI. ; and by Met. Man. & Bldg. Am. Act, 1878, sec. 25, from Part II. of that Act ; and by L. C. C. Gen. P. Act, 1890, sec. 37, from that Act as far as it related to buildings and structures, both of which comprised matters dealt with in this Act by Part XIV.

It will be observed that this section only exempts the above mentioned buildings from Parts VI. and VII. of this Act ; Parts V., XIII., XIV., XV. and XVI. are therefore now applicable to them.

County lunatic asylums and Bethlehem Hospital were, by sec. 6 of Met. Bldg. Act, 1855, also exempt from Part I. of that Act ; these buildings no longer enjoy any exemption.

Buildings erected in accordance with plans, and in a manner approved or directed by the Local Government Board, were by sec. 37 of L. C. C. Gen. P. Act, 1890, exempt from that Act ; this exemption is now abolished.

By sec. 21 of the Crystal Palace Act, 1881, ' the main buildings, conservatories and water works of the Company and the conveniences and other works immediately connected therewith ' were exempted from Part I. of Met. Bldg. Act, 1855, and any other Act amending the same.

Q. B. 1900 (Channell and Bucknill, JJ.) It was held that a building erected in the grounds a quarter of a mile from the

main building, constructed in a manner that would if not exempt require the consent of the Council under Part VII. of this Act, was not within the exemption of the special Act (*Crystal Palace Co.* v. *L. C. C.*, unreported, 'Builder,' 10 Feb. 1900).

For exemptions created by inconsistency between this Act and a special Act *see* decisions in the cases of *City & S. Lond. Ry.* v. *L. C. C.* (1891) 2 Q. B. 513; 60 L. J. (M. C.) 149; 65 L. T. 362; 56 J. P. 6; 40 W. R. 166; *L. C. C.* v. *Lond. Sch. Board* (1892) 2 Q. B. 606; 62 L. J. (M. C.) 30; 56 J. P. 791; 40 W. R. 604; 5 R 1; *L. C. C.* v. *Wandsworth and Putney Gas Co.*, 82 L. T. 562; 64 J. P. 500; 10 T. L. R. 652; *Whitechapel B. W.* v. *Crow*, 84 L. T. 595; 65 J. P. 549.

[If any addition be made to any building or structure specified in subsections (10), (11), or (12), whereby any increase is caused in the area, height or extent of any such building or structure, beyond the area, height or extent mentioned in the subsection in which any such building or structure is specified, the Council may give notice to the owner or occupier of such building or structure, either to remove such addition, or to make the building so increased in height or extent conform with all or any of the provisions of this Act, and with any byelaws under this Act relating to the construction of buildings, and upon his failing to do so, within 14 days from the service upon him of such notice, the Council may remove such addition to the building or structure, and may recover the expenses of such removal from the owner or occupier so making default in a summary manner.]

Exemption of Government buildings.

202. There shall be exempted from so much of the provisions of this Act as relates to buildings and structures—

Every building, structure or work vested in and in the occupation of Her Majesty, Her heirs and successors, either beneficially, or as part of the hereditary revenues of the Crown, or in trust for the public service or for public services; also

Any building, structure or work vested in and in the occupation of any department of Her Majesty's Government, or of the Metropolitan Police, or of the trustees of the British Museum for public purposes or for the public service; also

[Any building, structure or work vested in and occupied for the service of the Duke of Cornwall for the time being.]

Her Majesty's Palaces, and any building in the possession of

S. 202

Her Majesty, her heirs and successors, or employed for Her Majesty's use or service, and the British Museum, were by sec. 6 of Met. Bldg. Act, 1855, exempt from Part I. of that Act, and by sec. 25 of Met. Man. & Bldg. Am. Act, 1878, from Part II. of that Act, and by sec. 37 of L. C. C. Gen. P. Act, 1890, from that Act as far as it related to buildings and structures.

Q. B. 1899 (Grantham and Lawrence, JJ.) A building used as a drill hall and armoury for a volunteer corps vested in the usual way in the commanding officer, and used for the purpose of the corps only, was held not to be vested in or belonging to the Crown and therefore not exempt from the provisions of Met. Man. Act, 1855 (*United Vestries of Westminster* v. *Hoskins*, 63 J. P. 725). It would therefore appear that such a building does not fall within the exemption of this section.

Q. B. 1899 (Lawrence and Channell, JJ.) Buildings of which Her Majesty's Commissioners of Works had entered into an agreement to take a lease at their option, when completed to the satisfaction of their surveyor, were held not to come within the exemption of this section (*Drury* v. *Rickard*, 63 J. P. 374).

As to buildings for the supply of electricity.

[**203.** Where a local authority or a company has statutory powers for the supply of electricity in any metropolitan district, the buildings of such local authority or company, used as a generating station or for works, shall be deemed to be special buildings, to which the general provisions of Parts V., VI. and VII., and the First and Second Schedules of this Act, do not apply, and plans thereof shall be submitted to the Council for their approval; and the Council shall have power to authorise the buildings to be erected of greater dimensions than 250,000 cubic feet, and in other respects to exempt such buildings from any of the provisions of this Act if they think fit.]

See sec. 76 for powers of the Council to sanction larger buildings. *See* secs. 82 and 83.

Exempting lands, buildings and property of Inns of Court.

[**204.** The lands, buildings and property of—

(1.) The Honourable Society of the Inner Temple;
(2.) The Honourable Society of the Middle Temple;
(3.) The Honourable Society of Lincoln's Inn;
(4.) The Honourable Society of Gray's Inn;

herein called 'the Inns of Court,' shall be exempt from the operation of this Act. Provided that, in respect of any building, structure or land which abuts upon any public street, public place or public way, the Inns of Court shall be subject to the provisions of Part III. of this Act (Lines of Building Frontage).]

The buildings of the above-mentioned Societies were by sec. 26 of Met. Man. & Bldg. Am. Act, 1878, exempt from the operation of that Act; but they were not exempt from any part of the Met. Bldg. Act, 1855.

[**205.** In addition to any exemption referring to gas companies contained in this Act, nothing in this Act contained shall in any way take away, alter, prejudice or affect any of the powers, rights and privileges conferred upon a gas company by any Act of Parliament, and as existing immediately before the passing of this Act.] Saving existing rights of gas companies.

[**206.** Any building, structure or work in any respect exempt from the operation of this Act, or in any manner privileged in respect of any provision of this Act, shall remain so exempt or privileged so long only as it is used for the purpose or retain the character by reason whereof it is so exempt or privileged.] Duration of exemption.

[**207.** It shall not be lawful (unless with the consent of the Council) to make any alteration of any building in such manner that when so altered it will, by reason of such alteration, not be in conformity with the provisions of this Act applicable to new buildings.] Buildings not to be altered so as not to conform to Act.

208. Unless in any case the Council otherwise allow, where a party wall [or external wall] not in conformity with this Act has been [taken down, burnt or destroyed] to the extent of one half thereof [measured in superficial feet], every remaining portion of the old wall not in conformity with this Act shall either be made to conform therewith or be taken down before the rebuilding thereof. When remainder of party wall, &c., to be taken down.

Met. Bldg. Act, 1855 (repealed), sec. 11.

'Whenever any old buildings are separated by timber or other partitions not in conformity with this Act, then, if such partitions are removed to the extent of one half thereof, such buildings shall, as respects the separation thereof, be deemed to be new buildings, and be forthwith divided from each other in the manner directed by this Act.'

C. A. 1895 (Esher, M.R., Kay and Smith, L.JJ., Q. B. Wright and Wills, JJ., divided). Where a building which had been partially burnt had been taken down for more than half its cubical extent, but the party wall between it and the adjoining building had been taken down to the extent of less than one half thereof, and the part taken down re-erected; it was held that the party wall need not, so far as the remaining portion was concerned, be made to conform with the provisions of the present Act because sufficient had not been taken down to bring it within sec. 208; and sec. 5 (6) is merely a definition section, enacting nothing beyond definitions (*Crow* v. *Redhouse*, 59 J. P. 551, 663).

209. Every addition [to] or alteration [of a building, and any] other work made or done for any purpose in, to or upon a building (except that of necessary repair not affecting the construction of any external or party wall) shall, so far as regards such addition or alteration or Additions to and alterations of buildings.

S. 209 other work, be subject to the provisions of this Act, [and of byelaws thereunder,] relating to new buildings.

Met. Bldg. Act, 1855 (repealed), sec. 9.

'Any alteration, addition or other work made or done for any purpose except that of necessary repair not affecting the construction of any external or party wall, in, to or upon any old building, or in, to or upon any new building after the roof has been covered in, shall, to the extent of such alteration, addition or work, be subject to the regulations of this Act; and whenever mention is hereinafter made of any alteration, addition or work in, to or upon any building, it shall, unless the contrary appears from the context, be deemed to imply an alteration, addition or work to which this Act applies.'

The doubt that has been expressed (though it is difficult to see where it ever existed) whether an alteration to the interior of a building came within the Act of 1855 has been removed by the wording of this section. Every addition and every alteration are included, also all necessary repairs to external and party walls. The rebuilding of chimney stacks and parapet walls (even without any alteration) is now specifically stated to come within the Act, and a fee is to be paid to the District Surveyor; *see* Regulations at end of Third Sched.; the decision in the case of *Briant* v. *Fletcher* is therefore over-ruled by this Act.

C. A. 1877 (James, Baggallay, Bramwell and Brett, L.JJ.) It was held under the corresponding section of Met. Bldg. Act, 1855, that the operation of the Act was confined to the addition or alteration (*Scott* v. *Legg*, 10 Q. B. D. 236; 36 L. T. 456; 46 L. J. (M. C.) 267; 41 J. P. 773; 25 W. R. 594).

Application of Act to buildings erected before commencement of Act.

[**210.** A building, structure or work erected or constructed before the commencement of this Act, to which no objection could have been taken under any law then in force, shall (subject to the provisions of this Act as to new buildings or the alteration of buildings) be deemed to be erected or constructed in compliance with the provisions of this Act.]

Rules as to conversion of buildings.

[**211.** Unless in any case the Council otherwise allow, no person shall—

(1.) Convert into or use as a dwelling-house any building or part of a building not originally constructed for human habitation:

(2.) Convert into one dwelling-house two or more dwelling-houses constructed originally as separate dwelling-houses:

(3.) Convert into or use as two or more dwelling-houses any building constructed originally as one dwelling-house;

(4.) Convert a building which, when originally erected, was legally exempt from the operation of any building enactments or byelaws in force within London, into a building which, had it

been originally erected in its converted form, would have been within the operation of these enactments or byelaws ;

(5.) Re-convert into or use as a dwelling-house any building which has been discontinued as, or appropriated for any purpose other than, a dwelling-house ;

(6.) Convert into or use as a dwelling-room or part of a dwelling-room any room or part of a room used as a shop ; or

(7.) Convert a dwelling-house or any part of a dwelling-house into a shop :

in such manner that the building or part of a building so converted as aforesaid, when converted, will not be in conformity with the provisions of this Act relating to the class of buildings to which the building, when so converted, will belong.]

Compare with sec. 207.

For penalty (£10, and £10 a day) *see* sec. 200 (12) ; these alterations would be an infringement of the rules of Part VI.

Buildings in progress.

[**212.** Notwithstanding anything contained in this Act, a building, structure or work which has been commenced before, and is in progress at, the commencement of this Act ; or which is to be carried out under any contract entered into before the passing of this Act ; may be completed subject to, and in accordance with, the provisions of the Acts relating thereto as in force immediately previously to the passing of this Act.]

The commencement of the Act is 1 January, 1895.

The passing of the Act is 25 August, 1894.

This section appears to require a definite contract to carry out a specific building to entitle the building to come under the repealed Acts ; an ordinary building agreement to put so many houses on a certain site is not intended.

Q. B. 1895 (Cave and Wright, JJ.) A building agreement, executed prior to the passing of this Act, for the erection on a piece of land of a definite number of houses to be completed within specified times was held to come within this section (*Tanner* v. *Oldham*, (1896) 1 Q. B. 60 ; 65 L. J. (M. C.) 10 ; 73 L. T. 404 ; 44 W. R. 63 ; 15 R. 603). Compare sec. 218, which the Court appears to have ignored.

Saving powers of local authorities.

[**213.** Nothing in this Act shall take away or interfere with the powers of the local authorities with respect to the paving of new streets under the Metropolis Management Acts.]

Repeal

Repeal of section 50 of Metropolitan Railway Act, 1866.

214. Section 50 of the Metropolitan Railway (Additional Powers) Act, 1866, is hereby repealed.

Repeal of enactments in schedule.

215. (1.) The Acts mentioned in the Fourth Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule.

(2.) This repeal shall not affect—

(*a*) The past operation of any enactment hereby repealed, nor anything duly done or suffered under any enactment hereby repealed ; or

(*b*) Any right, privilege, obligation or liability acquired, accrued or incurred under or in accordance with any enactment hereby repealed ; or

(*c*) Any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment hereby repealed ; or

(*d*) Any power, investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid ; and any such power, investigation, legal proceeding and remedy may be exercised and carried on as if this Act had not passed ; or

(*e*) Any of the powers, privileges, exemptions, jurisdictions or authorities given to or vested in the Commissioners of Sewers by or under any Act of Parliament, and existing immediately before the passing of this Act.

Q. B. 1897 (Wright and Kennedy, JJ.) It has been held that this section saves only rights, liabilities, &c., accrued and incurred under the Acts repealed by this Act, at the time this Act came into operation (*Reg.* v. *Cluer, ex parte L. C. C.* 77 L. T. 439 ; 67 L. J. (Q. B.) 36).

Byelaws &c. under repealed Acts to remain in force.

216. All byelaws, regulations, orders, consents, conditions and notices duly made, given, imposed or issued under any Act hereby repealed, shall, so far as applicable for the purposes of this Act, be of the same validity and effect as if they had been made, given, imposed or issued under this Act. And all such byelaws and regulations shall remain in force until the same shall be revoked, altered or varied by byelaws duly made under the provisions of this Act.

Saving for existing officers.

217. Officers appointed under any enactment hereby repealed shall continue in office in like manner as if this Act had not been passed.

References in Acts or documents to repealed Acts to be read as referring to this Act.

218. Where in any Act or document any Act or any provisions of any Act are mentioned or referred to which are repealed by this Act, such Act or document shall, with any necessary modifications and so far only as the circumstances of the case admit, be read as if this Act, or the corresponding provisions of this Act, were therein mentioned or referred to instead of such repealed provisions.

SCHEDULES

THE FIRST SCHEDULE

Preliminary

Parts I. and II. of this Schedule apply to walls built of bricks not of less than 8½ inches long, or of stone or other blocks of hard and incombustible substance, the beds or courses being horizontal.

Structure of buildings.

1. Every building, [unless otherwise sanctioned in accordance with this Act,] shall be enclosed with walls constructed of brick, stone or other hard and incombustible substances, and the [footings] shall rest on the solid ground or upon concrete, or upon other solid substructure. [Provided that open sheds not exceeding 16 feet in height, and not exceeding 4 squares in area, may be constructed of any substances and in any manner approved by the District Surveyor.]

Construction of walls of brick, stone, &c.

2. Every wall constructed of brick, stone or other similar substances shall be properly bonded and solidly put together with mortar or cement, and no part of such wall shall overhang any part underneath it [except to the extent of 6 inches, and provided that the projection be well and solidly corbelled out, and that the side of the wall opposite to the corbelling be carried up vertically in continuation of the inner face thereof.] And all return walls shall be properly bonded together.

See secs. 53 & 84.

Extra thickness of certain walls.

3. The thickness of every wall, not being built of bricks or stone, or other hard and incombustible substances laid in horizontal beds or courses, shall be one third greater than the thickness prescribed in Parts I. and II. of this Schedule.

Met. Bldg. Act, 1855 (repealed), First Schedule, Prelim. 3.
'The thickness of every stone wall in which the beds of the masonry are not laid horizontally shall be one third greater than the thickness prescribed for stone walls in the rules hereinafter contained.'

Thickness of walls built of materials other than such bricks, &c., as aforesaid.

4. The thickness of any wall of a dwelling-house, if built of materials other than those before specified, shall be deemed to be sufficient if made of the thickness required by Parts I. and II. of this Schedule, or of such thickness as may be approved by the Council.

Met. Bldg. Act, 1855 (repealed), First Schedule, Part I., 7.
'The thickness of any wall of a dwelling-house, if built of materials other than such bricks as aforesaid, shall be deemed to be sufficient if made of the thickness required by the above tables, or of such less thickness as may be approved by the Metropolitan Board ; with this exception, that in the case of walls built of stone in which the beds of the masonry are not laid horizontally, no diminution shall be allowed in the thickness required by the foregoing rules for such last mentioned walls.'
Part II. of this Schedule deals with buildings of the warehouse class. This clause is therefore inconsistent. Surely the words 'of a dwelling-house' should have been omitted.

Hollow walls.

[5. When hollow walls are constructed, there shall be a wall on one side of the hollow space of the full thickness prescribed by this Act.]

Height of storey.

6. The heights of storeys shall be measured as follows :—

(*a*) The height of a topmost storey shall be measured from the level of the [underside of] its floor joists up to the level of the under surface of the tie of the roof or other covering ; or if there is no tie, then up to the level of half the vertical height of the rafters or other support of the roof ;

(*b*) The height of every storey other than a topmost storey shall be measured from the level of the [underside of the floor joists] of the storey up to the level of the underside of the floor joists of the storey next above it.

Met. Bldg. Act, 1855 (repealed), First Schedule, Prelim. 5.

'The height of every topmost storey shall be measured from the level of its floor up to the under side of the tie of the roof, or up to half the vertical height of the rafters when the roof has no tie; and the height of every other storey shall be the clear height of such storey exclusive of the thickness of the floor.'

By section 70 the height of a habitable room is measured in the clear from floor to ceiling.

By Part I, 11 of this Schedule the measurement is also to be taken clear from the floor to ceiling.

See definition of topmost storey, sec. 5 (14).

Height of external and party walls.

7. [For the purpose of determining the thickness of a wall] the height of such wall shall be measured from the base of the wall to the top of the topmost storey, [whether such wall is carried to the full height or not, or in case of a gable, when there are no storeys in the roof, to half the height of the gable.]

The height of a building is measured to the top of the parapet or wall, *see* sec. 5 (21).

Length of walls.

8. Walls are deemed to be divided into distinct lengths by return walls, and the length of every wall is measured from the centre of one return wall to the centre of another; provided that such return walls are external party or cross walls of the thickness required under this Schedule, and bonded into the walls so deemed to be divided.

Footings of walls.

9. [Unless with the consent of the Council, every wall, other than a wall carried on a bressummer, shall have footings]:—

The projection of the bottom of the footing of every wall on each side of the wall shall be at least equal to one half of the thickness of the wall at its base, [unless an adjoining wall interferes, in which case the projection may be omitted where that wall adjoins,] and the diminution of the footing of every wall shall be formed in regular offsets; and the height from the bottom of such footing to the base of the wall shall be at the least equal to [two thirds] of the thickness of the wall at its base.

Met. Bldg. Act, 1855 (repealed), First Schedule, Prelim. 8.

'The projection of the bottom of the footing of every wall, on each side of the wall, shall be at least equal to one half of the thickness of the wall at its base; and the diminution of the footing of every wall shall be formed in regular offsets; and the height

from the bottom of such footing to the base of the wall shall be at the least equal to one half of the thickness of the wall at its base.'

By sec. 87 the District Surveyor has power to allow the omission of the footings on one side of a wall when built against another wall.

Under-pinning.

[10. The underpinning of walls and chimneys shall be built with brick or stone bedded in cement to the full thickness of the old wall or work, and with proper footings, or to an additional thickness if the increased height of the wall so requires, and shall rest on the solid ground or on concrete or on other solid substructure as a foundation, and the whole shall be executed to the satisfaction of the District Surveyor.]

Thickening of walls.

[11. A wall shall not be thickened except after notice served on the District Surveyor of the intention to thicken, and the thickening shall be executed with brick or stone work in cement properly bonded to the old work to the satisfaction of the District Surveyor.]

With the exception of the words in brackets, and the alterations mentioned above, the above 'preliminary' is a re-enactment of Schedule I., Prelim. of Met. Bldg. Act, 1855.

Q. B. 1864 (Cockburn, C. J., Blackburn and Mellor, JJ.). It was held that the corresponding schedule of the Met. Bldg. Act, 1855, did not apply to a public building; *see* note to sec. 78 (*Reg.* v. *Carruthers*, 9 L. T. 825; 33 L. J. (M. C.) 107; 4 B. & S. 804.

Part I

Buildings not public, and not of the warehouse class

External and party walls shall be of [not less thickness than] the thickness hereinafter specified in each case, viz.:—

1. When the wall does not exceed 25 feet in height, its thickness shall be as follows:—

If the wall does not exceed 30 feet in length, and does not comprise more than 2 storeys,

it shall be 8½ inches thick for its whole height;

If the wall exceeds 30 feet in length, or comprises more than 2 storeys,

it shall be 13 inches thick below the topmost

storey, and 8½ inches thick for the rest of its height.

2. When the wall exceeds 25 feet, but does not exceed 40 feet in height, its thickness shall be as follows :—

If the wall does not exceed 35 feet in length,
it shall be 13 inches thick below the topmost storey, and 8½ inches thick for the rest of its height ;

If the wall exceeds 35 feet in length,
it shall be 17½ inches thick for the height of 1 storey, then 13 inches thick for the rest of its height below the topmost storey, and 8½ inches thick for the rest of its height.

3. When the wall exceeds 40 feet, but does not exceed 50 feet in height, its thickness shall be as follows :—

If the wall does not exceed 30 feet in length,
it shall be 17½ inches thick for the height of 1 storey, then 13 inches thick for the rest of its height below the topmost storey, and 8½ inches thick for the rest of its height ;

If the wall exceeds 30 feet, but does not exceed 45 feet in length,
it shall be 17½ inches thick for the height of 2 storeys, then 13 inches thick for the rest of its height ;

If the wall exceeds 45 feet in length,
it shall be 21½ inches thick for the height of 1 storey, then 17½ inches thick for the height of the next storey, and then 13 inches thick for the rest of its height.

4. Where the wall exceeds 50 feet, but does not exceed 60 feet in height, its thickness shall be as follows :—

If the wall does not exceed 45 feet in length,
it shall be 17½ inches thick for the height of 2 storeys, and 13 inches thick for the rest of its height ;

If the wall exceeds 45 feet in length,
it shall be 21½ inches thick for the height of 1 storey, then 17½ inches thick for the height of the next 2 storeys, and then 13 inches thick for the rest of its height.

5. Where the wall exceeds 60 feet, but does not

exceed 70 feet, in height, its thickness shall be as follows :—

If the wall does not exceed 45 feet in length, it shall be 21½ inches thick for the height of 1 storey, then 17½ inches thick for the height of the next 2 storeys, and then 13 inches thick for the rest of its height ;

If the wall exceeds 45 feet in length, it shall be increased in thickness in each of the storeys below the uppermost 2 storeys by 4½ inches (subject to the provision in this Schedule respecting distribution in piers).

6. Where the wall exceeds 70 feet, but does not exceed 80 feet, in height, its thickness shall be as follows :—

If the wall does not exceed 45 feet in length, it shall be 21½ inches thick for the height of 1 storey, then 17½ inches thick for the height of the next 3 storeys, and 13 inches thick for the rest of its height ;

If the wall exceeds 45 feet in length, it shall be increased in thickness in each of the storeys below the uppermost 2 storeys by 4½ inches (subject to the provision in this Schedule respecting distribution in piers).

7. Where the wall exceeds 80 feet, but does not exceed 90 feet, in height, its thickness shall be as follows :—

If the wall does not exceed 45 feet in length, it shall be 26 inches thick for the height of 1 storey, then 21½ inches thick for the height of the next storey, then 17½ inches thick for the next 3 storeys, and then 13 inches thick for the rest of its height ;

If the wall exceeds 45 feet in length, it shall be increased in thickness in each of the storeys below the uppermost 2 storeys by 4½ inches (subject to the provision in this Schedule respecting distribution in piers).

8. Where the wall exceeds 90 feet, but does not exceed 100 feet in height, its thickness shall be as follows :—

If the wall does not exceed 45 feet in length, it shall be 26 inches thick for the height of

1 storey, then 21½ inches thick for the height of the next 2 storeys, then 17½ inches thick for the height of the next 3 storeys, and then 13 inches thick for the rest of its height;

If the wall exceeds 45 feet in length,

it shall be increased in thickness in each of the storeys below the uppermost 2 storeys by 4½ inches (subject to the provision in this Schedule respecting distribution in piers).

9. Where the wall exceeds 100 feet, but does not exceed 120 feet in height, its thickness shall be as follows:—

If the wall does not exceed 45 feet in length,

it shall be 30 inches thick for the height of 1 storey, then 26 inches thick for the height of the next 2 storeys, then 21½ inches thick for the height of the next 2 storeys, then 17½ inches thick for the height of the next 3 storeys, and then 13 inches thick for the rest of its height:

If the wall exceeds 45 feet in length,

it shall be increased in thickness in each of the storeys below the uppermost 2 storeys by 4½ inches (subject to the provision in this Schedule respecting distribution in piers).

Conditions in respect of storeys exceeding certain height

10. If any storey exceeds in height 16 times the thickness prescribed under this Schedule for the walls of such storey, the thickness of each external and party wall throughout such storey shall be increased to one sixteenth part of the height of the storey, [and the thickness of each external and party wall below that storey shall be increased to a like extent]; but any such additional thickness may be confined to piers properly distributed, of which the collective widths amount to one fourth part of the length of the wall.

See Prelim. 5 of this Schedule for method of measurement.

Restriction in case of certain storeys.

11. No storey enclosed with walls less than 13 inches in thickness shall be more than 10 feet in height [between the floor and the ceiling thereof, or between the floor and the tie of the roof].

TABLE OF THICKNESS OF EXTERNAL AND PARTY WALLS, BUILDINGS NOT PUBLIC AND NOT OF THE WAREHOUSE CLASS

(Including Domestic Buildings)

Height not exceeding	Thickness	Length not exceeding			Length unlimited
		30 feet	35 feet	45 feet	
25 ft.	13 in.	— (not exceeding 2 storeys)	—	—	Below topmost storey
	8½ in.	Whole height	—	—	Rest of height
40 ft.	17½ in.	—	—	—	One storey
	13 in.	—	Below topmost storey	—	Below topmost storey
	8½ in.	—	Rest of height	—	Rest of height
50 ft.	21½ in.	—	—	—	One storey
	17½ in.	One storey	—	Two storeys	One storey
	13 in.	Below topmost storey	—	Rest of height	Rest of height
	8½ in.	Rest of height	—	—	—
60 ft.	21½ in.	—	—	—	One storey
	17½ in.	—	—	Two storeys	Two storeys
	13 in.	—	—	Rest of height	Rest of height
70 ft.	21½ in.	—	—	One storey	Increase on the thickness for length under 45 ft. by the addition of 4½ in. to the thickness of each storey, except the two uppermost, which additional thickness may be confined to piers the collective widths of which amount to one fourth of the length of the wall.
	17½ in.	—	—	Two storeys	
	13 in.	—	—	Rest of height	
80 ft.	21½ in.	—	—	One storey	
	17½ in.	—	—	Three storeys	
	13 in.	—	—	Rest of height	
90 ft.	26 in.	—	—	One storey	
	21½ in.	—	—	One storey	
	17½ in.	—	—	Three storeys	
	13 in.	—	—	Rest of height	
100 ft.	26 in.	—	—	One storey	
	21½ in.	—	—	Two storeys	
	17½ in.	—	—	Three storeys	
	13 in.	—	—	Rest of height	
120 ft.	30 in.	—	—	One storey	
	26 in.	—	—	Two storeys	
	21½ in.	—	—	Two storeys	
	17½ in.	—	—	Three storeys	
	13 in.	—	—	Rest of height	

TABLE OF THICKNESS OF EXTERNAL AND PARTY WALLS, BUILDINGS OF WAREHOUSE CLASS

Height not exceeding	Thickness of top 16 ft. of height of wall	Length not exceeding			Length unlimited
		30 ft.	35 ft.	45 ft.	
		Thickness of base of wall			
25 ft.	Top storey (not exceeding 10 ft. in height) 9 in. Rest, 13½ in.	—	—	—	13 in.
30 ft.	Top storey (not exceeding 10 ft. in height) 9 in. Rest, 13½ in.	—	—	13 in.	17½ in.
40 ft.	13½ in.	—	13 in.	17½ in.	21½ in.
50 ft.	13½ in.	17½ in.	—	21½ in.	26 in.
60 ft.	13½ in.	—	—	21½ in.	26 in.
80 ft.	13½ in.	—	—	21½ in.	Increase on the thickness for length under 45 feet by the addition of 4½ in. to the thickness of each storey except the two uppermost, which additional thickness may be confined to piers, the collective widths of which amount to ¼th of the length of the wall.
100 ft.	18½ in.	—	—	26 in.	
120 ft.	13½ in.	—	—	31 in.	

Rule as to buildings, not being public buildings or buildings of the warehouse class.

12. All buildings, excepting public buildings and such buildings as are in this Act defined to be buildings of the warehouse class, shall, as respects the thickness of their walls, be subject to the provisions contained in this Part of this Schedule.

Clauses 10, 11 and 12, with the exception of the words in brackets, are a re-enactment of clauses 5, 6 and 8 of Met. Bldg. Act, 1855, Schedule I., Part I.

Part II

BUILDINGS OF THE WAREHOUSE CLASS

Thickness at base.

The external and party walls of buildings of the warehouse class shall at the base be made of [not less thickness] than the thickness hereinafter specified in each case, viz. :—

1. Where the wall does not exceed 25 feet in height (whatever is its length), it shall be 13 inches thick at its base.
2. Where the wall exceeds 25 feet, but does not exceed 30 feet in height, it shall be at its base of the thickness following :—
   - If the wall does not exceed 45 feet in length, it shall be 13 inches thick at its base ;
   - If the wall exceeds 45 feet in length, it shall be 17½ inches thick at its base.
3. Where the wall exceeds 30 feet, but does not exceed 40 feet in height, it shall be at its base of the thickness following :—
   - If the wall does not exceed 35 feet in length, it shall be 13 inches thick at its base ;
   - If the wall exceeds 35 feet, but does not exceed 45 feet, in length, it shall be 17½ inches thick at its base ;
   - If the wall exceeds 45 feet in length, it shall be 21½ inches thick at its base.
4. Where the wall exceeds 40 feet, but does not exceed 50 feet in height, it shall be at its base of the thickness following :—
   - If the wall does not exceed 30 feet in length, it shall be 17½ inches thick at its base ;
   - If the wall exceeds 30 feet, but does not

exceed 45 feet in length, it shall be 21½ inches thick at its base ;

If the wall exceeds 45 feet in length, it shall be 26 inches thick at its base.

5. Where the wall exceeds 50 feet, but does not exceed 60 feet in height, it shall be at its base of the thickness following :—

If the wall does not exceed 45 feet in length, it shall be 21½ inches thick at its base ;

If the wall exceeds 45 feet in length, it shall be 26 inches thick at its base.

6. Where the wall exceeds 60 feet, but does not exceed 70 feet in height, it shall be at its base of the thickness following :—

If the wall does not exceed 45 feet in length, it shall be 21½ inches thick at its base ;

If the wall exceeds 45 feet in length, it shall be increased in thickness from the base up to within 16 feet from the top of the wall by 4½ inches (subject to the provision in this Schedule respecting distribution in piers).

7. Where the wall exceeds 70 feet, but does not exceed 80 feet in height, it shall be at its base of the thickness following :—

If the wall does not exceed 45 feet in length, it shall be 21½ inches thick at its base ;

If the wall exceeds 45 feet in length, it shall be increased in thickness from the base up to within 16 feet from the top of the wall by 4½ inches (subject to the provision in this Schedule respecting distribution in piers).

8. Where the wall exceeds 80 feet, but does not exceed 90 feet in height, it shall be at its base of the thickness following :—

If the wall does not exceed 45 feet in length, it shall be 26 inches thick at its base ;

If the wall exceeds 45 feet in length, it shall be increased in thickness from the base up to within 16 feet from the top of the wall by 4½ inches (subject to the provision in this Schedule respecting distribution in piers).

9. Where the wall exceeds 90 feet, but does not exceed 100 feet in height, it shall be at its base of the thickness following :—

If the wall does not exceed 45 feet in length, it shall be 26 inches at its base ;

If the wall exceeds 45 feet in length, it shall be increased in thickness from the base up to within 16 feet from the top of the wall by 4½ inches (subject to the provision in this Schedule respecting distribution in piers).

10. Where the wall exceeds 100 feet, but does not exceed 120 feet in height, it shall be at its base of the thickness following :—

If the wall does not exceed 45 feet in length, it shall be 31 inches thick at its base ;

If the wall exceeds 45 feet in length, it shall be increased in thickness from the base up to within 16 feet from the top of the wall by 4½ inches (subject to the provision in this Schedule respecting distribution in piers).

11. The thickness of the wall at the top, and for 16 feet below the top, shall be 13 inches [and a half,] and the intermediate parts of the wall between the base and 16 feet from the top shall [not be of less thickness than would be the case if the wall were to] be built solid throughout the space between straight lines, drawn on each side of the wall, and joining the thickness at the base to the thickness at 16 feet below the top.

Nevertheless, in walls not exceeding 30 feet in height, the walls of the topmost storey may be 9 inches thick, [provided the height of that storey does not exceed 10 feet.]

Condition in respect of storeys exceeding a certain height.

12. If in any storey of a building of the warehouse class, the thickness of the wall, as determined by the provisions of this Schedule, is less than one fourteenth part of the height of such storey, the thickness of the wall shall be increased to one fourteenth part of the height of the storey, [and the thickness of each external and party wall below that storey shall be increased to a like extent] ; but any such additional thickness may be confined to piers properly distributed, of which the collective widths amount to one fourth part of the length of the wall.

13. The thickness of any wall of a building of the warehouse class, if built of materials other than those before specified, shall be deemed to be sufficient if made of the thickness required by the provisions of this Schedule, or of such other thickness as may be approved by the Council. Thickness of walls built of materials other than such bricks, &c., as aforesaid.

Clauses 11, 12 and 13, with the exception of the words in brackets, are practically a re-enactment of Met. Bldg. Act, 1855, Schedule I., Part II., clauses 5, 6 and 7.

MISCELLANEOUS

1. The thickness of a cross wall shall be two thirds of the thickness hereinbefore required for an external or party wall of the same dimensions and belonging to the same class of buildings, but never less than 8½ inches; and no wall subdividing any building shall be deemed to be a cross wall unless it is carried up [to the floor of the topmost storey,] and unless in each storey [the aggregate extent of the vertical faces or elevations of all] the recesses and that of all the openings therein, [taken together,] does not exceed one half of [the whole extent of the vertical elevation of the wall.] Cross walls.

Met. Bldg. Act, 1855, Schedule I., Misc. 1, re-enacted, the words in brackets excepted.

[2. Wherever a cross wall becomes in any part an external wall, such cross wall shall be of the thickness required for an external wall of the same height and length and belonging to the same class of buildings.]

3. Where an increase of thickness is by any rule of Part I. or Part II. of this Schedule required, in case of a wall exceeding 60 feet in height and 45 feet in length, or in case of a storey exceeding in height 16 times or 14 times (as the case may be) the thickness prescribed for its walls, or in case of a wall below such storey, the increased thickness may be confined to piers, properly distributed, of which the collective widths amount to one fourth part of the length of the wall.

See Part I., 5 to 10, and Part II., 6 to 10 and 12.

THE SECOND SCHEDULE

[*The following materials shall, for the purposes of this Act, be deemed to be fire-resisting materials :—*

1. *Brickwork constructed of good bricks, well burnt, hard and sound, properly bonded and solidly put together—*

(*a*) *With good mortar compounded of good lime and sharp clean sand, hard clean broken brick, broken flint, grit or slag; or*
(*b*) *With good cement; or,*
(*c*) *With cement mixed with sharp clean sand, hard clean broken brick, broken flint, grit or slag;*

2. *Granite and other stone suitable for building purposes, by reason of its solidity and durability;*
3. *Iron, steel and copper;*
4. *Oak and teak and other hard timber when used for beams or posts, or in combination with iron, the timber and the iron (if any) being protected by plastering in cement or other incombustible or non-conducting external coating;*
   In the case of doors—
   oak or teak, or other hard timber, not less than 2 inches thick;
   In the case of staircases—
   oak or teak, or other hard timber, with treads, strings and risers, not less than 2 inches thick;
5. *Slate, tiles, brick and terra-cotta, when used for coverings or corbels;*
6. *Flagstones when used for floors over arches, but not exposed on the underside, and not supported at the ends only;*
7. *Concrete composed of broken brick, stone chippings or ballast, and lime, cement or calcined gypsum, when used for filling in between joists of floors;*
8. *Any material from time to time approved by the Council as fire-resisting.*]

This Schedule has been repealed by Lond. Bldg. Am. Act, 1905, and Schedule I. of that Act substituted.

THE THIRD SCHEDULE

Fees Payable to District Surveyors

Part I

ON NEW BUILDINGS

	£	*s.*	*d.*
[For any building not exceeding 30 square feet in area and not exceeding 10 feet in height	0	10	0]

	£	*s.*	*d.*
For every building not exceeding 400 square feet in area and not more than 2 storeys in height	1	10	0
For every additional storey	0	5	0
For every additional square or fraction of a square	0	2	6
For every building not exceeding 400 square feet in area and of 1 storey only in height	0	15	0

ON ADDITIONS, ALTERATIONS OR OTHER WORKS

For every addition or alteration or other work to which the provisions of this Act apply, made or done to or on any building after the roof thereof has been covered in

one half of the fee charged in the case of a new building [calculated upon the area of the whole building.]

	£	*s.*	*d.*
For inspecting the arches or fire-resisting floors over or under public ways (*a*)	0	10	0
For inspecting the formation of openings in party walls [(for each opening)]	0	10	0
[For inspecting the closing of openings in party walls (for each opening)	0	10	0]

[Provided that, in the case of public buildings, buildings constructed of concrete, and buildings divided into separate sets of chambers or tenements by party structures, the fees hereinbefore specified in this part of this Schedule shall in every case be increased by one half.]

ON CHIMNEYS AND FLUES

	£	*s.*	*d.*
[On the construction of a furnace chimney shaft, or similar shaft for ventilation or other purposes, in addition to the fee for any other operation in progress at the same time, if not exceeding 75 feet in height	2	0	0
If exceeding 75 and not exceeding 100 feet in height	2	10	0
For every additional 10 feet or portion of 10 feet in height	0	10	0
On the carrying of a flue from an oven, stove, steam-boiler, furnace or close-fire into an old flue	0	10	0
On certifying that a chimney breast in a party wall may be cut away	0	10	0]

ON CERTIFYING PLANS

	£	s.	d.
[For examining and certifying plans of an old building (*b*)	2	2	0]

ON WOODEN AND TEMPORARY STRUCTURES

[On inspection of any wooden structure, or on inspection of any structure or erection put up on any public occasion, the same amount as for a new building, calculated on the area of the structure or erection without reference to the area of any building to which it may be attached, or in or on which it may be put up.] (*c*)

ATTENDING AT COURT

	£	s.	d.
[For attending at a Court when an order is made for complying with notice of irregularity	0	10	0]

There are also payable to the District Surveyor in respect of the duties imposed by the Met. Man. & Bldg. Am. Act, 1878, the fee of 5*s.* ; and in respect of the duties imposed by L. C. C. Gen. P. Act, 1890, the fee of 5*s.*, in respect of each building to which the byelaws apply.

Fees are also payable by the Council to the District Surveyor under secs. 155 & 156, *see post.*

(*a*) C. P. 1872 (Willes and Keating, JJ.) It was held that under the corresponding provisions of Met. Bldg. Act, 1855, the District Surveyor is entitled to a separate fee of 10*s.* in respect of each arch or floor over or under a public way ; but, in consequence of the limiting words in sec. 49 of that Act, where several arches relating to the same building are included in one notice one fee of 10*s.* should be charged in respect of the several arches belonging to each building (*Power* v. *Wigmore*, L. R. 7 C. P. 386 ; 27 L. T. 148 ; 36 J. P. 694).

Southwark P. C., before Mr. Paul Taylor, it was decided that as the limiting words in sec. 49 of Met. Bldg. Act, 1855, had been repealed and not re-enacted (*see* sec. 154 of this Act), the latter portion of the above quoted judgment, based upon those words, no longer held good, but that a fee of 10*s.* for each arch was due in every case where there were more than one arch relating to the same building (*Dicksee* v. *Dewrance*, 'Builder,' 5 Dec. 1900).

(*b*) Westminster Cty. C., 1898. Where plans of several buildings are certified at the same time and on the same drawing it was held that the fee due was £2 2*s.* in respect of each building the plans of which were certified (*School Board for London* v. *Dicksee*, 'Builder,' 28 May, 1898).

(*c*) K. B. 1902 (Alverstone, C.J., Darling and Channell, JJ.) It was held that, notwithstanding the transfer of the licensing

power from the County Council to the Borough Councils, the right of the District Surveyor to charge and receive fees for the supervision and inspection of wooden structures falling within sec. 84 has not lapsed nor has it been transferred to the Borough Councils.

(*Westminster City C.* v. *Watson & Others*, (1902) 2 K. B. 717; 81 L. T. 326; 71 L. J. (K. B.) 603; 51 W. R. 300; 46 S. J. 514; 25 T. L. R. 621.)

Part II

On Dangerous Structures

[On each dangerous structure—

Where there are not more than 4 adjoining or nearly contiguous structures in the same ownership—

	£	*s.*	*d*
1. For making a survey of the structure reported as dangerous, and certifying opinion thereon—			
If the structure do not exceed 4 squares in area and 2 storeys in height	0	7	6
If exceeding 4 squares . . .	0	10	0
For every additional storey above 2	0	2	6
2. For each inspection of the structure and report as to completion or progress of the works	0	5	0
3. For inspecting the structure before the hearing of the summons, and attending the Court to give evidence—			
If 1 structure only	0	10	0
If more than 1 structure (for each structure)	0	5	0
4. For inspecting the structure before the hearing of the summons against the occupier (the owner having failed to comply), and attending the Court to give evidence—			
If 1 structure only	0	10	0
If more than 1 structure (for each structure)	0	5	0
5. For every adjournment of the summons	0	5	0
6. For superintending the erection of shoring (including needling when requisite) and hoarding, whether done by the Council or not, and for certifying the account for the same when done by the Council	0	10	0

	£	*s.*	*d.*
7. For shoring without hoarding, or hoarding without shoring, and certifying the account	0	7	6
8. For supervision, including the report of the officer in cases where it is necessary for the Council to execute works to ensure the safety of the public under an order made by a Court	0	5	0

Where there are more than 4 adjoining or nearly contiguous structures in the same ownership—

For Nos. 2, 3 and 4 in the above table .	0	4	0
For No. 5	0	2	6
And for No. 8	0	4	0]

Part III

Fees Payable for Special Services

[The fees payable by a builder to the District Surveyor for special services shall be the following :—

	£	*s.*	*d.*
For superintending the construction of floors and partition walls to stables under section 70 of this Act, per building	0	5	0
For superintending the construction of overhanging oriel windows, per building	0	5	0

See sec. 73 (6).

For superintending the fixing of any oven, copper, steam-boiler or stove to be used for trade purposes and not heated by gas	0	10	0

See sec. 66.

For superintending the fixing of pipes for conveying heated air, or hot water or steam at high pressure (for each floor of a building on which pipes are fixed) .	0	10	0

See sec. 66.

For services relating to the erection of buildings on low-lying lands, per building	0	5	0]

See sec. 122.

Special fees to be fixed by the Council are to be paid to the

District Surveyor in respect of other special services, laying out and widening streets, setting back buildings and lines of frontage, sec. 155.

PART IV

FEES PAYABLE TO COUNCIL

ON DANGEROUS STRUCTURES

[For general services—

	£	s.	d.
1. For preparation of notices, forms for same and postage	0	3	6
2. For service of notices (clerk's time)	0	2	6
3. For travelling per mile (one way)	0	0	3
4. For obtaining summonses and orders (clerk's time)	0	2	6
5. For cost of each summons or order	0	3	0

Where there are 2 or more adjoining or nearly contiguous structures in the same ownership—

For Nos. 2 and 4 (above) each	0	2	0

The fees payable upon 10 structures shall be the maximum fees.]

ON DILAPIDATED AND NEGLECTED BUILDINGS OR STRUCTURES

	£	s.	d.
[1. For each inspection of the building or structure, and report	0	5	0
2. For obtaining summons and order (clerk's time)	0	2	6
3. For cost of each summons or order	0	2	0
4. For attendance at a Court to give evidence	0	5	0
5. For every adjournment	0	2	6
6. For supervision of works, including report of officer in cases where the magistrate's order is executed by the Council	0	5	0
7. For travelling per mile (one way)	0	0	3

8. The cost of procuring local evidence to satisfy the magistrate that the condition of the structure is prejudicial to the property, or to the inhabitants of the neighbourhood, is to be considered separately in each case.

Where there are 2 or more adjoining or nearly contiguous structures in the same ownership—

	£	*s.*	*d.*
For Nos. 1, 4 or 6 (above) each . .	0	3	0
For Nos. 2 or 5 (above) each . . .	0	2	0
The fees payable upon 10 structures shall be the maximum fees.			
For travelling per mile (one way) . .	0	0	3]

REGULATIONS

[1. The fees specified in this Schedule in respect of works to a party wall comprise the fees payable in respect of both sides of the wall.

2. No fee shall be charged in respect of the fixing of a chimney pot.

3. No fee shall be charged in respect of the repairing of a chimney top, unless the top has been pulled down to a greater extent than 12 inches.

4. No fee shall be charged in respect of the repairing of a parapet, unless the parapet shall have been pulled down to a greater extent than 12 inches.

5. In calculating the area of every new building for the purposes of this Schedule, the area of all outbuildings not exceeding 30 feet in area, whether attached or not, shall be included, provided such outbuildings be erected at the same time as the main building.]

THE FOURTH SCHEDULE

Session and chapter	Title or short title	Extent of repeal
7 & 8 Vict. c. 84	The Metropolitan Building Act, 1844	So much as is unrepealed
18 & 19 Vict. c. 120	The Metropolis Management Act, 1855	Section 142, and in section 202, the words 'the plans, level, width, surface, inclination,' and the words 'and the plans and level of sites for building'
18 & 19 Vict. c. 122	The Metropolitan Building Act, 1855	The whole Act
23 & 24 Vict. c. 52	The Metropolitan Building Act (Amendment), 1860	The whole Act
24 & 25 Vict. c. 87	The Metropolitan Building (Amendment) Act, 1861	The whole Act
25 & 26 Vict. c. 102	The Metropolis Management (Amendment) Act, 1862	Sections 74, 75, 76, 85, 87, 98 and 99
32 & 33 Vict. c. 82	The Metropolitan Building Act, 1869	The whole Act
34 & 35 Vict. c. 39	The Metropolitan Building Act, 1871	The whole Act

Session and chapter	Title or short title	Extent of repeal
41 & 42 Vict. c. 32	The Metropolis Management and Building Acts (Amendment) Act, 1878	Sections 4, 6, 7, 8, 9, 10, 14, 15, 16, 17, 18, 19, 20, 21 from 'and the District Surveyor' to 'such house, building, erection or work,' and the words 'or surveyor,' section 22, so far as it relates to any notice or order served or made under any provision repealed by this Act, section 23 from 'and every penalty imposed by Part II.' to 'Acts amending the same,' section 25, in section 26 the words 'or in any byelaw of the board thereunder,' and in section 27 the words 'or in any byelaw thereunder made'
45 & 46 Vict. c. 14	The Metropolis Management and Building Acts (Amendment) Act, 1882	The whole Act
53 & 54 Vict. c. 243	The London Council (General Powers) Act, 1890	Sections 27 to 31, and sections 33 to 37
54 & 55 Vict. c. 78	The London Sky Signs Act, 1891	The whole Act
56 & 57 Vict. c. 221	The London County Council (General Powers) Act, 1893	Sections 5 to 9, and section 17

THE LONDON BUILDING ACT, 1894 (AMENDMENT) ACT, 1898

61 & 62 VICT. CAP. CXXXVII

ARRANGEMENT OF SECTIONS

THE LONDON BUILDING ACT, 1894 (AMENDMENT) ACT, 1898

61 & 62 VICT.

CHAPTER CXXXVII

An Act to Amend the London Building Act, 1894

[25th July, 1898.]

57 & 58 Vict. cap. ccxiii.

WHEREAS it is expedient to amend the provisions contained in the London Building Act, 1894, with respect to the erection or extension of buildings or structures and the formation or extension of forecourts or other spaces in front of buildings or structures within the prescribed distance from the centre of the roadway of the street in which such buildings or structures are situated, the height of working-class dwellings erected on the side of certain streets, the service of notices, summonses and orders in relation to dangerous or neglected structures, and the procedure in relation to certain offences under the said Act:

And whereas the objects aforesaid cannot be attained without the authority of Parliament:

May it therefore please your Majesty that it may be enacted, and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords, Spiritual and Temporal, and Commons in this present Parliament assembled and by the authority of the same as follows:—

Short title.

1. This Act may be cited as the London Building Act, 1894 (Amendment) Act, 1898.

Act of 1894 and this Act to be construed as one Act.

2. The London Building Act, 1894, (in this Act referred to as 'the principal Act'), as amended by this Act, and this Act shall be read and construed together as one Act, and words and expressions used in this Act shall, unless the context otherwise requires, bear the meanings assigned to them in the principal Act, and any references in the principal Act to any part or provisions of the principal Act shall be construed as referring to such part or provisions as amended by this Act.

Notice to set back buildings, &c.

3. (1.) In every case where any new building or new structure [or any part thereof] is erected,

[or any building or structure or any part thereof is extended,

in such manner that any external wall of such building S. 3
or structure,

or (if there be a forecourt or other space between such external wall and the roadway) any part of any external fence or boundary of such forecourt or space

shall be] at a distance in any direction from the centre of the roadway of any street or way [(being a highway)] less than the distance permitted [under Part II. of the principal Act],

or contrary to the conditions and terms (if any) subject to which the Council or the Tribunal of Appeal has sanctioned the erection [or extension] of such building [or structure],

the Council may serve a notice upon the owner or occupier of the said building, structure, [fence or boundary], or upon the builder requiring him to cause such building, structure, [fence or boundary] or any part thereof to be set back, so that every part of any external wall of such building or structure, or of the external fence or boundary of such forecourt or space, shall be at a distance in every direction from the centre of the roadway of such street or way not less than the distance permitted [under Part II. of the principal Act], and shall be in accordance with such conditions and terms (if any) as the Council or the Tribunal of Appeal may have prescribed.

This subsection was rendered necessary by reason of the decision of the Court of Queen's Bench in the case of *L. C. C.* v. *Aylesbury Dairy Co.*, (1898) 1 Q. B. 106; 77 L. T. 440; 61 J. P. 759; 67 L. J. Q. B. 24). It is an amendment of sec. 14 of the Lond. Bldg. Act, 1894 which it supersedes.

[(2.) Any notice served under the provisions of this section shall be deemed to be a notice empowered to be served under Part II. of the principal Act within the meaning of the second subsection of the two hundredth section of the principal Act, which subsection shall be read and construed and take effect as though the words 'fence or boundary' had been originally inserted therein immediately after the word 'structure.']

See Lond. Bldg. Act, 1894, sec. 200 (2).

[(3.) The fourteenth section of the principal Act is hereby repealed, and from and after the passing of this Act the principal Act shall be read and have effect as

S. 3 if this section had been inserted therein instead of the said fourteenth section.]

See Lond. Bldg. Act, 1894, sec. 14.

[(4.) Nothing in this section shall affect the exercise of any powers conferred upon any railway company by any special Act of Parliament for railway purposes.]

See Lond. Bldg. Act, 1894, sec. 20.

Height of working-class dwellings in certain streets.

[**4.** The proviso in subsection 5 of section 13 of the principal Act commencing with the words 'Provided always that no dwelling-house' is hereby, so far as the said proviso relates to dwelling-houses inhabited or adapted to be inhabited by persons of the working class and situate outside the city, amended so that it shall hereafter be read and have effect as if the words 'a distance of 20 feet from the centre of the roadway' were substituted for the words 'the prescribed distance' wherever the words 'the prescribed distance' occur in the said proviso.]

Service of summonses and orders relating to dangerous or neglected structures.

[**5.** Section 188 of the principal Act shall not apply to any notice, summons or order to be served upon the owner or occupier of a dangerous or neglected structure:

Any such notice, summons or order may be served on the owner or occupier of the dangerous or neglected structure by delivering a copy thereof to some person on the premises to which such notice, summons or order relates, or, if no person be found on the premises, then by fixing the same or a copy thereof on some conspicuous part of the premises to which it relates; and in the case of a railway company by delivering a copy thereof to the secretary at the principal office of the company; and in any such notice, summons or order it shall be sufficient to describe the owner or occupier as 'the owner' or 'the occupier,' and the same may be addressed to the owner or occupier by the description of 'the owner' or 'the occupier' of the premises (naming the premises) to which the same relates without further name or description:

Provided always that when the owner of any dangerous or neglected structure and his residence are known to the Council, it shall be the duty of the Council to send a copy of every such notice, summons or order by registered post, addressed to the usual or last known residence of such owner:

In this section the expression 'structure' shall have the meaning assigned to it in Part IX. of the principal

Act. In cases where a dangerous structure is situate within the City this section shall be read as if the Corporation were named therein instead of the Council.] S. 5

This section was rendered necessary by reason of the decision of Q. B. in the case of *Reg.* v. *Mead* (1898) 1 Q. B. 110; 61 J. P. 759; 66 L. J. (Q. B.) 874; 77 L. T. 462; 46 W. R. 61), *see* note to sec. 188 of Lond. Bldg. Act, 1894.

See sec. 102 of Lond. Bldg. Act, 1894.

Amendment of section 200, subs. (3) (*e*), of Act of 1894.

[**6.** Subsection (3) (*e*) of the two hundredth section of the principal Act shall hereafter be read and construed and take effect as though the word 'retains' had been inserted therein immediately after the word 'erects,' and the words 'approval or' had been inserted therein immediately before the word 'licence' wherever such word occurs therein.]

This section was enacted to meet the case of *Reg.* v. *Cluer* (77 L. T. 439; 67 L. J. (Q. B.) 36). *See* note to secs. 84 & 215 of Lond. Bldg. Act, 1894.

Amendment of section 200, subs. (3), of Act of 1894.

[**7.** Every person who does any of the things specified in paragraphs (*a*), (*d*) and (*e*) of subsection (3) of section 200 of the principal Act, as amended by this Act, shall be liable on conviction to a penalty not exceeding forty shillings for every such offence; and the Court before whom an information is laid by the Council in respect thereof may, in addition to imposing such penalty, make an order in writing, directing such person to demolish the building or structure complained of, or any part thereof, or to comply with the conditions contained in any consent, licence or approval granted by the Council for the setting up, erection, adaptation, alteration or retention of such building or structure; and such order of the Court shall be deemed to be the order of the Court within the meaning and for the purposes of the third subsection of the two hundredth section of the principal Act; and the imposition of any penalty under the provisions of this present section shall be without prejudice to any proceedings under the third subsection of the two hundredth section of the principal Act for the daily penalty therein mentioned, or under any other provisions of the principal Act or otherwise; but so that no person shall be liable to more than one penalty (other than daily penalties) for the same offence.]

As to the Stock Exchange buildings.

[**8.** The buildings and premises of the Stock Exchange within the City of London shall for the purposes of this and the principal Act be deemed to be a public building within the meaning of such Acts.]

See Lond. Bldg. Act, 1894, sec. 78.

Saving for gas companies.

[**9.** Nothing in this Act contained shall in any way take away, alter, prejudice, or affect any of the powers, rights and privileges conferred upon a gas company by any Act of Parliament and as existing immediately before the passing of the principal Act.]

See Lond. Bldg. Act, 1894, sec. 201 (8).

Costs of Act.

[**10.** The costs, charges, and expenses preliminary to and of and incidental to the preparing, applying for, obtaining, and passing of this Act shall be raised and paid by the Council as part of their general expenses.]

THE LONDON BUILDING ACTS (AMENDMENT) ACT, 1905.

5 EDW. VII. CAP. CCIX.

ARRANGEMENT OF SECTIONS

AN ACT

To amend the Acts relating to Buildings in London; to confer various powers on the London County Council; and for other purposes.

[Royal Assent, 11th August, 1905.]

WHEREAS the provisions contained in 'The London Building Act, 1894' (hereinafter referred to as 'the Act of 1894') as amended by 'The London Building Act, 1894, (Amendment) Act, 1898' (hereinafter referred

Preamble. 57 & 58 Vict. cap. ccxiii. 61 & 62 Vict. cap. cxxxvii.

to as 'the Act of 1898'), and the powers thereunder of the London County Council (in this Act referred to as 'the Council') are insufficient to secure the provision and maintenance of proper means of escape in case of fire from buildings in the Administrative County of London:

And whereas it is expedient to amend the said provisions in the manner hereinafter set forth and to confer upon the Council such further powers with respect to the matters aforesaid and otherwise as are hereinafter contained:

And whereas the objects aforesaid cannot be effected without the authority of Parliament:

May it therefore please your Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords, spiritual and temporal, and Commons in this present Parliament assembled, and by the authority of the same as follows (that is to say):—

Short title.

1. This Act may be cited as 'The London Building Acts (Amendment) Act, 1905.'

Acts of 1894 and 1898 and this Act may be cited together.

2. The Act of 1894 and the Act of 1898 and this Act may be cited together as 'The London Building Acts, 1894 to 1905.'

Commencement of Act.

3. This Act shall, except where otherwise expressly provided, come into operation on and shall take effect from the first day of January next after the passing thereof; which date is in this Act referred to as 'the commencement of this Act.'

Extent of Act.

4. This Act shall extend to London and no further.

Definition of fire-resisting material.

5. In the Act of 1894, the Act of 1898 and this Act, unless the context otherwise requires, the expression 'fire-resisting material' means any of the materials and things described or referred to in the First Schedule to this Act.

Interpretation.

6. (1.) In and for the purposes of this Act, unless the subject or context otherwise requires:—

(i.) The expression 'owner' (except as used in the section of this Act the marginal note whereof is 'Fees to District Surveyors') means the person for the time being receiving the rack-rent of the premises in connection with which the said expression is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such premises were let at a rack-rent; but where used in the said section the said expression

shall have the same meaning as is assigned thereto by section 5 of the Act of 1894 ; S. 6

This definition of ' owner ' (except in relation to fees as stated) is the same as that contained in Met. Man. Act, 1855, sec. 250; the Public Health (London) Act, 1891, sec. 141 ; and as that contained in the Public Health Act, 1875 ; the last mentioned is the definition incorporated with the Factory and Workshops Act, 1901. See definition of ' rack-rent.'

K. B. 1903 (Alverstone, C.J., Wills and Channell, JJ.) On a claim for paving expenses, where a builder had entered into a building agreement in respect of a parcel of land, and in the agreement it was expressly provided that the contract was to operate as an agreement only and not as a demise, or to give the builder any legal interest therein until the leases were executed ; the rent reserved had been duly paid, but no houses had been commenced ; it was held that the builder was not the owner within sec. 250 of Met. Man. Act, 1855, as the rights of the builder were merely contractual, and he never became entitled to a lease (*Driscoll* v. *Battersea B. C.* (1903) 1 K. B. 881 ; 72 L. J. (K. B.) 564 ; 67 J. P. 265 ; 88 L. T. 795 ; 1 L. G. R. 511).

(ii.) The expression ' rack-rent ' means rent which is not less than two thirds of the full annual value of the premises out of which the rent arises ; and the full annual value shall be taken to be the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for the premises, if the tenant undertook to pay all usual tenant's rates and taxes and tithe commutation rent charge (if any), and if the landlord undertook to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the premises in a state to command such rent ;

The definition of ' rack-rent ' is the same as that contained in Public Health (Lond.) Act, 1891, sec. 141, but differs from that contained in Public Health Act, 1875, sec. 4, where the probable average annual cost of repairs and insurance are deducted.

(iii.) The expression ' upper storey ' means any storey the level of the upper surface of the floor whereof is at a greater height than 50 feet above the level of the footway (if any) immediately in front of the centre of the face of the building in which such storey is situate, or (where there is no such footway) above the level of the ground before excavation ;

Compare Lond. Bldg. Act, 1894, definitions of ' level of ground,' sec. 5 (8), and ' height,' sec. 5 (21).

S. 6

(iv.) The expression 'high building' means any building any storey whereof is an upper storey as hereinbefore defined;

(v.) The expression 'new building' means any building the actual erection of which, above the footings, shall not have been bona fide and substantially commenced at the date of the commencement of this Act; or which has been taken down, burnt or destroyed for more than one half of its cubical extent and re-erected or commenced to be re-erected after such date; or of which the cubical extent has been increased after such date by an amount equal to the cubical extent of the building as existing before such increase; and any existing building which by reason of any alteration thereof or addition thereto becomes a high building after such date;

Buildings are by this Act divided into two categories, 'new buildings' and 'existing buildings.' A building will always remain in the category in which it is placed by definition except as provided in sec. 7 (3).

(vi.) The expression 'existing building' means any building not being a new building;

(vii.) The expression 'certified building' means any building in respect whereof the Council shall have issued a certificate, or which the Tribunal of Appeal shall have determined to have been provided with means of escape, under the provisions of the section of this Act of which the marginal note is 'Protection against fire in certain new buildings;'

See sec. 7 of this Act.

(viii.) The expression 'the Tribunal of Appeal' means the Tribunal of Appeal constituted by the Act of 1894;

See Lond. Bldg. Act, 1894, secs. 175 to 186.

(ix.) The expression 'plans' means plans, sections and elevations.

(2.) Words and expressions used in this Act shall, unless other meanings are assigned to them by this Act or the context otherwise requires, bear the meanings respectively assigned to them by the Act of 1894; and any reference in the Act of 1894 or in the Act of 1898

or in this Act to any part or provisions of the Act of 1894 or to any Schedule, or part of any Schedule, to the Act of 1894 shall be construed as referring to such part or provisions or Schedule or part of a Schedule as amended by the Act of 1898 and by this Act respectively. S. 6

The definitions in the last subsection will not apply to the Lond. Bldg. Act, 1894.

Protection against fire in certain new buildings.

7. (1.) Every new building (except a dwelling-house occupied as such by not more than one family) which is

(a) a high building; or

(b) a building in which sleeping accommodation is provided for more than twenty persons, or which is occupied or constructed or adapted to be occupied by more than twenty persons, or in which more than twenty persons are employed, or which is constructed or adapted for the employment therein of more than twenty persons,

shall be provided, in accordance with plans approved by the Council, or (in the event of an appeal) the Tribunal of Appeal, with all such means of escape therefrom in case of fire as can be reasonably required under the circumstances of the case. The owner of the building shall, before or at the same time that the building notice under section 145 (notices to be given to surveyor by builder) of the Act of 1894 in respect of such building is served on the District Surveyor, deposit, or cause to be deposited, at the County Hall, a notice stating the like matters and particulars as are required by the last-mentioned section to be stated in a building notice thereunder, together with a copy (which may be a sun-print or photographic reproduction on paper) of the plans prepared for such new building, showing, so far as may be necessary for the purposes of this Act, the means of escape proposed to be provided in connection with such building.

It shall be lawful for the Council at any time within the period of one month, or in the event of such period of one month commencing or expiring on any day between the first day of August and the fourteenth day of September, both inclusive, then within the period of two months, after the deposit as aforesaid of such plans, to refuse to approve such plans or to approve the same subject to such conditions (if any) as they may prescribe; provided that the Council shall, within such period as aforesaid, give notice to the applicant of such refusal or

S. 7 conditional approval, stating fully all their reasons for such refusal or for the imposition of such conditions as the case may be.

Provided that, if within the period limited as aforesaid the Council fail to give notice of their refusal to approve any such plans or of the conditions subject to which they approve any such plans, they shall be deemed to have approved such plans without conditions.

This subsection and the next are in substitution for sec. 63 of Lond. Bldg. Act, 1894 (repealed), which applied to buildings the upper surface of the top floor of which exceeded 60 feet in height above the street level.

Compare with corresponding provisions of the Factory and Workshops Act, 1901, sec. 14 (1).

For appeal to Tribunal of Appeal *see* sec. 22.

For power of entry to owner *see* sec. 15.

For penalties (£20, and £10 a day) *see* sec. 24 (1) a & c.

The operation of this subsection is limited in the case of 'high buildings' by subsec. 4 of this section.

(2.) No upper storey in any high building (not being of the class referred to in paragraph (b) of subsection (1) of this section), and no part of any building of the class referred to in the said paragraph, shall be occupied or let for occupation until the Council shall have issued a certificate, or (in the event of an appeal) the Tribunal of Appeal shall have determined that such building has been provided with means of escape in accordance with plans approved as aforesaid by the Council or the Tribunal of Appeal (as the case may be), and that the conditions (if any), subject to which such plans were so approved, have been complied with. Provided that, unless the Council shall, within fourteen days after notice of completion of any such building shall have been given to the Council by the owner, notify to the owner that such certificate is refused and the grounds of such refusal, such certificate shall be deemed to have been duly issued.

For appeal to Tribunal of Appeal *see* sec. 22.

For penalty (£20, and £10 a day) *see* sec. 24 (1) a.

(3.) If by reason of any structural alteration or addition of a substantial character of or to any certified building (being a building of the class referred to in paragraph (b) of subsection (1) of this section) the sleeping accommodation in such building is substantially increased, and the risk of fire in such building or the difficulty of escaping therefrom in case of fire is thereby substantially increased,

S. 7

or if the number of persons occupying or employed or dwelling in the upper storeys of any certified building (being a high building, but not being a building of the class referred to in the said paragraph), or in any part of any certified building (being a building of the class referred to in the said paragraph), is substantially increased and the risk of fire in the upper storeys of such building (being a high building), or in any part of such building (being a building of the class referred to in the said paragraph), or the difficulty of escaping from any such upper storey or part of a building (as the case may be), in case of fire, is thereby substantially increased,

or if by reason of any change of circumstances in or affecting any certified building, the risk of fire in such building is substantially increased, or escape from such building, or any such upper storey as aforesaid (as the case may be), in case of fire, is rendered substantially more difficult,

or if by reason of any material change in the mode of user of any certified building, the risk of fire in such building is substantially increased, or escape from such building, or from any such upper storey as aforesaid (as the case may be), in case of fire, is rendered substantially more difficult,

then, and in any of such events, the certificate issued by the Council or the determination of the Tribunal of Appeal (as the case may be) in respect of such building shall thenceforth be void and of none effect, and such building shall thenceforth cease to be a new building and be deemed to be an existing building.

Provided that the notice to be served on the owner of such building by the Council under the provisions of the section of this Act whereof the marginal note is 'Protection against fire in certain existing buildings'[1] shall, if the owner request the Council in writing so to do (giving particulars of any proposed or completed alteration, addition or change of circumstances), be served within two months after the receipt by them of such written request; and that if, notwithstanding such written request, no such notice is so served within the period aforesaid, such building or the upper storeys of

[1] *See* sec. 9.

S. 7 such building, as the case may be, shall be deemed to be in the opinion of the Council provided with proper and sufficient means of escape in case of fire.

For appeal to Tribunal of Appeal *see* sec. 22.

(4.) Nothing in this section contained shall authorise the Council to require (in the case of a building being a high building, and not being a building of the class referred to in paragraph (b) of subsection (1) of this section) any means of escape from any storey other than an upper storey.

As to occupation of certain buildings during rebuilding.

8. Nothing in subsection (2) of the section of this Act whereof the marginal note is 'Protection against fire in certain new buildings'[1] shall prevent the continuous occupation during rebuilding of any portion of any building to which the said subsection applies, and which has been partially taken down, burnt or destroyed.

Protection against fire in certain existing buildings.

9. (1.) From and after the first day of January, one thousand nine hundred and seven, in the case of any existing building (except a dwelling-house occupied as such by not more than one family) which is—

(a) a high building; or,

(b) a building in which sleeping accommodation is provided for more than twenty persons, or which is occupied by more than twenty persons, or in which more than twenty persons are employed;

the Council, if in their opinion such building is not provided with proper and sufficient means of escape therefrom in case of fire, may at any time serve on the owner of such building a notice requiring him to provide such means of escape as can be reasonably required under the circumstances of the case.

Any such notice shall specify in detail the requirements of the Council; and the owner of such building shall, subject to the provisions of this Act, execute and do all such works and things as may be necessary in order to comply with any requirements made by the Council under this section, and (in the event of an appeal) confirmed or varied by the Tribunal of Appeal as hereinafter provided, within such period as may be required by the Council, or (in the event of an appeal) the Tribunal of Appeal:

Provided that if such owner shall, within twenty-one

[1] *See* sec. 7.

days after the service of such notice, have submitted to the Council alternative proposals for the provision of means of escape in case of fire, and the Council shall have in writing accepted the same as satisfactory, it shall not be necessary for such owner to comply with any of the requirements contained in the notice served on him by the Council as aforesaid; but he shall with all practicable despatch, after such acceptance as aforesaid, execute and do all such works and things as may be necessary in order to provide the means of escape specified in such alternative proposals. S. 9

The operation of this subsection is limited in the case of 'high buildings' by subsec. (4) of this section.
For appeal to Tribunal of Appeal, *see* sec. 22.
For power of entry to owner, *see* sec. 15.
For penalties (£20, and £10 a day), *see* sec. 24 (1), b (i.) & (ii.)

(2.) Where any owner of a building has been convicted of an offence against this Act:—

(a) By failing to comply with any requirement made by the Council under this section, and (in the event of an appeal) confirmed or varied by the Tribunal of Appeal, within the period required by the Council or the Tribunal of Appeal (as the case may be); or,

(b) By failing to execute and do with all practicable despatch, after such acceptance as aforesaid, all such works and things as may be necessary to provide the means of escape specified in such alternative proposals as aforesaid;

a petty sessional Court may, notwithstanding the imposition of any penalty, make an order prohibiting the occupation of such building (being a building of the class referred to in paragraph (b) of subsection (1) of this section), or any part or parts of such building, or the occupation of any upper storey of such building (being a high building and not being a building of the class referred to in the said paragraph). The costs of any such proceedings and order shall be in the discretion of the Court.

Any order made under this subsection may be at any time amended or discharged by the order of a petty sessional Court.

For penalties (£20, and £10 a day), *see* sec. 24 (1), b (ii.)

(3.) The Council shall keep at the County Hall a register (which shall be open at all reasonable times to inspection) of all orders made under this section.

S. 9

(4.) Nothing in this section contained shall authorise the Council to require in the case of a building (being a high building and not being a building of the class referred to in paragraph (b) of subsection (1) of this section) any means of escape from any storey other than an upper storey.

Projecting shops.

10. (1.) Where any part of a building which is used or adapted to be used as a shop projects for a distance of seven feet or more beyond the main front of any building of which it forms part, and in which any persons are employed or sleep, the projecting portion of such shop shall be provided by the owner with a roof constructed of fire-resisting materials not less than five inches thick.

(2.) It shall be lawful to construct or place in or upon the roof of the portion of any shop so projecting beyond the main front of the building as aforesaid lantern lights or ventilating cowls.

Provided that no such lantern light or ventilating cowl shall be constructed or placed so that any part thereof will be at a less distance than six feet from the main front of the building from which the shop projects, or within such distance as may be reasonable in the circumstances of the case from any other external or party wall.

Provided also that the sides of such lantern light or ventilating cowl (except the side facing away from the main building) shall be carried up in fire-resisting materials for two feet above the roof in or upon which it is constructed or placed.

Provided further that no part of any such lantern light or ventilating cowl shall project above the roof in or upon which the same is constructed or placed to a greater extent than five feet.

(3.) The provisions of this section shall extend and apply as well to existing as to new buildings.

(4.) The Council or (in the event of an appeal) the Tribunal of Appeal may, in any case where it is reasonable so to do, sanction, subject to such conditions (if any) as the Council, or (in the event of an appeal) the Tribunal of Appeal, may impose in giving such sanction, the exemption of any building from all or any of the provisions of this section.

The provisions of sec. 12 (means of access to roofs) also apply to projecting shops coming within this section.

For power of entry to owner, *see* sec. 15.

For penalties (£20, and £10 a day), *see* sec. 24 (1), c.
For appeal to Tribunal of Appeal, *see* sec. 22.

Rules for living rooms over premises used for storage of inflammable liquid

11. (1.) No person shall knowingly or wilfully use, or permit to be used, either as a living room or as a workshop or workroom, any room constructed over or communicating directly with any part of a building used for the storage of petroleum as defined by Section 3 of 'The Petroleum Act, 1871,' (whether or not petroleum within the meaning of that Act), or bisulphide of carbon, or ether, or turpentine, or methylated spirit, or any other inflammable liquid kept for sale or trade purposes in such quantities or in such manner as to be liable to cause fire or explosion; unless there be provided in connection with such room according to the requirements and to the satisfaction of the Council—

(i.) Adequate safeguards to prevent the spread of fire from the part of the building used for the storage of any such inflammable liquid to such room; and

(ii.) Means of ready escape from such room in case of fire.

Petroleum Act, 1871 (34 & 35 Vict. cap. 105).

Sec. 3.—'For the purposes of this Act, "petroleum" includes any rock oil, Rangoon oil, Burmah oil, oil made from petroleum, coal schist, shale, peat, or other bituminous substance, any products of petroleum or any of the above-mentioned oils, and the term "petroleum to which this Act applies" means such of the petroleum so defined as when tested in the manner set forth in Sch. 1 of this Act, gives off inflammable vapour at a temperature of less than 100 degrees of Fahrenheit's thermometer.'

The requirements of the Council are subject to an appeal to the Tribunal of Appeal, *see* sec. 22 (1) d.

For penalties (£20, and £10 a day), *see* sec. 24 (1) d.

(2.) Nothing in this section contained shall affect or prejudice any jurisdiction vested in the Corporation of the City of London under 'The Petroleum Act, 1871.'

Means of access to roofs.

12. (1.) (a) Every existing building to which the section of this Act whereof the marginal note is 'Projecting shops' [1] applies, and every other existing building except a dwelling-house occupied as such by not more than two families, and

(b) Every new building—

shall, if having more than two storeys above the ground storey or if exceeding thirty feet in height, be provided (unless and except so far as the Council otherwise allow) by the owner with either

[1] *See* sec. 10.

(a) a dormer window or a door opening in a suitable position, approved by the district surveyor, on to the roof with proper access thereto ; or

(b) a trap-door in a suitable position, approved by the district surveyor, covered with copper or zinc and hung on hinges so as to admit of the same opening to the fullest extent, and furnished with a counterweight so as to ensure that the same shall open automatically when unfastened, and also with a fixed or hinged step-ladder leading to the roof ; or

(c) other proper means of access to the roof ;

and with a sufficient parapet or guard-rail where reasonably practicable and necessary to prevent persons slipping off the roof. Any dormer window or trap-door provided under this subsection shall only be fastened in such a manner as to ensure access to the roof being always readily available from the inside of the building.

This subsection is in substitution for Lond. Bldg. Act, 1894, sec. 61 (2) (repealed), the provisions of which applied to new dwelling-houses and factories exceeding 30 feet in height, and having a parapet.

For definition of 'height' of a building, *see* Lond. Bldg. Act, 1894, sec. 5 (21).

For power of entry to owner, *see* sec. 15.

For penalties (£20. and £10 a day), *see* sec. 24 (1) c.

(2.) The Council, or (in the event of an appeal) the Tribunal of Appeal, may in any case, where it is reasonable so to do, sanction, subject to such conditions, if any, as the Council, or (in the event of an appeal) the Tribunal of Appeal, may impose in giving such sanction, the exemption of any building from all or any of the provisions of this section.

For appeal to Tribunal of Appeal, *see* sec. 22.

(3.) This section shall not apply to any building falling within either of the sections of this Act the respective marginal notes whereof are 'Protection against fire in certain new buildings' and 'Protection against fire in certain existing buildings.'

See secs. 7 and 9.

Conversion of buildings.

13. No person shall, without the consent in writing of the Council, or (in the event of an appeal) the Tribunal of Appeal, convert a building in such manner that such building, when so converted, will not be in conformity with the provisions of this Act, or without such consent

knowingly or wilfully permit or suffer any building when so converted to be used or occupied. S. 13

Provided that if the Council shall not within the period of one month, or in the event of such period of one month commencing or expiring on any day between the first day of August and the fourteenth day of September, both inclusive, then within the period of two months, after written application to the Council by the owner for such consent, notify to the owner that such consent is refused and the grounds of such refusal, such consent shall be deemed to have been duly given.

For the purposes of this section the expression 'convert' shall include any change of user, whether involving any structural alteration or not, and notice of such conversion shall be given to the District Surveyor by the owner or occupier of the building intended to be converted.

For appeal to the Tribunal of Appeal, *see* sec. 22.
For penalties (£20, and £10 a day), *see* sec. 24 (1) i.

Means of escape to be maintained.

14. All means of escape in case of fire provided in accordance with any of the provisions of this Act or otherwise shall be kept and maintained, by the owner of the building in respect whereof they are provided, in good condition and repair and in efficient working order; and no person shall knowingly or wilfully obstruct or render less commodious, or permit or suffer to be obstructed or rendered less commodious, any such means of escape as aforesaid.

For penalties (£20, and £10 a day), *see* sec. 24 (1) f.

Power to owner to enter notwithstanding provisions of lease.

15. For the purpose of carrying out or maintaining any work required to be done or maintained by the owner under any of the provisions of this Act, it shall be lawful for the owner of any building, notwithstanding any provision to the contrary contained or implied in any lease or contract affecting such building, to enter such building or any part thereof, and do all such things therein or in relation thereto as may be necessary or proper in that behalf.

For penalties (£20, and £10 a day), *see* sec. 24 (1) g and h.

Duties of District Surveyors under Act.

16. (1.) The execution of every work to, in or upon a building necessary to give effect to the provisions of this Act shall be subject to the supervision of the District Surveyor appointed to the district in which the building is situated, in like manner as any work done to, in or

S. 16 upon the building under the provisions of the Act of 1894.

See Lond. Bldg. Act, 1894, secs. 138, 146, 150, 151, 152 and 153.
For power of entry to District Surveyor, *see* sec. 23 (2).

(2.) Particulars of any means of escape required by the Council, or (in the event of an appeal) the Tribunal of Appeal, or to be provided in accordance with plans approved by the Council under the provisions of this Act, shall be furnished by the Council to the District Surveyor within whose district the building to which such particulars relate is situate; and it shall be the duty of the District Surveyor to ascertain that such means of escape are properly provided in accordance with such particulars, and to report to the Council any failure to provide the same.

There is a similar provision in Lond. Bldg. Act, 1894, sec. 82 (5), applicable in the case of consent of the Council to buildings to which that Act is inapplicable.

(3.) Where any of the provisions of the sections of this Act whereof the marginal notes are respectively 'Projecting shops' and 'Means of access to roofs' are or become applicable to a new or to an existing building, the District Surveyor shall, as soon as he discovers that such building is not in conformity with such provisions, report such nonconformity to the Council.

There is no provision in this Act for the service of a notice on the owner, requiring him to comply with the above-mentioned secs. 10 and 12 in the case of existing buildings; procedure will therefore be by a summons for penalties (£20, and a daily penalty of £10); *see* sec. 24 (1) e, for failure to comply with the provisions of the sections.

District Surveyors to notify Council in certain cases.

17. The District Surveyor shall notify in writing to the Council every building about to be erected in his district to which in his opinion the section of this Act the marginal note whereof is 'Protection against fire in certain new buildings'[1] would apply; and, within a reasonable time after being requested in writing by the Council, shall from time to time ascertain and notify in writing to the Council any building within his district or any part thereof to which in his opinion the section of this Act the marginal note whereof is 'Protection against fire in certain existing buildings'[2] applies; and also, upon completion of any works required to be

[1] *See* sec. 7. [2] *See* sec. 9.

carried out under either of such sections, shall notify to the Council whether all the requirements made by the Council or the Tribunal of Appeal (as the case may be) have been complied with. S. 17

18. (1.) The District Surveyor shall be entitled to receive from, and shall be paid by, the builder employed in erecting the building in respect whereof the same are chargeable, or in doing any work or matter in respect of which any service has been performed by such Surveyor under the provisions of this Act, or from the owner or occupier of such building, or of any building in respect whereof such work or matter has been done or service performed, the fees specified in Part I. of the Second Schedule to this Act; and the provisions of Section 157 (Periods when Surveyors entitled to fees) of the Act of 1894 shall apply to the said fees and the recovery of the same. Fees to District Surveyors.

These fees are recoverable in a summary manner; *see* Lond. Bldg. Act, 1894, sec. 157 (2) and 166.

(2.) The District Surveyor shall be entitled to receive from, and shall be paid by, the Council the fee specified in Part II. of the said Second Schedule in respect of the performance of the duties therein mentioned.

As it is not provided that these fees may be recovered in a summary manner, presumably they would be recoverable as a statutory liability by action at law.

(3.) Where any works or services, other than those carried out or performed in pursuance of this Act, are carried out or performed in respect of any building, the said fees shall be in addition to, and not in substitution for, any fees which may be payable under the Act of 1894 in respect of such other works or services as aforesaid.

19. (1.) Where an offence under this Act, for which the owner of any building is liable under this Act to a penalty, has in fact been committed by an occupier or any other person, that occupier or other person shall be liable to the same penalty as if he were the owner. Exemption of owner from penalty on conviction of actual offender.

(2.) Where the owner is charged with any such offence he shall be entitled, upon information duly laid by him, to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge against himself; and if, after the commission of the offence has been proved, the owner

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proves to the satisfaction of the Court that he has used due diligence to enforce the execution of the provisions of this Act, and that such other person has committed the offence in question without the knowledge, consent or connivance of the owner, that other person shall be summarily convicted of the offence and the owner shall be exempt from any penalty. The person so convicted shall in the discretion of the Court be also liable to pay any costs incidental to the proceedings.

Apportionment of expenses borne by owners.

20. The owner of any building who has paid or incurred the expenses of executing any work in respect of such building, which the owner of such building is required to execute under any provisions of this Act, or has paid any other expenses, which by any such provision as aforesaid are required to be borne or paid by the owner, may, if he thinks fit, apply to the County Court of the district in which such building is situate ; and such Court may thereupon issue a summons requiring the several persons entitled to any estate or interest in the building to appear before the Court ; and the Court may make such order concerning such expenses, or their apportionment among all the several persons entitled to any estate or interest in the building, as appears to the Court to be just and equitable in the circumstances of the case, regard being had to the terms of any lease or contract affecting such building.

There is a somewhat similar provision in sec. 14 (4) of the Factory and Workshop Act, 1901, upon which conflicting decisions have been given in the High Court (*see* notes to that Act). The Factory Act, however, does not provide that regard shall be had to the terms of any lease or contract affecting the building.

Arbitration as to incidence of damage.

21. Where the occupier of any building shall claim to have sustained any damage directly and solely caused by the construction of any works carried out under this Act, such claim shall be referred to arbitration ; and the arbitrator shall determine how such damage shall be borne by the persons interested in the said building, having regard to all the circumstances of the case, including the terms of any lease or contract affecting such building.

See the Arbitration Act, 1889 (52 & 53 Vict. cap. 49).

As to appeals under Act.

22. (1.) At any time within two months after—

(a) the refusal or conditional grant by the Council of their approval of any plans deposited pursuant to the section of this Act the marginal note whereof is 'Protection against fire in

certain new buildings,' or the refusal by the Council to issue a certificate pursuant to the same section ; S. 22

See sec. 7.

(b) the service on the owner of any building of notice of any requirement of the Council under the section of this Act the marginal note whereof is ' Protection against fire in certain existing buildings ' ;

See sec. 9.

(c) the making of any requirement with respect to any building under the section of this Act the marginal note whereof is ' Projecting shops,' or any refusal or conditional grant of the sanction of the Council to any exemption under the last-mentioned section, or the section of this Act the marginal note whereof is ' Means of access to roofs ' ;

See secs. 10 and 12.

(d) the making of any requirement by the Council with respect to any building under the section of this Act the marginal note whereof is ' Rules for living rooms over premises used for storage of inflammable liquids ' ; or

See sec. 11.

(e) any refusal of the consent of the Council under the section of this Act the marginal note whereof is ' Conversion of buildings,'

See sec. 13.

the owner of the building to which such requirement or refusal or conditional grant relates may, if he think fit, appeal to the Tribunal of Appeal.

Appeals must be lodged ' within 14 days after notice of the decision, determination, certificate, requirement or regulation appealed against has been given to or served on the appellant ' ; *see* Regulations of the Tribunal of Appeal, *post.*

(2.) The National Telephone Company, Limited, shall, in any case where they are the occupiers (without being also the owners) of any building, or part of a building containing plant which is used for or in connection with public telephonic communication to which any such requirement or refusal or conditional grant relates, have

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the like right of appeal against such requirement, refusal or conditional grant as the said company would have had if they had been the owners of such building, or part of a building; and the Council shall give or cause to be given to the said company full and detailed particulars of any such requirement, refusal or conditional grant upon or contemporaneously with such requirement, refusal or conditional grant.

Power of entry to Council and their officers and District Surveyors.

23. (1.) For the purpose of exercising their powers or performing their duties under this Act, it shall be lawful for the Council or any officer of the Council duly authorised in writing by the Council in that behalf (which authority such officer shall produce if required) at all reasonable times, and after reasonable notice, to enter, inspect and examine any building, structure or premises to which he has reasonable grounds for thinking that the provisions of this Act apply.

The Council and its officers have no power of entry under Lond. Bldg. Act, 1894.

For penalties (£20, and £10 a day), *see* sec. 24 (1) g.

(2.) For the purpose of performing his duties under this Act, it shall be lawful for the District Surveyor at all reasonable times to enter, inspect and examine any building, structure or premises.

Compare with Lond. Bldg. Act, 1894, sec. 148, which confers a similar power, but confined to works in progress and within 14 days after completion.

For penalties (£20, and £10 a day), *see* sec. 24 (1) g.

Offences against Act.

24. Subject to the provisions of this Act, every person who does any of the things specified in this section shall be deemed to have committed an offence against this Act, and shall be liable upon conviction in a summary manner to a penalty not exceeding the amount hereinafter specified in connection with such offence, and to a further penalty not exceeding the amount hereinafter specified as the daily penalty in connection with such offence for every day on which the offence is continued —that is to say;

(1.) Every person who

(a) occupies, permits to be occupied, or lets for occupation any upper storey or any part of any building in contravention of the provisions of the section of this Act, the marginal note whereof is 'Protection against fire in certain new buildings'; or

See sec. 7.

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(b) (i.) fails to comply with any requirement made by the Council under the section of this Act, the marginal note whereof is 'Protection against fire in certan existing buildings,' and, (in the event of an appeal) confirmed or varied by the Tribunal of Appeal, within such time as may be required by the Council or the Tribunal of Appeal; or

See sec. 9 (1).

(ii.) fails to execute and do, with all practicable despatch after acceptance by the Council of any alternative proposals under the said section for the provision of means of escape in case of fire, all such works and things as may be necessary to provide the means of escape specified in such alternative proposals; or

See sec. 9 (1).

(iii.) occupies or permits to be occupied any part of, or storey in, a building after the making of an order of a Petty Sessional Court under the said section prohibiting the occupation of such part of, or such storey in, such building, unless such order has been discharged as in the said section provided; or

See sec. 9 (2).

(c) fails to deposit, or cause to be deposited, at or within the time at or within which the same are by the respective provisions relating thereto required to be deposited, any notice or plans required to be deposited under the provisions of this Act; or

See sec. 7.

(d) knowingly or wilfully uses, or permits to be used, any room in contravention of the provisions of the section of this Act the marginal note whereof is 'Rules for living rooms over premises used for storage of inflammable liquid'; or

See sec. 11.

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(e) fails to comply with the provisions of the sections of this Act the respective marginal notes whereof are 'Projecting shops' and 'Means of access to roofs'; or

See secs. 10 and 12. In these cases the penalties do not, as in the case of irregularity under the Lond. Bldg. Act, 1894, follow upon a neglect to comply with an order of a magistrate, but follow immediately upon the commencement of this Act in the case of existing buildings not in accordance with the respective sections, and immediately on the irregularity in the case of new buildings or works.

(f) Neglects to keep and maintain in good condition and repair, and in efficient working order, or obstructs or renders less commodious, or permits or suffers to be obstructed or rendered less commodious, any means of escape in case of fire provided in accordance with any of the provisions of this Act or otherwise; or

See sec. 14.

(g) refuses to admit any officer of the Council or District Surveyor or other person when entitled so to do under this Act to enter, survey, inspect or examine any building, structure, work or premises which such officer or Surveyor or other person is by this Act authorised to enter, survey, inspect or examine, or refuses or neglects to afford him all reasonable facilities and assistance in such survey, inspection or examination; or

See secs. 23 and 15.

(h) hinders or obstructs any persons empowered by this Act to enter and remain on any premises for the purpose of executing or maintaining and to execute or maintain any work required by this Act to be executed or maintained; or

See sec. 15.

(i) knowingly or wilfully converts, or permits or suffers to be used or occupied, a building in contravention of the provisions of the section of this Act the marginal note whereof is 'Conversion of buildings'; or

See sec. 13.

(j) does any other thing prohibited by this Act, or fails, neglects or omits to do any other thing which he is required to do under or in pursuance of this Act, S. 24

shall be liable to a penalty not exceeding twenty pounds, and a daily penalty not exceeding ten pounds.

Compare with Lond. Bldg. Act, 1894, sec. 200, where the daily penalty only runs after conviction; in this Amendment Act it runs from the commencement of the offence, which will therefore be a continuing offence.

(2.) The liability to these penalties shall be without prejudice to any other proceedings, whether under the Act of 1894, or this Act, or any byelaw or regulation made under the Act of 1894 or otherwise, but so that no person shall be punished twice for the same offence.

(3.) All such penalties as aforesaid shall be recoverable in a summary manner, and the provisions of Section 169 (Application of penalties) of the Act of 1894 shall extend and apply to all penalties recovered by the Council under this Act.

Repeal of scheduled enactment.

25. The Act specified in the Third Schedule to this Act is hereby repealed to the extent specified in the third and fourth columns of that Schedule.

Certain provisions of Act not to apply to factories, workshops or common lodging-houses.

26. (1.) The provisions of this Act shall not apply to any building the whole of which is a factory or workshop within the meaning of Section 14 of 'The Factory and Workshop Act, 1901,' or to any common lodging-house within the meaning of any statute for the time being in force relating to common lodging-houses within London.

(2.) Nothing in this Act shall empower the Council to require, as regards any building while used in part as a factory or workshop, means of escape in case of fire to be provided from, or in respect of, the part so used of such building, if within three years prior to the passing of this Act means of escape in case of fire have been provided from such part in compliance with 'The Factory and Workshop Act, 1901.'

See Factory and Workshop Act, 1901 (1 Edw. VII. cap. 22), sec. 14.

The means of exit in common lodging-houses is dealt with under L.C.C. (Gen. Powers) Act, 1902 (2 Edw. VII. cap. 173), sec. 47: 'The Council shall, as soon as practicable after any such application shall have been made to them, make or cause to be made all necessary and proper inspections and inquiries both as to whether the person so applying is a fit and proper person to have the control and management of a common lodging-house, and as to whether the premises in respect of which application

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is made for a licence are structurally and otherwise suitable for use and occupation as a common lodging-house, having regard to the number, health, safety and convenience of persons occupying or intended to occupy the same.'

Incorporating certain provisions of Act of 1894.

27. (1.) The following provisions of the Act of 1894 are hereby incorporated with, and form part of, this Act, and shall extend and apply accordingly, and have effect as fully and effectually as if the same had been re-enacted in this Act (that is to say) :—

Section 144 (Surveyor not to act in case of works under his professional superintendence) ;
Section 145 (Notices to be given to Surveyor by builder);
Section 147 (Notice to be evidence of intended works) ;
Section 156 (Fees in relation to evidence before Tribunal) ;
Section 181 (Power for Council to support decisions of officers before Tribunal) ;
Section 182 (Tribunal may state case for opinion of High Court) ;
Section 183 (Procedure of Tribunal) ;
Section 184 (Regulations as to procedure and fees) ;
Section 185 (Enforcement of decision of Tribunal) ;
Section 187 (Notices to be in writing) ;
Section 188 (Service of notices) ;
Section 190 (Power for Council to annex conditions) ;
Section 194 (Plans and documents to be property of Council) ;
Section 195 (Mode of giving approval of Council to plans) ;
Section 196 (Consent how given on behalf of owners not to be found) ;
Section 206 (Duration of exemption) ;

The following sections of Lond. Bldg. Act, 1894, are also incorporated by special reference thereto in other sections of this Act :—

Sec. 5 (Definitions), by sec. 6 (2).
Secs. 138, 146, 150, 151, 152, 153, by sec. 16 (1).
Sec. 157, by sec. 18 (1).

(2.) All regulations made, and to be made, by the Tribunal of Appeal under the said Section 184 of the Act of 1894 shall apply to the procedure to be followed in cases of appeal under this Act.

See Regulations of the Tribunal of Appeal, *post*.

For protection of Inns of Court.

28. The lands, buildings and property of—
(1.) The Honourable Society of the Inner Temple ;
(2.) The Honourable Society of the Middle Temple ;

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(3.) The Honourable Society of Lincoln's Inn;
(4.) The Honourable Society of Gray's Inn;
shall be exempt from the operation of this Act.

The Inns of Court are also exempted from the Lond. Bldg. Act, 1894 (except Part III.); *see* sec. 204 of that Act.

Exempting certain property of Dock Companies.

29. (1.) Any building or structure, or part of a building or structure, belonging to a dock company constituted by Act of Parliament, and situate within the dock premises shall be exempt from the provisions of this Act.

The above buildings are also exempted from Parts VI. and VII. of Lond. Bldg. Act, 1894; *see* sec. 201 (4) of that Act.

(2.) The exemption conferred by this section shall extend to and include any building or structure, or part of a building or structure, belonging to the Surrey Commercial Dock Company in connection with their Surrey Canal undertaking, and used exclusively for the purposes of canal works under the Acts of Parliament regulating the said undertaking.

Exempting certain property of Railway Companies.

30. Any building or structure (not being an hotel) belonging to or leased by any railway company situate upon the railway, or within the railway or station premises, of the same or any other railway company, and used for the purposes of, or in connection with, the traffic of the railway company, shall be exempt from the provisions of this Act.

The above buildings are also exempted from Parts VI. and VII. of Lond. Bldg. Act, 1894; *see* sec. 201 (8) of that Act.

Exempting certain property of Electric Lighting Companies.

31. Any building or structure, or part of a building or structure, belonging to or leased by any electric lighting company, having statutory powers for the supply of electricity, and used exclusively as a generating station or distributing or transforming station, or for works connected with the exercise of such powers, shall be exempt from the provisions of this Act.

Exempting generating station of the Underground Electric Railways Company of London, Limited.

32. The generating station referred to in section 8 of 'The Metropolitan District Railway Act, 1902,' shall be exempt from the provisions of this Act.

Exempting certain property of Gas Companies.

33. Any building or structure, or part of a building or structure, belonging to or leased by any gas company, and used exclusively for gas works, shall be exempt from the provisions of this Act.

The above buildings (except those leased by the company) are also exempted from Parts VI. and VII. of Lond. Bldg. Act, 1894; *see* sec. 201 (8) of that Act.

As to banks and insurance offices.

34. (1.) Any new or existing building, used or intended to be used to the extent of not less than three fourths of its cubical extent as a bank or insurance office, or partly for one and partly for the other of such purposes, by not more than two companies or firms, and used or intended to be used, as regards the residue thereof, only as a residence for, or for providing sleeping accommodation for, officers or servants of such companies or firms, shall, so long as such building is not used otherwise than as aforesaid, be exempt from the provisions of this Act.

(2.) The premises known as Staple Inn, Holborn, shall be deemed to be existing buildings to which the provisions of this section apply.

As to Stock Exchange buildings.

35. The buildings of the Stock Exchange in the City of London, situated between Throgmorton Street on the north, and Threadneedle Street and Old Broad Street on the south or south-east, and also any buildings (while used as a Stock Exchange) erected on the site of the properties Nos. 31 to 33 Throgmorton Street shall be exempt from the provisions of this Act.

Exempting buildings of public wharfingers.

36. Any existing building or structure in the exclusive occupation of a public wharfinger, and used by him for the purposes of his business, and situate upon or in immediate proximity to a dock, wharf, quay or riverside frontage, and which is self-contained and does not abut on any building, shall be exempt from the provisions of this Act. Provided that this exemption shall not apply to uptown warehouses, or to any building wherein any manufacturing process is carried on, or wherein any person sleeps.

'Public wharfinger' means the owner, lessee or occupier of a wharf, quay, warehouse or granary adjoining the Port of London, mainly used for warehousing the goods imported into the Port of London of persons other than the occupier of such premises.

Exempting the Royal Albert Hall.

37. The buildings and premises known as the Royal Albert Hall shall be exempt from the provisions of this Act.

For protection of the Metropolitan District, Baker Street and Waterloo, Great Northern Piccadilly and Brompton, and Charing Cross Euston and Hamp-

38. Any new or existing building or structure (not being an hotel) now or hereafter belonging to, or leased or erected by, the Metropolitan District Railway Company, the Baker Street and Waterloo Railway Company, the Great Northern, Piccadilly and Brompton Railway Company, and the Charing Cross, Euston and Hampstead Railway Company, or any of them shall, so far as erected or used or intended to be used for the purposes of or in connection with the traffic of the said

Companies or any of them, be exempt from the provisions of this Act. stead Railway Companies.

Exempting certain buildings.

39. The following buildings shall, so long as used for their present purposes, be exempt from the provisions of this Act :—

(1.) The Mansion House, Guildhall and Royal Exchange of the City ;

(2.) The Sessions House at the Old Bailey, and all public buildings erected or occupied by the Corporation under the provisions of the City of London Police Acts ;

(3.) The buildings of the Metropolitan Cattle Market, the Cattle Market at Deptford, the London Central Markets, the Spitalfields Market and the Shadwell Market.

The above buildings are also exempted from Parts VI. & VII. of Lond. Bldg. Act, 1894 ; *see* sec. 201 (2), (5), & (7) of that Act.

Bonded warehouses to be exempt.

40. Any building, or part of a building, approved by the Commissioners of Customs or the Commissioners of Inland Revenue as a warehouse or store for warehousing or depositing goods without payment of duty, shall, while used with such approval for any of such purposes, and unless and except so far as such Commissioners otherwise allow, be exempt from the provisions of this Act.

Saving rights of the Crown.

41. Nothing in this Act shall affect prejudicially any estate, right, power, privilege or exemption of the King's most excellent Majesty, and, in particular, nothing contained herein shall authorise the Council to take, use, or in any manner interfere with any land or hereditaments or any rights of whatsoever description belonging to his Majesty in the right of his Crown, and under the management of the Commissioners of Woods, without the consent in writing of the Commissioners of Woods on behalf of his Majesty first had and obtained for that purpose, which consent such Commissioners are hereby authorised to give.

Crown and Government buildings are also exempted from Lond. Bldg. Act, 1894, so far as relates to buildings and structures ; *see* sec. 202 of that Act.

Saving rights of the Duchy of Cornwall.

42. Nothing contained in this Act shall extend to authorise the Council to take, use, enter upon or interfere with any land, soil or water, or any rights in respect thereof belonging to his Majesty, in right of the Duchy of Cornwall, without the consent in writing of some

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two or more of such of the regular officers of the said Duchy, or of such other persons as may be duly authorised under the provisions of 'The Duchy of Cornwall Management Act, 1863,' Section 39, to exercise all or any of the rights, powers, privileges and authorities by the said Act made exercisable, or otherwise for the time being exercisable in relation to the said Duchy, or belonging to the Duke of Cornwall for the time being, without the consent of such Duke testified in writing under the seal of the Duchy of Cornwall first had and obtained for that purpose, or to take away, diminish, alter, prejudice or affect any property, rights, profits, privileges, powers or authorities vested in or enjoyed by his Majesty in right of the Duchy of Cornwall, or in or by the Duke of Cornwall for the time being.

Buildings vested in and occupied for the service of the Duke of Cornwall are also exempted from the Lond. Bldg. Act, 1894, so far as relates to buildings and structures; *see* sec. 202 of that Act.

Expenses of Act how to be borne.

43. All expenses incurred by the Council in carrying this Act into execution, and not otherwise provided for, shall be deemed to be general expenses incurred by the Council, and shall be raised and paid accordingly, and the costs, charges and expenses, preliminary to and of and incidental to the preparing, applying for, obtaining and passing of this Act shall be raised and paid by the Council in like manner.

The Schedules referred to in the foregoing Act:

THE FIRST SCHEDULE

The following materials shall, for the purposes of the [Act of 1894, the Act of 1898, and this Act], be deemed to be fire-resisting materials:—

I. [For general purposes:—]

(1.) Brickwork constructed of good bricks, well burnt, hard and sound, properly bonded and solidly put together:

(a) With good mortar compounded of good lime and sharp clean sand, hard clean broken brick, broken flint, grit or slag; or

(b) With good cement; or

(c) With cement mixed with sharp clean sand, hard clean broken brick, broken flint, grit or slag.

(2.) Granite and other stone suitable for building purposes by reason of its solidity and durability;
(3.) Iron, steel and copper;
(4.) Slate, tiles, brick and terra-cotta, when used for coverings or corbels;
(5.) Flagstones when used for floors over arches, but [such flagstones] not [to be] exposed on the underside, and not supported at the ends only;
(6.) Concrete composed of broken brick, tile, stone chippings, ballast, pumice, or [coke breeze] and lime cement or calcined gypsum;
[(7.) Any combination of concrete and steel or iron.]

II. For special purposes:—

(1.) In the case of doors [and shutters, and their frames]; oak, teak, [Jarrah, Karri], or other hard timber not less than [$1\frac{3}{4}$ inch finished thickness, the frames being bedded solid to the walls or partitions;]
(2.) In the case of staircases [and landings]; oak, teak, [Jarrah, Karri], or other hard timber, the treads, risers, strings, [and bearers], being not less than [$1\frac{3}{4}$ inch finished thickness, and the ceilings and soffits (if any) being of plaster or cement;]
(3.) Oak, teak, [Jarrah, Karri], and other hard timber; when used for beams or posts or in combination with iron, the timber and the iron (if any) being protected by plastering or other incombustible or non-conducting external coating [not less than 2 inches in thickness, or in the case of timber not less than 1 inch in thickness on iron lathing;]
(4.) [(a) In the case of floors and roofs—
Brick, tile, terra-cotta or concrete composed as described in paragraph I. (6) of this Schedule, not less than 5 inches thick in combination with iron or steel;]
(b) In the case of floors [and of the roofs of projecting shops—]
Pugging of concrete composed as described in the said paragraph I. (6), not less than 5 inches thick between [wood] joists, [provided a fillet 1 inch square is secured to the sides of the joists, and placed so as to be in a central position in

the depth of the concrete; or

Concrete blocks, not less than 5 inches thick laid between wood joists on fire-resisting bearers secured to the sides of joists;]

[(5.) In the case of verandahs, balustrades, outside landings, the treads, strings and risers of outside stairs, outside steps, porticoes and porches; oak, teak, Jarrah, Karri, or other hard timber not less than $1\frac{1}{4}$ inch finished thickness;]

[(6.) In the case of internal partitions, enclosing staircases and passages; terra-cotta, brick work, concrete or other incombustible material not less than 3 inches thick;]

[(7.) In the case of glazing for windows, doors and borrowed lights, lantern or skylights; glass not less than one fourth of an inch in thickness in direct combination with metal, the melting point of which is not lower than 1800 degrees Fahrenheit, in squares not exceeding 16 square inches, and in panels not exceeding 2 feet across either way, the panels to be secured with fire-resisting materials in fire-resisting frames of hard wood not less than $1\frac{1}{4}$ inch finished thickness, or of iron.]

The limit of 1800 degrees Fahrenheit will exclude the use of lead, tin, zinc and white metal alloys, but allow the use of iron, steel, copper, brass, bronze and other copper alloys.

III. Any other material from time to time approved by the Council as fire-resisting.

This Schedule is an amendment of the Second Schedule of Lond. Bldg. Act, 1894, which *see*; the words in brackets are new.

THE SECOND SCHEDULE

FEES PAYABLE TO DISTRICT SURVEYORS

PART I

(a) In respect of a building erected in conformity with the provisions of the section of this Act, of which the marginal note is 'Protection against fire in certain new buildings'; or

See sec. 7.

(b) For ascertaining whether any requirement made

by the Council under the section of this Act, the marginal note whereof is 'Protection against fire in certain existing buildings,' and (in the event of an appeal) confirmed by the Tribunal of Appeal, is complied with; or

See sec. 9.

(c) For any work required under the provisions of either of the sections of this Act, the respective marginal notes whereof are 'Projecting shops,' and 'Means of access to roof'—

See secs. 10 & 12.

One fifth of the amount of the fee payable under the Third Schedule of the Act of 1894, in respect of a new building of the same character, or the sum of one pound one shilling, whichever shall be the greater.

PART II

For surveying for the purpose of ascertainiing and notifying or reporting any building to the Council pursuant to the provisions of the sections of this Act, the marginal notes whereof are respectively 'District Surveyors to notify Council in certain cases,' and 'Duties of District Surveyors.'

See secs. 17 & 16.

For every building to which such sections apply, and for every other building which, in the opinion of the Council, has been reasonably inspected for the purposes of such sections, a fee of seven shillings and sixpence.

The fees provided in this Schedule are in addition to and not in substitution for any fees due under Lond. Bldg. Act, 1894; *see* sec. 18 (3).

THE THIRD SCHEDULE

Session and chapter	Title or short title	No. of section	Extent of repeal
57 & 58 Vict. c. ccxiii.	London Building Act, 1894	5 61 63 Second Schedule	Subsection (36). Subsection (2). The whole section. The whole Schedule.

METROPOLIS MANAGEMENT ACT, 1855

Bylaws as to the Formation of New Streets in the Metropolis,

Made by the Metropolitan Board of Works at a meeting of the said Board, held at Guildhall, in the City of London, on the 17th day of March, in the year of our Lord 1857, in and for the limits of the Metropolis, as defined by an Act passed in the nineteenth year of the reign of her present Majesty, 'For the better Local Management of the Metropolis,' and submitted to and confirmed at a subsequent meeting of the said Board, held at Guildhall aforesaid, in and for the limits aforesaid, on the 3rd day of April, in the year of our Lord 1857; and approved by the Right Honourable Sir George Grey, Baronet, one of her Majesty's Principal Secretaries of State, pursuant to the said Act; and published this 1st day of May, A.D. 1857.

In pursuance of the powers vested in the Metropolitan Board of Works by the Act of Parliament passed in the nineteenth year of the reign of her present Majesty, intituled 'An Act for the better Local Management of the Metropolis,' It is hereby ordered by the said Board as follows, that is to say :—

1. Four weeks at the least before any new street shall be laid out, written notice shall be given to the Metropolitan Board of Works, at their office, Spring Gardens, in the County of Middlesex, by the person or persons intending to lay out such new street, stating the proposed level and width thereof, and accompanied by a plan of the ground showing the local situation of the same.

2. Forty feet at the least shall be the width of every new street intended for carriage traffic; 20 feet at the least shall be the width of every new street intended only for foot traffic; provided, that the said width respectively shall be construed to mean the width of the carriage and foot way only, exclusive of any gardens, forecourts, open areas or other spaces in front of the houses or buildings erected or intended to be erected in any street.

3. Every new street shall, unless the Metropolitan Board of Works otherwise consent in writing, have at

the least 2 entrances of the full width of such street, and shall be open from the ground upward.

4. The measurement of the width of every new street shall be taken at a right angle to the course thereof, half on either side from the centre or crown of the roadway to the external wall, or front of the intended houses or buildings on each side thereof; but where forecourts or other spaces are intended to be left in front of the houses or buildings, then the width of the street, as already defined, shall be measured from the centre line up to the fence, railing or boundary dividing, or intended to divide, such forecourts, gardens or spaces from the public way.

5. The carriage way of every new street must curve or fall from the centre or crown thereof at the rate of three eighths of an inch, at the least, for every foot of breadth.

6. In every new street the kerb to each footpath must not be less than 4 nor more than 8 inches above the channel of the roadway, except in the case of crossings, paved or formed for the use of foot-passengers; and the slope of every footpath towards the kerb must be half an inch to every foot of width, if the footpath be unpaved; or not less than a quarter of an inch to every foot of width, if the footpath be paved.

7. In this bylaw the word 'street' shall be interpreted to apply to and include any highway (except the carriage way of any turnpike road), and any road, public bridge (not being a county bridge), lane, footway, square, court, alley or passage, whether a thoroughfare or not, and a part of any such highway, road, bridge, lane, footway, square, court, alley or passage.

8. In case of any breach of the regulations contained in this bylaw, the offender shall be liable for each offence to a penalty of 40 shillings; and in case of a continuing offence to a further penalty of 20 shillings for each day after notice thereof from the Metropolitan Board of Works.

By the 40th section of the Local Government Act, 1888, the powers of the Metropolitan Board of Works are transferred to the London County Council, and any notice which by the above bylaw is directed to be given to the Board must henceforth be given to the Council; and any consent which might have been given by the Board may be given by the Council, and any notice which might have been given under the said bylaw by the Board to an offender may be given by the Council.

METROPOLIS MANAGEMENT AND BUILDING ACTS AMENDMENT ACT, 1878

BYLAWS MADE BY THE COUNCIL UNDER SECTION 16

(*See* London Building Act, 1894, sec. 216.)

1. Repeal of previous Bylaws

The heretofore subsisting bylaws made by the Metropolitan Board of Works on the 3rd of October, 1879, and the 22nd of January, 1886, and confirmed by the Secretary of State for the Home Department on the 6th of October, 1879, and the 23rd of June, 1886, are hereby repealed, and in lieu thereof the following are made :—

2. Foundations and Sites of Buildings

No house, building or other erection shall be erected upon any site, or portion of any site, which shall have been filled up or covered with any material impregnated or mixed with any fæcal, animal or vegetable matter, or which shall have been filled up or covered with dust or slop or other refuse, or in or upon which any such matter or refuse shall have been deposited; unless and until such matter or refuse shall have been properly removed, by excavation or otherwise, from such site. Any holes caused by such excavation must, if not used for a basement or cellar, be filled in with hard brick or dry rubbish or concrete or other suitable material, to be approved by the District Surveyor.

The site of every house or building shall be covered with a layer of good concrete, at least 6 inches thick, and smoothed on the upper surface.

The foundations of the walls of every house or building shall be formed of a bed of good concrete, not less than 9 inches thick, and projecting at least 4 inches on each side of the lowest course of footings of such walls. If the site be upon a natural bed of gravel, concrete may be omitted from the foundations of the walls with the approval of the District Surveyor.

The concrete must be composed of clean gravel, broken hard brick, properly burnt ballast or other hard material, to be approved by the District Surveyor, well mixed with freshly burnt lime or cement in the pro-

portions of 1 of lime to 6, and 1 of cement to 8, of the other material.

See note to sec. 164 of Lond. Bldg. Act, 1894, and the decision of *Baker* v. *Moss* there quoted.

3. Description and Quality of the Substances of Walls

The external walls of every house, building or other erection shall, except in the case of concrete buildings, be constructed of good, hard, sound, well-burnt bricks or of stone.

Similar bricks shall be used in the portions of party and cross walls below the surface or level of the ground and above the roof, including the chimney stacks. Cutters or malms may be used in arches over recesses and openings in, or for facings of, external walls.

Stone used for the construction of walls must be free from vents, cracks and sand-holes, and be laid on its natural bed.

All brick and stone work shall be put together with good mortar or good cement.

The mortar to be used must be composed of freshly burned lime and clean, sharp sand or grit, without earthy matter, in the proportions of 1 of lime to 3 of sand or grit.

The cement to be used must be Portland cement, or other cement of equal quality to be approved by the District Surveyor, mixed with clean, sharp sand or grit in the proportions of 1 of cement to 4 of sand or grit.

Burnt ballast or broken brick may be substituted for sand or grit, provided such material be properly mixed with lime in a mortar mill.

Every wall of a house or building shall have a damp course composed of materials impervious to moisture, to be approved by the District Surveyor, extending throughout its whole thickness at the level of not less than 6 inches below the level of the lowest floor. Every external wall or inclosing wall of habitable rooms, or their appurtenances or cellars, which abut against the earth, shall be protected by materials impervious to moisture, to the satisfaction of the District Surveyor.

The top of every party wall and parapet wall shall be finished with 1 course of hard, well-burnt bricks set on edge in cement, or by a coping of any other waterproof and fire-resisting material, properly secured.

Whenever concrete is used in the construction of walls, the concrete shall be composed of Portland cement

and of clean Thames or pit ballast or gravel, or broken brick or stone, or furnace clinkers, with clean sand in the following proportions, viz., 1 part of Portland cement, 2 parts of clean sand, and 3 parts of the coarse material, which is to be broken up sufficiently small to pass through a 2-inch ring.

The proportions of the materials to be strictly observed, and to be ascertained by careful admeasurement; and the mixing either by machine or hand to be most carefully done with clean water, and, if mixed by hand, the material to be turned over dry before the water is added.

The walls to be carried up regularly and in parallel frames of equal height, and the surface of the concrete filled in the frame to be left rough and uneven to form a key for the next frame of concrete.

The thicknesses of concrete walls to be equal at the least to the thicknesses for walls to be constructed of brickwork prescribed by the 12th Section of the Metropolitan Building Act, 1855, and the First Schedule referred to therein.

See Lond. Bldg. Act, 1894, sec. 218.

Such portions of concrete party walls and chimney stacks as are carried above the roofs of buildings to be rendered externally with Portland cement.

4. Duties of District Surveyors

It shall be the duty of each District Surveyor, on receiving notice of the commencement of any house, building or other erection, or of any alteration or addition, or on his becoming aware that any house, building or other erection, or any alteration or addition, is being proceeded with, to see that the provisions of the foregoing bylaws are duly observed (except in cases where the London County Council may have dispensed with the observance thereof), and to see that the terms and conditions upon which any dispensation may have been granted are complied with.

5. Fees to be paid to District Surveyors

The District Surveyor shall, in respect of the erection of any house or other building, be entitled to receive the sum of 5 shillings, the same to be taken and deemed to be a fee due to such District Surveyor in respect of the duties imposed upon him by the Metropolis Management and Building Acts Amendment Act, 1878, and these bylaws; such fees to be payable in the manner

and at the time prescribed by Section 51 of the Metropolitan Building Act, 1855. The District Surveyor shall also, in every case where, in respect of any breach of these bylaws, or of the above Act of Parliament, an application shall have been made by him to a justice, and an order made thereon, be in like manner entitled to receive the sum of 10 shillings in addition to the before-mentioned fee of 5 shillings.

See Lond. Bldg. Act, 1894, secs. 218 and 157.

There shall be paid to the District Surveyor, in respect of his supervision of any building constructed wholly or in part with concrete walls, a fee one half more in amount than the fee to which he would be entitled under the Metropolitan Building Act, 1855, for a new building or addition. *No additional fee is, however, to be charged in respect of any alteration to a concrete building.*

The words in italics are no longer applicable, *see* Third Sched. of Lond. Bldg. Act, 1894.

6. Deposit of Plans and Sections

On notice being given to a District Surveyor of the intended erection, re-erection, alteration of, or addition to a public building, or a building to which Section 56 of the Metropolitan Building Act, 1855, applies, it shall be the duty of the person giving such notice to deposit plans and sections of such erection, re-erection, alteration or addition with the District Surveyor. Such plans and sections shall be of sufficient detail to show the construction.

See Lond. Bldg. Act, 1894, secs. 218 and 82.

On notice being given to the District Surveyor of the intended erection or alteration of, or addition to, any house, building or other erection other than a public building, or one to which Section 56 of the Metropolitan Building Act, 1855, applies, the District Surveyor may, if he think fit so to do, by notice in writing, require the person giving such notice to produce a plan or plans and sections of any such house, building or other erection, or of the intended alterations or additions thereto, for his inspection.

7. Penalties and Dispensation

In case of any breach of any of the provisions contained in these bylaws, the offender shall be liable for

each breach to a penalty not exceeding 5 pounds, and in each case of a continuing offence to a further penalty not exceeding 40 shillings for each day after notice of such offence from the London County Council or the District Surveyor.

In any case in which the Council think it expedient, they may dispense with the observance of any of the foregoing bylaws, or any part thereof, upon such terms and conditions as they may think proper, and in case of the non-observance of any terms and conditions upon which the Council may have dispensed with the observance of any of the foregoing bylaws, then such proceedings may be taken, and such liabilities shall be incurred, as if the same had been enacted by such bylaws.

The Seal of the London County Council was hereto affixed on the 13th day of October, 1891.

Seal of the London County Council

H. De la Hooke,
Clerk of the Council.

I hereby confirm the foregoing Bylaws.

Henry Matthews,
One of her Majesty's Principal Secretaries of State.

Whitehall, 19*th October*, 1891.

LONDON COUNCIL (GENERAL POWERS) ACT, 1890

BYLAWS MADE BY THE COUNCIL UNDER SECTION 31

(*See* London Building Act, 1894, sec. 216).

1. Description and Quality of the Substances of which Plastering is to be made

All laths used for plastering shall be sound laths free from sap, but iron or other incombustible laths, wire netting, or other suitable material to the satisfaction of the District Surveyor, may be used.

Plastering or coarse stuff shall be composed of lime and sand in the proportion of 1 of lime to 3 of sand, mixed with water and hair; but Portland cement, Keene's cement, Parian cement, Martin's cement, Selenitic cement, or other approved cement, or plaster of Paris may also be used for plastering.

The lime to be used must be freshly burned lime.

The sand to be used must be clean, sharp sand, free from loam or earthy matter.

The hair to be used must be good and sound, and free from grease or dirt ; 1 lb. of hair to be used to every 3 cubic feet of coarse stuff. Fibrous material to the satisfaction of the District Surveyor may be used instead of hair, and ground brick or furnace slag, to the satisfaction of the District Surveyor, may be used instead of sand.

The setting coat shall be composed of lime or cement mixed with clean washed sand, or of cement only.

Clear water only is to be used in mixing the material.

The Portland cement to be used must weigh not less than 90 lb. to the imperial bushel.

Fibrous slab or other slab plastering of sufficient thickness and securely fixed, may be used on ceilings, partitions and walls, to the satisfaction of the District Surveyor.

2. As to the Mode in which, and the Materials with which, any Excavation outside the Site of a Building is to be filled up

Any excavation made within a line drawn outside the site of a house, building or other erection, and at an uniform distance therefrom of 3 feet, shall not be filled up otherwise than with the natural soil or with brick or dry rubbish or other suitable material to be approved by the District Surveyor (not consisting of, nor impregnated or mixed with, any fæcal, animal or vegetable matter or with dust or slop or other refuse) and shall be properly rammed.

3. Duties of District Surveyors

It shall be the duty of each District Surveyor, on receiving notice of the commencement of any house, building or other erection, or on his becoming aware that any house, building or other erection is being proceeded with, or that any excavation is being made within a line drawn outside the site of a house, building or other erection, and within 3 feet therefrom, to see that the plastering is of the description and quality prescribed by, and that any excavation be filled up with the material and in the manner specified in, the foregoing bylaws.

4. Fees to be paid to District Surveyors

There shall be paid to the District Surveyor, in respect of his supervision of the plastering of any house, building or other erection, and in respect of the filling in of

any excavation made outside the site of any house, building or other erection, and within a distance of 3 feet therefrom, an inclusive fee of 5 shillings, such fee to be payable in the manner and at the time specified in Section 51 of the Metropolitan Building Act, 1855.

5. Penalties

In case of any breach of the provisions contained in these bylaws, the offender shall be liable for each offence to a penalty not exceeding 5 pounds, and, in each case of a continuing offence, to a further penalty not exceeding 40 shillings for each day after notice of such offence from the London County Council or the District Surveyor.

The Seal of the London County Council was hereto affixed on the 13th day of October, 1891.

Seal of the London County Council

H. De la Hooke,
Clerk of the Council.

I hereby confirm the foregoing Bylaws.

Henry Matthews,
One of her Majesty's Principal Secretaries of State.

Whitehall, 19*th October*, 1891.

The following Regulations, Rules and Standing Orders with regard to matters under the London Building Act, 1894, *and the London Building Act*, 1894 (*Amendment*) *Act*, 1898, *were approved by the Council on November* 8, 1904, *in substitution for those in force on that date.*

LONDON COUNTY COUNCIL

REGULATIONS AND RULES AS TO APPLICATIONS FOR SANCTION, CONSENT AND LICENCES, &c., UNDER THE LONDON BUILDING ACT, 1894, AND THE LONDON BUILDING ACT, 1894 (AMENDMENT) ACT, 1898.

The attention of applicants is specially directed to the provision of Section 194 of the London Building Act, 1894, whereby all applications, plans and other documents delivered at the office of the Council, on delivery there become the property of the Council.

I.—General

Every application (except those under Part XI. of the Act of 1894, as to which see paragraph II. (14) below) must be addressed to the Superintending Architect, County Hall, Spring Gardens, S.W., and must state under which section of the Acts it is made.

All applications must be in writing on foolscap paper, and all drawings (including plans, sections and elevations) must be on tracing linen of sufficient size to permit of the approval of the Council being endorsed thereon.

The scale to which drawings are made must be drawn thereon and not expressed in words; the north point must be indicated on all plans.

The site must be coloured pink, the proposed building red, existing buildings grey, and any land to be dedicated and left open for the use of the public blue.

The full name and address of the person on whose behalf the application is made, and the extent and character of his interest in the property, whether any portion of the site on which the building is proposed to be erected forms part of a disused burial ground, and whether the property is freehold, leasehold or copyhold, must be stated. Particulars must be furnished as to the nature of the application and the situation of the street, building or structure, and the purpose for which such building is required.

All drawings must be in duplicate, and be drawn on the unglazed side of the tracing linen.

II.—Plans, Sections and Particulars required in each case

(1.) *Formation and laying out of new streets—Adaptation of ways for streets and widenings of streets* (see also 13 below), *&c.*, sec. 7 *and* sec. 10 *of the* 1894 *Act.*

Plans must be to a scale of 88 feet to the inch, and must be accompanied by longitudinal sections to the same horizontal scale, but to a vertical scale of 11 feet to the inch, showing the natural and intended surface levels of the streets (computed from ordnance or some other fixed datum), and by cross sections to a scale of 22 feet to the inch.

The width of the new street must also be figured.

A key plan of the locality showing the surrounding property must also be sent.

Each street must be marked on the plans with a number, and referred to in the application as street No. 1, street No. 2 &c. In the event of the application being sanctioned, two additional copies of the plans will be required, and the intended name of each street, identified by reference to the number of the street on the plans, must be submitted in accordance with Section 32 of the Act of 1894. (For regulations as to street naming, *see* Reg 13.)

In the case of the adaptation of ways for streets or the widening of streets under sec. 10, sections will not be required.

Every application for sanction to the formation or laying out of any street, or for the adaptation of any way as a street, must be accompanied by correct and sufficient particulars in writing (which must be verified by production of title deeds should the Council so require) showing how the person on whose behalf the application is made has acquired such control over the land forming the site of the proposed street shown on the plan accompanying his application, as may be requisite to enable him to form or lay out such street, or to adapt such way as the case may be. Such particulars must contain the date of, and the names and addresses of the parties to, the document or documents under which the applicant acquired such control.

(2.) *Buildings* (*a*) *within the prescribed distance,* (*b*) *in advance of the general line of buildings, &c.,* sec. 13, sec. 17, *and* sec. 22, *of the* 1894 *Act and* secs. 3 *and* 4 *of the* 1898 *Act.*

Plans must be to a scale of 22 feet to the inch, and must show the situation of the building in relation to others adjacent to a sufficient extent to show the frontage of the street on either side of the site. The height and precise distance from the centre of the roadway of the proposed building and the width of the street are to be figured.

The names and addresses of the owners and occupiers of the nearest building on each side of the proposed building must also be sent.

In the event of an application being approved, an additional copy of the drawings will be required.

In the case of applications under sec. 13 (5), the extent

and height of the old buildings on the site must be shown to the same scale and a copy of the plans certified by the District Surveyor, together with the originals, should be forwarded. The original certified plans will be returned after being compared with the copy.

(3.) *Open space at the rear of domestic buildings*, sec. 41 ; *and open space about working-class dwellings not abutting upon a street*, sec. 42 *of the* 1894 *Act and* sec. 4 *of the* 1898 *Act.*

Plans and sections must be to the scale of one eighth of an inch to the foot ; they must indicate the height of the proposed buildings in every part ; there must also be a block plan to a scale of 22 feet to 1 inch, showing the adjoining premises, with the approximate height of any buildings thereon, and in any case where it is desired to extend a building or any part thereof above the diagonal line directed to be drawn by the Act of 1894, the diagonal line and also the horizontal line from which it is drawn must be shown on such drawings.

(4.) *Deviations from certified plans of domestic buildings previously existing on old sites*, sec. 43 *of the* 1894 *Act.*

Plans and sections to a scale of one eighth of an inch to a foot, showing the height and extent of the previously existing buildings, and certified by the District Surveyor, must be sent, together with plans and sections of the proposed new buildings to the same scale. The position and approximate height of any adjacent buildings must be indicated on a block plan to a scale of 22 feet to 1 inch. The area of open space to be left and the height of new buildings must be figured.

(5.) *Laying out new streets on a cleared area*, sec. 44 *of the* 1894 *Act.*

In all cases where the proposed new streets have been sanctioned, but not formed, the date of such sanction must be specified in any application submitted under section 44, and every such application must be accompanied by a block plan to a scale of 44 feet to 1 inch, showing the width of all old streets on the area, and the extent and approximate height of all old buildings thereon, together with sections to a scale of one eighth

of an inch to the foot, showing the height of the proposed new buildings.

In any case where sanction has not been obtained to the formation or laying out of proposed new streets upon a cleared area, application for the sanction to such streets must be made in accordance with Regulation II. (1), and should accompany any application made under section 44.

Applications cannot be entertained under sec. 44 for modification or relaxation of the previous provisions of Part V., except in respect of either existing streets or streets for the formation of which the sanction has been obtained under Part II. of the 1894 Act.

(6.) *Height of buildings*, sec. 47 *and* sec. 49 *of the* 1894 *Act.*

A block plan to a scale of 22 feet to an inch, showing the position of the proposed building and of any adjacent buildings, and the width of the street.

Also a plan and sections to a scale of one eighth of an inch to the foot, showing the height of the several parts of the building.

(7.) *Recesses and openings in external walls and recesses in party walls*, sec. 54 *of the* 1894 *Act.*

A block plan to a scale of 22 feet to an inch, showing the position of the building and of adjacent buildings.

Plans of the floors of the building and an elevation of the wall in which the recesses or openings occur to a scale of one eighth of an inch to the foot. The sizes of the recesses and openings must be figured.

(8.) *Timber in external walls*, sec. 55 ; *and furnace chimney-shafts*, sec. 65 *of the* 1894 *Act.*

Plans, sections and elevations to the scale of one eighth of an inch to a foot, together with such details to a larger scale as may be necessary to show the construction.

A block plan to a scale of 22 feet to the inch, showing the position of the building.

(9.) *Means of escape from the upper storeys of high buildings*, sec. 63 *of the* 1894 *Act.*

A block plan to a scale of 22 feet to an inch, showing the position of the building and of adjoining buildings.

Plans of the floors above 60 feet from the street level

to a scale of one eighth of an inch to the foot, and full details of the means of escape to be provided.[1]

(10.) *Projections*, sec. 73 *of the* 1894 *Act.*

In addition to the drawings, &c., required by Regulation II. (2), a plan, section and side elevation to a scale of one eighth of an inch to a foot. In the case of the application being approved an additional copy of the drawings will be required.

(11.) *Additional cubical extent*, sec. 76; *and buildings for the supply of electricity*, sec. 203 *of the* 1894 *Act.*

A block plan to a scale of 22 feet to the inch, showing the position of the proposed building and buildings adjacent.

Plans and sections to a scale of one eighth of an inch to the foot, showing the height of the building in its various parts.

The use to which the various parts of the building are intended to be put is to be indicated, also the positions and numbers of any hydrants or other fire-extinguishing appliances proposed to be provided, and any points bearing upon the question of liability to fire.

(12.) *Special and temporary buildings and structures.* Part VII. *of the* 1894 *Act and* secs. 6 *and* 7 *of the* 1898 *Act.*

Applications must be accompanied by a block plan of the premises, showing the position of the proposed building or structure, and of any adjacent buildings or structures, and also by a plan, elevation and section of the proposed building or structure to a scale of one eighth of an inch to a foot, together with such sections and details to a scale sufficiently large to clearly show the construction.

A fee of 5 shillings must be paid to the cashier of the Council on depositing the application, and a further fee of 5 shillings on obtaining a notification of the order of the Council, and in no case will the approval or licence be issued until the fees are paid.

Every application for a renewal of an approval or licence for a temporary building or structure for a

[1] Sec. 63 of the 1894 Act has been repealed by the Lond. Bldg. Am. Act, 1905, in sec. 7 of which Act will be found provisions substituted.

further period must be accompanied by a certificate from the District Surveyor that it has not been altered as to construction or position, and in cases where the building or structure has existed for 3 years or more as to its stability for such further period as may be applied for, and also as to any repairs which may be requisite.

In cases where the building or structure has existed for less than 3 years, and if the inspection be merely to ascertain that the building has not been altered as to construction or position, and to certify that an extension of time may be allowed, a fee of 10 shillings may be demanded and received by the District Surveyor.

In cases where the building or structure has existed for 3 years or more, and a certificate with regard to structural stability is required, a fee of 20 shillings may be demanded and received by the District Surveyor.

(13.) *Naming of streets and numbering of houses.* Part IV. *of the* 1894 *Act.*

No name is to be used for a street unless with the approval of the Council previously given, and it should be a name consisting of one word with or without the addition of 'street,' 'road' or other like term.

The name should be one that is not already in use in the county; it should, if possible, be in some way associated with the locality.

The Council's list of streets and places in the Administrative County of London, together with an office list of available names, arranged under the districts for which they are appropriate, may be consulted by applicants.

Only such thoroughfares as may be deemed to be of sufficient length or importance may be designated 'roads.'

The Council will be prepared favourably to consider the use of the terms 'avenue' and 'grove' conditionally upon the planting and maintenance of suitable trees in the streets in question; other descriptions, such as 'gardens,' 'crescent,' 'square,' &c., may be used only when the terms seem appropriate.

Applicants proposing names for large blocks of buildings, *e.g.*, artisans' dwellings, mansions, flats, &c., should have regard to the rules which apply to the naming of streets.

The Council should be notified of every name intended to be used as a postal address.

Any person or persons setting up any name to any street in London until the expiration of 1 month after notice of the intention to set up the name has been given to the Council, or setting up any name objected to by the Council under Section 32 of the Act of 1894, is liable to a penalty of 40 shillings, with a continuing penalty of 40 shillings for every day on which the offence continues after conviction.

In numbering houses the rules to be observed are as follows :—

St. Paul's Cathedral is recognised as a central point ; and the numbering of houses begins at the end or entrance of the street nearest to that building, except where a street leads from a main thoroughfare to a less important street, and then the numbering starts from the main thoroughfare.

Taking, therefore, the sides of a street as left and right (assuming that the back is towards St. Paul's) the odd numbers will be assigned to the left-hand side, and the even numbers to the right-hand side.

(Under Section 36 of the Act the Council has the power to order ' that any houses or buildings in any street or way or any part thereof shall, for the purpose of distinguishing the same, be marked with such numbers as they shall deem convenient for that purpose.' Great inconvenience and expense in re-numbering would frequently be saved if the above rules were observed in the first instance.)

Any person interested in property affected by any order of the Council for re-naming streets or re-numbering houses is permitted, on application, to make a copy of the order and a tracing of the plan attached thereto ; or a certified copy of the order and plan may be furnished to him on his paying the cost of making the same.

A fee of 1 shilling is to be charged to all persons seeking information involving a reference to the records with regard to orders for re-naming streets or re-numbering houses.

If a copy of an order and plan be required, there will be a further fee of not less than 1*s.* 6*d.* (*see* following scale).

A more extended plan may be obtained for a larger payment.

Copies of orders and plans are to be made in the Superintending Architect's department.

Scale of fees to be charged for the provision, under section 38 of the London Building Act, 1894, of copies of orders, with or without plans, in relation to the re-naming of streets and the re-numbering of houses :—

		£	s.	d.
For a copy of an order without a plan, or with a plan showing . .	3 houses	0	1	6
For a copy of an order with a plan showing	4 or 5 ,,	0	2	0
	6 ,, 7 ,,	0	2	6
	8 ,, 9 ,,	0	3	0
	10 ,, 11 ,,	0	3	6
	12 ,, 13 ,,	0	4	0
	14 ,, 15 ,,	0	4	6
	16 to 20 ,,	0	5	0
	21 ,, 25 ,,	0	5	6
	26 ,, 30 ,,	0	6	0
	31 ,, 35 ,,	0	6	6
	36 ,, 40 ,,	0	7	0
	41 ,, 45 ,,	0	7	6
	46 ,, 50 ,,	0	8	0
	51 ,, 75 ,,	0	10	6
	76 ,, 100 ,,	0	12	6
	101 ,, 150 ,,	0	15	0
	151 ,, 200 ,,	0	17	6
	201 ,, 300 ,,	1	0	0

(14.) *Dwelling-houses on low-lying lands.* Part XI. (*These regulations were made by the Council on March* 26, 1895, *under Section* 123 *of the London Building Act,* 1894, *and the concurrence of the Tribunal of Appeal was duly signified thereto on April* 8, 1895.)

Every person who shall be desirous of erecting or adapting any building to be used wholly or in part as a dwelling-house on any land in the county of London, of which the surface is below the level of Trinity high-water mark, and which is so situate as not to admit of being drained by gravitation into an existing sewer of the Council, shall first make a written application for a licence. Such application shall be addressed to the Clerk of the Council.

Such application shall contain a statement as to the nature and extent of the interest of the applicant in the building or buildings proposed to be erected or adapted, and be accompanied by a plan and section of the lowest floor of such building or buildings and the curtilages

thereof, to a scale of one eighth of an inch to a foot, and by a block plan to a scale of not less than $\frac{1}{2500}$ (which may be on a sheet or sheets of the Ordnance Survey, or may be drawn on tracing linen), showing the position of such building or buildings, and the local sewer into which it is proposed to drain such building or buildings and the connection of such local sewer with an existing sewer of the Council.[1]

Such plans and sections shall be accompanied by a description of the materials to be used in the construction of such building or buildings, and shall be coloured in accordance therewith. The points of the compass shall be marked on the block plan.

The position and course of the drainage system proposed to be adopted for the disposal of sewage and rain water, and its connection with the local sewer or an existing sewer of the Council, shall be clearly shown on the plans and sections, and the diameter and inclination of the drain pipes shall be figured thereon.

The plan and section shall also indicate in figures the level above or below Ordnance datum at which it is proposed to construct the floor of the lowest rooms.

The decision given by the Chief Engineer of the Council upon such application shall be reported to the Building Act Committee, and the Committee shall report it to the Council, and thereupon, if it is to the effect that the erection or adaptation may not be permitted, the Clerk of the Council shall by letter inform the applicant that the Council, acting upon the decision of the Engineer, has refused permission. If it is to the effect that the erection or adaptation may be permitted, a licence under the seal of the Council, embodying the conditions of the Engineer's decision, shall be issued to the applicant.

Regulation made by the Council on March 26, 1895, *under Section* 122

It shall not be lawful to place the underside of the lowest floor of any permitted building at such a level as will render it liable to flooding, and every permitted building shall be efficiently and properly drained to the satisfaction of the Engineer for the time being of the Council, either into a local sewer or into a main sewer of the Council.

[1] See note to Sec. 122 of Lond. Bldg. Act, 1894, and the case of *Ellis* v. *L. C. C.* there quoted.

STANDING ORDERS

Conditions upon which Applications may be granted

In dealing with applications made under the London Building Act, 1894, and the Amending Act of 1898, with reference to the undermentioned matters, the desirableness of imposing conditions to the following effect shall be considered: but this order shall not limit any power to vary such conditions or to impose such conditions in other matters than those mentioned, or to impose any other conditions in any matter.

In the matter of the formation or laying out of proposed streets, conditions to the following effect:—

(1.) That within from the date of the order the roadway of the proposed street hereby sanctioned shall be clearly defined throughout by posts and rails, or so otherwise as the Council shall permit, and be thrown open to the public as a highway.

(2.) That no building shall be commenced to be erected upon either side of such roadway, or upon a site abutting upon such roadway, unless such roadway shall have been and shall still remain so defined and thrown open as aforesaid, and unless such roadway shall have been and shall still remain so made as regards levels, direction, width and gradients throughout as to comply with the provisions of any statutes and byelaws in force in London regulating streets and buildings, and unless such roadway shall also have been so made and shall still remain as to accord with the plans and sections attached hereto, and the particulars which accompanied the application for the sanction, contained in this order, and unless the name of the street has been approved by the Council and as so approved shall have been affixed and shall be retained at both ends of the street.

In the matter of the erection of one-storey shops in advance of the general line of buildings, a condition to the following effect:—

That no part of the proposed shop or any structure or erection connected therewith do exceed 16 feet

in height above the footway, or such other height as may be fixed by the Council.

In the matter of temporary buildings or structures dealt with under Part VII., conditions to the following effect :—

(1.) That the building or structure be commenced and completed within such periods as may be deemed expedient.

(2.) That if the building or structure be commenced or completed contrary to Condition 1, or be found at any time to have been so erected, set up, altered or adapted as not to be in all respects in accordance with the application for the approval or licence and the plans and particulars relating to such application, or (when approved or licensed for a special purpose) to have been used for any purpose other than a purpose named in the approval or licence, or to have had any unauthorised addition made thereto, or any word, advertisement or device made or retained thereon, such building or structure shall within seven days after service on any owner or occupier thereof for the time being of a notice from the Council requiring its removal, be entirely removed.

In any matter in which land is to be given up conditions to the following effect :—

(1.) That before the building is erected or within such period as may be named in the sanction, consent, licence or approval, the land coloured blue upon the deposited plan shall be dedicated to and left open for the use of the public, and that no pier, pilaster or other projection be placed on such land.

(2.) That no vault, arch, cellar or other construction shall be made in or under the said land coloured blue on the said plan without the previous consent in writing of the local authority.

And in all matters conditions to the following effect :—

That the building, structure or work be set up, erected or carried out, as the case may be, and retained without any addition thereto and in exact accordance with the application for the sanction, consent, licence or approval, and the plans and particulars which accompanied such application.

No sanction, consent, licence or approval shall be

issued until the conditions imposed by the Council in granting the same have been, if the Council so require, accepted in writing by such persons as the Council shall consider the proper parties to comply with such conditions.

November 8, 1904.

THE LONDON BUILDING ACT, 1894

57 & 58 VICT. CAP. CCXIII SEC. 184

THE TRIBUNAL OF APPEAL

Regulations as to the procedure to be followed in cases of Appeal, and the Fees to be paid

Made by the Tribunal and approved by the Lord Chancellor in accordance with Sec. 184

Generally.

1. All communications shall be written, type-written, or printed on foolscap paper.

All drawings shall be on tracing linen and in duplicate.

Any further drawings or copies of drawings shall (if so required by the Tribunal) be supplied by the Appellant.

Time and place for lodging Appeals.

2. Appeals shall be addressed to the Tribunal of Appeal and shall be lodged and the fee thereon shall be paid at the office of the Tribunal, No. 13 Great George Street, Westminster, S.W., by hand, within the period (if any) prescribed by the Act; and where no period is so prescribed, within 14 days after notice of the decision, determination, certificate, requirement or regulation appealed against has been given to or served on the Appellant.

Documents to be lodged with Appeal.

3. The Appeal, which shall specify the section and subsection under which it is made, shall be accompanied by copies of the original application and of the decision, determination, certificate, requirement or regulation appealed against, with copies in duplicate on tracing linen of all plans or drawings relating thereto. These documents shall be supplemented by a short statement of the facts, setting out the grounds of the Appeal, together with a list of the names and addresses of all parties to whom notices under the original application and of this Appeal have been given.

Notices to be given by the Appellant.

4. The Appellant shall also, within the time limited for lodging the Appeal, give notice of such Appeal to the London County Council, and in cases where the

original applicant is not the Appellant, to such applicant ; and in case of an Appeal under any of the following sections also to the persons mentioned opposite such section.

Notices to be given other than to the Council and original Applicant.

Section	With reference to	Persons to whom Notice to be given
5 (8)	The Superintending Architect's determination as to the level of the ground.	The Superintending Architect. The District Surveyor.
13 (3)	The Council's determination that the prescribed distance shall be greater than 20 feet from the centre of the roadway.	The Local Authority.
13 (4)	The Council's consent to the erection, &c., of any building, &c., at a distance less than the prescribed distance from the centre of the roadway.	The Local Authority. The Owners and Occupiers of the nearest building on each side of the proposed building.
19	The refusal or conditional grant of Council's sanction under Part II. to Streets.	The Local Authority.
19	The refusal by a District Surveyor of his Certificate to plans of a building or structure to be altered or re-erected under Section 13.	The District Surveyor. The Local Authority.
25	The Certificate of Superintending Architect as to general line of buildings.	The Superintending Architect. The Local Authority and all other persons entitled under Section 24 to notice of the Superintending Architect's Certificate.
29	The Certificate of the Superintending Architect determining in what street or streets a building or structure is situate.	The Superintending Architect. The Local Authority and all other persons entitled to notice of the Superintending Architect's Certificate.
43 (*i*) & (*iii*)	The refusal of a District Surveyor to certify plans.	The District Surveyor.
44	The Council's determination in cases where a person desires to rearrange a cleared area.	The Local Authority.
46	The Superintending Architect's Certificate determining the front and rear of a building.	The Superintending Architect.
48 (2) *b* & (4)	The Council's refusal to allow a building to be erected to a greater than the prescribed height.	Such Owners or Lessees as the Council may under this section direct.
78	The District Surveyor's requirement respecting the construction of public buildings in case of disagreement.	The District Surveyor.
79	The District Surveyor's requirement respecting the conversion of any building into a public building in case of disagreement.	The District Surveyor.
122	The Council's refusal to permit, or any of the Council's regulations as to, or the decision of their Engineer, or conditions imposed on the Council's grant of a licence for the erection of dwelling-houses on low-lying land.	The Council's Engineer. The Local Authority.
132	The refusal of a District Surveyor to grant a Certificate as to sky signs.	The District Surveyor.

All documents to remain deposited in the office of the Tribunal.

5. All documents lodged with an Appeal shall remain deposited in the office of the Tribunal as records of the case.

Hearing of Appeals.

6. After the lodgment of an Appeal the earliest convenient appointment shall be arranged for the hearing of the Appeal, and shall be communicated to the parties by letter. The fees in respect of the view (if any), the Hearing and Order shall be paid by the Appellant before the hearing.

Appeals shall be heard at such place as the Tribunal may from time to time determine.

Procedure at the hearing of Appeals.

7. The hearing of Appeals shall be open to the public.

The full Tribunal of Three Members shall sit to hear Appeals.

The London County Council and the parties interested may appear before the Tribunal either in person or by Counsel, Solicitor or Agent, and the procedure at the hearing shall, subject to such variations as the Tribunal may think fit, be similar *mutatis mutandis* to that adopted on the trial of actions before the High Court, thus :—

Preliminary objections, if any, to be heard and disposed of.
Appellant to state his case and call his witnesses.
Respondent to state his case and call his witnesses.
Any other parties interested to be heard.
Appellant to reply.

Decision of the Tribunal.

8. The decision of the Tribunal shall be embodied in an Order in writing under the seal of the Tribunal.

Order and documents to be filed.

9. The original Order and all documents relating thereto shall be filed and preserved in the office of the Tribunal.

Office copies.

10. Office copies, under the seal of the Tribunal, of Orders and other documents shall be upon payment supplied to any party to an Appeal, and shall be admissible in evidence for all purposes of the Act and Regulations to the same extent as the original would be admissible. All copies of Orders or other documents appearing to be sealed with the said seal shall be deemed to be office copies without further proof.

Documents open to inspection.

11. The file of documents shall be open to inspection by any person at the office of the Tribunal between the hours of 11 and 3.

Fees.

12. The fees to be paid to the Tribunal by the Appellants and other parties are as follows :—

	* Higher Scale			† Lower Scale		
	£	*s.*	*d.*	£	*s.*	*d.*
Lodging Appeal . . .	2	0	0	1	0	0
View	2	0	0	1	0	0
Hearing	5	0	0	2	0	0
Order	2	0	0	1	0	0
Stating Special Case . .	2	0	0	1	0	0
Inspection of an Order .	0	1	0	0	1	0
,, of File of Proceedings	0	2	6	0	2	6

Office copies, 6*d.* per folio. Plans, &c., according to work involved.

Copies other than office copies, 4*d.* per folio. Plans, &c., according to work involved.

* The Higher Scale shall apply to cases relating to lines of frontage, laying out of streets, open spaces about buildings, height of buildings, conversion of buildings into public buildings and low-lying lands.

† The Lower Scale shall apply to all other cases.

The preceding Regulations as to procedure and fees to be paid were made by the Tribunal of Appeal in accordance with the London Building Act, 1894, Section 184. This twenty-first day of February, 1895.

For and on behalf of the Tribunal,

ARTHUR CATES,

Chairman of the Tribunal.

Approved :

HERSCHELL. *C.*

March 1, 1895.

All communications to be on foolscap paper and to be addressed to the Clerk of the Tribunal, No. 13 *Great George Street, Westminster, S.W.*

All payments to be made in cash. Cheques will not be received.

THE LONDON BUILDING ACT, 1894

THE TRIBUNAL OF APPEAL

Scale of Fees as the remuneration to be paid to District Surveyors under Sec. 156 *of the Act.*

The following fees shall (unless the Tribunal shall in any case direct otherwise) be paid by the London County Council to a District Surveyor for any work

done by such District Surveyor in relation to the preparation of evidence, and giving the same before the Tribunal of Appeal.

	Higher Scale £ s. d.	Lower Scale £ s. d.
For each day's attendance before the Tribunal, to include all work in relation to the preparation of evidence and giving the same	2 2 0	1 1 0

The higher scale shall apply to all cases relating to lines of frontage, laying out of streets, open spaces about buildings, height of buildings, conversion of buildings into public buildings and low-lying lands.

The lower scale shall apply to all other cases.

Signed on behalf of the Tribunal of Appeal in accordance with a resolution of the Tribunal of December 13, 1895.

(signed) ARTHUR CATES,
Chairman of the Tribunal.

THE LONDON BUILDING ACT, 1894

The following fees are to be paid by the Council to District Surveyors, in accordance with section 155 *of the London Building Act*, 1894 :—

	£ s. d.
On reporting that the roadway of a street sanctioned by the Council has been defined and made throughout as regards levels, direction, width and gradient to comply with any statutes and bylaws for the time being in force regulating such street and to comply with the plans and sections attached to the Council's order sanctioning such street, and that all conditions (if any) attached to such sanction have been complied with	2 2 0
On reporting that a way has been adapted as a street, or that a street or way has been widened, in accordance with a sanction given by the Council, on an application made under section 10, and that all conditions (if any) annexed to such sanction have been complied with	1 1 0

	£	s.	d.
On reporting that a building, forecourt boundary or fence has been set back to the distance from the centre of the street sanctioned by the Council under sections 13 or 17, and all conditions (if any) annexed to such sanction have been complied with, and all land (if any) that should have been, has been added to the public way . .	0	5	0
On reporting that a building, other than a building sanctioned by the Council under sections 13 or 17, and upon which the District Surveyor is entitled to a fee under these standing orders, has been erected to the line of frontage for which the consent of the Council was given under section 22, and all conditions (if any) annexed to such consent have been complied with . . .	0	5	0
For attending a Police Court to give evidence on behalf of the Council in relation to any of the above matters ; for each attendance .	0	10	0

METROPOLIS MANAGEMENT AMENDMENT ACT, 1890

53 & 54 VICT. CAP. 66

6. Subject to the provisions of this Act, it shall not be lawful, after the passing of this Act, to form or to lay out, or to commence to form or lay out, any street, road, passage or way over land from which sand, gravel or other subsoil has been excavated or removed, until the site and subsoil of the street, road, passage or way has been properly levelled and made good to a sufficient depth with stones, gravel or other suitable material to form a sound foundation to the satisfaction of the Vestry or District Board, to be expressed in writing ; and it shall not be lawful to excavate, remove or take away any sand, gravel or subsoil from any land upon which any street, road or way has been wholly or in part formed or laid out, or upon which it is intended to form or lay out any street, road, passage or way, except upon such conditions as to the levelling and making a proper foundation for the same as the Vestry of the parish or District Board of the district may in writing impose.

Provided that this section shall not apply where no more sand, gravel or subsoil has been, or is intended to be, excavated, removed or taken away than is

necessary to level or form a foundation for the paving, metalling or flagging of any street, road, passage or way.

If the Vestry or District Board shall refuse their approval in writing, or shall impose conditions, any company or person dissatisfied with such refusal, or with such conditions, may, within 7 days from the date of receiving notice of such refusal or of such conditions, appeal to the Council, and such appeal shall stand referred to such committee of the Council as the Council may appoint; and such committee shall have power to confirm or reverse such refusal, or to vary the conditions imposed, or impose such conditions as they may think fit, and their determination shall be final; and such committee may order any costs of such appeal to be paid to or by the Vestry or District Board or person appealing.

Any company or person forming or laying out, or commencing to form or lay out, any street, road, passage or way, or excavating, removing or taking away any sand, gravel or subsoil contrary to the provisions of this Act, or to the conditions imposed by the Vestry or District Board, or on appeal by the Council, shall for every such offence be liable to a penalty not exceeding 5 pounds, and to a further penalty not exceeding 20 shillings for every day after the first during which the offence continued, or during which such excavation shall be permitted to remain, without the consent in writing of the Vestry or District Board, or on appeal of the Council. Provided always that nothing in this section contained shall apply to any road, passage or way formed or laid out, or to be formed or laid out, and intended to be maintained as a road, passage or way not open to public use.

Provided also that nothing in this section contained shall prejudice or affect any existing rights of the owners of property fronting or abutting on any street, road, passage or way to excavate subsoil for the purpose of forming or constructing cellars, vaults, subways or basements in connection with buildings erected on such property.

Q. B. 1892 (Hawkins and Wills, JJ.) The local authority have no power absolutely to refuse to allow any subsoil to be excavated or removed, but only to impose conditions as to levelling and making good the soil (*Wandsworth B. W.* v. *Bird*, (1892), 1 Q. B. 481).

Underground Rooms [1]

Provisions as to the occupation of underground rooms as dwellings.

96. (1.) Any underground room, which was not let or occupied separately as a dwelling before the passing of this Act, shall not be so let or occupied unless it possesses the following requisites, that is to say :

(*a*) Unless the room is in every part thereof at least 7 feet high, measured from the floor to the ceiling, and has at least 3 feet of its height above the surface of the street or ground adjoining or nearest to the room : Provided that, if the width of the area hereinafter mentioned is not less than the height of the room from the floor to the said surface of the street or ground, the height of the room above such surface may be less than 3 feet, but it shall not in any case be less than 1 foot, and the width of the area need not in any case be more than 6 feet ;

(*b*) Unless every wall of the room is constructed with a proper damp course, and, if in contact with the soil, is effectually secured against dampness from that soil ;

(*c*) Unless there is outside of and adjoining the room, and extending along the entire frontage thereof, and upwards from 6 inches below the level of the floor thereof, an open area, properly paved, at least 4 feet wide in every part thereof : Provided that, in the area may be placed steps necessary for access to the room, and over and across such area there may be steps necessary for access to any building above the underground room, if the steps in each case be so placed as not to be over or across any external window ;

(*d*) Unless the said area and the soil immediately below the room are effectually drained ;

(*e*) Unless, if the room has a hollow floor, the space beneath it is sufficiently ventilated to the outer air ;

(*f*) Unless any drain passing under the room is properly constructed of a gas-tight pipe ;

(*g*) Unless the room is effectually secured against the rising of any effluvia or exhalation ;

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[1] See Lond. Bldg. Act, 1894, Sec. 70 (1) *f*.

S. 96

(*h*) Unless there is appurtenant to the room the use of a water-closet, and a proper and sufficient ashpit ;

(*i*) Unless the room is effectually ventilated ;

(*j*) Unless the room has a fireplace with a proper chimney or flue ;

(*k*) Unless the room has one or more windows opening directly into the external air, with a total area clear of the sash frames equal to at least one tenth of the floor area of the room, and so constructed that one half at least of each window of the room can be opened, and the opening in each case extends to the top of the window.

(2.) If any person lets or occupies, or continues to let, or knowingly suffers to be occupied, any underground room contrary to this enactment, he shall be liable to a fine not exceeding 20 shillings for every day during which the room continues to be so let or occupied.

(3.) The foregoing provisions shall, at the expiration of 6 months after the commencement of this Act, extend to underground rooms, let or occupied separately as dwellings before the passing of this Act ; except that the sanitary authority, either by general regulations providing for classes of underground rooms, or on the application of the owner of such room in any particular case, may dispense with or modify any of the said requisites which involve the structural alteration of the building, if they are of opinion they can properly do so having due regard to the fitness of the room for human habitation, to the house accommodation in the district, and to the sanitary condition of the inhabitants and to other circumstances ; but any requisite which was required before the passing of this Act shall not be so dispensed with or modified.

(4.) The dispensations and modifications may be allowed either absolutely or for a limited time, and may be revoked and varied by the sanitary authority, and shall be recorded, together with the reasons, in the minutes of the sanitary authority.

(5.) If the owner of any room feels aggrieved by a dispensation or modification not being allowed as regards that room, he may appeal to the Local Government Board, and that Board may refuse the dispensation or modification, or allow it wholly or partly, as if they were the sanitary authority. Such allowance may be revoked or varied by the Board, but not by the sanitary authority.

(6.) Where two or more underground rooms are occupied together, and are not occupied in conjunction with any other room or rooms on any other floor of the same house, each of them shall be deemed to be separately occupied as a dwelling within the meaning of this section.

(7.) Every underground room in which a person passes the night shall be deemed to be occupied as a dwelling within the meaning of this section; and evidence giving rise to a probable presumption that some person passes the night in an underground room shall be evidence, until the contrary is proved, that such has been the case.

(8.) Where it is shown that any person uses an underground room as a sleeping-place, it shall, in any proceeding under this section, lie on the defendant to show that the room is not separately occupied as a dwelling.

(9.) For the purpose of this section, the expression 'underground room' includes any room of a house, the surface of the floor of which room is more than 3 feet below the surface of the footway of the adjoining street, or of the ground adjoining or nearest to the room.

Enforcement of provisions as to underground rooms.

97. (1.) Any officer of a sanitary authority, appointed or determined by that authority for the purpose, shall, without any fee or reward, report to the sanitary authority, at such times and in such manner as the sanitary authority may order, all cases in which underground rooms are occupied contrary to this Act in the district of such authority.

(2.) Any such officer, or any other person, having reasonable grounds for believing that any underground room is occupied in contravention of this Act, may enter and inspect the same at any hour by day; and if admission is refused to any person other than an officer of the sanitary authority, the like warrant may be granted by a justice under this Act as in case of refusal to admit any such officer.

(3.) A warrant of a justice authorising an entry into an underground room may authorise the entry between any hours specified in the warrant.

Provision in case of two convictions for unlawfully occupying underground room.

98. Where two convictions for an offence relating to the occupation of an underground room as a dwelling have taken place within a period of 3 months (whether the persons convicted were or were not the same), a Petty Sessional Court may direct the closing of the underground room for such period as the Court may deem necessary, or may empower the sanitary authority of the district permanently to close the same, in such manner as they think fit, at their own cost.

LONDON GOVERNMENT ACT, 1899

62 & 63 VICT.

CHAPTER 14

An Act to make better provision for Local Government in London. [13th July, 1899.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

. . . . . .

Transfer of powers from London County Council.

5. (1.) As from the appointed day the powers and duties of the London County Council under the enactments mentioned in Part I. of the Second Schedule to this Act shall, subject to the conditions mentioned in that Schedule, be transferred to each Borough Council as respects their Borough.

(2.) As from the appointed day the powers of the London County Council under the enactments mentioned in Part II. of the Second Schedule to this Act may, subject to the conditions mentioned in that Schedule, be exercised also by each Borough Council as respects their Borough.

K. B. 1902 (Alverstone, C.J., Darling and Channell, JJ.) A stand made entirely of wood except for the nails and fastenings erected to enable persons to view a public procession was held to be a ' wooden structure ' within sec. 84 of Lond. Bldg. Act, 1894 ; and the power to license such stands and to take proceedings in default of obtaining a licence or observing the conditions thereof was held to be transferred by this section from the L. C. C. to the Borough Council. The Court refused to consider the question whether these structures were still subject to the supervision of the District Surveyors, as they could not deal with that point without deciding what are the rights, duties and obligations of District Surveyors, and they being no parties to the case stated were not represented (*City of Westminster* v. *L. C. C.*, (1902), 1 K. B. 326 ; 66 J. P. 199 ; 71 L. J. (K. B.) 244 ; 84 L. T. 53 ; 50 W. R. 429).

K. B. 1902 (Alverstone, C.J., Darling and Channell, JJ.) The powers, duties and liabilities of the District Surveyors with respect to the supervision or inspection of wooden structures falling under sec. 84 of Lond. Bldg. Act, 1894, have not been transferred to the Borough Councils and their officers (*City of Westminster* v. *Watson and others* (1902) 2 K. B. 717 ; 87 L. T. 326 ; 51 W. R. 300 ; 71 L. J. (K. B.) 603 ; 25 T. L. R. 621 ; 46 S. J. 514).

. . . . . .

Proceeding in case of doubts as to transfer of powers.

29. If any question arises, or is about to arise, as to whether any power, duty or liability is or is not transferred by or under this Act to the Council of any metropolitan borough, or any property is or is not vested in any such Council; that question, without prejudice to any other mode of trying it, may, on the application of the Council, be submitted for decision to the High Court in such summary manner as, subject to any rules of Court, may be directed by the Court; and the Court, after hearing such parties and taking such evidence (if any) as it thinks just, shall decide the question.

The cases of *City of Westminster* v. *L. C. C.* and *City of Westminster* v. *Watson, supra*, have been decided under this section. *See* note to sec. 5.

. . . . . .

SECOND SCHEDULE

Part I

MINOR POWERS AND DUTIES TO BE TRANSFERRED FROM COUNTY COUNCIL

Sec. 5 (1).

Powers and Duties transferred.	Conditions of Transfer.
Power under section 84 of the London Building Act, 1894, to license the setting up of wooden structures, and power to take proceedings for default in obtaining or observing the conditions of a licence under that section.	
Power under section 134 of the London Building Act, 1894, in relation to the removal of unauthorised sky signs.	Subject in case of default to the provisions of the Public Health (London) Act, 1891, as if the default were a default under that Act.
Powers under section 199 of the London Building Act, 1894, which section relates to the removal of obstructions in streets.	

. . . . . .

Part II

Sec. 5 (2).

POWERS OF COUNTY COUNCIL TO BE EXERCISED ALSO BY BOROUGH COUNCILS

57 & 58 Vict. cap. cxiii.

Powers exercisable.	Conditions of exercise.
Power under section 170 of the London Building Act, 1894, which section relates to the demolition of buildings in case of the conviction for an offence against the Act, or bylaws made under it.	The power to be exercised only where the Borough Council have obtained the conviction.
Power to take proceedings in respect of timber or other articles piled, stacked or stored in contravention of section 197 or section 200 (11) (*h*) of the London Building Act, 1894.	The power to be exercised only within the borough.

. . . . . .

FACTORY AND WORKSHOP ACT, 1901

1 EDW. VII. CAP. 22.

An Act to consolidate with Amendments the Factory and Workshop Acts. [17th August, 1901]

BE it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

. . . . . .

Provision of means of escape in case of fire.

14. (1.) Every factory of which the construction was not commenced on or before the first day of January, one thousand eight hundred and ninety-two, and in which more than 40 persons are employed, and every workshop of which the construction was not commenced before the first day of January, one thousand eight hundred and ninety-six, and in which more than 40 persons are employed, must be furnished with a certificate from the District Council of the district in which the factory or workshop is situate that the factory or workshop is provided with such means of escape in case of fire for the persons employed therein as can reasonably

be required under the circumstances of each case; and if the factory or workshop is not so furnished it shall be deemed not to be kept in conformity with this Act; and it shall be the duty of the Council to examine every such factory and workshop, and, on being satisfied that the factory or workshop is so provided, to give such a certificate as aforesaid. The certificate must specify in detail the means of escape so provided. S. 14

(2.) With respect to all factories and workshops to which the foregoing provisions of this section do not apply, and in which more than 40 persons are employed, it shall be the duty of the District Council of every district from time to time to ascertain whether all such factories and workshops within their district are provided with such means of escape as aforesaid, and, in the case of any factory or workshop which is not so provided, to serve on the owner of the factory or workshop a notice in writing specifying the measures necessary for providing such means of escape as aforesaid, and requiring him to carry them out before a specified date; and thereupon the owner shall, notwithstanding any agreement with the occupier, have power to take such steps as are necessary for complying with the requirements; and unless the requirements are complied with, the owner shall be liable to a fine not exceeding 1 pound for every day that the non-compliance continues.

Q. B. 1886 (Day and Smith, JJ.) Where an officer of a local authority, purporting to act under Met. Man. Act, 1855, served a notice requiring certain sanitary work to be done without the local authority having, prior to the service of the notice, authorised the service of such notice; it was held that the notice was bad, as the local authority had not exercised any discretion in the matter, and that the statute had not been complied with (*St. Leonard's, Shoreditch, V.* v. *Holmes*, 50 J. P. 133).

As discretionary authority is given to the Council under this section, and not to any officer, this decision will probably have some application.

Q. B. 1900 (Phillimore and Bucknill, JJ.) Where the upper part of a building was used as a factory, and the lower storeys were let to tenants, it was held that the whole building was not a factory, but that each set of storeys used for one business was, and that consequently the owner could not be compelled to erect a staircase through the lower storeys if by so doing he would be committing a trespass (*In re the L. C. C. & Lewis*, 69 L. J. (Q. B.) 277; 82 L. T. 195; 64 J. P. 39).

K. B. 1901 (Alverstone, C.J., and Lawrence, J.) Where the Council had given notice to the owner of a factory to provide certain works as a means of escape in case of fire, which would, if carried out, involve an act of trespass on other premises in the

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occupation of others, though the owner of the factory did not claim arbitration, it was held that the notice was not final against him and that the magistrate ought not to convict for refusal to comply (*In re the L. C. C. & Brass*, 17 T. L. R., 504).

Ch. 1902 (Buckley, J.) Where there are two separate factories in the same building, not being a 'tenement factory,' it is the duty of the Council to specify the works required for the protection of each factory considered separately. Where two such factories belong to the same owner, if the Council serve on him a notice requiring him to construct works for the protection of both factories jointly, such notice is bad, and the owner has no right to enter upon one factory for the purpose of making works for the protection of the other factory (*Toller* v. *Spiers & Pond, Ltd.* (1903), 1 Ch. 362; 67 J. P. 234; 72 L. J. (Ch.) 191; 87 L. T. 578; 51 W. R. 381; 1 L. G. R. 193).

K. B. 1903 (Alverstone, C.J., Wills and Channell, JJ.) Where two adjacent houses, let by the same owner to the same tenant on separate leases, were occupied for the purposes specified in sec. 149 (1) *c*, but were only connected by an emergency exit from the window of one to the roof of the other, and by a bridge on the first-floor level over which business traffic passed, and in one of the houses more than 40 persons were employed, the umpire had found that the two houses together constituted one factory within the section; it was held that the umpire was entitled to so find (*In re the L. C. C. & Tubbs*, 68 J. P. 29; 1 L. G. R. 746; 1 A. L. R. 5).

(3.) In case of a difference of opinion between the owner of the factory or workshop and the Council under the last foregoing subsection, the difference shall, on the application of either party, to be made within 1 month after the time when the difference arises, be referred to arbitration; and thereupon the provisions of the First Schedule to this Act shall have effect, and the award on the arbitration shall be binding on the parties thereto, and the notice of the Council shall be discharged, amended or confirmed in accordance with the award.

(4.) If the owner alleges that the occupier of the factory or workshop ought to bear or contribute to the expenses of complying with the requirement, he may apply to the County Court having jurisdiction where the factory or workshop is situate; and thereupon the County Court, after hearing the occupier, may make such order as appears to the Court just and equitable under all the circumstances of the case.

Compare with somewhat similar provision in Lond. Bldg. Am. Act, 1905, sec. 20.

K. B. 1902 (Alverstone, C.J., Darling and Channell, JJ.) Where the owner of a factory had, under a notice from the Council, executed works to provide means of escape in case of fire, and the tenant under his lease had covenanted to 'from time to time and at all times during the said term pay and discharge all

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rates, taxes, charges, assessments and outgoings whatsoever, whether Parliamentary, parochial, local or of any other description, which now are or may be at any time assessed, charged or imposed upon the demised premises, or the landlord or the occupier in respect thereof' ; it was held that, whatever might be the true construction of the covenant, the County Court judge had jurisdiction to apportion the expense of providing the means of escape between the lessor and lessee in such proportion as to him appeared 'just and equitable under all the circumstances of the case,' that he was bound to take into consideration the contract between the parties, but, unless there was something in the terms of the lease to make it unjust and inequitable that he should apportion the amount between them, he had jurisdiction so to do (*Monk* v. *Arnold*, (1902) 1 K. B. 761 ; 71 L. J. (K. B.) 441 ; 86 L. T. 580 ; 50 W. R. 667).

K. B. 1902 (Lawrence, J.) The facts being substantially the same as in the last quoted case, it was held that the landlord may sue upon such a covenant in the High Court and is not restricted to his remedy in the County Court provided by the Factory and Workshop Act (*Shephard* v. *Barber*, 67 J. P. 238 ; 1 L. G. R. 157).

K. B. 1904 (Darling, J.) The facts being substantially the same as in the two above quoted cases, the covenant being 'to pay all existing and future taxes, sewers rates, and rates, assessments and outgoings of every description for the time being payable by the landlord or tenant in respect of the said demised premises,' it was held that the expenses of the works executed were 'outgoings' within the covenant, but that the landlord had no cause of action in the High Court and had no other remedy than by making an application to the County Court (*Horner* v. *Franklin and Another*, (1905) 1 K. B. 479 ; 74 L. J. (K. B.) 291 ; 92 L. T. 178 ; 68 J. P. 579).

(5.) For the purpose of enforcing the foregoing provisions of this section, an inspector may give the like notice and take the like proceedings as under the foregoing provisions of this Act with respect to matters punishable or remediable under the law relating to public health but not under this Act, and those provisions shall apply accordingly.

(6.) The means of escape in case of fire provided in any factory or workshop shall be maintained in good condition and free from obstruction, and if it is not so maintained the factory or workshop shall be deemed not to be kept in conformity with this Act.

(7.) For the purposes of this section the whole of a tenement factory or workshop shall be deemed to be one factory or workshop, and the owner shall be substituted for the occupier.

. . . . . .

15. Every District Council shall, in addition to any powers which they possess with reference to the prevention of fire, have power to make bylaws providing for

Bylaws for means of escape from fire.

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means of escape from fire in the case of any factory or workshop, and sections 182 to 186 of the Public Health Act, 1875, shall apply to any bylaws so made.

Doors of factory or workshop to open from inside.

16. (1.) While any person employed in a factory or workshop is within the factory or workshop for the purpose of employment or meals, the doors of the factory or workshop, and of any room therein in which any such person is, must not be locked or bolted or fastened in such a manner that they cannot be easily and immediately opened from the inside.

(2.) In every factory or workshop the construction of which was not commenced before the first day of January, one thousand eight hundred and ninety-six, the doors of each room in which more persons than 10 are employed, shall, except in the case of sliding doors, be constructed so as to open outwards.

(3.) A factory or workshop in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

. . . . . .

Application of Act to laundries.

103. (1.) In every laundry carried on by way of trade or for purposes of gain the following provisions shall apply :—

. . . . . .

(*d*) So far as regards provisions with respect to health and safety, accidents, education of children, notice of occupation of a factory or workshop, the affixing of abstracts and notices and the matters to be specified in those notices (so far as they apply to laundries), powers of inspectors, fines and legal proceedings for any failure to comply with the provisions of this section, this Act shall have effect as if every laundry in which steam, water or other mechanical power is used in aid of the laundry process were a factory, and every other laundry were a workshop, and as if every occupier of a laundry were the occupier of a factory or of a workshop ;

. . . . . .

Fine for not keeping factory or workshop in conformity with Act.

135. (1.) If a factory or workshop is not kept in conformity with this Act, the occupier thereof shall be liable to a fine not exceeding 10 pounds, and, in the case of a second or subsequent conviction in relation to a factory within 2 years from the last conviction

for the same offence, not less than 1 pound for each offence. S. 135

(2.) The Court of summary jurisdiction, in addition to or instead of inflicting a fine, may order certain means to be adopted by the occupier, within the time named in the order, for the purpose of bringing his factory or workshop into conformity with this Act. The Court may, on application, enlarge the time so named, but if, after the expiration of the time as originally named or enlarged by subsequent order, the order is not complied with, the occupier shall be liable to a fine not exceeding 1 pound for every day on which the non-compliance continues.

. . . . . .

Prosecution of offences and recovery and application of fines.

144. (1.) All offences under this Act shall be prosecuted, and all fines under this Act shall be recovered, on summary conviction, before a Court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

(2.) A summary order may be made for the purposes of this Act by a Court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

(3.) All fines imposed in pursuance of this Act shall, save as otherwise expressly provided for by this Act, be paid into the Exchequer.

. . . . . .

Appeal to Quarter Sessions.

145. If any person feels aggrieved by a conviction or order made by a Court of summary jurisdiction on determining an information or complaint under this Act, he may appeal therefrom to Quarter Sessions.

. . . . . .

Service of notices and documents, &c.

148. Any notice, order, requisition, summons and document required or authorised to be served or sent for the purposes of this Act—

(*a*) may be served and sent by post, or by delivering the same to or at the residence of the person on or to whom it is to be served or sent, or (where he is the owner of a factory or workshop) by delivering the same or a true copy thereof to his agent, or (where he is the occupier of a factory or workshop) by delivering the same or a true copy thereof to his agent or to some person in the factory or workshop ; and

(*b*) where it is required to be served on or sent to the occupier of a factory or workshop, shall be deemed to be properly addressed if addressed to the occupier of the factory or workshop at

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the factory or workshop, with the addition of the proper postal address, but without naming the person who is the occupier.

Factories and workshops to which Act applies.

149. (1.) Subject to the provisions of this section, the following expressions have in this Act the meanings hereby assigned to them—that is to say :—

The expression 'textile factory' means any premises wherein or within the close or curtilage of which steam, water or other mechanical power is used to move or work any machinery employed in preparing, manufacturing or finishing, or in any process incident to the manufacture of cotton, wool, hair, silk, flax, hemp, jute, tow, china-grass, cocoa-nut fibre or other like material, either separately or mixed together, or mixed with any other material, or any fabric made thereof :

Provided that print works, bleaching and dyeing works, lace warehouses, paper mills, flax scutch mills, rope works and hat works shall not be deemed to be textile factories ;

The expression 'non-textile factory' means—

(*a*) any works, warehouses, furnaces, mills, foundries or places named in Part I. of the Sixth Schedule to this Act ; and

(*b*) any premises or places named in Part II. of the said Schedule wherein or within the close or curtilage or precincts of which steam, water or other mechanical power is used in aid of the manufacturing process carried on there ; and

(*c*) any premises wherein or within the close or curtilage or precincts of which any manual labour is exercised by way of trade or for purposes of gain in or incidental to any of the following purposes—namely,

(i.) the making of any article or of part of any article ; or

(ii.) the altering, repairing, ornamenting or finishing of any article ; or

(iii.) the adapting for sale of any article,

and wherein or within the close or curtilage or precincts of which steam, water or other mechanical power is used in aid of the manufacturing process carried on there :

The expression 'factory' means textile factory and non-textile factory, or either of those descriptions of factories :

The expression 'tenement factory' means a factory where mechanical power is supplied to different parts of the same building occupied by different persons for the purpose of any manufacturing process or handicraft, in such manner that those parts constitute in law separate factories; and for the purpose of the provisions of this Act with respect to tenement factories all buildings situate within the same close or curtilage shall be treated as one building: S. 149

Ch. 1902 (Buckley, J.) Where there are two separate factories in the same building and the mechanical power is not supplied from the same source the two factories do not constitute one 'tenement factory' (*Toller* v. *Spiers & Pond*, (1903) 1 Ch. 312; 67 J. P. 234; 72 L. J. (Ch.) 191; 87 L. T. 578; 51 W. R. 381; 1 L. G. R. 193).

K. B. 1904 (Alverstone, C.J., Wills and Kennedy, JJ.) Where certain premises were occupied by three different persons in different parts, two of the parts constituting in law separate factories, and the occupiers of these factories produced and used their own mechanical power in their respective factories; it was held that, as the mechanical power was not supplied from a common source, the premises containing the two factories could not constitute a 'tenement factory' within this section (*Brass* v. *L. C. C.*, (1904) 2 K. B. 336; 68 J. P. 365; 73 L. J. (K. B.) 841; 91 L. T. 344; 2 L. G. R. 809; 20 T. L. R. 464; 1 A. L. R. 9).

The expression 'workshop' means—

(*a*) any premises or places named in Part II. of the Sixth Schedule to this Act, which are not a factory; and

(*b*) any premises, room or place, not being a factory, in which premises, room or place, or within the close or curtilage or precincts of which premises, any manual labour is exercised by way of trade or for purposes of gain in or incidental to any of the following purposes—namely

(i.) the making of any article or of part of any article; or

(ii.) the altering, repairing, ornamenting or finishing of any article; or

(iii.) the adapting for sale of any article,

and to or over which premises, room or place the employer of the persons working therein has the right of access or control:

The expression 'workshop' includes a tenement workshop:

The expression 'tenement workshop' means any

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workplace in which, with the permission of or under agreement with the owner or occupier, 2 or more persons carry on any work which would constitute the workplace a workshop if the persons working therein were in the employment of the owner or occupier.

(2.) A part of a factory or workshop may, with the approval in writing of the chief inspector, be taken for the purposes of this Act to be a separate factory or workshop.

(3.) A room solely used for the purpose of sleeping therein shall not be deemed to form part of the factory or workshop for the purposes of this Act.

(4.) Where a place situate within the close, curtilage or precincts forming a factory or workshop is solely used for some purpose other than the manufacturing process or handicraft carried on in the factory or workshop, that place shall not be deemed to form part of the factory or workshop for the purposes of this Act, but shall, if otherwise it would be a factory or workshop, be deemed to be a separate factory or workshop, and be regulated accordingly.

(5.) A place or premises shall not be excluded from the definition of a factory or workshop by reason only that the place or premises is or are in the open air.

(6.) The exercise by any young person or child in any recognised efficient school, during a portion of the school hours, of any manual labour for the purpose of instructing the young person or child in any art or handicraft shall not be deemed to be an exercise of manual labour for the purpose of gain within the meaning of this Act.

Application to Crown factories and workshops.

150. (1.) This Act applies to factories and workshops belonging to the Crown; but in case of any public emergency the Secretary of State may, by order, to the extent and during the period named by him, exempt from this Act any factory or workshop belonging to the Crown, or any factory or workshop in respect of work which is being done on behalf of the Crown under a contract specified in the order.

(2.) A factory or workshop belonging to, or in the occupation of, the Crown shall not be excluded from the operation of this Act by reason only that it is not carried on by way of trade or for the purpose of gain.

(3.) The powers conferred by this Act on a District Council or other local authority shall, in the case of a factory or workshop belonging to or in the occupation of the Crown, be exercised by an inspector under this Act.

151. The Secretary of State may by special order direct, with respect to any class of factories or workshops, that different branches or departments of work carried on in the same factory or workshop shall, for all or any of the purposes of this Act, be treated as if they were different factories or workshops.

Power to treat separate branches as separate factories or workshops.

153. (1.) In the application to the administrative county of London of the section of this Act relating to the means of escape from fire, the London County Council shall take the place of the District Council, and their expenses in the execution of that section shall be defrayed as part of their expenses in the management of the London Building Act, 1894.

Application of Act to London.

(2.) In the application to the administrative county of London of the section of this Act giving power to make bylaws providing for means of escape from fire, the reference to a District Council shall be construed as a reference to the London County Council.

(3.) The power of the London County Council under Section 164 of the London Building Act, 1894, to make bylaws with respect to the means of escape from fire in buildings exceeding 60 feet in height shall extend to all factories and workshops, whether exceeding 60 feet in height or not.

These bylaws, if and when made, would be enforced by the District Surveyor under sec. 146 of Lond. Bldg. Act, 1894.

. . . . . .

156. (1.) In this Act, unless the context otherwise requires—

General definitions.

. . . . . .

The expression 'owner' has the meaning given to it by Section 4 of the Public Health Act, 1875 :

'Owner.'

See note to Lond. Bldg. Am. Act, 1905, sec. 6 (1).

By Public Health Act, 1875 (38 & 39 Vict. cap. 55) sec. 4, 'Owner' means the person for the time being receiving the rack-rent of the lands or premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rack-rent.

'Rack-rent' means the rent which is not less than two thirds of the full nett annual value of the property out of which the rent arises, and the full nett annual value shall be taken to be the rent at which the property might reasonably be expected to let from year to year, free of all usual tenants' rates and taxes, and tithe commutation rent charge (if any), and deducting therefrom the probable average annual cost of repairs, insurance and other expenses (if any) necessary to maintain the same in a state to command such rent.

SCHEDULES

Section 14.

FIRST SCHEDULE

PROVISIONS AS TO ARBITRATIONS

(1.) The parties to the arbitration are in this Schedule deemed to be the owner of the factory or workshop on the one hand and the District Council on the other hand.

(2.) Each of the parties to the arbitration may, within 14 days after the date of the reference, appoint an arbitrator.

(3.) No person shall act as arbitrator or umpire who is employed in, or in the management of, or is interested in, the factory or workshop to which the arbitration relates.

(4.) The appointment of an arbitrator must be in writing, and notice of the appointment shall be forthwith sent to the other party to the arbitration, and the appointment shall not be revoked without the consent of that party.

(5.) The death or removal of, or other change in, any of the parties to the arbitration shall not affect the proceedings under this Schedule.

(6.) If within the said 14 days either of the parties fails to appoint an arbitrator, the arbitrator appointed by the other party may proceed to hear and determine the matter in difference, and in that case the award of the single arbitrator shall be final.

(7.) If before an award has been made any arbitrator appointed by either party dies or becomes incapable to act, or for 7 days refuses or neglects to act, the party by whom that arbitrator was appointed may appoint some other person to act in his place; and if he fails to do so within 7 days after notice in writing from the other party for that purpose, the remaining arbitrator may proceed to hear and determine the matter in difference, and in that case the award of the single arbitrator shall be final.

(8.) In either of the foregoing cases where an arbitrator is empowered to act singly, on one of the parties failing to appoint, the party so failing may, before the single arbitrator has actually proceeded in the arbitra-

tion, appoint an arbitrator, who shall then act as if no failure had occurred.

(9.) If the arbitrators fail to make their award within 21 days after the day on which the last of them was appointed, or within such extended time (if any) as has been appointed for that purpose by both arbitrators under their hands, the matter in difference shall be determined by the umpire appointed as hereinafter mentioned.

(10.) The arbitrators, before they enter on the matter referred to them, shall appoint by writing under their hands an umpire to decide on points on which they may differ.

(11.) If the umpire dies or becomes incapable of acting before he has made his award, or refuses to make his award within a reasonable time after the matter has been brought within his cognizance, the persons or person who appointed such umpire shall forthwith appoint another umpire in his place.

(12.) If the arbitrators refuse or fail, or for 7 days after the request of either party neglect, to appoint an umpire, then on the application of either party an umpire may be appointed by the chairman of the Quarter Sessions within the jurisdiction of which the factory or workshop is situate.

(13.) The decision of every umpire on the matters referred to him shall be final.

(14.) If a single arbitrator fails to make his award within 21 days after the day on which he was appointed, the party who appointed him may appoint another arbitrator to act in his place.

(15.) Arrangements shall, whenever practicable, be made for the matters in difference being heard at the same time before the arbitrators and the umpire.

(16.) The arbitrators and the umpire, or any of them, may examine the parties and their witnesses on oath, and may also consult any counsel, engineer, or scientific person whom they think it expedient to consult.

(17.) The payment, if any, to be made to any arbitrator or umpire for his services shall be fixed by the Secretary of State, and, together with the costs of the arbitration and award, shall be paid by the parties or one of them, according as the award may direct. Such costs may be taxed by a master of the Supreme Court, or, in Scotland, by the auditor of the Court of Session, and the taxing officer shall, on the written application of either of the parties, ascertain and certify the proper

amount thereof. The amount, if any, payable by the Secretary of State shall be paid as part of the expenses of inspectors under this Act. The amount, if any, payable by the occupier of the factory or workshop may, in the event of non-payment, be recovered in the same manner as fines under this Act.

. . . . . .

SIXTH SCHEDULE

Sections 54, 149, 156.

LIST OF FACTORIES AND WORKSHOPS

PART I

NON-TEXTILE FACTORIES

'Print works.'

(1.) 'Print works,' that is to say, any premises in which any persons are employed to print figures, patterns or designs upon any cotton, linen, woollen, worsted or silken yarn, or upon any woven or felted fabric not being paper ;

'Bleaching and dyeing works.'

(2.) 'Bleaching and dyeing works,' that is to say, any premises in which the processes of bleaching, beetling, dyeing, calendering, finishing, hooking, lapping and making up and packing any yarn or cloth of any material, or the dressing or finishing of lace, or any one or more of such processes, or any process incidental thereto, are or is carried on ;

'Earthenware works.'

(3.) 'Earthenware works,' that is to say, any place in which persons work for hire in making or assisting in making, finishing or assisting in finishing, earthenware or china of any description, except bricks and tiles not being ornamental tiles ;

'Lucifer-match works.'

(4.) 'Lucifer-match works,' that is to say, any place in which persons work for hire in making lucifer matches, or in mixing the chemical materials for making them, or in any process incidental to making lucifer matches except the cutting of the wood ;

'Percussion-cap works.'

(5.) 'Percussion-cap works,' that is to say, any place in which persons work for hire in making percussion caps, or in mixing or storing the chemical materials for making them, or in any process incidental to making percussion caps ;

'Cartridge works.'

(6.) 'Cartridge works,' that is to say, any place in which persons work for hire in making cartridges, or in any process incidental to making cartridges, except the

manufacture of the paper or other material that is used in making the cases of the cartridges ;

(7.) 'Paper-staining works,' that is to say, any place in which persons work for hire in printing a pattern in colours upon sheets of paper, either by blocks applied by hand, or by rollers worked by steam, water or other mechanical power ; 'Paper-staining works.'

(8.) 'Fustian-cutting works,' that is to say, any place in which persons work for hire in fustian cutting ; 'Fustian-cutting works.'

(9.) 'Blast furnaces,' that is to say, any blast furnace or other furnace or premises in or on which the process of smelting or otherwise obtaining any metal from the ores is carried on ; 'Blast furnaces.'

(10.) 'Copper mills' ; 'Copper mills.'

(11.) 'Iron mills,' that is to say, any mill, forge, or other premises, in or on which any process is carried on for converting iron into malleable iron, steel or tin plate, or for otherwise making or converting steel ; 'Iron mills.'

(12.) 'Foundries,' that is to say, iron foundries, copper foundries, brass foundries, and other premises or places in which the process of founding or casting any metal is carried on ; except any premises or places in which such process is carried on by not more than 5 persons and as subsidiary to the repair or completion of some other work ; 'Foundries.'

(13.) 'Metal and india-rubber works,' that is to say, any premises in which steam, water or other mechanical power is used for moving machinery employed in the manufacture of machinery, or in the manufacture of any article of metal not being machinery, or in the manufacture of india-rubber or gutta-percha, or of articles made wholly or partially of india-rubber or gutta-percha ; 'Metal and india-rubber works.'

(14.) 'Paper mills,' that is to say, any premises in which the manufacture of paper is carried on ; 'Paper mills.'

(15.) 'Glass works,' that is to say, any premises in which the manufacture of glass is carried on ; 'Glass works.'

(16.) 'Tobacco factories,' that is to say, any premises in which the manufacture of tobacco is carried on ; 'Tobacco factories.'

(17.) 'Letter-press printing works,' that is to say, any premises in which the process of letter-press printing is carried on ; 'Letter-press printing works.'

(18.) 'Bookbinding works,' that is to say, any premises in which the process of bookbinding is carried on ; 'Bookbinding works.'

(19.) 'Flax scutch mills' ; 'Flax scutch mills.'

(20.) 'Electrical stations,' that is to say, any pre- 'Electrical stations.'

mises or that part of any premises in which electrical energy is generated or transformed for the purpose of supply by way of trade, or for the lighting of any street, public place or public building, or of any hotel, or of any railway, mine or other industrial undertaking.

K. B. 1903 (Alverstone, C.J., Wills and Channell, JJ.) Guardians of the poor, having been summoned for keeping a certain part of a workhouse, being an engine shed and machinery for the purpose of supplying electric light and power to the workhouse, not in conformity with this Act; it was held that a workhouse came within a 'public building' under this Schedule and that the engine house was therefore a factory within the meaning of the statute (*Mile End O. T. Guardians* v. *Hoare*, (1903) 2 K. B. 483; 67 J. P. 395; 72 L. J. (K. B.) 651; 89 L. T. 276; 1 L. G. R. 732).

Part II

NON-TEXTILE FACTORIES AND WORKSHOPS

'Hat works.' (21.) 'Hat works,' that is to say, any premises in which the manufacture of hats or any process incidental to their manufacture is carried on;

'Rope works.' (22.) 'Rope works,' that is to say, any premises being a ropery, ropewalk, or rope work, in which is carried on the laying or twisting or other process of preparing or finishing the lines, twines, cords or ropes, and in which machinery moved by steam, water or other mechanical power is not used for drawing or spinning the fibres of flax, hemp, jute or tow, and which has no internal communication with any buildings or premises joining or forming part of a textile factory, except such communication as is necessary for the transmission of power;

'Bakehouses.' (23.) 'Bakehouses,' that is to say, any places in which are baked bread, biscuits or confectionery from the baking or selling of which a profit is derived;

'Lace warehouses.' (24.) 'Lace warehouses,' that is to say, any premises, room or place not included in bleaching and dyeing works as hereinbefore defined, in which persons are employed upon any manufacturing process or handicraft in relation to lace, subsequent to the making of lace upon a lace machine moved by steam, water or other mechanical power;

'Shipbuilding yards.' (25.) 'Shipbuilding yards,' that is to say, any premises in which any ships, boats or vessels used in navigation, are made, finished or repaired;

'Quarries.' (26.) 'Quarries,' that is to say, any place not being

NOTE

These Regulations are now superseded by those issued on 10th December, 1907, dealing with the London Building Acts (Amendment) Act 1905, and the Factory and Workshop Acts 1901 and 1907 (see pages 356 to 367).

a mine, in which persons work in getting slate, stone, coprolites or other minerals ;

(27.) 'Pit-banks,' that is to say, any place above ground adjacent to a shaft of a mine, in which place the employment of women is not regulated by the Coal Mines Regulation Act, 1887, or the Metalliferous Mines Regulation Act, 1872, whether such place does or does not form part of the mine within the meaning of those Acts. 'Pit-banks.' 50 & 51 Vict. cap. 58. 35 & 36 Vict. cap. 77.

(28.) Dry cleaning, carpet beating, and bottle washing works.

LONDON COUNTY COUNCIL FACTORY AND WORKSHOP ACT, 1901

Provision of Means of Escape in Case of Fire

By the provisions of sections 14, 103 (1) (*d*) and 153 (1) of the Factory and Workshop Act, 1901, the duty is imposed upon the London County Council of seeing that each factory, workshop or laundry situated within the Administrative County of London, in which more than 40 persons are employed, is provided with such means of escape in case of fire for the persons employed therein as can reasonably be required in the circumstances of each case.

The Council, on July 22, 1902, approved the following statement with reference to the requirements in respect of the means of escape in case of fire to be provided in accordance with the provisions of the above Act, with a view to assisting factory owners and others in making application for the Council's certificate, or in submitting proposals to comply with the Council's requirements in respect thereof. *This statement must not, however, be taken as binding upon the Council, but only as a general guide or indication, since each case is, after full consideration of the varying circumstances, dealt with upon its merits ; and nothing herein contained must be taken as in any way interfering with or derogating from the powers of the Home Office, the Council, the District Surveyors, or of any other authority whatsoever under the Factory Act, the London Building Acts or any other Act, or under any bylaws that may be made under Section* 15, *Section* 153, *subsection* 3, *of the Factory and Workshop Act,* 1901, *or under any bylaws or regulations relating*

to the construction of buildings or otherwise; or as constituting any consent, sanction, allowance or permission under any such Act, bylaw or regulation, but all such Acts, bylaws and regulations must be fully observed and complied with notwithstanding anything herein contained.

APPLICATIONS

(1.) Applications for the Council's certificate in respect of the means of escape from new buildings, and applications with proposals to meet the Council's requirements in respect of the means of escape from old buildings should state—

Particulars required.

(*a*) The number of persons employed or to be employed on the premises, specifying the number of males and females employed or to be employed on each floor.

(*b*) The trade carried on or to be carried on on each floor, with particulars of machinery, power, &c.

(*c*) In the case of existing buildings used as factories, whether the premises were erected before January, 1892, and in the case of workshops and laundries, whether erected before January, 1896.

(*d*) The name and address of the owner.

(*e*) Particulars of the occupation of the building, if existing, and, if any part is used otherwise than as a factory or workshop or laundry, particulars of the tenancy of such part should be furnished.

Plans required.

(2.) Applications should be accompanied by complete plans and sections drawn on the unglazed side of tracing linen to $\frac{1}{8}$-inch or $\frac{1}{4}$-inch scale ($\frac{1}{8}$-inch scale preferred), and by a block plan to a small scale showing the premises and the surrounding buildings and thoroughfares, such block plan to have the north point indicated.

MEANS OF ESCAPE

Number of staircases.

(3.) The number of staircases required depends, *inter alia*, upon the following circumstances—

(*a*) The area of the building.

(*b*) The number of persons employed or which could be employed.

(*c*) The disposal of the workpeople.

(*d*) The alternative means of escape which may be available.

Alternative means of escape.

(4.) It may, however, be laid down as a general principle (subject to the exceptions hereinafter mentioned) that distinct and separate alternative means of escape, exclusive of windows, loop-hole doors, &c., are required from each floor, by one of the following means—

(*a*) A second staircase in the same block ;

(*b*) A proper staircase in another block, to which access is available on all the floors by proper openings in the party or division walls, or by external communication ;

(*c*) Open iron bridges where the blocks are not adjoining each other.

Position.

(5.) The means of escape from each of the floor levels should be placed as far apart as possible.

Escape by roof.

(6.) In all cases where practicable, some means of escape from the roof of the building to the roof of adjoining premises should be provided.

Cases in which one staircase may be deemed sufficient.

(7.) In small and inextensive premises where not more than 30 persons are employed above the ground floor, and in some cases where it is possible to provide a staircase in a central position, one properly inclosed staircase, constructed of incombustible materials, may be accepted ; but in all cases where only one staircase is provided, some means of escape from the roof to the roof of adjoining premises *must* be provided.

INTERNAL STAIRCASES

Position.

(8.) Staircases should be placed next to an outer wall, and must be so arranged as to deliver by means of a doorway, not less than 4 feet 6 inches wide in the clear when the doors are open, direct into the outer air at the ground level into a public way or thoroughfare or some large open space. Staircases must also be so arranged that persons enter them from any floor level in the same direction as persons descending the staircases.

Lighting and ventilation.

(9.) Staircases must be properly lighted and ventilated by windows.

Inclosing of staircases.

(10.) Staircases, including landings and passages from one flight to another, must be inclosed with newel and inclosing walls, not less than 9 inches thick, carried up above the roof and ceiled with iron and concrete.

Materials to be used. Steps, flights and landings.

(11.) Staircases must be constructed of incombustible materials, with solid square or spandril steps, arranged in straight flights, without winders ; each flight must consist of not more than 15 steps, which must be

supported at both ends on brickwork, and landings must be provided at the top and bottom of each flight and between the flights. The steps and landings must be of the same width as the staircase (*see* No. 14) and not less than 6 inches thick. In the case of spandril steps, however, the thickness at the smallest part may be as set out in No. 16.

Treads and risers.

(12.) The treads of the staircases must be not less than 10 inches wide, clear of nosings, and the risers not more than $7\frac{1}{2}$ inches high.

Handrails.

(13.) Staircases must be provided with handrails fixed upon both sides thereof and continued round the landings and chased into the ends of the newel walls.

Width of staircases.

(14.) The width of staircases is to be regulated as follows—

(*a*) Where the premises are adapted for the employment of less than 200 persons on the floors above the ground floor, the staircases must be not less than 3 feet 6 inches wide.

(*b*) Where the premises are adapted for more than 200 persons on the floors above the ground floor, or where more than 100 persons are employed on any one floor above the ground floor, the staircases must be not less than 4 feet 6 inches wide.

Doorways to staircases.

(15.) Staircases must in all cases be connected with all floors and the roof by means of doorways of the same width in the clear, when the doors are open, as the staircases.

Spandril steps.

(16.) Spandril steps, where used, must be of the following thickness—

(*a*) For 3 feet 6 inches staircases, not less than 3 inches thick in the smallest part.

(*b*) For 4 feet 6 inches staircases, not less than $4\frac{1}{2}$ inches thick in the smallest part.

Doors to staircases.

(17.) All doorways to staircases must be fitted with doors of fire-resisting materials (solid teak or oak, 2 inches thick, or other approved material) in 2 folds, hung so as to open in the direction of exit or to swing both ways clear of steps, landings, passageways and footways; such doors must be fitted with springs, weights, or other approved appliances to close them after use, and, if required to be fastened during the time the workpeople are upon the premises, be fitted during such time with automatic bolts only, so that the doors open by pressure from the inside.

Construction of staircases in certain 'old buildings.'

(18.) In the case of old buildings[1] (in respect of which the Council is not required to issue a certificate) where there is a distinct and separate alternative means of escape provided to the satisfaction of the Council, from each of the upper floors, the inclosed staircase may be constructed of teak or oak, not less than 2 inches thick, including the treads, strings, carriages, bearers, landings, joists and floors, the risers to be not less than 1 inch thick, but no fir or pine must be used ; and the inclosure to the staircase may be a solid partition of incombustible material at least 3 inches thick ; but such staircase must, in all other respects, be formed and arranged as required for a staircase for a new building as regards width, going, treads, risers, doors, handrails, &c. (*see* Nos. 8–17).

EXTERNAL STAIRCASES

External iron staircases.

(19.) In cases in which external iron staircases are accepted by the Council as means of escape, they must be constructed with dead bearings and without cantilever work.

(20.) They must comply with the requirements Nos. 8–17 as regards width, going, width of treads, height of risers, doors, handrails, &c.

(21.) They must deliver into the outer air at the ground level into a public way or thoroughfare, or some large open space.

(22.) Where an iron staircase is in general use the treads must be of approved non-slippery material as distinguished from perforated iron or chequered iron plates.

(23.) All windows and similar openings by or near any such staircases must be protected with kiln wire, or glazed with a combination of glass and wire or other approved fire-resisting glazing.

GENERAL

Guard rails on roofs.

(24.) Proper guard rails must be provided to the routes of escape on roofs, &c., where necessary, to the satisfaction of the Council.

Gangways.

(25.) Clear gangways, at least 3 feet 6 inches wide,

[1] By the term 'old buildings' is meant those of which the construction was begun before—
In the case of factories, 1st January, 1892.
In the case of workshops and laundries, 1st January, 1896.

must be kept up to and between all staircases, bridges and exits on all floors.

Width of doorways, &c.

(26.) All doorways and all passageways must, where of a less width than 3 feet 6 inches, be increased to that width.

Doors usable as means of exit.

(27.) All doors usable as means of exit must be made so as to open in the direction of exit, or to swing both ways clear of steps, landings, passageways, &c.

Door-fastenings.

(28.) All such doors must, if required to be fastened during the time the workpeople are upon the premises, be fitted during such time with automatic bolts only.

Inclosing of lifts.

(29.) Lifts should be inclosed all up with brickwork 9 inches thick, or with incombustible material of approved quality and thickness, and fitted with iron or other fire-resisting doors, unless, with the approval of the Council, such lifts be inclosed with fire-resisting materials to a height of 4 feet above each floor level, and above this with stout wire-mesh guard.

(30.) Lifts must be kept at some distance from staircases, and must in no case be connected directly therewith by means of openings or otherwise.

Windows to open.

(31.) All windows on the floors above the ground floor, facing the public way, street, thoroughfare or open space, must be made to open easily at sill level to a sufficient height and width to allow a full-grown person to pass through in case of need.

G. L. Gomme,
Clerk of the Council.

County Hall, Spring Gardens, S.W.
July 22, 1902.

PUBLIC AUTHORITIES PROTECTION ACT, 1893

56 & 57 VICT.

CHAPTER 61

An Act to generalise and amend certain statutory provisions for the protection of persons acting in the execution of statutory and other public duties.

[*5th December*, 1893.]

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present

Parliament assembled, and by the authority of the same, as follows :—

Protection of persons acting in execution of statutory or other public duty.

1. Where, after the commencement of this Act, any action, prosecution or other proceeding is commenced in the United Kingdom against any person for any act done in pursuance or execution or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, duty or authority, the following provisions shall have effect :—

(*a*) The action, prosecution or proceeding shall not lie or be instituted unless it is commenced within 6 months next after the act, neglect or default complained of, or, in case of a continuance of injury or damage, within 6 months next after the ceasing thereof :

(*b*) Wherever in any such action a judgment is obtained by the defendant, it shall carry costs to be taxed as between solicitor and client :

(*c*) Where the proceeding is an action for damages, tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after the tender, or is proceeded with after payment into Court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after the tender or payment, and the defendant shall be entitled to costs, to be taxed as between solicitor and client, as from the time of the tender or payment ; but this provision shall not affect costs on any injunction in the action :

(*d*) If, in the opinion of the Court, the plaintiff has not given the defendant a sufficient opportunity of tendering amends before the commencement of the proceeding, the Court may award to the defendant costs to be taxed as between solicitor and client.

This section shall not affect any proceedings by any department of the Government against any local authority or officer of a local authority.

Ch. 1904 (Farwell, J.) Where a contract is entered into by a 'public authority' with the object of carrying out its public duty, any claim arising out of such contract is a claim in respect to a private and not a public duty of the public authority, and this

Act does not apply to any proceeding in respect of such claim (*Sharpington* v. *Fulham Guardians*, (1904) 2 Ch. 449 ; 68 J. P. 510 ; 73 L. J. (Ch.) 777 ; 52 W. R. 617 ; 2 L. G. R. 1229 ; 20 T. L. R. 643).

Westminster Cty. C., 1898. Where the School Board for London had paid to the District Surveyor under protest fees claimed for certifying plans of old buildings under the Lond. Bldg. Act, 1894, and one year afterwards issued a C. C. summons against the said District Surveyor claiming the return of the proportion of such fees claimed to have been paid in excess, it was held that the action was barred by this Act, proceedings not having been taken within 6 months. The main issue was also decided in favour of the District Surveyor (*School Board for London* v. *Dicksee*, ' Builder,' 28 May, 1898).

Repeal.

2. There shall be repealed as to the United Kingdom so much of any public general Act as enacts that in any proceeding to which this Act applies—

(*a*) The proceeding is to be commenced in any particular place ; or

(*b*) the proceeding is to be commenced within any particular time ; or

(*c*) notice of action is to be given ; or

(*d*) the defendant is to be entitled to any particular kind or amount of costs, or the plaintiff is to be deprived of costs in any specified event ; or

(*e*) the defendant may plead the general issue ;

and in particular there shall be so repealed the enactments specified in the Schedule to this Act to the extent in that Schedule mentioned.

This repeal shall not affect any proceeding pending at the commencement of this Act.

Saving as to Scotland.

3. This Act shall not apply to any action, prosecution or other proceeding for any act done in pursuance or execution or intended execution of any Act of Parliament, or in respect of any alleged neglect or default in the execution of any Act of Parliament, or on account of any act done in any case instituted under an Act of Parliament, when that Act of Parliament applies to Scotland only, and contains a limitation of the time and other conditions for the action, prosecution or proceeding.

Commencement.

4. This Act shall come into operation on the first day of January, one thousand eight hundred and ninety-four.

Short title.

5. This Act may be cited as the Public Authorities Protection Act, 1893.

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Aa prefixed to the number of the section indicates that the reference is to the Lond. Bldg. Am. Act, 1898.
A " " " " " Lond. Bldg. Am. Act, 1905.
F " " " " " Factory and Workshop Act, 1901.
P " " " " " Public Authorities Protection Act, 1893.
G " " " " " London Government Act, 1899.
In all other cases the reference is to the London Building Act, 1894.

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THE
LONDON BUILDING ACTS
1894 TO 1908

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THE

LONDON COUNTY COUNCIL (GENERAL POWERS) ACT, 1908

(8 EDWARDUS VII., CAP. CVII.)

ARRANGEMENT OF SECTIONS

PART IX

MISCELLANEOUS AND FINANCIAL PROVISIONS

NOTE.—As no date is specified in the Act, it comes into operation on the day it receives Royal Assent, viz., 1st August 1908 (Tomlinson *v.* Bullock, (1879) 4 Q.B.D. 230).

THE

LONDON COUNTY COUNCIL (GENERAL POWERS) ACT, 1908

8 EDWARDUS VII

CHAPTER CVII

An Act to make sanitary provisions applicable to the Administrative County of London; to amend the London Building Act, 1894; *to confer powers upon the London County Council and the Councils of certain Metropolitan Boroughs; to make provisions with respect to the drainage of parts of the Metropolitan Borough of Hackney and the Urban Districts of Tottenham and Willesden; and for other purposes.*

[Royal Assent, 1st August, 1908.]

Preamble.

WHEREAS it is expedient to confer on the London County Council (hereinafter referred to as 'the Council') the powers hereinafter described:

And whereas it is expedient that the provisions contained in this Act for securing the health and well-being of the inhabitants of the Administrative County of London (hereinafter referred to as 'the County') should be made:

57 & 58 Vict. cap. ccxiii.

And whereas it is expedient that the London Building Act, 1894, should be amended as hereinafter provided:

And whereas . . . . .

And whereas the objects aforesaid cannot be attained without the authority of Parliament:

May it therefore please your Majesty that it may be enacted, and be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the

Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, as follows (that is to say) :—

PART I

INTRODUCTORY

Short Title.

1. This Act may be cited as 'The London County Council (General Powers) Act, 1908.'

By sec. 15, Part III. of this Act may, together with the London Building Acts, 1894 to 1905, be cited as 'The London Building Acts, 1894 to 1908.'

Division of Act into Parts.

2. This Act is divided into Parts as follows :—

Part I. Introductory.
" II. Sanitary Provisions.
" III. Amendment of London Building Act, 1894.
" IV. Open Space at Salter's Hill, West Norwood.
" V. Widening of Green Lanes, Stoke Newington.
" VI. Powers to Camberwell Council.
" VII. Hackney and Tottenham Sewerage.
" VIII. Willesden Sewerage.
" IX. Miscellaneous and Financial Provisions.

Interpretation of terms.

3. In this Act the following words and expressions have the several meanings hereby assigned to them, unless there is something in the subject or context repugnant to such construction (that is to say) :—

'The Council' means the London County Council ;

See Lond. Bldg. Act, 1894, sec. 5 (41).

'The County' means the Administrative County of London ;

See Lond. Bldg. Act, 1894, sec. 5 (40).

. . . . . .

'Daily penalty' means a penalty for every day on which any offence is continued after conviction ;

The Lond. Bldg. Act, 1894, contains no definition of 'daily penalty.' The above definition, however, corresponds with words used in the penalty section (200) of that Act. Compare with Lond. Bldg. Acts (Am.) Act, 1905, sec. 24, where the words 'after conviction' do not occur. S. 3

. . . . . .

'Owner' (except where used in Part III. of this Act) means the person for the time being receiving the rack-rent of the premises in connection with which the word is used, whether on his own account, or as agent or trustee for any other person, or who would so receive the same if such premises were let at a rack-rent.

The expression 'owner,' so far as Part III. is concerned, will mean the same as in the Lond. Bldg. Act, 1894. *See* sec. 5 (29) of that Act, p. 19, and the notes thereon.

. . . . . .

Incorporation of Lands Clauses Acts.

4. The Lands Clauses Acts are incorporated with this Act. Provided that the expressions 'the Promoters of the Undertaking' and 'the Company' in the said Acts shall mean the Council.

. . . . . .

PART III

AMENDMENT OF LONDON BUILDING ACT, 1894

Interpretation and effect of this part of Act.

[**15.** Words and expressions used in this Part of this Act shall, unless the context otherwise requires, bear the meanings assigned to them in 'The London Building Act, 1894' (in this Part of this Act referred to as 'the principal Act');

And any references in the principal Act, or any existing Act amending the same, to Part VI. of the principal Act, or any of the provisions of that Part, shall be construed as referring to such Part or provisions, as amended by this Part of this Act;

And the Principal Act, the London Building Act, 1894, (Amendment) Act, 1898, the London Building Acts (Amendment) Act, 1905, and this Part of this Act may be cited together as 'The London Building Acts, 1894 to 1908.']

For definitions of words and expressions, *see* Lond. Bldg. Act, 1894, sec. 5, pp. 11 to 22.

Repeal of Sections 75, 76 and 77 of principal Act.

[**16.** Sections 75 (Cubical extent of buildings), 76 (Consent to larger dimensions), and 77 (Rules as to uniting buildings) of the principal Act are hereby repealed ;

And, from and after the passing of this Act, the principal Act shall be read and have effect as if the following provisions of this Part of this Act had been inserted in the principal Act, instead of the said Sections 75, 76, and 77.]

See pp. 93 to 97.

The provisions of this Part of this Act therefore form part of Part VI. of Lond. Bldg. Act, 1894, and are subject to the supervision of the District Surveyor, and to be enforced by him as though they were provisions of the Lond. Bldg. Act, 1894 ; *see* secs. 138, 145 to 154 of that Act (pp. 144 to 155).

Cubical extent of building.

17. (1) Except as in this section provided, no building of the warehouse class, [and no building or part of a building used for any trade or manufacture] shall extend to more than 250,000 cubic feet, unless divided by [division] walls in such manner that no division of [such building, or part of a building, (as the case may be)] shall extend to more than 250,000 cubic feet ;

And no addition shall be made to any [such building, part of a building, or division] so that the cubical extent of such building, [part of a building,] or division shall exceed 250,000 cubic feet.

Lond. Bldg. Act, 1894, sec. 75 (repealed).

'Except as in this section provided, no building of the warehouse class shall extend to more than 250,000 cubic feet, unless divided by party walls in such manner that no division thereof extend to more than 250,000 cubic feet.

'No addition shall be made to any building of the warehouse class, or to any division thereof, so that the cubical extent of any such building or division shall exceed 250,000 cubic feet.'

The corresponding section of the Met. Bldg. Act, 1855, sec. 27 (4), regulated 'every warehouse or other building used wholly or in part for the purposes of trade or manufacture' ; the corresponding section of Lond. Bldg. Act, 1894, sec. 75, regulated 'buildings of the warehouse class.' These terms have not identical significance. It will be observed that the present section regulates both these classes, and, in addition, any part used for trade or manufacture. *See* also sec. 74 (2) of Lond. Bldg. Act, 1894 (p. 92).

The previous Acts have referred to the subdividing walls as 'party walls,' and confusion has consequently arisen ; the term 'division wall' is new to this Act.

For the construction of 'division walls,' *see* sec. 19.

For method of measurement of 'cubical extent,' *see* Lond. Bldg. Act, 1894, sec. 5 (24), p. 17.

S. 17

The second paragraph was inserted in 1894 to counteract the decision of C.A. that the corresponding section in Met. Bldg. Act, 1855, did not prevent an addition being made to an existing building so as to extend it beyond the limit (*Scott* v. *Legg*, 10 Q.B.D. 236 ; 36 L. T. 456 ; 46 L. J. (M.C.) 267 ; 41 J.P. 773 ; 25 W. R. 594).

Q.B. 1894 (Mathew and Cave, JJ.). It was held that the division by fireproof floors of a building, so that each division contained between the floors did not exceed the maximum permitted cubic space, was not a compliance with the corresponding section of Met. Bldg. Act, 1855, because a fireproof floor is not a party wall (*Holland and Hannen* v. *Wallen*, 70 L. T. 376 ; 58 J.P. 132 ; 10 R. 583). Provision, however, is now made in sec. 17 (3) for such a subdivision, with the consent of the Council.

Q.B. 1896 (Wright and Collins, JJ.). In the case of a building of the warehouse class that was intended to be erected in conformity with sec. 75 of the Lond. Bldg. Act, 1894, by being divided vertically by five walls, two of such walls being arranged to separate a portion of the building only one storey in height on one side of such walls from a portion of the building five storeys in height on the other side of such walls, and it was proposed to construct such walls only for the lower storey, and for 3 feet above the roof of such storey in accordance with the rules of the Act relating to party walls ; but it was proposed to form in the upper portion of such walls openings for windows to the storeys above the lowest of the five-storey portion of the building ; it was held that in this section the words ' party wall ' are not used in their technical sense, but merely as a convenient phrase for sub-dividing walls, and that the walls in question ceased to be party walls after they had ceased to divide the two portions of the building, and had been carried up 3 feet above the roof of the lower portion of the building, and need not, above that level, be constructed in accordance with the requirements of the statute as to party walls (*Drury* v. *Army and Navy Auxiliary Co., Ltd.*, (1896) 2 Q.B. 271 ; 65 L. J. (M.C.) 169 ; 60 J.P. 421 ; 74 L. T. 621 ; 44 W. R. 560).

(2) Where the Council are satisfied, on the report of the Superintending Architect and of the Chief Officer of the Fire Brigade, that additional cubical extent is necessary for any [such building, part of a building, or division, as aforesaid ;] and are satisfied that proper arrangements have been, or will be, made and maintained for lessening, so far as reasonably practicable, danger from fire ; the Council may consent to such building, [part of a building, or division] containing additional cubical extent ;

But such consent shall continue in force only while [such] building, [part of a building, or division] is actually used for the purposes of the trade or manufacture [(if any)] in respect of which the consent was granted.

Lond. Bldg. Act, 1894, sec. 76 (repealed).

' Where the Council are satisfied, on the report of the Super-

S. 17 intending Architect and of the Chief Officer of the Fire Brigade, that additional cubical extent is necessary for any building to be used for any trade or manufacture, and are satisfied that proper arrangements have been, or will be, made and maintained for lessening, so far as reasonably practicable, danger from fire, the Council may consent to such building containing additional cubical extent :

'Provided that such buildings shall not—

(i.) Extend to a number of cubic feet exceeding 450,000, or any less number allowed by the Council, without bei g divided by party walls in such manner that the cubical extent of each division do not exceed that number ;

(ii.) Exceed 60 feet in height ;

(iii.) Be used for the purpose of any trade or manufacture involving the use of explosive or inflammable materials.

'Such consent shall continue in force only while the said building is actually used for the purpose of the trade or manufacture in respect of which the consent was granted.'

The restrictions previously imposed on the Council's power to consent to excess of cubical extent have now been removed.

See sec. 20.

In the Lond. Bldg. Act, 1894, there was an inconsistency between a 'building of the warehouse class' upon which the limit was imposed in sec. 75, and 'any building to be used for any trade or manufacture' in sec. 76 ; this has now been removed.

There is an inconsistency between this subsection and sec. 82 (2) of the Lond. Bldg. Act, 1894, dealing with buildings to which the general provisions of that act are inapplicable, which definitely prohibits the authorisation of buildings of the warehouse class of greater cubical extent than 250,000 cubic feet. This same inconsistency previously existed between the repealed sec. 76 of Lond. Bldg. Act, 1894, and sec. 82 (2) of that Act.

See subsec. (4) of this section.

By L.C.C. (Tramway and Improvements) Act, 1904 (4 Edward VII., ch. ccxxxi.), sec. 59, the Council may make car-sheds, &c., 'of such cubical extent as they may consider necessary or convenient.'

By L.C.C. (Tramways and Improvements) Act, 1906 (6 Edward VII., ch. clxxxi.), sec. 47 (3), the Council may erect car-sheds, &c., on certain lands acquired, 'and of such height and cubical extent as they may consider necessary or convenient.'

County Office Site (London) Act, 1906 (6 Edward VII., ch. lxxxvi.), sec. 4 (1) : 'Any buildings erected by the Council on such lands or any part of such lands shall be in such position and of such description, height, and dimensions as the Council shall determine to be necessary or convenient.'

[(3) The Council may, in any case in which they think fit so to do, consent to any such building, or part of a building, as aforesaid, being divided (wholly or in part) horizontally by floors to be constructed in such manner and of such materials and in all other respects as the Council may require or approve ; and in such case such floors shall, for the purposes of this section, be deemed to be division walls.]

See note to subsec. (1), and the decision in the case of *Holland and Hannen* v. *Wallen*.

As these division floors are for the purposes of this section to be deemed to be division walls, they will be subject to the provisions of sec. 19; and all the provisions of the Lond. Bldg. Act, 1894, and this Act will apply to them; openings therefore cannot be made in them except in accordance with the provisions of sec. 18.

See sec. 20.

(4) The [provisions of] this section shall not apply to any building which, being at a greater distance than two miles from St. Paul's Cathedral, is used wholly for the manufacture of the machinery and boilers of steam vessels, or for a retort house, or [for] the manufacture of gas, or for generating electricity; provided that such building consist of one floor only, and be constructed of brick, stone, iron, or other incombustible material throughout, and be not used for any purpose other than such as are specified in this subsection; [and] every such building shall, for the purposes of the provisions of [the principal Act] with respect to special buildings, be deemed a building to which the general [provisions of Part VI. of the principal Act] are inapplicable.

Lond. Bldg. Act, 1894, sec. 75 (repealed), second paragraph.

'The restriction contained in this section upon the cubical extent of a building shall not apply to any building which, being at a greater distance than 2 miles from St. Paul's Cathedral, is used wholly for the manufacture of the machinery and boilers of steam vessels, or for a retort house, or the manufacture of gas, or for generating electricity, provided that such building consist of one floor only, and be constructed of brick, stone, iron, or other incombustible material throughout, and shall not be used for any purpose other than such as hereinbefore specified. Every such building shall, for the purpose of the provisions of this Act with respect to special buildings, be deemed to be a building to which the general rules of this Act are inapplicable.'

Compare Lond. Bldg. Act, 1894, sec. 203 (p. 190).

These buildings will therefore come within the provisions of sec. 82 of Lond. Bldg. Act, 1894. Subsec. (2) of that section prohibits in terms the authorisation of buildings of the warehouse class of greater cubical extent than 250,000 cubic feet.

See note to subsec. (2).

Rules as to uniting buildings.

18. (1) Buildings shall not [without the consent of the Council] be united [unless]

(*a*) they are wholly in one occupation, and,

(*b*) when so united, and considered as one building, they would be in conformity with [the principal Act, as amended by this Part of this Act, and with this Part of this Act].

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Lond. Bldg. Act, 1894, sec. 77 (repealed).

'(1) Buildings shall not be united except where they are wholly in one occupation, or are constructed or adapted to be so.

'(2) Buildings shall not be united if, when so united, and considered as one building only, they would not be in conformity with this Act.'

The words 'without the consent of the Council' are new, but do not substantially alter the law, for the power to consent to an otherwise irregular uniting could be exercised under sec. 207 of Lond. Bldg. Act, 1894, as a consent to an alteration therein mentioned.

The words 'or are constructed or adapted to be so' inserted for the first time in Lond. Bldg. Act, 1894, sec. 77 (1), the meaning of which has been the subject of much discussion, have now been omitted; the interpretation placed on them in the case of *Woodthorpe* v. *Spencer and Husbands*, 63 J.P. 246, has therefore now no application.

The restrictions contained in this section are, by sec. 19, made applicable to all openings subsequently made in a party or division wall.

For meaning of 'united' *see* subsec. (4).

See sec. 20.

When uniting shop premises the provisions of sec. 74 (2) of Lond. Bldg. Act, 1894, must therefore be observed, and the premises altered accordingly.

C.A. 1877 (James, Baggallay, Bramwell, and Brett, L.JJ., reversing Court of Appeal from Inferior Courts, Cleasby, B., and Grove, J.). Under the corresponding section of Met. Bldg. Act, 1855, it was held that the addition of a new portion to an old building was not 'uniting' within the meaning of the section, which only applied to the uniting of two already existing buildings (*Scott* v. *Legg*, 10 Q.B.D. 236; 36 L. T. 456; 46 L. J. (M.C.) 267; 41 J.P. 773; 25 W. R. 594).

K.B. 1903 (Alverstone, C.J., Wills and Channell, JJ.). Where several blocks of flats, originally intended to be erected as so many distinct buildings, were subsequently erected each with its own staircase and external entrance from an open space within the curtilage, but with a passage way under the roofs from end to end, and also connected in pairs by means of a door connecting the bath-rooms of adjacent blocks; it was held that this constituted the erection of one building, and not a uniting of several buildings; and that sec. 77 of Lond. Bldg. Act, 1894, applied only to the union of buildings having a separate existence before the union, and did not apply to additions built on to and connected with a previously existing building (*Goodchild* v. *Matthews*, 67 J.P. 296; 89 L. T. 369; 1 L. G. R. 523).

(2) An opening shall not be made [in any division wall separating divisions of a building of the warehouse class, or used for any trade or manufacture, or] in any party wall, or in two external walls [separating] buildings, [in any case in] which [such divisions or buildings (as the case may be)], if taken together, would extend to more than 250,000 cubic feet, except under the following conditions:—

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(*a*) Such opening shall have the floor, jambs and head formed of brick, stone, iron [or other incombustible materials]; and be closed by two wrought iron doors, [sliding doors or shutters], each [not less than] one-fourth of an inch thick in the panel, at a distance from each other of the full thickness of the wall, fitted to [grooved or] rebated [iron] frames, without woodwork of any kind;

[and all such doors, sliding doors and shutters shall be fitted with sufficient and proper bolts or other fastenings, and be capable of being opened from either side, and shall have on each face thereof styles and rails, at least four inches wide, and one-fourth of an inch thick; and shall be constructed fitted and maintained in an efficient condition.

Provided that, in lieu of being constructed and fitted as aforesaid, such doors, sliding doors and shutters may be constructed of any such fire-resisting materials, and be fitted in any such manner, as may be approved by the Council].

(*b*) Such opening shall not exceed in width 7 feet, or in height 8 feet, and [the width of] such opening [in any wall of a storey] (or, [if there be more than one such opening in any such wall, the width of all such] openings taken together) shall not exceed one-half of the length of [such wall].

[Provided that any] such opening may be 9 feet 6 inches in height in a wall of which the thickness is not less than 24 inches, or if the doors, [sliding doors or shutters, closing such opening, are] placed at a distance of not less than 24 inches from each other.

[Provided also, that the Council may consent to any such opening being of such greater height or width as they may think fit.]

Lond. Bldg. Act, 1894, sec. 77 (3) repealed.

'(3) An opening shall not be made in any party wall or in two external walls dividing buildings which, if taken together, would extend to more than 250,000 cubic feet except under the following conditions:—

'(*a*) Such opening shall not exceed in width 7 feet or in height 8 feet and such opening or openings taken together shall not exceed one half the length of such party wall on each floor of the building in which they occur.

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'(*b*) Such opening shall have the floor, jambs and head formed of brick, stone or iron, and be closed by two wrought iron doors each one-fourth of an inch thick in the panel, at a distance from each other of the full thickness of the wall, fitted to rebated frames without woodwork of any kind ; or by wrought iron sliding doors or shutters, properly constructed, fitted into grooved or rebated iron frames.

'(*c*) If the thickness of the wall be not less than 24 inches, or the doors be placed at a distance from each other of not less than 24 inches, such opening may be 9 feet 6 inches in height.'

The rules as to the construction of doors hung on hinges are now also made applicable to sliding doors and shutters.

For penalty for failure to maintain (£20 and £20 a day) *see* sec. 21.

Compare Lond. Bldg. Act, 1894, secs. 54 (3) and 58, and *see* notes to those sections.

For window openings in 'party walls' subdividing a warehouse, now called 'division walls,' *see* note to sec. 17 (1) on the case of *Drury* v. *Army and Navy Auxiliary Co.* This decision does not apply to party walls proper, dividing two buildings in different occupations, as the Court specially excluded such a case from their judgment, but it appears to have some bearing on such a case.

Sec. 101 of Lond. Bldg. Act, 1894, allows the reconstruction of certain previously existing windows in party walls.

For 'fire-resisting materials,' *see* Lond. Bldg. Acts (Am.) Act, 1905, first schedule.

For fees payable to the district surveyor on forming and closing these openings, *see* Lond. Bldg. Act, 1894, third schedule, Part I.

See sec. 20.

(3) Whenever any buildings which have been united cease to be in one occupation, the owner thereof, [or if the buildings are the property of different owners then each of such owners], shall forthwith give notice [of such change of occupation] to the District Surveyor, and shall cause [all] openings [uniting the same] in any party wall, [or in any external wall], to be stopped up [(unless the Council consent to such openings or any of them being retained)] with brick or stone work, not less than 13 inches in thickness ; (except in the case of a wall 8½ inches in thickness, in which case 8½ inches shall be sufficient), and properly bonded with such wall ; and any timber placed in the wall [and] not in conformity with [the principal Act] shall be removed ;

[And if notice be not given to the District Surveyor pursuant to this section such owner or each of such owners shall, upon conviction in a summary manner, be liable to a penalty not exceeding 5 pounds].

Lond. Bldg. Act, 1894, sec. 77 (repealed).

'(4) Whenever any buildings which have been united cease to be in one occupation, all openings made for the purpose of uniting

the same in any party wall between the buildings, or in any external wall, shall be stopped up with brick or stone work, not less than 13 inches in thickness (except in the case of a wall 8½ inches in thickness, in which case 8½ inches shall be sufficient) and properly bonded with such wall, and any timber not in conformity with this Act placed in the wall shall be removed. S. 18

'(5) Whenever any buildings which have been united cease to be in one occupation, the owner thereof shall forthwith give notice to the District Surveyor, and shall cause any openings made in the party wall to be stopped up and bonded as aforesaid.'

The penalty under the repealed section for neglecting to give notice to the District Surveyor of change of occupation was 40*s.* and 40*s.* a day. *See* Lond. Bldg. Act, sec. 200 (11) j.

As no penalty is specially provided in this Act for failing to cause the openings to be stopped up, it is presumed that the penalty provided under Lond. Bldg. Act, 1894, sec. 200 (11) j will still be applicable.

See sec. 20.

[(4) Buildings shall be deemed to be united when any opening is made in the party wall, or the external walls, separating such buildings, or when such buildings are so connected that there is access from one building to the other without passing into the open air.]

Buildings to be united must have a previous separate existence; an addition built on to an existing building is not a uniting; *see* decisions in the cases of *Scott* v. *Legg*, L. R. 10 Q.B.D. 236; 46 L. J. (M.C.) 267; 36 L. T., 456; 41 J.P. 773; 25 W. R. 594, and *Goodchild* v. *Matthews*, 89 L. T. 369; 67 J.P. 296; 1 L. G. R. 523.

[(5) The provisions of this section shall extend and apply

(*a*) to all openings, at any time after the passing of this Act, made, or proposed to be made, in any party wall, or two external walls, or in any division wall, notwithstanding the existence in any such wall of an opening uniting buildings, or affording communication between divisions of a building (as the case may be), and

(*b*) to such buildings as if they had not previously been united.]

This subsection was inserted in order to get rid of the effect of the decision of Q.B. 1899 (Channell and Lawrence, JJ.) that where buildings not wholly in one occupation were, in fact, already united by an opening or doorway in the party wall, although such opening may have been irregularly made, and without notice to the District Surveyor; the formation of a second opening in the party wall was not a uniting of the buildings, as they were, in fact, united before (*Woodthorpe* v. *Spencer and Husbands*, 63 J.P. 246).

Division walls to be subject to provisions of principal Act relating to party walls.

[**19.** The provisions of the principal Act, with respect to party walls, shall extend and apply to such division walls as are referred to in this Part of this Act.

Provided that, in the case of any such division wall, the Council may, it they think fit, consent to such departure as they may consider expedient from such of the said provisions as are contained in Part VI. of and the First Schedule to the principal Act.]

The provisions of the principal Act with respect to party walls are contained in Lond. Bldg. Act, 1894, secs. 54 (3), 56 (1), 56 (3), 59 (1) and (2), 60, 208, and 209.

The provisions of this Act with respect to party walls, which are contained in sec. 18, are specially by that section made applicable to ' division walls.'

See sec. 20.

Copy of plans and particulars approved by Council to be furnished to District Surveyor.

[**20.** A copy of any plans and particulars approved by the Council under this Part of this Act shall be furnished by the Council to the District Surveyor within whose district the building to which such plans and particulars relate is situate.]

See secs. 17 (2) (3), 18 (1) (2) (3) and 19.

Similar provisions are contained in Lond. Bldg. Act, 1894, sec. 82 (5) with respect to iron and special buildings, and in Lond. Bldg. Acts (Am.) Act, 1905, sec. 16 (2) with respect to means of escape required by the Council.

It is the duty of the District Surveyor to enforce all the special provisions and variations approved by the Council in the same manner as though they were definite rules in the Act. *See* Lond. Bldg. Act, 1894, secs. 138, 146, 148, 151, 152, and 153.

Penalty for failure to comply with conditions.

[**21.** Any person

failing to comply with any term or condition imposed by the Council in giving any consent under this Part of this Act, or

failing to maintain in an efficient condition any doors, sliding doors, shutters, styles, or rails, or bolts, or other fastenings, as required under this Part of this Act

shall be liable to a penalty not exceeding 20 pounds, and to a daily penalty not exceeding the like amount.]

For the Council's power to annex conditions when giving any consent *see* Lond. Bldg. Act, 1894, sec. 190.

The penalty for neglecting to comply with the conditions imposed was, under the Lond. Bldg. Act, 1894, sec. 200 (10), £10.

Under the Lond. Bldg. Act, 1894, there was no penalty specified for neglecting to maintain party wall doors.

For general penalty clause *see* Lond. Bldg. Act, 1894, sec. 200 (11) j.

[**22.** Section 202 (Exemption of Government Buildings) of the principal Act shall be read and construed as if the exemptions thereby conferred extended also to the provisions of the London Building Acts (Amendment) Act 1905.]

Extending exemption of Government Buildings.

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PART IX

MISCELLANEOUS AND FINANCIAL PROVISIONS

. . . . . .

[**74.** (1) The Council may (subject to the provisions of the London Building Act, 1894, and any Act amending the same for the time being in force) on any lands already acquired, or hereafter to be acquired, by them by agreement, for the purposes of 'The Metropolitan Fire Brigade Act, 1865,' erect, construct, maintain and use all such buildings and other conveniences, and of such height and cubical extent as they may consider necessary or convenient for the said purposes, or any of them.

As to buildings on lands acquired by agreement for Fire Brigade purposes.

(2) The erection or construction of buildings or conveniences under the powers of this Section shall be deemed to be the execution of works within the meaning of sec. 68 of 'The Lands Clauses Consolidation Act, 1845.']

For provisions as to height see Lond. Bldg. Act, 1894, Part V.
For provisions as to cubical extent *see* secs. 17 and 18 of this Act.

[**75.** Notwithstanding anything contained in 'The Metropolitan Police Courts Act, 1839,' or in any other Act, to the contrary, whenever, in consequence of proceedings taken in respect of an offence under this Act or any by-law made thereunder (other than an offence under Part III. of this Act), a pecuniary penalty is inflicted, the amount of such penalty shall be payable, and paid, if such proceedings are taken by the Council, to the Council, and if such proceedings are taken by a Sanitary Authority, to such Sanitary Authority.]

Application of penalties under Act.

Compare with Lond. Bldg. Act, 1894, sec. 169, under which one half of penalties recovered by the Council are to be paid to the Council.

The application of this section to Part III., the Amendment of the Lond. Bldg. Act, 1894, will be very limited, because, in almost all cases of infringement of that part, proceedings will be taken by the District Surveyor, as in the case of infringements of Part VI. of the Lond. Bldg. Act, 1894. *See* sec. 16.

. . . . . .

Saving rights of the Crown.

[**77.** Nothing in this Act affects prejudicially any right, power, privilege, or exemption of the Crown.]

See Lond. Bldg. Act, 1894, sec. 202.

Saving the rights of the Duchy of Cornwall.

[**78.** Nothing contained in this Act shall extend to authorise the Council to take, use, enter upon, or interfere with any land, soil, or water, or any rights in respect thereof belonging to his Majesty, in right of the Duchy of Cornwall, without the consent in writing of some two or more of such of the regular officers of the said Duchy, or of such other persons as may be duly authorised under the provisions of 'The Duchy of Cornwall Management Act, 1863,' section 39, to exercise all or any of the rights, powers, privileges and authorities by the said Act made exerciseable, or otherwise for the time being exerciseable in relation to the said Duchy, or belonging to the Duke of Cornwall for the time being, without the consent of such Duke testified in writing under the Seal of the Duchy of Cornwall first had and obtained for that purpose; or to take away, diminish, alter, prejudice or affect any property, rights, profits, privileges, powers, or authorities vested in or enjoyed by his Majesty in right of the Duchy of Cornwall, or in or by the Duke of Cornwall for the time being.]

A similar provision is found in Lond. Bldg. Act (Am.) Act, 1905, sec. 42; the above section is therefore included here, though probably it has no application to Part III. of this Act.

See Lond. Bldg. Act, 1894, sec. 202.

As to payments under this Act.

[**79.** (1) All costs and expenses of the Council in the execution of this Act (except so far as they may be otherwise provided for by this or any other Act) shall be defrayed as payments for general county purposes within the meaning of 'The Local Government Act, 1888,' and, subject as hereinafter provided, the costs, charges, and expenses preliminary to, and of, and incidental to, the preparing, applying for, obtaining and passing of this Act, shall be paid by the Council in like manner.]

. . . . . .

See Lond. Bldg. Act, 1894, sec. 189, and Lond. Bldg. Acts (Am.) Act, 1905, sec. 43.

FACTORY AND WORKSHOP ACT, 1907.

7 EDWARDUS VII

CHAPTER XXXIX

An Act to amend the Factory and Workshop Act, 1901, *with respect to Laundries, and to extend that Act to certain Institutions, and to provide for the inspection of certain premises.* [28th August, 1907.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

LAUNDRIES

Application of 1 Edw. 7, c. xxii., to laundries.

1. The Factory and Workshop Act, 1901 (which Act, as amended by any subsequent enactment, including this Act, is hereinafter referred to as the principal Act), shall, subject to the provisions of this Act, apply to laundries as if at the end of Part II. of the Sixth Schedule to that Act, enumerating non-textile factories and workshops, the following paragraph were added :—

'(29) Laundries carried on by way of trade or for the purpose of gain, or carried on as ancillary to another business or incidentally to the purpose of any public institution.'

. . . . . .

INSTITUTIONS

Application of Factory and Workshop Acts to certain institutions.

5. (1) Where in any premises forming part of an institution carried on for charitable or reformatory purposes, and not being premises subject to inspection by or under the authority of any Government Department, any manual labour is exercised in or incidentally to the making, altering, repairing, ornamenting, finishing, washing, cleaning, or adapting for sale, of articles not intended for the use of the institution, the provisions of the principal Act shall, subject to the provisions of this Act, apply to those premises, notwithstanding that the work carried on therein is not carried on by way of trade

S. 5 or for the purposes of gain, or that the persons working therein are not working under a contract of service or apprenticeship.

These buildings will, in London, come within the provisions of the Lond. Bldg. Acts (Am.) Act, 1905, secs. 7, 9, or 12; means of escape must therefore be dealt with under that Act.

. . . . . .

Short title, construction, commencement, and repeal.

7. (1) This Act may be cited as 'The Factory and Workshop Act, 1907,' and shall be construed as one with the Factory and Workshop Act, 1901, and the Factory and Workshop Act, 1901, and this Act may be cited together as 'The Factory and Workshop Acts, 1901 and 1907.'

(2) This Act shall come into operation on the first day of January, one thousand nine hundred and eight.

(3) Section one hundred and three of the Factory and Workshop Act, 1901, is hereby repealed.

See p. 286.

LONDON COUNTY COUNCIL

FACTORY AND WORKSHOP ACTS, 1901 AND 1907, AND LONDON BUILDING ACTS (AMENDMENT) ACT, 1905, MEANS OF ESCAPE IN CASE OF FIRE [1]

NOTE.—Applicants are advised to obtain copies of the Acts of Parliament mentioned below.

LONDON BUILDING ACTS (AMENDMENT) ACT, 1905

By the provisions of Sections 7 and 9 of the London Building Acts (Amendment) Act, 1905, the duty is imposed upon the London County Council of ensuring that the following buildings shall be provided with such means of escape in case of fire as can be reasonably required in the circumstances of the case :—

High buildings and twenty person buildings.

(*a*) Any high building, *i.e.*, a building having any storey the level of the upper surface of the floor whereof is at a greater height than 50

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[1] These suggested requirements are in substitution for those issued on July 22, 1902, in respect of the Factory and Workshop Act, 1901; *see* p. 297.

feet above the level of the footway (if any) immediately in front of the centre of the face of the building in which such storey is situate, or, where there is no such footway, above the level of the ground before excavation.

(*b*) Any building in which sleeping accommodation is provided for more than twenty persons, or which is occupied by more than twenty persons, or in which more than twenty persons are employed, or any new building which is constructed or adapted to be occupied by more than twenty persons, or which is constructed or adapted for the employment therein of more than twenty persons.

Note.—Dwelling-houses occupied as such by not more than one family are exempt from the provisions of Sections 7 and 9.

Projecting shops.

By the provisions of Section 10, in every new and existing building in which any persons are employed or sleep, part of which is used or adapted to be used as a shop and projects 7 feet or more beyond the main front of such building, the roofs over the projecting portions are required to be constructed of fire-resisting materials not less than 5 inches thick. Provisions are also made with regard to the position and construction of lantern lights and ventilating cowls in such roofs.

Rooms over premises used for storage of inflammable liquid.

By the provisions of Section 11, buildings used in part for the storage of inflammable liquid and in part for living rooms, &c., are required to be provided with—

(1) Adequate safeguards to prevent the spread of fire from the part of the building used for the storage of any such inflammable liquid to any room used as a living room, workshop or work-room constructed over or communicating directly with any part used for the storage of such inflammable liquid, and

(2) Means of ready escape from such room in case of fire.

Means of access to roofs.

By the provisions of Section 12 every existing building having a shop projecting 7 feet or more from the main front of the building, and to which Section 10 above referred to applies, and every other existing building, except a dwelling-house occupied as such by not more than two families, and every new building shall, if having more than two storeys above the ground storey, or if exceeding 30 feet in height, be provided (unless and except so far as the Council shall otherwise allow)

with a dormer window or a door opening in a suitable position on to the roof or a trap door in a suitable position with a fixed or hinged step ladder or other proper means of access to the roof as specified in such Section 12, and with a sufficient parapet or guard rail where reasonably practicable and necessary to prevent persons slipping off the roof. The provisions of such section do not apply to buildings falling within either Sections 7 or 9 above-mentioned.

Conversion of buildings.

Under the provisions of Section 13, buildings shall not, without the consent of the Council, be converted, whether by change of user involving structural alterations or not, in such a manner that the buildings when so converted will not be in conformity with the Act.

Means of escape to be maintained.

Under the provisions of Section 14 all means of escape provided under this Act or otherwise shall be kept and maintained by the owner of the building in good condition and repair and efficient working order, and no person shall obstruct or render less commodious, or permit or suffer to be obstructed or rendered less commodious any such means of escape.

Exemption of certain buildings.

Certain buildings are specially exempted from the operations of the Act (Sections 28 to 42), and there is also a proviso (Section 26) that the provisions of the Act shall not apply to any building the whole of which is a factory or workshop within the meaning of Section 14 of the Factory and Workshop Act, 1901, or to any common lodging-house within the meaning of any statute for the time being in force relating to common lodging-houses within London.

Right of appeal under certain conditions.

Under certain defined circumstances (*see* Section 22) the owner of an existing or new building has a right of appeal to the Tribunal of Appeal against the decision of the Council.

Factory and Workshop Acts, 1901 and 1907

Factories and workshops.

The provisions of Section 14 of the Factory and Workshop Act, 1901, and the provisions of the Factory and Workshop Act, 1907, require that each factory, workshop or laundry, in which more than 40 persons are employed, shall be provided with such means of escape in case of fire for the persons employed therein as can reasonably be required in the circumstances of each case.

Arbitration in the event of a difference between owner and Council.

In case of a difference of opinion between the owner of an existing factory or workshop and the Council under Section 14, there is a provision in the Act for arbitration, but this does not apply to new factories or workshops.

Statement of General Requirements

The following statement with reference to the requirements in respect of the means of escape in case of fire to be provided in accordance with the provisions of the before-mentioned Acts, has been drawn up with a view to assisting owners and others in submitting applications and proposals to the Council thereunder. *This statement must not, however, be taken as binding upon the Council, but only as a general guide or indication, since each case is, after full consideration of the varying circumstances, dealt with on its merits; and nothing herein contained must be taken as in any way interfering with or derogating rom the powers of the Home Office, the Council, the District Surveyors, or any other authority whatsoever under the Factory Acts, the London Building Acts, or any other Act, or under any by-laws that may be made under Section* 15 *and Section* 153, *Subsection* 3, *of the Factory and Workshop Act*, 1901, *or under any by-laws or regulations relating to the construction of buildings or otherwise, or as constituting any consent, sanction, allowance or permission under any such Act, by-law or regulation, but all such Acts, by-laws and regulations must be fully observed and complied with notwithstanding anything herein contained.*

Applications

Particulars required.

Applications for the Council's certificate in respect of the means of escape from new buildings, and applications with proposals to meet the Council's requirements in respect of the means of escape from existing buildings, or for exemptions from any of the provisions of the above Acts, should state—

(*a*) The Act and section of the Act under which application is made.

(*b*) The number of persons for whom sleeping accommodation is provided and the number of persons occupying or employed on or intended to be occupied or employed on the various floors of the premises, specifying

approximately the numbers of males and of females.

(*c*) The trade, if any, carried on or to be carried on on each floor, with particulars of machinery, power, &c.

(*d*) In the case of existing buildings, the date of the erection of the building.

(*e*) The name and address of the owner and the occupier (if any).

(*f*) Particulars of the occupation or proposed occupation of the building. If in different occupations, particulars with regard to each part should be furnished.

Plans required.

Applications should be accompanied by all necessary plans, sections and elevations, drawn to one-eighth inch or one-quarter inch scale (one-eighth preferred), and by a block plan to a small scale showing the premises and the surrounding buildings and thoroughfares, such block plan having the north point indicated. These plans should show (as far as may be necessary for the purpose of the application) the means of escape proposed to be provided.

Means of Escape

Means of escape.

The means of escape required depend, *inter alia*, upon the following circumstances :—

(*a*) The area and disposition of the building.

(*b*) The number and the distribution of the persons for whom the means of escape are to be provided.

(*c*) The user of the building.

(*d*) The nature of the construction of the building.

(*e*) In the case of a building used for trade purposes, the nature of the materials and goods stored or manufactured in the building.

(*f*) The provision of an efficient system of automatic fire alarms, sprinklers, or other appliances.

Number of staircases.

It may, however, be laid down as a general principle (subject to the exceptions hereinafter mentioned) that at least one enclosed and protected staircase and exit will be required, and in addition an alternative means of escape from each floor by one of the following means :—

(*a*) Another enclosed and protected staircase and exit in the same building.

(*b*) A suitable staircase in another block, to which access is given by doorway openings in the

party or division walls, or by external communication.

(*c*) External gangways or balconies affording access to adjoining or adjacent buildings.

(*d*) An external iron staircase.

(*e*) Any other suitable arrangement which will, in the opinion of the Council, secure the desired object, having regard to the circumstances of any particular case. No arrangement which is not permanently fixed in position or which requires manipulation in part or in whole in order that it may be used in case of emergency can be accepted.

Position.

Where two or more means of escape from any floor are provided, they should be placed as far as reasonably practicable from each other so as to be approached from any part of the floor area independently of any one fire risk on that floor.

Escape by roof.

(*f*) In all cases where considered necessary by the Council some means of escape from the roof of the building to the roof of the adjoining premises should be provided.

Cases in which one staircase may be deemed sufficient.

(*g*) In small premises, and in some cases where it is possible to provide a staircase in a central position, one enclosed staircase may be accepted, provided that the premises are not used for the storage or manufacture of inflammable or explosive materials.

Maintenance

Maintenance.

Periodical examination should be made of all means of escape provided to ascertain whether they are in good condition and repair and in efficient working order.

All persons who are employed in or who occupy buildings in which means of escape have been provided should be made acquainted with the position and nature of such means of escape.

In hotels, boarding-houses, &c., notices should be displayed in each bedroom giving information as to the position and nature of the means of escape in case of fire, and the corridors, staircases and exits should be efficiently lighted during the night.

Details of the Construction, &c., of Means of Escape

I.—Enclosed and Protected Staircases

A.—*Internal incombustible staircases*

Enclosure.

(*a*) The staircases, including landings, lobbies and passages from one flight to another, should be enclosed by walls, not less than 9 inches thick, the outer edges of the steps and landings being properly supported.

(*b*) The staircases should be ceiled with iron and concrete where they are not carried up above the roof, or where they are carried up above the roof and are liable to attack by fire from an adjoining structure.

Materials to be used.

(*c*) The staircases, including the flooring in the lobbies, approach passageways, &c., should be constructed of incombustible materials with solid square or spandrel steps, which should be supported at both ends on brickwork. The steps and landings should be not less than 6 inches thick.

(*d*) Spandrel steps, where used, should be of the following thickness—

(i) For staircases 3 feet 6 inches wide, not less than 3 inches thick in the smallest part.

(ii) For staircases 4 feet 6 inches wide, not less than $4\frac{1}{2}$ inches thick in the smallest part.

B.—*Internal fire-resisting staircases*

Materials to be used and enclosure.

(*a*) The staircases, including the treads, strings, carriages, landings, joists and floors, should be constructed of oak, teak, jarrah, karri or other hard timber of not less than $1\frac{3}{4}$ inches finished thickness (no fir or pine must be used), and the enclosure to the staircase should be a solid partition of incombustible or fire-resisting material at least 3 inches thick, carried up through the thickness of the floors.

(*b*) The ceilings and soffits of the staircases and landings, if any, should be of plaster or cement.

(*c*) A suitable balustrade should be provided where necessary to the outer strings of the staircases.

II.—EXTERNAL IRON STAIRCASES

(*a*) The staircases, including the strings, bearers and supports, should be of iron, and constructed throughout upon dead bearings, to the satisfaction of the District Surveyor.

(*b*) The steps and landings should be constructed of solid or perforated iron plates (if perforated plates be used no perforation should exceed three quarters of an inch across each way).

(*c*) The risers should be of iron, either solid or of a close pattern.

(*d*) Where an iron staircase is in general use the treads and landings should be finished with a surface of approved non-slippery material as distinguished from perforated iron or chequered iron plates.

(*e*) All windows and similar openings by or near any such staircase should be glazed with fire-resisting glazing, and where necessary the sashes and frames should be fixed.

(*f*) A balustrade of a close pattern at a suitable height should be provided on each side of the flights and round the landings. If balusters be used, they should be not more than 6 inches apart.

(*g*) The staircases should deliver into the outer air, at the ground level, into a public way or thoroughfare, or some large open space.

III.—GENERALLY AS TO STAIRCASES

(*a*) Internal staircases should, where practicable, be placed next to an outer wall, and be so arranged that persons enter them from any floor level in the direction of descent. Position.

(*b*) Internal staircases should be properly lighted and ventilated by windows, or, in exceptional cases, other effective means. Lighting and ventilation.

(*c*) The treads of the staircases should be not less than 10 inches wide clear of nosings, and the risers not more than 7½ inches high. Treads and risers.

(*d*) Staircases should be provided with handrails fixed upon both sides thereof, and continued round the landings and chased into the end of newel walls where these occur. Handrails.

(*e*) Where the doorways or staircases may be used

Width of staircases, etc.

as means of escape by not more than 200 persons, they should be not less than 3 feet 6 inches wide.

(*f*) Where the doorways or staircases may be used as means of escape by more than 200 persons, or by more than 100 persons on any one floor, they should be not less than 4 feet 6 inches wide.

Doorways to staircases.

(*g*) The doorways for access to and exit from the staircases should in all cases be of the width in the clear mentioned above when the doors are open.

(*h*) All doorways leading to staircases should, where necessary, be recessed. The recesses should be constructed throughout of fire-resisting materials, and be fitted with doors of fire-resisting materials (oak, teak, jarrah, karri or other hard timber of not less than $1\frac{3}{4}$ inches finished thickness) in two folds hung so as to open in the direction of exit or to swing both ways clear of steps, landings, passageways and footways. Such doors must be fitted with springs, weights or other approved appliances to close them after use. The frames of the doors shall be bedded solid to the walls or partitions.

Steps, flights, and landings.

(*i*) Staircases should be arranged in straight flights, without winders; each flight should consist of not more than fifteen steps; landings should be provided at the top and bottom of each flight; the steps and landings should be of the full width of the staircases.

Landing spaces.

(*j*) Landing spaces not less than 2 feet 6 inches wide should be provided between the steps of the flights and the escape doorways leading to and from the staircases.

Supports and enclosures.

(*k*) All supports to internal fire-resisting staircases and their enclosures should be of fire-resisting materials, and all iron work supporting internal staircases and their enclosures should be protected by plastering or other incombustible or non-conducting external coating not less than 2 inches in thickness.

Doors affording access to roof.

(*l*) Doors at the head of staircases affording access to the roof should be glazed in the upper panels with ordinary glass.

IV.—EXTERNAL IRON GANGWAYS AND BALCONIES

(*a*) These gangways and balconies should be supported on dead bearings and be provided with solid floors of incombustible materials; if perforated iron flooring be used, the perforations should not exceed three-quarters of an inch across each way. Materials to be used.

(*b*) A suitable balustrade not less than 3 feet 6 inches high should be provided to these gangways and balconies. Balustrades.

V.—ENCLOSURE AND POSITION OF LIFTS

In cases where a lift will, in the opinion of the Council, endanger the means of escape, the following requirements should be observed:—

(*a*) Lifts, excepting passenger lifts constructed within the open wells of staircases and enclosed only with metal grilles, should not be placed near to escape staircases, and should not be connected directly therewith by means of openings or otherwise. Position.

(*b*) In buildings where fire-resisting floors are provided, lifts should be enclosed all up with incombustible materials and fire-resisting doors or shutters. When the shaft of the lift is carried up to the roof it should be continued through the roof, and, if covered, thin glass should be used, protected on the outside with strong wire guards. Enclosure.

(*c*) In other buildings where there are large floors undivided by partitions, fixtures, &c., lifts, if placed as far as practicable from the staircases, exits, &c., may be enclosed with fire-resisting materials to a height of 4 feet above each floor level, and above this with stout wire-mesh guard.

VI.—BUILDINGS USED FOR THE STORAGE OF INFLAMMABLE LIQUID

(*a*) Rooms in which inflammable liquid is stored should be separated from other parts of the building by brick walls and fire-resisting floors and ceilings. Buildings for storage of inflammable liquid.

(*b*) Doorways for access to such rooms should be fitted with self-closing fire-resisting or iron doors.

(*c*) Adequate ventilation should be provided.

(*d*) Living rooms, workshops or workrooms constructed over or communicating directly with any part of a building used for the storage of inflammable liquid, should be provided with exit doorways giving access to some safe position as far as practicable from the storage, and with doors hung to open in the direction of exit with only such fastenings as can be easily and immediately opened from the inside.

VII.—GENERAL

Guard rails.

(*a*) Proper guard rails should be provided to the routes of escape on roofs, &c., and round skylights, lantern lights and ventilating cowls on the roofs of projecting shops.

Gangways.

(*b*) Clear gangways should be kept up to and between all staircases, gangways and exits on all floors.

Escape doors.

(*c*) All escape doors should be made so as to open in the direction of exit or to swing both ways, clear of steps, landings, passageways, &c.

(*d*) All doors usable as means of escape from both sides should swing both ways and be kept free from all fastenings.

(*e*) All such doors must, if required to be provided with fastenings during the time persons are upon the premises, be fitted during such time with automatic bolts only.

(*f*) In buildings other than residential buildings a portion of the upper panels of all fire-resisting doors usable as means of escape should be glazed with transparent fire-resisting glazing, and it is suggested that a portion of the upper panels of all other principal exit doors should be glazed with clear glass, the glass to be at such a height as will enable persons approaching the doors in opposite directions to see each other.

Windows to open.

(*g*) Windows on the floors above the ground floor facing the public way, street, thoroughfare or open space should be made to open easily at sill level to a sufficient height and width

to allow a full-grown person to pass through in case of need.

(*h*) Windows and doors affording access to external escape staircases, balconies, bridges, &c., should be marked on the inside in large letters 'Exit in case of fire.' Windows and doors.

THEATRES, MUSIC HALLS, CONCERT HALLS, &C.

Premises to be used for music, dancing, stage plays, or entertainments of a like kind, are specially dealt with under the Metropolis Management and Building Acts (Amendment) Act, 1878, and the Metropolitan Board of Works (Various Powers) Act, 1882, and special regulations relating to such premises have been made by the Council.

G. L. GOMME,
Clerk of the Council.

County Hall,
Spring Gardens, S.W.
10th December, 1907.

DIGEST OF LAW CASES

Decided by the High Court

1905-1908

The London Building Act, 1894

Secs. 7 & 200 (1) a.

K.B. 1905 (Alverstone, C.J., Lawrance and Ridley, JJ.). The freeholder of a triangular piece of land situated between two loops of a railway and approached only through a tunnel under one of the railways and along a rough clinker road over part of the land, had submitted to the Council for their approval a plan of a proposed new street to run through the tunnel (to be widened to 40 feet), along the line of the rough road, and onwards across the land, over the other railway loop by a bridge, to be constructed, to meet an existing road beyond. The new street had been sanctioned by the Council on the conditions (1) that the new street should be clearly defined and thrown open to the public within one year (subsequently extended by another eighteen months); (2) that no new building should be commenced to be erected 'upon either side of such roadway or upon a site abutting on such roadway' before condition (1) had been complied with and certain other things done. The freeholder, having agreed to lease a plot of the land situated 187 feet back from the proposed street, with a right of way over the intervening land, had commenced to erect buildings on the said plot, lengthened the sewer along the rough road, and from time to time put fresh clinkers thereon. The road had not been continued over the freeholder's land, the tunnel had not been widened, nor the bridge built. A summons against the freeholder under Section 200 (1) *a* for commencing to form and lay out a street not in accordance with the conditions of the Council was heard before the expiry of the extended time mentioned in

condition (1), and was dismissed by the magistrate, who found that the defendant had commenced to form and lay out a part of the proposed street, but that he had not commenced to erect new buildings 'upon either side of such roadway or upon a site abutting on such roadway.' Upon the case coming before the Divisional Court it was held that respondent had not commenced to form and lay out the proposed new street, also that he had not commenced to erect new buildings 'upon either side of such roadway or upon a site abutting on such roadway,' which words 'ought to be construed in the narrower sense as dealing with such sites as will have an operation and effect upon the roadway as such' (*L.C.C.* v. *Collins*, 69 J.P. 401; 93 L. T. 540; 3 L. G. R. 1103).

Secs. 7, 8, & 10.

K.B. 1905 (Alverstone, C.J., Lawrance and Ridley, JJ.). A private road had been laid out and sewered in 1870, of a width of 21 to 22 feet throughout, and of a length of about 1,200 feet, communicating at one end only with a public road by carriage gates and foot gates, and affording access to several residences. In 1903 the respondent bought a plot of land abutting on the side of the said private road and proceeded to build a house thereon 50 feet back from the road, for that purpose taking down the post and rail fence between the private road and his plot and erecting a permanent oak fence. The conveyance of the plot did not vest the soil of the private road in him, but granted him a right of way over it to his plot. It was held that the respondent had not commenced to form and lay out a street within the meaning of Sections 7 and 8, or to adapt a way for carriage traffic within the meaning of Section 10 (*L.C.C.* v. *King*, 69 J.P. 406; 3 L. G. R. 1046).

Secs. 7, 8, & 10.

K.B. 1905 (Alverstone, C.J., Kennedy and Ridley, JJ.). Where the owner of land on which was a private way, over which a few other persons had a right to go to premises abutting on the way, which was paved and closed at the end with gates, had enlarged a building that abutted on the way, extending it along the way, and had done nothing to the way itself beyond setting the new building back 4 feet from the way, leaving the intervening slip of land unpaved, it was held that he had not commenced to form or lay out a new street

within the meaning of Section 7, nor had he adapted or altered for carriage traffic within the meaning of Section 10 (*L.C.C.* v. *Heathman*, 69 J.P. 222 ; 3 L. G. R. 1016).

Secs. 22, 73 (8), & 164.

K.B. 1905 (Alverstone, C.J., Lawrance and Ridley, JJ.). A shelter, 10 feet 6 inches long, projecting 4 feet 9 inches, had been hung from the front wall of a building by two stay rods and secured to the wall at the bottom by six bolts ; the shelter consisted of an iron framework, filled in on the front and sides with leaded glass, and covered on the top with zinc ; there were letters on the glass, made visible at night by lights. The shelter extended beyond the general line of buildings in the street, was about 11 feet above the pavement, and had been erected without the consent of the Council. It was held that the shelter was not a 'structure' within the meaning of Section 22, and not a 'projection' within the meaning of Section 73 (8) (*L.C.C.* v. *Schewzik*, (1905) 2 K.B. 695 ; 69 J.P. 409 ; 74 L. J. (K.B.) 959 ; 93 L. T. 550 ; 54 W. R. 168 ; 3 L. G. R. 1159 ; 21 T. L. R. 731 ; 3 A. L. R. 105).

Sec. 22.

C.A. 1907 (Cozens-Hardy, M.R., Fletcher Moulton and Farwell, L,JJ., affirming K.B., Darling and A. T. Lawrence, JJ.). In 1898 the then Superintending Architect had defined the general line of buildings in part of a street between two return streets, and no appeal was made against his decision. In 1906 the Superintending Architect defined another general line of buildings for a greater length of the same street, including the portion that was the subject of the certificate of 1898 ; upon appeal, the Tribunal of Appeal reversed the certificate of 1906 certifying another line for a still greater length of the street ; there was no evidence that change of circumstances had arisen since the date of the 1898 certificate to alter the general line, though it appeared that on various occasions between 1856 and 1877 the Metropolitan Board of Works had granted consent to the erection of one-storey shops on the forecourts, and that other one-storey shops had been erected apparently without consent. It was held that the general line of buildings defined in 1898 was still operative, and that the certificate of 1906 must accordingly be set aside (*Lilley* v. *L.C.C.*, K.B. 71 J.P. 437 ;

97 L. T. 306; 5 L. G. R. 1070; 3 A. L. R. 122; C.A. 72 J.P. 41; 98 L. T. 110; 6 L. G. R. 126).

It does not appear to have transpired that the certificate of 1898 was before the establishment of the Tribunal of Appeal in 1900, and consequently that no appeal was then possible.

Sec. 22.

K.B. 1907 (Alverstone, C.J., Darling and Phillimore, JJ.). The Palace Theatre Company, Limited, had been summoned for erecting a 'structure' beyond the general line of buildings without the consent of the London County Council. The 'structure' consisted of a framework of wood covered with plaster in imitation of stone, with two plaster figures; the centre was hollow, and contained lights to illuminate a canvas panel in the front for advertisements of the performance. It was 13 feet in height and 7 feet wide, and projected from 1 foot 2 inches to 2 feet 2 inches beyond the defined line, and was fastened by iron holdfasts to the wall, but could have been removed without serious injury to the wall, and it stood on the pavement lights, without any fastening. It was admitted that it was in advance of the general line of buildings in Cambridge Circus, but it was contended by the defendant company that it was not a 'structure' within the section. The magistrate had found as a fact that it was a 'structure' within Section 22, and imposed a penalty and made an order for its removal; as the question was one of fact, he declined to state a case. *Rule nisi* calling on the magistrate to show cause why a mandamus should not issue directing him to state a case. Held that, as the question was one of fact, and as there was evidence on which the magistrate could come to the conclusion he had arrived at, the Court would not issue a mandamus to compel him to state a case (*Rex* v. *Denman and L.C.C., ex parte Palace Theatre Co., Ltd.*), 71 J.P. 279; 96 L. T. 672; 5 L. G. R. 814).

Sec. 22 (1).

K.B. 1907 (Alverstone, C.J., Darling and A. T. Lawrence, JJ.). Where the respondents had erected without the consent of the Council on the steps and landing leading to the front door in the main front wall of their premises a showcase (7 feet 6 inches in length, 1 foot 10 inches in width, 9 feet 3 inches in height above the street level) which took the place of a

shop-front and projected to the extent of 6 feet 3 inches beyond the general line of buildings as certified by the Superintending Architect, and the houses in this part of the street had bay windows in advance of the general line, and the showcase was slightly in advance of the bays, it was held that the showcase was not a 'building or structure' within the section (*L.C.C.* v. *Hancock and James*, 71 J.P. 268; 76 L. J. (K.B.) 526; (1907) 2 K.B. 45; 96 L. T. 618; 5 L. G. R. 572; (1907) W. N. 88; 3 A. L. R. 118).

Secs. 22, 25, & 31.

K.B. 1907 (Darling and A. T. Lawrence, JJ.). Where the Superintending Architect had defined under Section 22 the general line of buildings in part of a street, which buildings were owned by a railway company, including a coal order office in course of erection, to be used in connection with coal to be brought over the company's lines, and let on a tenancy that might be determined on a week's notice, and the company had appealed to the Tribunal of Appeal under Section 25 against the certificate, and the Tribunal had allowed the appeal on the ground that the line affected the exercise by the company of powers conferred upon them by their special Acts of Parliament. It was held that the Tribunal of Appeal was wrong, as, assuming that the coal office had been built and let in exercise of such powers, no general line of buildings defined by the Superintending Architect could, by reason of Section 31, affect such exercise (*South-Eastern and Chatham Railways* v. *L.C.C.*, 71 J.P. 260; 76 L. J. (K.B.) 528; (1907) 2 K.B. 91; 96 L. T. 676; 5 L. G. R. 626; (1907) W. N. 81).

Secs. 22 & 31.

K.B. 1907 (Channell, Bray and Sutton, JJ.). Where land had been acquired by a railway company under a special Act passed in 1862, which provided that nothing in that Act should prejudice, diminish, alter, or take away any of the rights, powers, privileges or authorities of the Metropolitan Board of Works, and the company had leased some of the land to respondent, who had erected thereon a brick-built coal order office beyond the general line of buildings as certified by the Superintending Architect. It was held (Bray, J., dissenting) that the respondent was not entitled to erect the building in advance of the general line on the ground that Section 31 did not protect the respondents, as the railway company's

private Act did not authorise the erection of buildings beyond the general line (*L.C.C.* v. *Coal Co-operative Society, Ltd.*, 72 J.P. 68 ; 98 L. T. 580 ; 6 L. G. R. 387).

This case was in respect of the same building as the case of *S.E. and Chatham Railway* v. *L.C.C.*, *supra*, and the two decisions appear to be in direct conflict.

Sec. 49.

Ch. 1907 (Kekewich, J.). An old street originally formed or laid out before August 7, 1862, that has been substantially altered since that date by being straightened and widened in part over new ground, part of the old street being absorbed as building ground, has been held to be a street formed or laid out since August 7, 1862, within the meaning of the section (*Attorney-General* v. *Metcalf and Greig*, (1907) 2 Ch. 23 ; 96 L. T. 351 ; 76 L. J. (Ch.) 259 ; 71 J.P. 182 ; (1907) W. N. 36 ; 23 T. L. R. 263 ; 3 A. L. R. 113).

C.A. 1907 (Cozens-Hardy, M.R., Fletcher Moulton and Farwell, L,JJ., reversing (Ch.) Kekewich, J.). In the case of a block of flats abutting upon a wide street not within the section, and also upon a street of less width than 50 feet, held to have been formed since August 7, 1862, where the frontage to the latter street was for a distance of 40 feet from the corner flush up to the footway and of a height regulated by the height according to the front or wider street, and where the remainder of the flank frontage was in part set back from and in part flush up to the street, but the distance of the external wall of each part from the opposite side of the street did not exceed the height of such wall at that part, and where there was behind one of the projecting parts another external wall that extended higher than the wall in front of it, but so that the height of such wall did not exceed the distance of that wall from the other side of the street : it had been held by Kekewich, J., that the words 'so that the height shall exceed' mean 'shall in any part exceed,' and that the height of each part of a building must be governed by the distance of the front or external wall of that part from the other side of the street. On appeal it was held that the height of the first 40 feet measured from the corner is properly regulated by the front street, and such portion is to be treated as an ordinary part of that street, that what is the 'front or nearest external wall' in the flank street is a question of fact

to be dealt with in each case, that the wall may conceivably vary, but that a recess going back from the general line of frontage does not vary the meaning of the 'front or nearest external wall,' and that a number of walls, one behind the other, carried to a greater height in steps, contravene the section. (*Attorney-General* v. *Metcalf and Greig*, *supra*, and C.A. (1908) 1 Ch. 327; 97 L. T. 737; 77 L. J. (Ch.) 261; 72 J.P. 97; 24 T. L. R. 53).

It is not clear from this judgment that each portion of the length of a frontage is not to be separately treated according to the judgment of Kekewich, J.

Sec. 88.

K.B. 1907 (A. T. Lawrence, J.). Where under an indenture it was provided that the building owners might without payment make use of the half of a certain wall (which was a party fence wall) as and for a party wall, and might thicken, raise, and underpin the same at their own expense, the height not to exceed 30 feet, and the building owners had raised the wall for the whole of its thickness to a height of 27 feet, claiming their right to do this under the Building Act, it was held that the building owners were entitled to use half the wall for the permanent use of girders, and were entitled to raise and underpin the whole wall (*Bennett* v. *Harrod's Stores*, *Ltd.*, 'The Builder,' December 7, 1907).

Secs. 88–91.

C.A. 1907 (Vaughan Williams, Fletcher Moulton, and Buckley, L,JJ., affirming K.B., Ridley and Darling, JJ.). Where the respondents as 'building owners' had served notice under Section 90 on appellant, the adjoining owners, setting out that they intended to raise the party wall between 33 and 34 John Street, Edgware Road, and, difference having arisen, the matter was referred to the three surveyors, who by their award ordered respondents to do certain work and to make good all structural damage to appellant's premises; but refused to award compensation for damage to appellant's trade arising from the works to the party wall, on the ground that they had no jurisdiction, and the appellant had successively appealed to the County Court, the Divisional Court, and the Court of Appeal, it was held that where surveyors are appointed under Section 91 to settle a difference between

a building owner and an adjoining owner under Section 90 with respect to the raising of a party wall, they have no jurisdiction to award compensation to the adjoining owner in respect of loss of trade arising from the execution of the work (*Adams* v. *Marylebone B.C.*, K.B. 70 J.P. 545; 75 L. J. (K.B.) 995; (1906) 2 K.B. 767; 93 L. T. 540; C.A. 71 J.P. 465; (1907) 2 K.B. 882; (1907) W. N. 187; 77 L. J. (K.B.) 1; 97 L. T. 593; 23 T. L. R. 702; 3 A. L. R. 108).

Secs. 5 (31), 90 (1), & 201 (8).

Ch. 1906 (Warrington, J.). Where a railway company had acquired by agreement, under powers conferred upon them by their special Act, a house, which they proceeded to pull down, thereby, it was alleged by the owners of the adjoining building, 'affecting' the party wall, without having given them a party wall notice as required by Section 90, and an injunction was asked for restraining the company from continuing the demolition of the building, it was held that the company were not exempt under their special Act from the provisions of the Building Act, and were bound to give the adjoining owners the usual party wall notice, in default of which the adjoining owners were entitled to an injunction; but it was held upon the facts that the company, not having done anything that amounted to a substantial interference with the party wall, had done nothing that 'affected' the party wall, and consequently were not 'building owners' within the meaning of Section 5 (31) (*Lewis and Salome* v. *Charing Cross, Euston and Hampstead Railway Co.*, (1906) 1 Ch. 508; 70 J.P. 221; 75 L. J. (Ch.) 282; 94 L. T. 732; 54 W. R. 435; 4 L. G. R. 432).

Sec. 90 (1).

Ch. 1907 (Neville, J.). The party structure notice required to be served by the building owner on the adjoining owner must be served on every person in possession of or in receipt of rents or profits arising from the adjoining premises or in occupation of the same otherwise than as a tenant from year to year, or for any less term, or as a tenant at will (*see* definition of 'owner' in Section 5 (29)). But where a particular interest in adjoining premises is owned by a number of persons together, as in the case of a tenancy in common or a joint tenancy, then it is sufficient to serve

one of those persons only (*Crosby* v. *Alhambra Co., Ltd.*, (1907) 1 Ch. 295 ; 76 L. J. (Ch.) 176 ; (1907) W. N. 8).

Sec. 90 (4).

C.A. 1905 (Mathew and Cozens-Hardy, L.JJ., affirming Bucknill, J., at chambers). The limitation of time contained in this subsection does not apply when a difference has arisen between the building owner and the adjoining owner and the matters in dispute have been referred to the surveyors under Section 91, and the surveyors do not make their award within six months after the service of the party wall notice (*Leadbitter* v. *Marylebone B.C.* (1905), 69 J.P. 201 ; (1905) 1 K.B. 661 ; 92 L. T. 819 ; 74 L. J. (K.B.) 507 ; 53 W. R. 470 ; 21 T. L. R. 377).

Part VIII.

Ch. 1906 (Kekewich, J.). Defendants had leased to plaintiffs a plot of land adjacent to their own building, and had cleared the site, leaving an open end to their own buildings. The plans of the new buildings to be built by plaintiffs, submitted to defendants, showed certain windows in the rear wall of the building overlooking defendants' roof. These windows were at first objected to by defendants, but, upon plaintiffs insisting that they were necessary for their business, they subsequently approved the plans. Plaintiffs proceeded with the erection of their building ; and as the rear wall, containing the windows, was the only wall separating plaintiffs' building from defendants', the District Surveyor objected to the openings as being in a party wall, and took proceedings before the magistrate, who was prepared to hold that the wall was a party wall within the meaning of the Act and to order the windows to be closed. Plaintiffs' builder, when erecting the rear wall, which was entirely within the demised premises, had, with the consent of their architect but without their knowledge or consent, supported defendants' roof by building into the wall the ends of timbers. Plaintiffs asked for an injunction to restrain defendants from committing any trespass so as to convert their wall into a party wall. It was held that as the windows must be blocked up, the defendants had acted in derogation of their grant, that they had committed a trespass upon plaintiffs' property, and that a mandatory injunction must be granted (*Betts, Ltd.*,

v. *Pickfords, Ltd.*, 94 L. T. 363; (1906) 2 Ch. 87; 75 L. J. (Ch.) 483; 54 W. R. 476; 22 T. L. R. 315).

Sec. 106.

Ch. 1906 (Warrington, J.). Where demised premises had been allowed to fall in such a state as to render repair practically impossible, and the front and back walls and one party wall had been condemned as dangerous, it was held that the lessor was not bound to rebuild under a covenant to keep the outside of the premises in good and substantial repair, and that there is no difference in principle in the liability of lessor and lessee (*Torrens* v. *Walker*, 95 L. T. 409; (1906) 2 Ch. 166; 75 L. J. (Ch.) 645; 54 W. R. 584).

Sec. 106.

K.B. 1905 (Bray, J.). Where a building had been allowed to become dangerous, and proceedings had been taken and an order to take down the structure had been made, and a lessee of certain rooms in the building sued for breach of the covenant for quiet enjoyment, it was held that a breach had been committed, though in this case the original lessor, the defendant, was not liable (*Williams* v. *Gabriel*, (1906) 1 K.B. 155; 94 L. T. 17; 75 L. J. (K.B.) 149; 54 W. R. 379; 22 T. L. R. 217).

Sec. 113 (1) & Third Schedule, Part II.

K.B. 1905 (Alverstone, C.J., Lawrance and Ridley, JJ.). Where one of two adjoining buildings had been taken down, with the exception of the party wall separating the two buildings, and that party wall had become the subject of dangerous structure proceedings under Part IX., and the owner of the still existing house had paid the Council their expenses, including the fees to the District Surveyor, it was held that the Council were not entitled to recover from the owner of the demolished building District Surveyor's fees in respect of that building, as there was only one dangerous structure—*i.e.* the party wall (*L.C.C.* v. *Sheinman*, 69 J.P. 395; 93 L. T. 505; 3 L. G. R. 977).

Secs. 71 & 145.

K.B. 1908 (Alverstone, C.J., A. T. Lawrence and Sutton, JJ.). Where a limited company had obtained a provisional order, confirmed by statute, under which they had constructed a box in the street measuring

27 inches by 27 inches by 30 inches, with concrete floor, brick walls, and an iron manhole cover or lid, without having served notice on the District Surveyor, it was held that the case could not be distinguished merely upon the question of size from the previously decided cases of *Whitechapel Dist. B.W.* v. *Crow* and *Charing Cross and Strand Electricity Supply Corporation* v. *Woodthorpe*, and that the District Surveyor was entitled to notice (*County of London Electric Supply Co.* v. *Perkins*, 72 J.P. 133 ; 6 L. G. R. 344).

The size of the boxes in this case was considerably less than in the previous cases.

Secs. 150, 151, & 153 (1).

K.B. 1907 (Alverstone, C.J., Darling and Phillimore, JJ.). Where a summons had been taken out by the District Surveyor against the respondent for default in complying with a notice of irregularity under Section 151, requiring respondent to divide a building by 'party walls' as provided by Section 75, and the magistrate had found as a fact that the appellant, after receiving the plans, had allowed the work to proceed without serving notice of objection under Section 150, and dismissed the summons on the ground that the appellant, by omitting to give such notice of objection, had deprived the respondent of the right of appeal conferred by Section 150, and was therefore too late to take the proceedings on a notice of irregularity, it was held that the failure to give notice of objection under Section 150 was no bar to the proceedings, and that the case must go back to the magistrate to be considered on its merits (*Coggin* v. *Duff*, 71 J.P. 302 ; 96 L. T. 670 ; 5 L. G. R. 615 ; 3 A. L. R. 120).

Secs. 182 & 183.

K.B. 1907 (Phillimore and Bray, JJ.). Where 'persons deeming themselves aggrieved' appeal to the Tribunal of Appeal under Section 25 against the certificate of the Superintending Architect defining the general line of buildings in part of a street, and the Council appear by counsel on such appeal and call evidence in support of the certificate of the Superintending Architect, the Tribunal of Appeal may, on allowing the appeal and varying the certificate, order the County Council to pay the costs of the appellant (*L.C.C.* v. *Metropolitan Railway Co. and Others*, 71 J.P. 372 ; 97 L. T. 136 ; 5 L. G. R. 814).

London Building Acts (Amendment) Act, 1905

Secs 7 & 22 (1).

K.B. 1908 (Channell and Sutton, JJ.). Where a building to which the provisions of Section 7 of the Lond. Bldg. Acts (Am.) Act, 1905, would apply had been commenced without plans being deposited with the Council in accordance with that section at the time therein set out, it was held that the provisions of the section as to the time at which the plans therein mentioned shall be deposited is directory only, and is not a condition precedent to the approval or refusal by the Council of the means of escape proposed to be provided, or to the owner's right of appeal under Section 22 (1) of the Act to the Tribunal of Appeal (*L.C.C.* v. *Spink and Son*, 72 J.P. 341 ; (1908) 2 K.B. 447).

Sec. 26 (2).

Q.B. 1891 (Coleridge, C.J., and Mathews, J.). A house kept for charitable purposes and not for gain, where poor persons are accommodated with a night's lodging and food for a nominal sum, and subject to religious control, is not a common lodging-house requiring registration within the meaning of 16 & 17 Vict. cap. 41 (*Booth* v. *Ferrett*, 55 J.P. 7 ; (1890) 25 Q.B.D. 87).

Sec. 26 (2).

K.B. 1905 (Alverstone, C.J., Lawrance and Kennedy, JJ.). A house where no payment is made by persons admitted to it for shelter and food may be a common lodging-house within the meaning of the Common Lodging-houses Act, 1851, and Part IX. of the L.C.C. (General Powers) Act, 1902 (*Gilbert* v. *Jones*, 69 J.P. 392 ; (1905) 2 K.B. 691 ; 93 L. T. 520 ; 74 L. J. (K.B.) 929 ; 54 W. R. 94 ; 3 L. G. R. 987 ; 21 T. L. R. 709).

This decision has now been overruled by a subsequent Chancery case in respect of the same building, when Kekewich, J., granted an injunction against the use of the building as a common lodging-house without licence. This decision was reversed on appeal (*see Parker* v. *Talbot*, *post*).

Sec. 26 (2).

C.A. 1906 (Vaughan Williams, Stirling and Cozens-Hardy, L,JJ., reversing (Ch.) Kekewich, J.). The definition of the term 'common lodging-house' con-

tained in the Common Lodging-houses Act (Ireland), 1860, was held to apply to the Common Lodging-houses Acts, 1851 and 1853, notwithstanding the fact that the Act of 1860 has been repealed. A house conducted as a charitable institution to which very poor or destitute persons were admitted in a similar manner as in a common lodging-house, but no payment of any kind, direct or indirect, was made by or on behalf of the persons admitted, was held not to be a common lodging-house within the Common Lodging-houses Acts, 1851 and 1853, and the L.C.C. (General Powers) Act, 1902, Part IX. (*Parker* v. *Talbot*, 70 J.P. 43; (1905) 2 Ch. 643; 93 L. T. 522; 75 L. J. (Ch.) 8; 54 W. R. 132; 4 L. G. R. 27; 22 T. L. R. 10).

The definition above referred to is contained in Section 3: 'The term "common lodging-house" shall mean a house in which persons are harboured or lodged for hire for a single night or for less than a week at a time, or any part of which is let for any term less than a week.'

LIST OF DISTRICT SURVEYORS AND THEIR DISTRICTS

SEPTEMBER 1908

No.	District	Surveyor and Address
1	Battersea, Central	Wilfred J. Hardcastle, 73 Marney Road, Battersea Rise, S.W.
2	Battersea, South, and part of Wandsworth	Horace Cheston, 35 Bellville Road, Wandsworth Common, S.W.
3	Bermondsey . .	Vincent John Grose, 13 Railway Approach, London Bridge, S.E.
4	Bethnal Green, East, and South Bow	Edward Street, 109 Bow Road, E.
5	Bethnal Green, West	Robert Pledge Notley, 11 Paradise Row, Bethnal Green Road, E.
6	Bromley, St. Leonard	E. Street (Interim), 109 Bow Road, E.
7	Camberwell . .	Ellis Marsland, 244 Camberwell Road, S.E.
8	Catford . . .	Richard Dominic Hansom, 39 Culverley Road, Catford, S.E.
9	Charlton, Kidbrooke and Lee	A. A. Fillary, 83 Belmont Hill, S.E.
10	Chelsea . . .	Thomas Edward Mundy, 6 Lincoln Street, Chelsea, S.W.
11	City of London, East	John Todd, Hamilton House, 149 Bishopsgate Street Without, E.C.
12	City of London, West	C. W. Surrey, 134 Fleet Street, E.C.
13	Clapham . . .	William Grellier, 188 High Street, Clapham, S.W.
14	Deptford, East, and Greenwich	Benjamin Tabberer, Lecture Hall, Royal Hill, Greenwich, S.E.
15	Finsbury . . .	Josiah Goodchild (Interim), Bank Chambers, Parkhurst Road, Holloway
16	Fulham, North .	A. P. Stokes (Interim), Broadway House, The Broadway, Walham Green, S.W.

No.	District	Surveyor and Address
17	Fulham, South .	John Albert Gill Knight, Broadway House, The Broadway, Walham Green, S.W.
18	Hackney, North-East	H. A. Legge (Interim), 360 Mare Street, Hackney, N.E.
19	Hackney, South-East, and North Bow	Alexander Payne, 10 St. Thomas's Square, Mare Street, N.E.
20	Hackney, West .	H. A. Legge, 360 Mare Street, Hackney, N.E.
21	Hammersmith .	A. H. W. Glasson, 3 The Grove, Hammersmith, W.
22	Hampstead . .	Frederic Hammond, 305 Finchley Road, Hampstead, N.W.
23	Holborn . . .	W. G. Perkins, 6 Raymond Buildings, Gray's Inn, W.C.
24	Islington, North, and St. Pancras, North	Josiah Goodchild, Bank Chambers, Parkhurst Road, Holloway, N.
25	Islington, South, and Shoreditch	Henry Lovegrove, 124 Shoreditch High Street, E.
26	Kensington . .	Samuel Flint Clarkson, 17A Vicarage Gate, Kensington, W.
27	Lambeth, Central, and Battersea, North	Clarence Tilt Coggin, 69 Kennington Oval, S.E.
28	Lambeth, South	Percy Hunter, 53 Clapham Road, S.W.
29	Lewisham, East .	E. W. Lees, 3 Lewisham Bridge, S.E.
30	Lewisham, West .	W. R. Davidge, 301A Brockley Road, S.E.
31	Mile End Old Town	H. N. Kerr, 13 Grafton Street, Mile End Road, E.
32	Newington, and part of St. George - the - Martyr, Southwark	Bernard J. Dicksee, 14 and 16 New Kent Road, S.E.
33	Norwood, West .	Arthur George Morrice (Interim), 8 Knight's Hill, S.E.
34	Paddington . .	F. W. Hamilton, 195 Edgware Road, W.
35	Plumstead and Eltham	Thomas Batterbury, 97 Griffin Road, Plumstead, Woolwich, and Park House, Court Road, Eltham, Kent
36	Poplar, All Saints	John Clarkson, 136 High Street, Poplar, E.
37	Putney and Roehampton	Thomas William Willis, 9 Hotham Road, Putney, S.W.

No.	District	Surveyor and Address
38	Rotherhithe, Hatcham, and St. George-in-the-East	Augustus William Tanner, 114 Lower Road, Rotherhithe, S.E., and 334 Commercial Road East, E.
39	St. George, Hanover Square, North	Thomas Henry Watson, 9 Conduit Street, Regent Street, W.
40	St. George, Hanover Square, Belgrave and Pimlico Division	S. F. Monier-Williams, 83A Chester Square, Pimlico, S.W.
41	St. James, Westminster	L. R. Ford, 60 Haymarket, S.W.
42	St. Margaret, St. John, and St. Peter, Westminster	Edward Dru Drury, 25 Queen Anne's Gate, Westminster, S.W.
43	St. Marylebone .	Arthur Ashbridge, 17 York Place, Portman Square, W.
44	St. Pancras, South	Frederick Wallen, 96 Gower Street, W.C.
45	St. Saviour, St. George-the-Martyr (part), and Christ Church, Southwark, and the Northern Division of Lambeth	Edwin Richard Hewitt, 182 Blackfriars Road, S.E.
46	Stoke Newington	Joseph Douglass Mathews, 171 Church Street, Stoke Newington, N.
47	Strand. . . .	O. C. Hills, 60 Haymarket, S.W.
48	Streatham, East, and Tulse Hill	A. G. Morrice (Interim), 71 Christchurch Road, Tulse Hill, S.W.
49	Streatham, West	W. H. Stevens (Interim), 186 Balham High Road, S.W.
50	Sydenham . .	G. Tolley, 4 Dartmouth Road, Forest Hill, S.E.
51	Wandsworth, East, and Tooting Graveney	George Aitchison, R.A., 125 Trinity Road, Upper Tooting, S.W.
52	Wandsworth, West	R. Elsey Smith, Bank Chambers, High Street, Wandsworth, S.W.
53	Whitechapel, Spitalfields, Mile End New Town and the Tower Liberty	Arthur Crow, Hamilton House, 149 Bishopsgate Street Without, E.C.
54	Woolwich . . .	Alfred Conder, 21 William Street, Woolwich

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TO LONDON BUILDING ACT AMENDMENT, 1908

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