The law regulating streets and buildings in the metropolis under the London Building Act, 1894, and other metropolitan statutes : together with the standing orders, regulations, bye-laws, forms, &c.; of the London County Council and of the Commissioners of Sewers of the City of London / by R. Cunningham Glen and Arthur A. Bethune ; with explanatory diagrams by Alfred Conder.

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THE LONDON BUILDING ACT 1894

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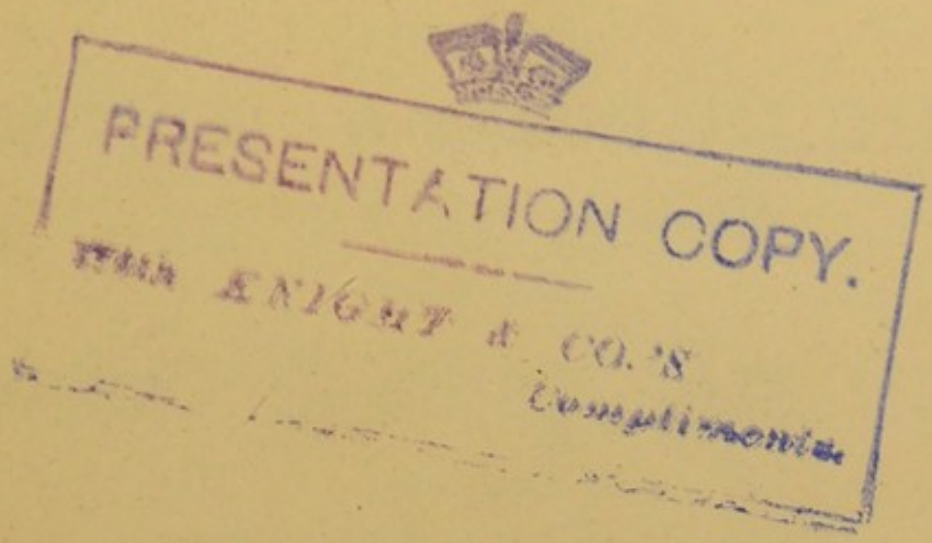

STREETS AND BUILDINGS

IN THE

METROPOLIS

THE LAW

REGULATING

STREETS AND BUILDINGS

IN THE METROPOLIS

UNDER THE

London Building Act, 1894

AND OTHER

METROPOLITAN STATUTES

TOGETHER WITH THE

STANDING ORDERS, REGULATIONS, BYE-LAWS, FORMS, &c.

OF THE

LONDON COUNTY COUNCIL

AND OF

THE COMMISSIONERS OF SEWERS

OF THE CITY OF LONDON

BY

R. CUNNINGHAM GLEN, M.A., LL.B. Cantab.

BARRISTER-AT-LAW OF THE MIDDLE TEMPLE AND OF THE NORTH-EASTERN CIRCUIT

ASSOCIATE AND HON. EXAMINER TO THE SURVEYORS' INSTITUTION

AND

ARTHUR A. BETHUNE

BARRISTER-AT-LAW OF THE INNER TEMPLE AND OF THE NORTH-EASTERN CIRCUIT

With Explanatory Diagrams

BY

ALFRED CONDER, F.R.I.B.A., F.S.I.

ARCHITECT

DISTRICT SURVEYOR FOR WOOLWICH

LONDON

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PREFACE.

Although the short title of the London Building Act, 1894, does not indicate that the Act relates to matters other than the construction of buildings, it is 'an Act to consolidate and amend the enactments relating to streets and buildings in London,' and enactments relating to streets and buildings contained in no less than thirteen statutes are repealed by it. The provisions of some of these repealed enactments are re-enacted; while the provisions of others appear in an amended form, together with the provisions which experience in administering the previous Acts has shown to be necessary, or which are considered to be in accordance with modern requirements. But, though the Act purports to consolidate the enactments relating to streets and buildings in London, it fails to collect all the statutory provisions which relate to these matters; and the authors of the present work, considering that no work dealing solely with the London Building Act, 1894, could be a complete guide to the law relating to streets and buildings in the Metropolis, determined to delay the publication of their work in order to render it complete by the inclusion of the whole of the statute law relating in any way to the formation and construction of streets and the erection and construction of buildings and structures within the Metropolis.

Accordingly in the main portion of the present work will be found the London Building Act, 1894, with notes in which endeavour has been made to collect all decisions upon corresponding enactments, and such other decisions as it is hoped will assist in the elucidation of the Act. In noting the various sections care has been taken wherever possible to refer to all other provisions in the Act dealing with, or relating to, the same subject-matter; and the authors have also in some cases ventured to express their views as to the construction to be placed upon the particular enactment. In the first and second appendices, the latter of which relates only to the City, have been placed the various enactments relating in any way to the subject-matter of the work, and these enactments have been treated, though perhaps less fully, in the same way as the Act of 1894. The third appendix has been divided into three parts, the first containing such of the standing orders of the London County Council as relate to matters dealt with in the work; the second part containing all the byelaws and regulations of the Council relating to streets and buildings, including byelaws as to overhead wires, byelaws under the Public Health (London) Act, 1891, regulations of the Council as to applications for its sanction and consent in those cases in which its sanction and consent is rendered necessary by the Act of 1894, and the regulations made by the Tribunal of Appeal determining the procedure &c. to be adopted, and the fees to be paid, in appeals to it. In the third part of the appendix will be found the regulations and standing orders of the Commissioners of Sewers relating to streets and buildings in the City. The fourth appendix contains the forms in use by district surveyors under the Act of 1894 and under the byelaws continued in force by that Act, together with such of the Instructional Letters issued by the Metropolitan Board of Works to district surveyors as it is thought may prove of assistance in the administration of the existing enactments,

and the Instructional Letter of the London County Council which accompanied the copies of the Act of 1894 distributed by the Council amongst district surveyors.

The authors are much indebted to Mr. ALFRED CONDER, F.R.I.B.A., F.S.I., the District Surveyor for Woolwich, for the series of diagrams which will be found in the fifth appendix. The intention with which these diagrams have been inserted is to illustrate wherever it is possible so to do the provisions or requirements of the Act of 1894; and Mr. CONDER has made his diagrams so clear and explanatory that it is hoped they will be found useful by architects and surveyors as well as by all others who may have occasion to refer to the work.

The authors have also received much assistance from the officials of the London County Council and of the Commissioners of Sewers, for which they desire to offer their thanks. In the last appendix is a list of the district surveyors, showing their districts and offices at the date of publication, and also the rules regulating the professional practice and charges of architects sanctioned by the Royal Institute of British Architects and confirmed at a general conference of the architects of the United Kingdom, permission to publish these rules having been granted to the authors by the Council of the Institute.

The notes have been written not only with a view to making the work useful in practice to lawyers, architects, surveyors, and builders, but also with a view to its being of assistance to candidates for examination by the Surveyors' Institution.

The work concludes with an exhaustive index, and after the table of contents will be found a table of those provisions of the repealed Acts to which any of the provisions of the Act of 1894 correspond, which latter table should prove useful to those who were acquainted with the provisions of the previous Acts.

The senior author's previous work on the Metropolitan Building Acts having met with approval, the authors are induced to hope that the present work may be favourably received.

R. CUNNINGHAM GLEN.
ARTHUR A. BETHUNE.

NEW COURT, TEMPLE:
June 1895.

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THE

LONDON BUILDING ACT, 1894

57 & 58 Vict. ch. ccxiii.

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

57 & 58 Vict. c. ccxiii.

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 (1)	Public Act
The Metropolis Management Act 1855 (2)	Public Act
The Metropolitan Building Act 1855 (3)	Public Act
The Metropolitan Building Act (Amendment) 1860 (4)	Public Act
The Metropolitan Building Amendment Act 1861 (5)	Public Act
The Metropolis Management Amendment Act 1862 (6)	Public Act

(1) 7 & 8 Vict. c. 84. This Act was repealed by the Metropolitan Building Act, 1855, except so much as was contained in sects. 54 to 63 inclusive. The portion remaining unrepealed at the date of this Act is repealed by sect. 215, *post.*

(2) 18 & 19 Vict. c. 120, sect. 142 is wholly, and sect. 202 is partially repealed by sect. 215, *post.*

(3) 18 & 19 Vict. c. 122. This Act is repealed by sect. 215 *post.*

(4) 23 & 24 Vict. c. 52. This Act is repealed by sect. 215, *post.*

(5) 24 & 25 Vict. c. 87. This Act merely exempted buildings erected by the Commissioners for the Exhibition of 1851 from the operation of the Metropolitan Building Act, 1855. It is repealed by sect. 215, *post.*

(6) 25 & 26 Vict. c. 102, sects. 74 to 76 inclusive, and 85, 87, 98 and 99 of this Act are repealed by sect. 215, *post.*

57 & 58 Vict. c. ccxiii.

The Metropolitan Building Act 1869 (7)	Public Act
The Metropolitan Building Act 1871 (8)	Public Act
The Metropolis Management and Buildings Acts Amendment Act 1878 (9)	Public Act
The Metropolis Management and Building Acts (Amendment) Act 1882 (10)	Public Act
The London Council (General Powers) Act 1890 (11)	Local and Personal Act
The London Sky Signs Act 1891 (12)	Local and Personal Act
The London County Council (General Powers) Act 1893 (13)	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:

---

(7) 32 & 33 Vict. c. 82. This Act is repealed by sect. 215, *post*.

(8) 34 & 35 Vict. c. 39. This Act merely exempted the buildings of the Foreign Cattle Market at Deptford from the operation of Part I. of the Metropolitan Building Act, 1855, and is repealed by sect. 215, *post*.

(9) 41 & 42 Vict. c. 32. This Act is partially repealed by sect. 215, *post*.

(10) 45 Vict c. 14. This Act is repealed by sect. 215, *post*.

(11) 53 & 54 Vict. c. ccxliii., sects. 27 to 31 and 33 to 37 of this Act are repealed by sect. 215, *post*.

(12) 54 & 55 Vict. c. lxxviii. The whole of this Act is repealed by sect. 215, *post*.

(13) 56 & 57 Vict. c. ccxxi. Sects. 5 to 9 and sect. 17 of this Act are repealed by sect. 215, *post*.

And whereas the purposes aforesaid cannot be effected without the authority of Parliament: 57 & 58 Vict. c. ccxiii. ss. 1–3.

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.

By sect 9 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), 'Every Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, shall be a public Act, and shall be judicially noticed as such, unless the contrary is expressly provided by the Act.' The present Act contains no provision to the contrary, and therefore, although it was passed as a private, it is now a public Act by virtue of the above enactment.

Division of Act into Parts.

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

Part I.—Introductory.
Part II.—Formation and Widening of Streets.
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.—Rights of Building and Adjoining Owners.
Part IX.—Dangerous and Neglected Structures.
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.
Part XIV.—Byelaws.
Part XV.—Legal Proceedings.
Part 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.

57 & 58 Vict. c. ccxiii. ss. 3, 4.

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.

London.—By London is meant the Administrative County of London, sect. 5 (40), *post*, p. 38. That is to say, the Metropolis, see sect. 40 of the Local Government Act, 1888 (51 & 52 Vict. c. 41), which expression means for the purposes of the last-mentioned Act (*ib.* sect. 100), 'the City of London and the parishes and places mentioned in Schedules A, B, and C to the Metropolis Management Act, 1855, as amended by subsequent Acts.

The City of London comprises all parts at the date of the Act (*i.e.* January 1, 1895) within the jurisdiction of the Commissioners of Sewers. The Commissioners of Sewers for the City of London were constituted by the City of London Sewers Act, 1848 (11 & 12 Vict. c. clxiii.), an Act to provide for the sanitary improvement of the City of London and the Liberties thereof, which repealed the Acts under which the drainage and sanitary matters in the City of London and its liberties had previously been regulated (*i.e.* 19 Car. II. c. 3; 11 Geo. III. c. 29; 33 Geo. III. c. 75; and 4 Geo. IV. c. 114). By such Act, the portions of which relating to matters dealt with by this Act are set out in Appendix II., *post*, as also are the similar portions of the City of London Sewers Act, 1851 (14 & 15 Vict. c. xci.), the Commissioners appointed thereunder were given jurisdiction over 'the City,' which word by sect. 262 of the Act means the City of London and the Liberties thereof, and includes such parts of Holborn, the Minories, and Aldersgate Street as at the time of the passing of such Act were, or had been usually treated as being within the Liberties of the City, and the courts and alleys leading into the same or communicating therewith, and also the north side of Eldon Street, formerly called Bevlier Row, Moorfields, and the courts and alleys leading into the same or communicating therewith, and all precincts and places within the City of London or the Liberties thereof. By sect. 165, *post*, the city is exempted from the provisions of any byelaw made under this Act in respect of any matter from which it is exempted by this Act or by any Act it repeals. The byelaws made by the Commissioners under the City of London Sewers Acts will be found in Appendix III., Pt. II., *post*.

Schedules A, B, and C of the Metropolis Management Act, 1855, as amended by the Metropolis Management Act, 1885

(48 & 49 Vict. c. 33), the Metropolis Management (Battersea and Westminster) Act, 1887 (50 & 51 Vict. c. 17), and the Metropolis Management (Plumstead and Hackney) Act, 1893 (56 & 57 Vict. c. 55, sect. 33), comprise the following parishes and places, viz. :— 57 & 58 Vict. c. ccxiii. s. 4.

SCHEDULE A.—Bermondsey; Camberwell; Chelsea; Fulham; Hackney; Lambeth; Mile End Old Town Hamlet; Paddington; Plumstead; Rotherhithe; St. George-in-the-East; St. George, Hanover Square; St. George the Martyr, Southwark; St. James and St. John, Clerkenwell; St. James, Westminster; St. John, Hampstead; St. Leonard, Shoreditch; St. Luke, Middlesex; St. Margaret and St. John the Evangelist, Westminster; St. Martin-in-the-Fields; St. Mary Abbot, Kensington; St. Mary, Battersea (excluding Penge); St. Mary, Islington; St. Mary, Stoke Newington, Middlesex; St. Marylebone; St. Matthew, Bethnal Green; St. Pancras; St. Peter and St. Paul, Hammersmith; and Woolwich.

SCHEDULE B.—The *Whitechapel District*, which comprises St. Mary, Whitechapel; Christ Church, Spitalfields; St. Botolph Without, Aldgate, in the county of Middlesex; Holy Trinity, Minories; the Precinct of St. Katherine; the Hamlet of Mile End New Town; the Liberty of Norton Folgate; the Old Artillery Ground; and the District of the Tower.

Greenwich District, which comprises St. Paul, Deptford, including Hatcham; St. Nicholas, Deptford; and Greenwich.

Wandsworth District, which comprises Clapham; Tooting Graveney; Streatham; Wandsworth; and Putney, including Roehampton.

St. Giles' District, which comprises St. Giles-in-the-Fields; St. George, Bloomsbury.

Holborn District, which comprises St. Andrew, Holborn-above-Bars; St. George the Martyr; St. Sepulchre, in the county of Middlesex; Saffron Hill; Hatton Garden; Ely Rents and Ely Place; and the Liberty of Glasshouse Yard.

Strand District, which comprises St. Anne, Soho; St. Paul, Covent Garden; St. John the Baptist, Savoy, or Precinct of the Savoy; St. Mary-le-Strand; St. Clement Danes; and the Liberty of the Rolls.

Limehouse District, which comprises St. Anne, Limehouse; St. John, Wapping; St. Paul, Shadwell; and the Hamlet of Ratcliff.

Poplar District, which comprises All Saints, Poplar; St. Mary, Stratford-le-Bow; and St. Leonard, Bromley.

St. Saviour's District, which comprises Christchurch and St. Saviour (including the Liberty of the Clink).

Lee District, which comprises Charlton-next-Woolwich; Eltham; Lee and Kidbrooke.

Lewisham District, which comprises Lewisham, including Sydenham Chapelry, and the Hamlet of Penge.

The Parish of Rotherhithe united with St. Olave District, which comprises St. Olave; St Thomas, Southwark; and St. John, Horselydown.

57 & 58 Vict. c. ccxiii. ss. 4, 5 (1).

SCHEDULE C.—The close of the Collegiate Church of St. Peter; the Charterhouse; Inner Temple; Middle Temple; Lincoln's Inn; Gray's Inn; Staple Inn; and Furnival's Inn.

Commissioners of Sewers.—This expression means the Commissioners of Sewers for the City of London, see sect. 5 (46), *post*, p. 39, and the exemptions which refer to them are those contained in sects. 98, 127, 128, 211 (ii. *e*). The statutes which conferred upon the Commissioners of Sewers powers, privileges, &c., at the time of the passing of this Act were 11 & 12 Vict. c. clxiii., 14 & 15 Vict. c. xci., 15 & 16 Vict. c. 85, 20 & 21 Vict. c. 35, 30 & 31 Vict. c. 134, 38 & 39 Vict. c. 36, 44 & 45 Vict. c. 37, 52 & 53 Vict. c. 72, and 54 & 55 Vict. c. 76.

City of London.—No byelaw made by the Council in respect of any matter from which the City is exempted by this Act, or by any Act repealed by this Act, has any effect within the City (sect. 165, *post*).

Definitions.

5. In this Act unless the context otherwise requires—

The Interpretation Act, 1889 (52 & 53 Vict. c. 63) contains a number of definitions that are applicable to the present Act, in addition to the following definitions. Whenever, therefore, an expression is used in the body of the Act which is defined by that Act, the way in which such expression is defined has been stated in the note to the section in which the particular expression occurs.

'*Street.*'

(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.

Street.—In defining this term the words used are 'street' means and includes: In *Nutter* v. *the Accrington Local Board of Health* (4 Q. B. D. 375; 48 L. J. Q. B. 487; 40 L. T. (N.S.) 803; 43 J. P. 635; affirmed by the House of Lords W. N., 1880, p. 148; 43 L. T. (N.S.) 710), it was held that a definition of the word street that such word should 'apply to and include any highway not being a turnpike road' made the word applicable to a place which in ordinary language would be called a 'street' although such place was also a turnpike road; and in so holding Cotton, L.J., said that the interpretation clause was not restrictive, and did not say that the word street should be confined to any highway not being a turnpike road, and that he was therefore of opinion that the definition enlarged and did not restrict the word. Here, however, the use of the word 'means' is clearly restrictive, and the fact that the word 'street' is to include those things which it is to be construed to mean cannot enlarge its meaning.

Whether, then, any provision in the Act which relates to streets is applicable in a particular case must depend upon

whether the place to which it is sought to apply the provision is one or other of the places described in the definition, see *Ellis* v. *the London County Council*, 67 L. T. (N.S.) 558; 57 J.P. 24, and *Fenwick* v. *the Rural Sanitary Authority of Croydon Union* (1891), 2 Q. B. 216; 60 L.J. M. C. 161; 65 L. T. (N.S.), 645; 40 W. R. 124; 55 J. P. 470. In order too that a place may come within the meaning of the word 'street' as here defined it would appear to be necessary that such place should be, or should be intended to be, a street in the sense in which that term is ordinarily used; namely, a way having houses or buildings more or less continuously along it. This would appear to follow from the fact that by subsect. 2 the expression 'way' includes any public road, way, or footpath not being a street. For the expression 'street' being defined as meaning and including any highway; and public roads, ways and footpaths being highways, the word 'street' whenever used in the Act would, in addition to its other meanings, include a public way: But where the Act is intended to apply to ways, the expression 'way' is used in addition to that of 'street'; the inference from which is that where the term 'street' alone is used it is not intended to include anything within the definition of the term 'way.' It is further to be noticed that the expression 'way' includes private roads, ways, or footpaths which it is intended to form, lay out, or adapt as streets, rendering it doubtful therefore whether the provisions of the Act which relate to the formation or laying out of streets are applicable to the formation or laying out of private roads, ways, and footpaths intended to be formed or laid out as streets. 57 & 58 Vict. c. ccxiii. s. 5 (1).

Whether a particular place is, or will be a 'street' or a 'way' within the meaning of the Act will be a question of fact dependent upon the extent to which it has buildings along its sides. In some instances roads and lanes which have existed for many years have been held to have been converted into streets by the erection of buildings where none existed previously. For instance, an old country lane which had existed for a long period, with a cinder roadway, and no well-defined footways, grass growing at the sides, and which had always been repaired by the inhabitants at large, was held to have become a new street within the meaning of byelaws as to new streets made under sect. 157 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), by reason of the erection of houses along it. See *Robinson* v. *the Barton Eccles Local Board*, 8 App. Cas. 798; 53 L. J. Ch. 226; 50 L. T. (N.S.) 57; 32 W. R. 249; 48 J. P. 276. So also an old highway within the Metropolis was held to have become a new street within the meaning of sects. 98 and 112 of the Metropolis Management Acts Amendment Act 1862 (25 & 26 Vict. c. 102), upon buildings being erected along it, see *Pound* v. *Plumstead Board of Works* and *Lord Northbrook* v. *Plumstead Board of Works*, L. R. 7 Q. B. 183; 41 L. J. M. C. 51; 25 L. T. (N.S.) 461, 20 W. R. 177; 36 J. P. 468; and *Dryden* v. *Putney Overseers*, 1 Ex. D. 223; 34 L. T. (N.S.) 69; 40

57 & 58 Vict. c. ccxiii. s. 5 (1).

J. P. 263. An old turnpike road was also held upon the expiration of the turnpike trust to be a 'new street' within the meaning of the same Acts, it not having been built upon to any great extent, *Vestry of St. John, Hampstead*, v. *Cotton*, 16 Q. B. D. 475 ; 54 L. T. (N.S.) 441, affirmed by the House of Lords, 51 J. P. 340.

In *Williams* v. *Powning*, 48 L. T. (N.S.) 672 ; 47 J. P. 486, Hawkins, J., said that 'a street may become a new street in a variety of ways.' If the land on both sides belongs to one owner, and he lays it out in building plots, and begins to build on one plot, he would begin to form a new street, having an intention to go on and make a street. Another way is where the lane belongs to different owners, and by their united acts you can find an intention indicated to make a new street in the popular sense of the term. In that case it would be impossible to come to any other conclusion than that it was a new street. Another case is where the land belongs to different owners, and no tribunal could say that there ever was at the same time an intention amongst them all to build. In that case the precise time at which it does become a new street may be a question of some difficulty, and it is a question of fact to be decided by the justices. With regard to the last statement as to the time a street becomes a 'new street' see sects. 8 and 10, *post*, which prescribe what shall be deemed the commencement to form or lay out a street, or adapt a street or way for carriage or foot traffic, as the case may be. In *Williams* v. *Powning* the Queen's Bench Division held that where a person had merely built six cottages upon a piece of garden ground in a lane 6 ft. wide and 250 ft. long which was admitted to be a street within the meaning of the definition of that word in the Public Health Act, 1875, he had not thereby converted the lane into a 'new street' within the meaning of certain byelaws regulating the width of new streets. So too in *Gozzett* v. *the Maldon Urban Sanitary Authority* (1894), 1 Q. B. 327 ; 70 L. T. (N.S.) 414, the same Court held that a new street had not been laid out under the following circumstances, viz. :— The lessee of a piece of ground, together with a right of way over a road fifteen feet wide and more than one hundred feet in length, which adjoined the piece of land, commenced to build two houses upon such piece of land without widening the road over which he had the right of way, and which was not of sufficient width to satisfy the byelaws regulating the width of new streets within the district. See also *Taylor* v. *the Metropolitan Board of Works*, *The Metropolitan Board of Works* v. *Clever*, and *The Metropolitan Board of Works* v. *Cox*, *post*, pp. 46 and 47.

In *The Metropolitan Board of Works* v. *Nathan*, 54 L. T. (N.S.) 423, the Queen's Bench Division held that an approach to artisans' dwellings was not a street within the meaning of the Metropolitan Building Acts. 'Such approach was 100 ft. long and 16 ft. wide, and communicated at one end only with a public street, at which end there was a gateway, which had been erected upon the site of an old gateway of less

width than the new gateway.' The approach had been made on the site of an old roadway on which warehouses had previously abutted, and was for the sole use and convenience of the tenants of the dwellings, to the exclusion of the public, no right of way over the same having ever been dedicated to or used by the public at large. 57 & 58 Vict. c. ccxiii. s. 5 (2–4).

Highway.—This term includes all public ways, whether carriage-ways, bridle-ways, or foot-ways, and merely means a way over which the public have a right to pass and repass without molestation, either in conveyances, upon horseback, or on foot, according to the nature of the way. See Lopes and Kay, L. JJ., in *Harrison* v. *Duke of Rutland and others* (1893), 1 Q. B. at pp. 154 and 155 ; 68 L. T. (N.S.) 38 ; 4 R. 155 ; 62 L. J. Q. B. 117 ; 41 W. R. 322.

Road, &c.—These are included in the term 'street,' whether they are thoroughfares or not ; but the definition leaves it uncertain whether they apply to roads, &c. which are not public. In *Curtis* v. *Emery*, L. R. 7 Ex. 369 ; 42 L. J. M. C. 39 ; 21 W. R. 143, the Court held that the definition in s. 3 of the Towns Police Clauses Act, 1847 (10 & 11 Vict. c. 89), that the word 'street' in that Act is to 'extend to and include any road, square, court, alley, and thoroughfare, or public passage within the limits of any district,' did not extend the meaning of such term to places over which the public had no rights.

'*Way.*' (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.

Way.—See the definition of '*street*,' *ante*, p. 7.

'*Roadway.*' (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.

'*Centre of the roadway.*' (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 imme-

57 & 58 Vict. c. ccxiii. s. 5 (4, 5).

diately before the date of such widening or where it shall not have been so widened the actual centre of the existing roadway:

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.

Centre of the roadway.—Before August 18, 1890, neither the County Council nor the Superintending Architect had power to ascertain or define what was the centre of the roadway in any street or way, but such point was to be ascertained by means of the definition contained in s. 4 of the Metropolitan Building (Amendment) Act, 1878. Upon that date, however, power was conferred upon the County Council by sect. 30 of the London Council (General Powers) Act, 1890, to define the line constituting the centre of the roadway. The section enacted as follows:—'For the purpose of any enactment in this Act or the Metropolis Management Acts referring to the centre of the roadway in the case of a street formed or laid out after the passing of this Act the Council may at any time define the line constituting the centre of the roadway, and the line so defined shall continue to be deemed the centre for those purposes 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 equal extent.' This enactment is repealed by sect. 215, *post*, p. 302, and the enactment contained in the above section is substituted therefor.

The decision of the Superintending Architect defining the line which constitutes the centre of the roadway in any case will presumably be final, the Act giving no appeal from such decision, just as his decision as to the general line of buildings under sect. 75 of the Metropolis Management Amendment Act, 1862, was final until the passing of the London Council (General Powers) Act, 1890, as to which see *Spackman* v. *Plumstead District Board of Works*, 10 App. Cas. 229; 54 L. J. M. C. 81; 53 L. T. (N.S.) 157.

'*Prescribed distance.*'

(5) The expression 'the prescribed distance' means twenty feet from the centre of the roadway where such roadway is used for the purpose of carriage traffic and ten feet from the centre of the roadway where such roadway is used for the purposes of foot traffic only.

Prescribed distance.—The Council may, in certain cases, extend this distance. See sect. 13 (2), *post*, p. 62.

57 & 58 Vict. c. ccxiii. s. 5 (6). '*New building.*'

(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.

Building.—The Act contains no definition of the term 'building.' Some degree of permanency was considered necessary, however, in order to constitute an erection a building within the previous Acts. It was sought, in one case, to evade the Act by erecting a structure of wood of considerable size intended to be used permanently as a shop, but not let into the ground, being merely laid upon timbers placed upon the surface of the ground. The Court, however, held the structure to be a 'building' within the Act, and in so holding Erle, C.J., said: 'Though by the application of mechanical power a structure of considerable size may be removed, it does not cease to be a "building" within the meaning of the Act.' Crowder, J., said: 'I agree with the Lord Chief Justice that it is enough that there is a foundation of some kind to which the superstructure is to be attached.' And Byles, J., said: 'By "a building" is usually understood a structure of considerable size, and intended to be permanent, or at least to endure for a considerable time.' See *Stevens* v. *Gourley*, 7 C. B. (N.S.) 99; 1 L. T. (N.S.) 33; 29 L. J. C. P. 1; 6 Jur. (N.S.) 147; 8 W. R. 85. See also *Slaughter* v. *Mayor of Sunderland*, 60 L. J. M. C. 91; 65 L. T. (N.S.) 250; 55 J. P. 519; *London County Council* v. *Pearce* (1892), 2 Q. B. 109; 66 L. T. (N.S.) 685; 40 W. R. 543; 56 J. P. 790; and *Brown* v. *the Corporation of Leicester*, *post*, p. 13.

In *Richardson* v. *Brown*, 49 J. P. 661, it was held that a wooden structure used as a butcher's shop which had wheels, and was brought on such wheels to a particular site, was nevertheless a building, with regard to the erection of which notice should have been given in accordance with the requirements of a local Act. In giving judgment in the case Lord Coleridge, C.J., said: 'I think it was not at all intended to be used merely as a caravan, but to all intents and purposes it is a house or building, and is so used, and the wheels have been adopted evidently with the intention of evading the Act of Parliament.'

Sect. 53 requires walls to be constructed in accordance

57 & 58 Vict. c. ccxiii. s. 5 (6).

with the rules contained in the first schedule to the Act, the first of which rules requires every building to be enclosed with walls constructed as therein prescribed. Presumably, therefore, an erection which has not and is not intended to have walls, is not a building within the meaning of the Act. The provisions of the previous Acts were similar, and considerable divergence of opinion existed among the metropolitan stipendiary magistrates on the point, some of such magistrates holding that erections in timber yards for storing timber, which erections consisted of floors upon which the timber was stored, and which, though substantially constructed upon foundations, were purposely left unenclosed by walls in order to allow the timber to season, were not buildings within the meaning of the Acts, while other magistrates held the opposite opinion. Special provisions are now, however, contained in sect. 197, *post*, p. 278, of the present Act relating to the storage of wood and timber.

In *Moir* v. *Williams*, 66 L. T. (N.S.) 215 ; 61 L. J. M. C. 33 ; (1892) 2 Q. B. 264 ; 40 W. R. 69 ; 56 J. P. 197, Lord Esher, M.R., said that the word building in schedule 2, part 1, of the Metropolitan Building Act, 1855, was to be used in the same sense as it had in its ordinary use in the English language, that was to say, a block of brickwork or masonry covered in by a roof. And in *Hibbert* v. *Acton Local Board* (5 Times L. R. 274) the Court of Appeal held that a conservatory 15 ft. in length and 9 ft. in depth, built of wood and glass, was not a building within the meaning of a bye-law relating to the erection of new buildings made under sect. 157 of the Public Health Act, 1875 (38 & 39 Vict. c. 55). One of the requirements of the bye-law was that every new building was to be enclosed with walls constructed of good bricks, stone, or other hard and incombustible material, and Fry, L.J., with reference to this requirement, pointed out that the bye-law dealt with buildings capable of being enclosed with walls, whereas conservatories were not capable of being so enclosed, as they required light. See, however, with regard to greenhouses and cases for plants, the exemption contained in sect. 201, subs. 14, 15, & 16, *post*, p. 297.

It is to be noticed that whether or not the absence of walls will prevent an erection from being a 'building' within the meaning of the Acts, the absence of a roof will do so. Proceedings with respect to a building are not, however, to be affected by the removal or falling in of the roof in the course of such proceedings. See sect. 198, *post*, p. 280.

Where a gas company was authorised to open the soil and pavement of streets within the limits of their special Act, and in opening the soil of a road caused damage to arches under the road which were occupied as cellars, it was held that the arches were 'buildings' within sect. 7 of the Waterworks Clauses Act 1847 (10 Vict. c. 15), which contained a proviso that nothing in the Act was to authorise the undertakers to lay down or place any pipe or other works into, through, or

against any building without the consent of the owners and occupiers thereof. *Thompson & Co.* v. *Sunderland Gas Co.* 2 Ex. D. 429 ; 46 L. J. Ex. 710 ; 37 L. T. (N.S.) 30. Lord Cairns, L.C., in delivering his judgment, said that whether the arches were made mainly for the support of the roads or for the convenience of the landowner at the same time that they were supporting the road, they had been used by the landowner as stores or cellars, doors had been placed upon them, and they had been used in other respects just as a building might be used which had been constructed for the specific purposes of being used as a store. They were not the natural formation of the ground under the road ; they were artificial, the construction of man, the putting together of bricks and mortar, and being used for the purpose for which they were used, he was at a loss to conceive why they were not to be included under the word building. Cockburn, C. J., in agreeing with Lord Cairns, said that if the arches were made solely for the purpose of supporting the road, if that was their primary origin, or their sole use, it might be a question whether they could be held to be buildings within the meaning of the section, although their artificial construction by the hands of man rendered them distinguishable from the soil of a street or bridge. 57 & 58 Vict. c. ccxiii. s. 5 (6).

In *Bowes* v. *Law*, L. R. 9 Eq. 636 ; 22 L. T. (N.S.) 267 ; 39 L. J. Ch. 483 ; 18 W. R. 640, James, V.C., held that by the erection of a vinery a breach had been committed of a covenant in a conveyance against the erection upon the land conveyed of buildings other than dwelling-houses over a certain value.

The question whether or not a structure is a building must, however, depend in every case upon the particular circumstances, regard being had to the object of the particular enactment which it is sought to apply to the structure. It was accordingly held in one case that magistrates were not wrong in holding that a photographer's show-case was, under the circumstances of the particular case, a building within the Public Health (Buildings in Streets) Act, 1888 (51 and 52 Vict. c. 52). In the case referred to (*Brown* v. *Corporation of Leicester*, 67 L. T. (N.S.) 686 ; 57 J. P. 70 ; 5 R. 35), the show-case was a structure of wood and glass 9 feet long by 3 feet wide and 7 feet high, fastened to the ground by four posts at the corners, forming part of the structure, and let into the ground to the depth of 6 inches or 12 inches, which structure was roofed over and had a door at one end. And Denman and Lindley, JJ., considered that a structure consisting of upright walls, two feet thick, in the form of a square, and intended to be used as a brick-kiln, was not a building within the meaning of a byelaw requiring the deposit of plans and sections (*Fielding* v. *Rhyl Improvement Commissioners*, 3 C. P. D. 272 ; 38 L. T. (N.S.) 223 ; 26 W. R. 881).

The expression 'domestic building' is defined by subsect. 26, *post*, p. 24, and such expression does not for the purposes of Part V. of the Act (which part relates to open spaces about and the height of buildings) include any buildings used or con-

57 & 58 Vict c. ccxiii. s. 5 (6, 7).

structed or adapted to be used wholly or principally as offices or counting-houses, see sect. 39, *post*, p. 94.

New Building.—With regard to the expression 'means and includes' see the note to subsect. 1, *ante*, p. 6. But though an addition to an old building is not a new building (see *Shiel* v. *Mayor, &c. of Sunderland*, 30 L. J. M. C. 215; 6 H. & N. 796; 25 J. P. 647), section 209, *post*, subjects additions to buildings to the provisions of the Act and the byelaws thereunder relating to new buildings. And where a local Act enacted that 'the making of any addition to an existing building by raising any part thereof, or making any projection therefrom, but so far as regards such addition only, shall for all the purposes of this Act and of any other local Act for the time being in force within the Borough, and of the Public Health Acts, and of any byelaw made thereunder respectively, be deemed to be the erection of a 'new building,' it was held that the mere fact that the addition occupied no greater space than a conservatory had previously occupied, which conservatory had been removed and the addition erected in its place, did not necessarily prevent its being an addition to an existing building within the meaning of the section (*Meadows* v. *Taylor*, 24 Q. B. D. 718; 59 L. J. M. C. 99; 62 L. T. (N.S.) 658).

The present definition is to be read with sects. 207–212, *post* (Instr. Letter of December 15, 1894, App. IV., Pt. II., *post*). It draws a line at the commencement of the Act, and only defines as new buildings buildings erected or re-erected after that date. No buildings erected before that date are within the definition unless they are re-erected, or commenced to be re-erected, after that date, having first been taken down for more than half their cubical extent.

As to when a building, apart from the question of any definition, becomes a new building, Lord Coleridge, C.J., said in *James* v. *Wyville*, 51 L. T. (N.S.) 237; 48 J. P. 725, 'The question whether a building is a new building or not, has been decided over and over again to be a question of fact; it is a question of degree. For instance, if a building were nearly all taken away and then rebuilt, it clearly would be a new building; on the other hand, it is quite clear that by a small addition of, say, a door, the building would not thereby become a new building. Between these two extreme cases there may be thousands of cases, and it would be impossible to give a description in each particular case as to what is, or is not, a new building; and it must be left to the discretion of each judge to decide for himself what is a new building. So that the question is and must be a question of fact.'

In *Clarke* v. *Vestry of St. Pancras* (34 J. P. 181), the occupier of a house in the parish of St. Pancras covered in a yard in front of his house with a roof. The yard was surrounded by old walls upon which the roof had been placed, and the Court nevertheless held that the effect of what had been done was to erect a building, and such building being in advance of the general line of buildings, contrary to sect. 75 of the Metropolis

Management and Building Acts Amendment Act, 1862, there was power under that section to order the removal of the roof. 57 & 58 Vict. c. ccxiii. s. 5 (8–10).

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

Bressummer.—In Gwilt's 'Encyclopædia of Architecture' the definition is 'a summer or beam placed breastwise for the support of a superincumbent wall, performing, in fact, the office of a lintel.'

(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. '*Level of the ground.*'

Level of the ground.—In ascertaining the height of a building for the purposes of Part 5 of the Act the measurement is to be taken, where there is no footway, immediately in front of the face of the building, from the level of the ground (see subsect. 21, *post*, p. 22 ; and s. 41, *post*, p. 96).

The provisions regulating appeals to the Tribunal of Appeal are contained in sects. 175 to 186, *post*, pp. 269–273. Notice of an appeal under this subsection is to be given within fourteen days after notice of the Superintending Architect's determination to the Council, and when the original applicant is not the appellant to such applicant, and also to the Superintending Architect and the District Surveyor ; see the Regulations of the Appellate Tribunal of February 21, 1895, in Appendix III., *post*.

(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. '*Foundation.*'

Foundation.—This term meant under the definition in the Metropolis Management and Building Acts Amendment Act, 1878 : 'the space immediately beneath the footings of a wall.' And in *Blashill* v. *Chambers*, 14 Q. B. D. 479, Grove, J., in speaking of the reference to the bottom of the foundations in the definition of the word 'site' in that Act, said : 'I take it the bottom of the foundations means the lowest part which the foundations touch or rest upon.'

The footings mean 'the spreading courses at the base or foundation of a wall, by which the weight of the superincumbent mass is distributed over a larger area.' Brande & Cox, 'Dictionary of Science,' &c.

'The projecting courses at the base of a wall to spread it, and thus give security to the wall.' Gwilt's 'Encyclopædia.'

The word 'bressummer' is defined in subsect. 7, *ante*.

(10) The expression 'base' applied to a wall means the underside of the course immediately above the '*Base.*'

57 & 58 Vict. c. ccxiii. s. 5 (11–14).

footings if any or in the case of a wall carried by a bressummer above such bressummer.

Base.—A 'course' is 'a continual level range of stone or brick of the same height throughout the range of the elevation of a building' (Brande & Cox, 'Dictionary of Science,' &c.). The expression 'bressummer' is defined in subsect. 7, *ante*, p. 15. As to the meaning of the expression 'footings,' see the note to subsect. 9, *ante*.

'*Ground storey.*'

(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 four feet below the level of the adjoining pavement shall be deemed to be the ground storey.

Ground storey.—The expression 'level of the ground' is defined in subsect. 8, *ante*, p. 15, by which subsect. an appeal is given against the determination of the District Surveyor of what is such level to the Superintending Architect and from him to the Appellate Tribunal. The latter part of the first clause of this definition is apparently meant to meet the case of buildings erected upon the slope of or beside a hill.

See note under heading 'storey,' sect. 62, *post*, p. 124.

'*Basement storey.*'

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

Basement storey.—The expression 'ground storey' is defined by subsect. 11, *supra* With regard to basement rooms, see sect. 70 (*d*), *post*, p. 134, and sects. 96 to 98 of the Public Health (London) Act, 1891, in the note to that section.

'*First 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.

First storey.—The expression 'ground storey' is defined by subsect. 11, *supra*.

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

Topmost storey.—Two floors in a roof one side of each of which was formed by the sloping roof, and the other three sides by the vertical walls at the rear and sides of the house, were held to be storeys within the meaning of Schedule 1 of the Metropolitan Building Act, 1885, it not being necessary that a topmost storey should be contained within four vertical walls. See *Foot* v. *Hodgson*, 25 Q. B. D. 160; 55 J. P. 116; 89 L. T. 27. In this case, which was an appeal from a County Court in

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the matter of an award with reference to a party structure difference, the Queen's Bench Division considered that the County Court judge had not treated the question whether or not the floors in question were storeys as a question of fact, but had been influenced by an erroneous view of the law in having held that the topmost storey of a building must necessarily mean a room enclosed by four vertical walls, and that as a consequence rooms built in the roof could not be considered as forming a storey. 57 & 58 Vict. c. ccxiii. s. 5 (15, 16).

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

'External wall.'—What is a 'party wall' is defined by the next subsection. And, but for the exception that the expression external wall is not to mean a party wall, party walls would be included in the term, the external parts of premises being those which form the enclosure of the premises, and beyond which no part of the premises extends. It would therefore but for this exception be immaterial whether the external walls were exposed to the atmosphere, or rested upon and adjoined some other building, which formed no part of the premises. See Lord Denman, C. J., in *Green* v. *Gates*, 2 Q. B. 225.

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

(*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.

Party wall.—Party walls are defined in Gwilt's 'Encyclopædia' as 'such as are formed between buildings to separate them from each other, and prevent the spreading of fire,' by Crabb in his 'Technological Dictionary' as 'partitions of brick made between buildings separately occupied to prevent the spread of fire.' The definition of party wall in the present section is taken from the Local Government Board model byelaws, and is an extension of the former definition in the Metropolitan Building Act, 1855. In addition to the definition in subsect. 16, sect. 58, *post*, p. 121, enacts that when a wall is, after the commencement of the Act (*i.e.* after January 1, 1895), built as a party wall in any part, or where a wall built before or after such date becomes after such date a party wall in any part, the wall shall be deemed a party wall for such part of its length as is so used. It is difficult, however, to see what useful object is served by this enactment, having regard to the decision of the Court in *Knight* v. *Pursell* (11 Ch. D. 412; 48 L. J. Ch. 395;

57 & 58 Vict. c. ccxiii. s. 5 (16).

40 L. T. (N.S.) 391 ; 27 W. R. 817 ; 43 J. P. 622), where the Court held that it was only so much of a wall as had buildings upon each side of it that was a 'party wall' within the meaning of the definition in sect. 3 of the Metropolitan Building Act, 1855. Where, therefore, the owner of land upon which was a boundary wall had built against such wall some closets, and the owner of the adjoining land erected upon his side of the wall a substantial structure, it was held that the wall was a 'party wall' within such definition, so far as there were buildings upon each side of it. In *Knight* v. *Pursell*, Fry, J., said, 'It appears to me, on reading the definition of a party wall contained in the 3rd sect. of the Act, that the intention is to define a party wall, not by reference to the rights of ownership which the adjoining proprietors may have in any particular wall in dispute, but by reference to the mode in which the wall is used. It is a question, not of title, but of user. The object of the Act is to limit the acts of private owners for the general benefit of the public, to prevent the spread of fire, and for similar purposes. And, therefore, in order to determine whether this wall is a party wall, it is not necessary to consider what rights of ownership the plaintiff and defendant have, but what is the physical condition, position, and user of the wall.' With regard to the contention that the Act could not have been intended to take away the control of the wall from the proper owner of it, his lordship said that Acts of Parliament often took away some control of owners over their property for public purposes, and that he therefore considered the wall in question to be a party wall, but only so far as it was used by the plaintiff on the one hand and the defendant on the other as a support for their buildings. So, too, in *The Standard Bank of British South Africa* v. *Stokes*, 9 Ch. D. 68 ; 47 L. J. Ch. 554 ; 38 L. T. (N.S.) 672 ; 43 J. P. 91 ; 26 W. R. 492, Jessel, M.R., said that in his opinion the meaning of the sect. 83 of the Metropolitan Building Act, 1855, which regulated the rights of building and adjoining owners with respect to party structures, was that the section defined all the rights which the building owner was to have in relation to such a structure, and that such rights were exclusive, and he had no other rights. The effect, therefore, of the Act so far as the owner of premises which adjoin other premises, and are separated therefrom by a party wall, is concerned in the event of his being desirous of doing work which will affect such party wall, is to enable him to do such things to the wall as are specified in the Act irrespective of whether or not he has any property in or easement over the wall, or any common law rights in respect thereof. On the other hand, so far as the adjoining owner is concerned, that is to say, the owner of the premises upon the other side of the party wall, sect. 101 of the Act preserves any easement he may possess in relation to such wall and all other rights over it. Consequently, whatever rights the Act may confer upon the building owner, in the exercise of such rights he must have regard to the common law rights of the adjoining owner.

57 & 58 Vict. c. ccxiii. s. 5 (16).

In this view it may be useful to consider what are the rights at common law of the owners of adjoining properties in respect of party structures separating such properties. Now there are four different senses in which the term party wall may be used, and these are given by Fry, J., in his judgment in *Watson* v. *Gray*, 14 Ch. D. 192; 49 L. J. Ch. 243; 42 L. T. (N.S.) 295. He there said, with regard to the meaning of the word 'party-wall' in a conveyance: 'What is the meaning of the term "party-wall" as there used? The words appear to me to express a meaning rather popular than legal, and they may, I think, be used in four different senses. They may mean first a wall of which the two adjoining owners are tenants in common, as in *Wiltshire* v. *Sidford* (1 M. & R. 404) and *Cubitt* v. *Porter* (8 B. & C. 257). I think that the judgments in those cases show that that is the most common and the primary meaning of the term. In the next place the term may be used to signify a wall divided longitudinally into two strips, one belonging to each of the neighbouring owners, as in *Matts* v. *Hawkins* (5 Taunt. 20). Then, thirdly, the term may mean a wall which belongs entirely to one of the adjoining owners, but is subject to an easement or right in the other to have it maintained as a dividing wall between the two tenements. The term is so used in some of the Building Acts. Lastly, the term may designate a wall divided longitudinally into two moieties, each moiety being subject to a cross easement in favour of the owner of the other moiety. In whichever of these senses the term is used, some difficulty arises. In the case of a longitudinal division between the two neighbours, each of them, as was said in *Cubitt* v. *Porter*, has a right to pare away one moiety of the wall, and if this was done the moiety of the other owner might be of very little use to him. Again, if the wall belongs to the adjoining owners as tenants in common, it may become the subject of a partition, and then exactly the same difficulty would arise. To meet this difficulty the fourth meaning of the term "party-wall" suggested was by the learned author of the note to *Wiltshire* v. *Sidford*.'

In *Wiltshire* v. *Sidford* it was held that trespass does not lie by one part owner of a party-wall against the other part owner; and the note mentioned by Fry, J., refers to the statement of Littledale, J., in delivering his judgment in *Wiltshire* v. *Sidford*, that 'the property in the wall follows the property in the land. It does not follow that either party might pull the wall down, for each has a right to use the property of the other,' and with reference to this the note is: 'Supposing the respective proprietors of adjoining houses to be each tenant in severalty of his own moiety, with cross-easements in the moiety of the other, if either party took down his own moiety, he would be liable to an action on the case for any injury which might thereby result to his neighbour; and this in some cases might be more beneficial than a tenancy in common; for upon such tenancy in common being destroyed upon a writ of partition

57 & 58 Vict. c. ccxiii. s. 5 (17).

(which, being a writ of right, and not of grace, either party, it is conceived, might prosecute), it would seem that the other would have no protection against the injury which was inflicted in *Wigford* v. *Gill*, Cro. Eliz. 269.' In *Wigford* v. *Gill* the owner of land had erected a mill dam partly upon his own and partly upon his neighbour's land, and the neighbour had pulled down so much of the dam as was upon his land, the consequence of which was that the rest of the dam fell down and the water ran out. The report says 'All the Court held it was justifiable. So if one erects a wall upon his own lands and the land of his neighbour, and the neighbour pulls down the wall upon his land, and therefore all the wall falleth down, this is lawful.'

See also Jessel, M.R., in *The Standard Bank of British South Africa* v. *Stokes*, 9 Ch. D., at pp. 71 and 72.

In *Weston* v. *Arnold* (L. R. 8 Ch. App. 1084) the Court of Appeal held that a wall might be a party-wall to such height as it belonged in common to two buildings, and cease to be a party-wall for the rest of its height.

See also *Mayfair Property Company* v. *Johnston*, and the notes to section 87, *post*, p. 163.

The latter portion of the definition of 'party-wall' appears to have reference to the provisions contained in sect. 81 (6), which enable a building owner, after notice and subject to payment of compensation, to project the footings of the external wall and the foundations thereunder into the land of the adjoining owner. If so the definition applies to any wall a portion of which, greater than the actual footings, is on land belonging to a person who is not the owner of the land on which the rest of the wall is.

'Cross wall.'

(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.

Cross wall.—This expression is defined in substantially the same terms as in the Act of 1855, except that the reference to a building being constructed or adapted to be wholly in one occupation is new. The interpretation must be read in connection with Rule 1 under the heading 'Ceilings,' in Part 2 of the First Schedule to this Act, which provides that 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 face or elevation of the wall. It will not apply to internal partition walls unless they are made use of as 'return' walls, for the purpose of giving lateral support to external or party walls, as there is nothing in the Act to prevent partition walls not so used being constructed of materials other than

those which are incombustible. See Rule 8 (Preliminary) in the First Schedule.

57 & 58 Vict. c. ccxiii. s. 5 (18–20).

(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.

'*Party fence wall.*'

Party fence wall.—The previous Acts contained no definition of party fence walls. From this definition it will be seen that the expression does not include a wall which is part of a building. A party fence wall is, therefore, neither a 'party wall' nor a 'party structure,' within the meaning of the Act.

In Gwilt's 'Encyclopædia' a party fence wall is defined as 'a wall separating open ground in one occupation from that in another: each owner having a right up to the centre of the wall.'

By sect. 197 (17), all party fence walls not exceeding seven feet in height measured from the top of the footings of the walls are exempted from the provisions of Parts VI. and VII. of the Act, which Parts deal with the construction of buildings. The latter portion of the definition apparently means that more than the footings upon one side of the wall to which it refers must be upon the lands of different owners.

(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.

'*Party arch.*'

'*Party arch.*'—This definition is new. Party arches are defined by Crabb in his 'Technological Dictionary' as 'Arches built between separate tenements.'

(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.

'*Party structure.*'

Party structures.—See the definition of 'Party wall' *ante*, p. 17, and the notes thereto.

In *Holland* v. *Wallen*, 70 L. T. (N.S.) 396; 10 R. 583, it was argued that a building divided by concrete floors was divided by 'party walls' within the meaning of sect. 27 (4) of the Metropolitan Building Act, 1855. This definition, while making such floors 'party structures,' makes it clear that they are not intended when the expression 'party wall' is used.

Since the expression 'party wall' is confined to walls which

57 & 58 Vict. c. ccxiii. s. 5 (21-23).

form parts of buildings, and the latter portion of this definition is also confined to structures which form portions of buildings, the expression does not include within its meaning a 'party fence wall;' such expression being defined by subsect. 18, *ante*, p. 20, to mean a wall used or constructed to be used as therein specified, 'and not being part of a building.'

'*Height.*'

(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.

Height.—This definition is new. The height of any building erected on the side of any new street was, under the Metropolis Management Act, 1862, sect. 85, to be determined by measurement from the level of the centre of the street opposite the building up to the parapet or eaves of the building, but under the London Council (General Powers) Act, 1890, the height of certain buildings was to be measured from the level of the footway (if any) immediately in front, or, where there was no footway, from the natural level of the ground before excavation. Both sections are now repealed, and the principle of the latter is extended to all buildings. It is to be observed that, the base of the gable being the limit of the measurement, no account is taken of storeys built wholly in the roof.

The expression 'level of the ground' is defined by subsect. 8, *ante*, p. 15, by which subsection an appeal is given against the determination by the district surveyor of such level. An external wall is defined, *ante*, p. 17, as an outer wall or vertical enclosure of any building not being a party wall, which latter term is defined *ante*, p. 17.

'*Area.*'

(22) The expression 'area' applied to a building means the superficies 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.

Area.—For definitions of the expression 'external wall,' see subsection 15, *ante*, p. 17, and for a definition of 'party wall' see subsection 16, *ante*, p. 17. For the purposes of sect. 54, which contains rules as to recesses and openings, the word 'area' means the area of the vertical face or elevation of the wall or recess to which it refers.

'*Square.*'

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

Square.—A space of one hundred superficial square feet must obviously have been intended. 57 & 58 Vict. c. ccxiii. s. 5 (24, 25).

(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. '*Cubical extent.*'

'*Cubical extent*' as here defined would require the measurement to be calculated up to the underside of the slates or other roof covering, and would therefore include any space under the roof of a building above the ceiling of the uppermost storey.

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

Dwelling-house.—The effect of this definition is to confine the term to buildings wholly or principally used, or constructed, or adapted for human habitation; in other words to buildings, the whole or principal parts of which are inhabited or inhabitable. Both the expression 'inhabited' and the expression 'habitable' are defined for the purposes of the Act in subsects. 39 and 40 respectively of this section, see *post*, pp. 37 & 38. And in *Riley* v. *Read* (4 Ex. D. 100; 48 L. J. Ex. 437; 40 L. T. (N.S.) 398), in holding that a building used partly as a club and partly as an auctioneer's office, but which was occupied during the day only, no person sleeping there at night, was not an inhabited dwelling-house so as to be liable to inhabited house duty under 14 & 15 Vict. c. 36, Kelly, C.B., said, 'If "inhabited houses" were the thing mentioned, we should have to consider whether there might not be inhabitancy, though no one slept on the premises, but when we find the Acts speak, not of "inhabited houses," but of "inhabited dwelling-houses," we must put a construction not only on the word "inhabited," but on the word "dwelling" as applied to house. Is this such a place unless one or more persons sleep in the house? I think not. . . . My interpretation of "to dwell" is "to live and occupy for all the purposes of life."'

There may be two obstacles which render a building incapable of being used as a dwelling-house. 'First, it may be physically incapable of being reasonably so used on account of its construction. Neither the Duke of York's Column, nor a tombstone, nor an open shed, nor the Prince Consort's Memorial could by any fit use of language be said to be capable of being used as a dwelling for man. This is a physical incapacity. But, secondly, there may be a legal incapacity preventing a building from being used as a dwelling for man, an incapacity existing either at common law or by statute. An instance of legal incapacity is afforded by a church of the Established Church of England. By the consecration of such a church the status of the building and the soil is

57 & 58 Vict. c. ccxiii. s. 5 (26, 27).

altered. The building is by ecclesiastical law separated for ever from the common uses of mankind. It is dedicated thenceforward to sacred services, and the law precludes it from being ever capable of use for ordinary secular purposes.' See Bowen, L.J., in *Wright* v. *Ingle*, 16 Q. B. Div., at p. 399.

'*Domestic building.*'

(26) The expression 'domestic building' includes a dwelling-house and any other building not being a public building or of the warehouse class.

Domestic building.—See the previous definition and the notes to the definition of 'new building,' *ante*, p. 11. The expression 'domestic building' is taken from the model bye-laws of the Local Government Board. It does not, for the purposes of Part V. of the Act relating to open spaces about buildings and the height of buildings, include any buildings used, or constructed, or adapted to be used wholly or principally as offices or counting-houses (see sect. 39, *post*, p. 94).

'*Public building.*'

(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 two hundred and fifty thousand cubic feet or as sleeping accommodation for more than one hundred persons.

Public buildings.—The definition of the term 'public buildings' in sect. 3 of the Metropolitan Building Act, 1855, was that such term should 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.' Under this definition the Queen's Bench Division held that a station used solely for ambulances and other conveyances, horses, and the staff employed for the conveyance of persons suffering from infectious diseases from the East of London to the various hospitals in the Metropolitan Asylums District, was not a public building; *Josolyne* v. *Meeson*, 53 L. T. (N.S.) 319; 49 J. P. 805. It was also held by the Queen's Bench Division in *The London County Council* v. *the London School Board* (1892), 2 Q. B. 606; 62 L. J. M. C. 31; 56 J. P. 791, that the provisions of the

Metropolitan Building Acts were not applicable to buildings erected in pursuance of special statutory enactment if such provisions were inconsistent or incompatible with the erection of such buildings in accordance with such enactment. See also *The City and South London Railway Company* v. *the London County Council* (1891), 2 Q. B. 513; 60 L. J. M. C. 149; 65 L. T. (N.S.) 362; 56 J. P. 6; *Clark* v. *School Board for London*, L. R. 9 Ch. 120; 43 L. J. Ch. 421; *London and Brighton Railway Company* v. *Truman*, 11 App. Cas. 45; *London and Blackwall Railway Company* v. *Limehouse District Board of Works*, 3 K. & J. 123; 26 L. J. Ch. 164; and *Mulliner* v. *the Midland Railway Company*, 27 W. R. 330; 40 L. T. (N.S.) 121. A building which is allowed by the owner to be used gratuitously for the performance of stage plays, no money being taken at the doors, is nevertheless a building used as a public theatre if the public obtain admission thereto upon payment. Where, therefore, an unlicensed building, the interior of which was fitted up as an ordinary theatre containing seats for two or three hundred spectators, with a stage, stage scenery, machinery, footlights, and other usual adjuncts of a theatre, except that there was no box office or other place in the theatre for the sale of tickets or receipt of money for admission, was gratuitously allowed by the owner to be used for the performance of stage plays to which the public were admitted by ticket, for which payment had previously been made, in aid of a charity, such owner was held to have been rightly convicted of having or keeping a house for the public performance of stage plays without a licence, under 6 & 7 Vict. c. 68, sect. 2. See *Shelley* v. *Bethell*, 12 Q. B. D. 11; 53 L. J. M. C. 16; 99 L. T. (N.S.) 779; 48 J. P. 244.

57 & 58 Vict. c. ccxiii. s. 5 (28, 29).

(28) The expression 'building of the warehouse class' means a warehouse factory manufactory brewery or distillery and any other building exceeding in cubical extent one hundred and fifty thousand cubic feet which is neither a public building nor a domestic building.

'*Building of the warehouse class.*'

Building of the warehouse class.—The expression was confined by the Metropolitan Building Act, 1855, Sch. 1, Part II., v. 1, to warehouses, manufactories, breweries, and distilleries. It is now extended to include every building which exceeds 150,000 cubic feet, and is neither 'a public building nor a domestic building,' each of which expressions is defined *ante*, see subsects. 26 and 27.

(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.

'*Owner.*'

57 & 58 Vict. c. ccxiii. s. 5 (29).

Owner.—Adjoining and building owners are included in the term 'owner,' when used in connection with the payment of expenses, which the Act declares are to be borne by the owner of any premises, see sect. 173, *post*, p. 266. Such expressions are defined by subsections 31 & 32, *post*, see p. 34. There may of course be more persons than one who will satisfy the definition of 'owner' in respect of any particular premises, and where such is the case the Act makes them liable to any expenses recoverable from the owner in proportion to their interests in the premises, see sect. 173 (2). The definition of the term 'owner' in the present Act is the same as that which was contained in the Metropolitan Building Act, 1855. It differs from the definition of the term in the Metropolis Management Act, 1855, sect. 250, in sect. 4 of the Public Health Act, 1875, and in sect. 141 of the Public Health (London) Act, 1891, in that under those Acts the term is to *mean* and not merely to *apply* to the persons specified in the definition. The difference is, however, it is presumed, not a material difference, the effect in both cases being to prevent the term, when used in the Acts, from having any other meaning than that given to it by the definition in the Act in which it occurs. The present definition also differs from those referred to in that there the word means the person for the time being receiving the rack rent of the lands or premises in connection with which it 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.

With reference to the use of the word 'owner' in sect. 51 of the Metropolitan Building Act of 1855, the provisions corresponding to which in the present Act are contained in section 150, *post*, Lush, J., in one case said: 'In what sense is the word "owner" used? It is used in the popular sense, and means the person who employed the builder to build the house for him. The statute never intended that an investigation should be made into title, or to make it material whether the person who had the house erected for his own benefit had a legal title, an equitable title, or any title at all to the land. The interpretation clause does not support the respondent's case. That clause was intended to exclude the argument that the person who has all the benefit of the building is not owner because he has not a legal title; and therefore it enacts "owner shall apply to every person in possession or receipt either of the whole or any part of the rents or profits of any land or tenement, or in the occupation of such land or tenement." The section cannot be taken to be confined only to buildings which are capable of being let, and the person is called "owner" who has the immediate right of letting them, and who would, if there was an occupier, be entitled to have the rent from him; and therefore the statute excludes the question, whether the person to whom rent is payable by the occupier has or has not a legal title.' See

Caudwell v. *Hanson* (L. R. 7 Q. B. 55; 41 L. J. M. C. 8; 25 L. T. (N.S.) 595; 20 W. R. 202; 36 J. P. 470). In the case referred to the Court held that the freeholder of land of which he had agreed to grant building leases for the term of ninety-nine years at a peppercorn rent during the first five years of the term, and at a ground rent of 28*l.* a year during the remainder of the term, was not an owner within the corresponding definition of that term in the Metropolitan Building Act, 1855, of the portions so leased upon which portions houses had been erected, inasmuch as the lessee was at the time the question arose entitled in equity to a grant of the lease pursuant to the agreement, and had, therefore, power to let the houses and receive the profits, and was therefore the 'owner' within the definition. 57 & 58 Vict. c. ccxiii. s. 5 (29).

So also, though a person in point of law may be a tenant from year to year, yet if he has a contract for a term, he must be taken in a Court of Equity to be possessed of the interest contracted for, because equity considers that to be done which is contracted to be done. A tenant in possession who had only an equitable interest under an agreement for a lease for a term was, therefore, in equity held to be an 'adjoining owner' under the Metropolitan Building Act, 1855, who was entitled to have three months' notice given to him before any alterations affecting a party-wall between his and the adjoining premises would be commenced by his neighbour. *Cowen* v. *Phillips*, 33 Beav. 18; 9 Jur. (N.S.) 657; 11 W. R. 706; 8 L. T. (N.S.) 622.

The owner of land let at a peppercorn rent is not an owner within the meaning of this definition. In *Evelyn* v. *Whichcord*, 27 L. J. M. C. 211; E. B. & E. 126; 31 L. T. (O.S.) 96; 6 W. R. 468; 22 J. P. 658; 4 Jur. (N.S.) 808, also a decision under the Metropolitan Building Act, 1855, the freeholder of building land agreed to grant a building lease of such land for eighty-one years at a peppercorn rent for the first year, 6*l.* for the second year, and 12*l.* for each year during the remainder of the term. And the Court held that the lessee was not the 'owner' of houses which were erected upon such land at the time that fees became due to the District Surveyor for supervising the erection of the houses. Lord Campbell, C. J., in so holding said: 'At the time these fees became due, the lands were let at a peppercorn rent; the appellant therefore received no profits. We cannot hold him liable, unless in every case where land is let on a building lease, the ultimate reversioner is to be held liable, and the surveyor entitled to come upon him for his fees.' And Compton, J., said: 'The definition points to a person who either receives himself, or by his tenant, the whole or part of the rents and profits; and I do not think that a peppercorn reserved as rent can fairly be said to be part of the rents or profits. I think the lessee for eighty-one years or his assignee had them, or part of them, "any part" meaning part of the whole.' See also *Caudwell* v. *Hanson*, *supra*.

Under a definition in a local Act of the term 'owner' that it was to mean the person for the time being receiving the rack

57 & 58 Vict. c. ccxiii. s. 5 (29).

rent of the lands in connection with which the word was used, or who would so receive the same if such lands were let at a rack rent, it was held that the lessee under a building lease for 999 years at a ground rent of 26*l.* was such an owner, although at the time there were no buildings erected on the land. *Corporation of St. Helens* v. *Riley*, 47 J. P. 471.

Under the definition of the word 'owner' in section 2 of the Nuisances Removal Act, 1855 (18 & 19 Vict. c. 121), namely, that such word 'includes any person receiving the rents of property, in respect of which the word is used, from the occupier of such property on his own account, or as trustee or agent for any other person,' the Court of Queen's Bench held that the agent of a lessor of a house and shop, let for a term of 21 years at a rack rent, whose lessee occupied the shop but underlet the rest of the house to a yearly tenant, was not an owner within the meaning of the definition. The shop was shut off from the rest of the premises upon which a nuisance existed, and consequently the lessee was in receipt of the rent from the occupier of the premises on which the nuisance arose, and he and not the lessor's agent was the owner. *Cook* v. *Montagu*, L. R. 7 Q. B. 418; 41 L. J. M. C. 149; 26 L. T. (N.S.) 471; 20 W. R. 624; and see *Truman, Hanbury, Buxton & Co.* v. *Kerslake* (1894), 2 Q. B. 774; 10 Times L. R. 668.

In another case where premises were let for a term of years at the same rent at which they were sublet, the rent being merely received by the intermediate lessee and handed over by him to his lessor, the Queen's Bench Division held that, as the intermediate lessee paid over the whole of the rent he received from his lessee without deriving any profit whatever, he was not the person who received the rack rent of the premises, and was not therefore the owner of the premises within the meaning of that as defined by sect. 250 of the Metropolis Management Act, 1862, *Walford* v. *the Hackney District Board of Works*, 98 L. T. 63; 11 Times L. R. 17.

The lessee of a house under a lease for a long term of years, different portions of which he had underlet to different tenants, was, however, held to be the 'owner' within the meaning of the Metropolitan Building Act, 1855, of a party wall in such house, notwithstanding that the underlettings created a greater interest in the under-tenants than that of a yearly tenancy. *Hunt and another* v. *Harris*, 34 L. J. C. P. 249; 19 C. B. (N.S.) 13; 13 L. T. (N.S.) 742; 11 Jur. (N.S.) 475; 13 W. R. 742, in which case Erle, C. J., in delivering judgment said: 'It seems to me perfectly clear that the party upon whom the duty of payment is cast (*i.e.* by s. 73 of the Act of 1855, which corresponded to section 101 of the present Act) is the owner of the structure within the meaning of section 3, namely, a person in possession or receipt of the rents or profits of the premises, that is to say—the person having a beneficial lease, and entitled to the rack rent. . . . I do not mean to say but

that the owner in fee simple, or somebody else, also may be liable. I do not pronounce any opinion upon that. But my opinion is clear that the owner of a long term, who has underlet the premises, and who is entitled to the rack rents, is liable.' 57 & 58 Vict. c. ccxiii. s. 5 (29).

The Metropolitan Building Act of 1844 contained a definition of the term 'owner,' which was similar to that in the present Act, and such definition was held not to include the lessor of a house let for a term of 21 years, which house was during the term accidentally burnt, and being ruinous had to be pulled down under the Act, although during the time that the house was untenantable by reason of an accidental fire the lease stipulated that the tenant should be exempt from the payment of rent. *Ex parte the Overseers of Saffron Hill*, 24 L. J. M. C. 56 ; 24 L. T. (o.s.) 118 ; 18 Jur. 1104.

A receiver appointed by the Court in an action is not an agent for any other person, nor is he a trustee. He is appointed by the order of the Court, and is responsible to the Court, and cannot obey the directions of the parties in the action. In no sense, therefore, does he stand in the position of agent to the parties who are interested at the suit of whom, or of one of whom, he was appointed ; and is not an 'owner' of premises within the definition of that term in section 4 of the Public Health Act, 1875, which definition is similar to that contained in section 250 of the Metropolis Management Act, 1855, App. I., *post*, p. 354. See *The Corporation of Bacup* v. *Smith*, 44 Ch. D. 395 ; 59 L. J. Ch. 518 ; 63 L. T. (N.S.) 195.

The definition of the word 'owner' in the present Act does not appear to be an exclusive definition, and it may be that the expression includes others than those mentioned. So far, however, as the persons mentioned are concerned, they do not include persons in whom buildings are vested by virtue of some irrevocable dedication, whether by statute or otherwise, to a purpose which prevents the person in whom they are vested deriving any rent or profit therefrom.

In *Reg.* on the prosecution of *The Metropolitan Board of Works* v. *Lee*, 4 Q. B. D. 75 ; 48 L. J. M. C. 22 ; 39 L. T. (N.S.) 605 ; 43 J. P. 302, the Court held that the incumbent of a district church in the metropolis was not the 'owner' of the church within Part II. of the Metropolitan Building Act, 1855, which related to dangerous structures, although the freehold of the church was vested in him under the Church Building Acts. Cockburn, C. J., in that case said, 'The incumbent does not receive the rents or profits of the church, and he is not in occupation of it.'

In *Angell* v. *the Vestry of Paddington*, also, L. R. 3 Q. B. 714 ; 37 L. J. M. C. 171 ; 9 B. & S. 496 ; 16 W. R. 1167, Blackburn, J., said that he could not see how the Commissioners for building additional churches under 58 Geo. III. c. 45 ; 59 Geo. III. c. 134 ; 3 Geo. IV. c. 72 ; and 5 Geo. IV. c. 103, could be said to be 'owners' within the definition of that term in the Metropolis Management Act, 1855 (18 and 19 Vict. c. 120, s.

57 & 58 Vict. c. ccxiii. s. 5 (29).

250), which enacts that the word 'owner' in that Act shall mean 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. On the other hand, in *Caiger and others* v. *the Vestry of St. Mary, Islington*, 50 L. J. M. C. 59; 44 L. T. (N.S.) 605; 45 J. P. 570, the Queen's Bench Division held that certain trustees who were lessees of a chapel which was registered as a place of religious worship, but had not been consecrated, and attached to which were a vestry and rooms for a caretaker, besides lecture and school rooms underneath the chapel, were owners within the same definition. In his judgment in this case Grove, J., pointed out that the land had not been dedicated in perpetuity, and the chapel not having been consecrated according to the rites of the Church of England, there was nothing except the covenant by the lessees not to use the premises for any other purpose than as a place of worship and Sunday school in connection therewith, and for religious meetings, or other religious or charitable purposes, which covenant could be waived by the lessor, to bind the trustees to continue its use as a chapel. The learned judge further said that he agreed with what fell from the Attorney-General during the argument, namely, that parties could not by mere agreement alter the liability imposed by the Metropolis Management Act; otherwise it would be very easy to evade the statute by inserting covenants in a lease, and not insisting on their performance. The two last-mentioned cases were supposed to be in conflict until the Court of Appeal in *Wright* v. *Ingle*, 16 Q. B. D. 379; 55 L. J. M. C. 17; 54 L. T. (N.S.) 511; 34 W. R. 220; 50 J. P. 436, pointed out that the cases were distinguishable on the ground, so far as the question of ownership was concerned, that in the first case the question arose with regard to a church of the Established Church of England, which was vested in the Commissioners for building additional churches, and which could never, so long as the statutes under which it was vested in the Commissioners lasted, be let at all at a rack rent, and that consequently the Commissioners could not be such owners as were described by the definition clause; whereas in the latter case, and in the case then before the Court, the continuance of the user of the premises for purposes of a chapel was dependent upon covenants which might or might not be enforced. In *The Board of Works for the Plumstead District* v. *the Ecclesiastical Commissioners for England* (1891), 2 Q. B. 361; 64 L. T. (N.S.) 830; 55 J. P. 791, land had been conveyed to the Ecclesiastical Commissioners under the Church Building Acts as a site for a church, which was afterwards erected, and, with part of the land, consecrated; and the Queen's Bench Division held that upon consecration the whole of the land conveyed to the Commissioners vested in the incumbent under sect. 13 of the

Church Building Act, 1845 (8 and 9 Vict. c. 70), and that the Commissioners had therefore ceased to be owners of it. Denman, J., in so holding said, 'I do not found my judgment on the peculiar nature of the land, nor on the construction of the particular word "owner," as used in the definition clause of the Metropolis Management Acts, but on the ground that they are not "owners" in any sense. The land is not vested in them. Their duties are the creation of statute.' The question as to whether or not the incumbent was owner of the portion of the land which had not been consecrated was not dealt with in any way. 57 & 58 Vict. c. ccxiii. s. 5 (29).

The Vestry of St. Mary, Islington, was held to be the owner within the meaning of that term in the Metropolis Management Acts of a garden in a square which had been laid out for the benefit of the public, and over which the Vestry exercised control under the Metropolitan Open Spaces Act, 1881 (44 & 45 Vict. c. 34), it having acquired under that Act the residue of a lease of the garden. *The Vestry of St. Mary, Islington*, v. *Corbett and others*, 71 L. T. (N.S.) 573.

In another case the lessee of a building used as a chapel which was let on lease to him for 21 years was held to be the owner of such building within the meaning of the Metropolitan Building Act, 1855. See *Mourilyan and another* v. *Labalmondiere*, 1 E. and E. 533 ; 30 L. J. M. C. 95 ; 7 Jur. (N.S.) 627 ; 25 J. P. 340 ; S. C. nom. *Reg.* v. *Mourilyan and another*, 3 L. T. (N.S.) 668 ; see also *Wigg* v. *Lefevre*, 8 'Times' L. R. 493.

A Cemetery Company incorporated by Act of Parliament, and empowered to sell the exclusive right of burial in vaults in perpetuity or for limited periods, was also held to be an 'owner' of land within the definition of that term contained in sect. 250 of the Metropolis Management Act, 1855. *Vestry of St. Giles, Camberwell*, v. *the London Cemetery Company* (1894), 1 Q. B. 699 ; 63 L. J. M. C. 74 ; 58 J. P. 382, on the ground that land was not *extra commercium* where lump sums could be received for portion of it ; and the Cemetery Company being owners in fee, with the power of letting or selling the land, although this power was limited to the purposes of interment, yet there was nothing to prevent the Company from letting the cemetery, or part of it, to another cemetery company at a rack rent, so long as it was used as a cemetery.

The owner of the soil of a highway is not an owner of land within the definition of that term in the Metropolis Management Act, 1855. In *The Plumstead Board of Works* v. *the British Land Company*, L. R. 10 Q. B. 203 ; 44 L. J. Q. B. 38 ; 32 L. T. (N.S.) 94 ; 39 J. P. 376, the defendants, who were owners of land, laid it out for building, making roads and ways upon and across it communicating with ancient highways outside the land, which roads and ways were dedicated by the defendants as highways, but were not repairable by the inhabitants at large. The land was then sold in lots to different purchasers, being conveyed to them by metes, bounds, and admeasurements, set forth on a plan annexed to the conveyance

57 & 58 Vict. c. ccxiii. s. 5 (30).

upon which each lot was numbered. Each of the lots had a frontage upon one or other of the roads made by the defendants, and was stated in the conveyance to be situate upon the side of and adjoining such road. It was held by the Exchequer Chamber that even if the soil of the roads remained vested in the defendant Company, the Company was not by virtue of such ownership an 'owner,' within the definition of that term in sect. 250 of the Metropolis Management Act, 1855, of land bounding or abutting on the streets with which such roads communicated or which such roads intersected. In so holding the Court distinguished the case of *Northbrook* v. *the Plumstead Board of Works*, L. R. 7 Q. B. 183 ; 41 L. J. M. C. 51 ; 25 L. T. (N.S.) 461 ; 36 J. P. 468, on the ground that in that case there had not been as here dedication of the roads in question to the public which would be past recall. In the last-mentioned case Blackburn, J., said that he could not see why Lord Northbrook was not the owner of land merely because he chose to use it for an artificial purpose. Such purpose was that of a private road forming the means of access to houses built along the side of it on lands which did not belong to Lord Northbrook.

For the purposes of sect. 15, *post*, p. 70, which relates to the payment by the London County Council of compensation to the owner of land which the Council has required should be thrown into a street or way in order that such street or way may be of a greater width than 40 feet, the expression 'owner' has the same meaning as in the Lands Clauses Acts, as to which see the note to sect. 15 ; and for the purposes of proceedings for the removal of an unlawful sky sign, the expression 'owner' means the occupier of the house, building, or structure to which the sky sign is erected or attached, sect. 134, *post* ; and also for the purposes of sect. 23, *post*, p. 82, which sect. enables the Council to require a building which is being rebuilt to be set back to the general line of buildings upon payment of compensation to the owner.

'*Occupier.*' '*Occupy.*' '*Occupation.*'

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

Occupier.—The Act does not define the meaning either of the term 'occupier' or of the term 'lodger ;' and when a person ceases to be an occupier and becomes a lodger for the purposes of the Parliamentary and Municipal franchise is a question which the Courts have found it very difficult to answer. In *Bradley* v. *Baylis*, 8 Q. B. D. 195 ; 51 L. J. Q. B. 183 ; 46 L. T. (N.S.) 253 ; 30 W. R. 823, Jessel, M. R., for the assistance of revising barristers in making out the lists of voters, stated what cases, in his opinion, would be cases of occupying tenants, and what cases would be cases of lodgers. He stated, however, at the same time that such descriptions were not exhaustive, and that there might and must be cases between them as to which it was wholly impossible to give an opinion until their details were known. The portion of the judgment in which the state-

ment occurred was as follows :—'First of all, take the case of a lodger. It seems to me, as to unfurnished lodgings (and I will only deal with unfurnished lodgings, as it is the only class of cases with reference to which questions are likely to arise), where the owner of the house does not let the whole of it, but retains a part for his own residence, and resides there, and where he does not let out the passages, staircase, and outer door, but gives to the inmates (I use that term for my present purpose) merely a right of ingress and egress, and retains to himself the general control, with the right of interfering—I do not mean an actual interference, but a right to interfere, a right to turn out trespassers, and so on ; there I consider that such owner is the occupying tenant of the house, and the inmate, whether he has or has not the exclusive use of the rooms, is a lodger. That is one extreme case. Now I take another case, where the landlord lets out the whole of the house into separate apartments, and lets out each floor separately, so as to demise the passages, reserving simply to each inmate of the upper floors the right of ingress and egress over the lower passages, but parts entirely with the whole legal ownership, for the term demised, and retains no control over the house : there, in my opinion, the inmates are occupying tenants, and are capable of being rated as such. That is an extreme case on the other side. There will be an immense number of intermediate cases, which, as I said before, can only be dealt with as they arise.' The Master of the Rolls then went on to discuss the different cases then before the Court, and in so doing said that he did not think that the mere fact that the inmates might have latch-keys to the outer door and also keys to the inner doors made any difference ; nor did he think that the mere fact that the landlord did not reside on the premises personally, but had resident servants who occupied, on his behalf, part of the house, or that the landlord did or did not repair the premises, made any difference. He thought that the inmates were still lodgers, notwithstanding. 57 & 58 Vict. c. ccxiii. s. 5 (30).

In *Bradley* v. *Baylis* (*ubi supra*) Brett, L. J., said that 'supposing a man remains in the house and lets off several rooms to different persons who are then his lodgers, and he afterwards lets off all the rest of the rooms and leaves the house, and preserves no actual control over it, so that he is not to go into it, either by his servants or by himself, then those persons who were before lodgers have become by that fact householders. But supposing during the qualifying year one of those lodgers leaves, and the owner thereupon (as assuredly he must) resumes the control over that unlet part, according to my view of the statutes, immediately by that act of his those people left in the house who have been householders become lodgers again.' These remarks were relied upon in the subsequent case of *Ancketill* v. *Baylis*, 10 Q. B. D. 577 ; 52 L. J. Q. B. 104 ; 48 L. T. (N.S.) 342, as authority for the proposition that where, upon the tenant of a room in a house, all the rooms of which were let off to tenants as their residences,

57 & 58 Vict. c. ccxiii. s. 5 (31, 32)

each tenant having a key to his room and a key of the front door, relinquishing his tenancy, the landlord had taken the usual steps to obtain a new tenant of the vacant room, this fact had caused the inmates of the house to cease to be occupying tenants of their rooms, and to become lodgers merely. Baggallay, L. J., said, however, in holding the contrary, that he thought that Brett, L. J., did not contemplate the view which had been taken of these words, and that when he spoke about the owner resuming control he was alluding to a case where the owner resumed full and complete control, as if, for instance, he came to reside in the vacated rooms. Sir James Hannen, in the same case, said: 'I will take a case where a house has, in the first instance, been let to lodgers in the strict sense of the word: suppose that the landlord finds it more convenient to sleep elsewhere, but that he keeps in hand a furnished room and retains the right to come into the house, this alteration will make no difference in the relation between the landlord and the lodger.'

'*Building owner.*'

(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.

Building owner.—The owner of premises separated from adjoining premises by a party wall who pulls down and repairs such wall in compliance with a dangerous structure notice was held to be a building owner within the meaning of sect. 88 of the Metropolitan Building Act, 1855, with the provisions of which sect. 95 of the present Act corresponds, see Erle, C. J., in *Hunt and another* v. *Harris*, 34 L. J. C. P. 249; 19 C. B. (N.S.) 13; 11 Jur. (N.S.) 485; 12 L. T. (N.S.) 421.

See also note to sect. 101, *post*, p. 190.

'*Adjoining owner.*'
'*Adjoining occupier.*'

(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.

Adjoining owner.—Under the Metropolitan Building Act, 1855, it was held that the lessee for a long term of years of a house which he had underlet to different tenants from whom he received the rent, was liable as an 'adjoining owner,' within the meaning of that Act, to contribute towards expenses incurred by the owner of the adjoining premises in complying with a dangerous structure notice with reference to a party wall which separated the two premises. See *Hunt and another* v. *Harris*, *supra*.

A tenant in possession of part of a house under an agree-

ment for a greater interest than as tenant from year to year, was held to be an 'adjoining owner,' who was entitled to be served with the three months' notice prescribed by sect. 85 (1) of the Metropolitan Building Act, 1855, for which enactment the provisions of sect. 84 of the present Act are substituted. See *Fillingham* v. *Wood* (1891), 1 Ch. D. 51 ; 60 L. J. Ch. 232 ; 64 L. T. (N.S.) 46. 57 & 58 Vict. c. ccxiii. s. 5 (33, 34).

So also a tenant in possession with an equitable interest only under an agreement for a lease for a term was held, in equity, to be an adjoining owner within the meaning of the Metropolitan Building Act, 1855, to whom it was necessary to give notice before commencing any works which would affect a party wall belonging to his premises, see *Cowen* v. *Phillips*, *ante*, p. 27.

See also note to sect. 101, *post*, p. 190.

The same person may be both building owner and adjoining owner, and where such is the case, by reason of the owner of two adjoining houses occupying one house himself and letting the other to a yearly tenant, the owner is entitled to enter the adjoining premises in order to execute works of repair to the party wall between the two houses without giving notice either to the tenant of the adjoining premises under sect. 84, *post*, p. 157. See *Wheeler* v. *Gray*, 28 L. J. C. P. 200 ; 5 Jur. (N.S.) 916 ; 6 C. B. (N.S.) 606 ; 7 W. R. 325 ; 23 J. P. 453 ; S. C. nom. *Weal* v. *Gray*, 31 L. T. (O.S.) 166. See also the note to sect. 90, *post*, p. 173.

(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. *'Builder.*

Builder.—The definition of this expression in the Metropolitan Building Act, 1855, was '"builder" shall apply to and include the master builder or other person employed to execute or who actually executes any work upon any building ;' and under that Act it was held that there was no power to convict a builder of having done anything contrary to the Act after his employment as builder in respect of the particular building had ceased. See *Smith* v. *Legg* (1893), 1 Q. B. 398 ; 68 L. T. (N.S.) 347 ; 57 J. P. 295. And this notwithstanding that notice of the irregularity may have been served upon the builder while he was actually engaged in executing the work. See *Wallen* v. *Lister* (1894), 1 Q. B. 312 ; 63 L. J. M. C. 51 ; 70 L. T. (N.S.) 348 ; 10 R. 127 ; 42 W. R. 318 ; 58 J. P. 53.

(34) The expression 'superintending architect' means the superintending architect of metropolitan buildings for the time being. *'Superintending architect.*

Superintending Architect.—Under sect. 136, *post*, p. 228, the London County Council is empowered for the purpose of aiding in the execution of this Act to appoint some fit person to be

57 & 58 Vict. c. ccxiii. s. 5 (35, 36).

called the 'Superintending Architect of Metropolitan Buildings,' who is to be removable at the will of the Council, and is not to practise as an architect or to follow any other occupation. The Superintending Architect in office at the commencement of the Act—viz. Mr. Thomas Blashill, who succeeded the late Mr. Vulliamy, the first holder of the office—is continued as Superintending Architect under the present Act. By sect. 137, *post*, p. 230, the Superintending Architect is, in the event of his being prevented by illness, infirmity, or other unavoidable cause from attending to the duties of his office, empowered, with the consent of the London County Council, to appoint a deputy.

'District surveyor.'

(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.

District Surveyor.—By sect. 139 (2), *post*, p. 233, the several persons who at the commencement of this Act—*i.e.* on the 1st January, 1895—were District Surveyors are continued in office as District Surveyors under the present Act; and by subsect. 1 of the same section the London County Council is, upon a vacancy occurring in the office of a District Surveyor, empowered to appoint another qualified person in his place. A list of the District Surveyors holding office at the date of the publication of this work, with their respective offices and districts, will be found in the Appendix V., *post*. The Council may also dismiss or suspend any District Surveyor, and appoint a temporary substitute during any suspension or vacancy; it may not, however, dismiss a District Surveyor who held office before the 14th August, 1855, without the consent of a Secretary of State. A District Surveyor prevented by illness, infirmity, or any other unavoidable circumstance from attending to the duties of his office, may, with the consent of the Council, appoint a deputy (see sect. 142, *post*, p. 234); and the Council is empowered by sect. 143, in case of pressure of business in any district, or in case the Surveyor of a district cannot discharge his duties promptly and efficiently, either to direct another District Surveyor to assist him or to appoint an assistant to such first-mentioned surveyor.

District Surveyors are forbidden by sect. 144, *post*, p. 234, of the Act to survey buildings or structures for the purposes of the Act upon which any work has been done by or under the superintendence of such surveyors, whether acting professionally or on their private accounts.

'Fire-resisting material.'

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

Fire-resisting material.—This definition is new. The materials and things described in the second schedule are brickwork, bonded and put together with the materials herein

specified, granite and any other solid and durable stone suitable for building purposes, iron, steel, and copper, oak, teak, and other hard timber of the thicknesses therein mentioned, and in certain cases protected by plastering or cement, or other incombustible or non-conducting external coating; slate tiles, brick and terra-cotta and flagstones under certain circumstances, concrete, composed of the ingredients specified, and, lastly, any material from time to time approved by the Council as fire-resisting. The last description would appear to be meant to enable the Council to escape the difficulty so far as the provisions of the Act relating to fire-resisting materials are concerned, which was experienced in the case of *Payne* v. *Wright* (1892), 1 Q. B. 104; 61 L. J. M. C. 7; 65 L. T. (N.S.) 612; 40 W. R. 191; 56 J. P. 120, with regard to the necessity for roofs of buildings being covered with slates, tiles, metal, or other incombustible materials. In that case portions of the roof of a building which would otherwise have been covered with glass, were covered with a material known as 'duroline,' a material composed of woven iron wire coated with an oleaginous compound, which was entirely waterproof and semi-transparent, and was used at several large buildings in the metropolis and extensively in other parts of the country, as a substitute for glass. The magistrate before whom proceedings were taken in respect of such roofing, found as a fact that part of the material, that is to say, the oleaginous coating, was combustible, and that part of it, that is to say, the wire network, was incombustible, and held, there having been evidence given before him by experts that the material was safer than glass as a protection from fire when used on skylights, that, having regard to the object and purposes of the Act, the material as a whole was an incombustible material within the meaning of the Act. The Queen's Bench Division, however, reversed such holding, and held that the magistrate ought to have found that the material was not incombustible.

57 & 58 Vict c. ccxiii. s. 5 (37–39).

(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.

'*Inhabited.*'

Inhabited.—See the note to subsection 25, *ante*, p. 23; and see also the instructional letter of December 15, 1894, in Appendix IV., *post*.

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

'*Habitable.*'

Habitable.—See the definition of the expression 'inhabited' in subsection 37 and the note to subsection 25, *ante*, p. 23.

'*The Metropolis Management Acts.*'

(39) The expression 'the Metropolis Management Acts' means the Metropolis Management Act 1855 and

57 & 58 Vict. c. ccxiii. s. 5 (40, 41).

the Acts amending the same or any one or more of those Acts.

The Metropolis Management Acts.—The Acts by which the Metropolis Management Act 1855 has been amended are the following, viz. :—the Metropolis Local Management Act, 1856 (19 & 20 Vict. c. 112); the Metropolis Local Management Act Amendment Act, 1858 (21 & 22 Vict. c. 104); the Metropolis Local Management Acts Amendment Act, 1862 (25 & 26 Vict. c. 102); the Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67, sect. 77); the Metropolitan Board of Works (Loans) Act, 1869 (32 & 33 Vict. c. 102, sect. 50); the Metropolitan Board of Works (Loans) Act, 1871 (34 & 35 Vict. c. 47, sects. 16, 18); the Metropolitan Management and Building Acts Amendment Act, 1878 (41 & 42 Vict. c. 32); the Diseases Prevention, Metropolis Act, 1883 (46 & 47 Vict. c. 55, sect. 5); the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43, sect. 4); the Metropolis Management Amendment Act, 1885 (48 & 49 Vict. c. 33); the Metropolis Management (Battersea and Westminster) Act, 1887 (50 & 51 Vict. c. 17); the Metropolis Management Amendment Act, 1890 (53 & 54 Vict. c. 66); the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76); the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19); the Statute Law Revision Act (No. 2), 1893 (56 & 57 Vict. c. 54); and the Metropolis Management (Plumstead and Hackney) Act, 1893 (56 & 57 Vict. c. 55).

'*London.*'

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

London.—See the note to sect. 4, *ante*, p. 4.

'*The Council.*'

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

The London County Council.—The London County Council was constituted by sect. 40 of the Local Government Act, 1888 (51 & 52 Vict. c. 41) and superseded the Metropolitan Board of Works, the body to which the control of the laying-out of streets and building operations in the metropolis had been entrusted previously to the coming into operation of that Act. The Local Government Act, 1888, so far as it relates to the Metropolis, came into operation on the 21st March, 1889, to which day the date in sect. 109 of the Act was altered by order of the Local Government Board, dated the 19th March, 1889; subsect. 8 of section 40 of the Act enacts that 'there shall also be transferred to the London County Council the powers, duties, and liabilities of the Metropolitan Board of Works, and after the appointed day that Board shall cease to exist, and the property, debts, and liabilities thereof shall be transferred to the London County Council, and that Council shall be in law the successors of the Metropolitan Board of Works.

(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. 57 & 58 Vict. c. ccxiii. s. 5 (42–47). '*Local authority.*'

Local Authority.—A list of the parishes and districts subject to these authorities will be found in the note to sect. 4, *ante*, p. 5.

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

The City.—See the note to sect. 4, *ante*, p. 4.

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

(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. '*Guildhall.*'

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

The Commissioners of Sewers.—See the note to sect. 4, *ante*, p. 6. '*Commissioners of Sewers.*'

(47) The expression 'the tribunal of appeal' means the tribunal of appeal constituted by this Act.

The Tribunal of Appeal is constituted by sect. 175, *post*, p. 269, and consists of: One member to be appointed by a Secretary of State, one member to be appointed by the Council of the Royal Institute of British Architects, and one member to be appointed by the Council of the Surveyors' Institution.

PART II.

Formation and Widening of 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. As to making streets.

Widening, &c., streets.—The provisions of the present Act which regulate the widening of streets are contained in sect. 10, *post*, p. 55. The powers of the authorities which are, by sect. 5

57 & 58 Vict. c. ccxiii. s. 6.

(42), *ante*, p. 39, included in the meaning of the expression 'local authority,' when used in this Act, are contained in 57 Geo. III. c. 29, sect. 80, in sects. 120 and 144 of the Metropolis Management Act, 1855, and sects. 72, 98, 99, and 100 of the Metropolis Management Amendment Act, 1862, which will be found in Appendix I., *post*.

By sect. 250 of the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), 'the word "street" shall apply to and include any highway (except the carriage-way of any turnpike road), and any road, bridge (not being a county bridge), lane, footway, square, court, alley, passage, whether a thoroughfare or not, and a part of any such highway, road, bridge, lane, footway, square, court, alley, or passage.' And by sect. 112 of the Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), 'the word "street" shall be deemed to apply to and include the subject matters specified in the two hundred and fiftieth section of the firstly recited Act' (*i.e.* the Act of 1855), and also any mews and a part thereof.

By sect. 80 of 57 Geo. III. c. 29 (the powers of improving streets conferred by which are extended to the Metropolis by sect. 73 of the Metropolis Management Amendment Act, 1862), it is enacted that 'for the improvement of the streets and public places in the parochial or other districts within the jurisdiction of this Act, and for the public advantage, it shall and may be lawful to and for the Commissioners or trustees, or other persons having the control of the pavements of any parochial or other district, from time to time, and at all times hereafter, to alter, widen, turn, or extend any of the streets or other public places within any such parochial or other district (except turnpike roads), and to lengthen and continue or open the sides or ends of any streets or public places within any parochial or other district, into any other street or public place within such or any other parochial or other district, and to raise, level, lower, drain, ballast, gravel, or pave such new part or parts of any such streets or public places so altered, widened, extended, opened, or lengthened as aforesaid; and that if any houses, walls, buildings, lands, tenements, and hereditaments, or any part thereof, shall be adjudged by the said Commissioners or trustees, or other persons as aforesaid, to project into, obstruct, or prevent them from so altering, turning, widening, extending, lengthening, continuing, or opening the said streets or public places within the said parochial or other district, and that the possession, occupation, and purchase of such houses, walls, buildings, lands, tenements, or hereditaments will be necessary (*a*) for that purpose, it shall and may be lawful to and for the said Commissioners or trustees, or other persons as aforesaid, and they shall have full power and authority to treat, contract, and agree, or to employ any person or persons to treat, contract, and agree with the several owner or owners, occupier or occupiers of all such houses, walls, buildings, lands, and hereditaments, of whatsoever nature, tenure, kind, or

quality, for the purposes aforesaid, and to pay for the same such sum or sums of money as shall be agreed upon by the said Commissioners or trustees, or other persons as aforesaid, and the owner or owners, occupier or occupiers thereof, out of the money to raise and be raised and to be received by them, either by virtue of any local Act or Acts of Parliament relating to such parochial or other districts, or of this Act, and to pull down, use, sell, or dispose of such houses, walls, and buildings, and the materials thereof, and lay the sites thereof, and also such other lands, tenements, or hereditaments, or so much thereof as they, the said Commissioners, trustees, or other persons as aforesaid, shall think proper, into the said streets or other public places.' 57 & 58 Vict. c. ccxiii. s. 6.

(*a*) The word 'necessary' in sect. 80 means physically necessary, and it was therefore held by Kay, J., in *Gard* v. *the Commissioners of Sewers*, 28 Ch. D. 486 ; 49 L. T. (N.S.) 325, that the Commissioners of Sewers were not entitled under the section to adjudge the whole of a house to be necessary to be taken for the widening of a street, and to take it in pursuance of such adjudication, when, in fact, only a portion of the house physically obstructed the widening, the object of the Commissioners being to resell the remainder of the house at an increased price, and so to enable the scheme for widening the street to be carried out.

In *Thomas* v. *Daw*, L. R. 2 Ch. App. 1 ; 15 L. T. (N.S.) 200, which was distinguished by Kay, J., in the case last cited, the Court held that the Commissioners of Sewers could not under sect. 80 take the whole of a house compulsorily unless they had formally adjudged that possession of the whole was necessary for the purpose of executing their powers. See also *Lynch* v. *the Commissioners of Sewers of the City of London*, 32 Ch. D. 72, in which case it was held that the Commissioners could not virtually adjudicate that a property was required for the purposes of an improvement until they had determined what the improvement was to be, so far as to furnish materials for judging whether the property was or was not required.

In another case, *Teuliere* v. *the Vestry of St. Mary Abbott's, Kensington*, 30 Ch. D. 642 ; 55 L. J. Ch. 23 ; 50 J. P. 53 ; 53 L. T. (N.S.) 422, it was held that where the local authority for the purpose of widening a street within its district required a portion of an orphanage, which if severed would leave a substantial portion of the premises remaining, the authority was not, upon the owners wishing to sell the portion required only, entitled to take the whole of the premises.

And in *Gordon* v. *the Vestry of St. Mary Abbott's, Kensington* (1894), 2 Q. B. 742 ; 63 L. J. M. C. 193 ; 71 L. T. (N.S.) 196 ; 58 J. P. 463 ; 10 R. 539, it was held that a metropolitan local authority can, under sects. 80 and 82 of Michael Angelo Taylor's Act, 1817, compulsorily take away a part of a house, as well as a portion of land, for the purpose of widening a thoroughfare, provided that the taking away of such a part will not involve a

57 & 58 Vict. c. ccxiii. s. 6.

structural alteration of the whole house or necessitate an alteration in its business purposes ; but if the part to be removed is so indissolubly linked to the house that this cannot be removed without destroying its identity, the local authority must treat for the whole house. The question as to the character of the proposed alteration was in the same case held to be a question of fact, to be found before the Queen's Bench Division could decide whether or not the local authority had properly exercised its jurisdiction under the Act.

By sect. 120 of the Metropolis Management Act, 1855, which section was enacted before sect. 80 of 57 Geo. III. c. 29 was applied to the whole of the Metropolis, it is provided that :—

'It shall be lawful for every Vestry and District Board, if any Projection or Obstruction which has been placed or made against or in front of any House or Building in any such Street before the Commencement of this Act shall be an Annoyance as aforesaid, to cause the same to be removed or altered as they think fit : Provided always, that the Vestry or Board shall give Notice in Writing of such intended Removal or Alteration to the Owner or Occupier against or in front of whose House or Building such Projection or Obstruction shall be, Seven Days before such Removal or Alteration shall be commenced, and shall make reasonable Compensation to every Person who shall incur any Loss or Damage by such Removal, excepting in Cases where the Obstruction or Projection may now be removable under any Act, in which Case no Compensation shall be made.'

The Metropolitan Board of Works, now the London County Council, was given power to make, widen, or improve any streets, roads, or ways, for facilitating the passage and traffic between different parts of the Metropolis, or to contribute and join with any person in any such improvements, and to acquire for that purpose any land, rights in land, or property, by sect. 144 of the Metropolis Management Act, 1855, which will be found in Appendix I., *post*.

By sect. 72 of the Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), it is enacted that :—

The Vestry of every Parish mentioned in Schedule A. to the firstly-recited Act, and the District Board of every District, shall, with the previous Consent in Writing of the Metropolitan Board of Works, have Power within their respective Parish or District to make, extend, widen, alter, or improve any Street, Road, or Way, or any Bridge over a Canal traversing any Part of such Parish or District, for the Purpose of facilitating Passage and Traffic, or for any other public Purpose ; or to contribute and join with the Metropolitan Board, or with any other Body or Persons, in any such Improvements ; and to take by Agreement or Gift any Land, Right in Land, or Property for the Purposes aforesaid, or any of them, on such Terms and Conditions as they may think fit ; and for the Purposes aforesaid it shall be lawful for any Vestry

or District Board, should they see fit, to take down the present Bridges over Canals within their Parish or District, and to erect others in their Place and Stead, or to erect new Bridges over such Canals in such Situations as they may deem beneficial, and from Time to Time to repair and maintain such existing or new Bridges, and to indemnify the Canal Company or other Body or Persons interested in such Bridges against the future Repairs and Maintenance of any such Bridges; and the Expenses incurred by any Vestry or District Board in any such Improvements shall be paid out of the general Rate authorised to be raised in their Parish or District under the firstly-recited Act: Provided that no such Extension, Widening, Alteration, Improvement, taking down, or Re-erection of any existing Bridge over any such Canal, or the Erection of any new Bridge over the same, shall be made without the previous Consent in Writing under their Common Seal of the Company owning such Canal, and the Provisions of the One hundred and seventh Section of the firstly-recited Act shall remain in force and be applicable to this Enactment: Provided also, that it shall be lawful for any such Vestry or District Board, under the Provision contained in the One hundred and eighty-third Section of the firstly-recited Act, to borrow and take up at Interest on the Credit of all or any of the Moneys or Rates authorised to be raised by them under that Act any sums necessary for defraying the Expenses of any such Improvements: Provided, that nothing in this Act shall extend or be construed to extend to authorise the taking down or removing any Bar, Gate, Rail, or other Fence fixed for preventing any Thoroughfare into or from any Square, Street, or Way, without the Consent of the Proprietor of the Estate or Property upon which such Bar, Gate, Rail, or other Fence, Square, Street, or Way shall be situate: Provided that this Enactment shall not limit the Powers in force given by the Act next hereinafter referred to, or by any Local Act. 57 & 58 Vict. c. ccxiii. s. 6.

Sect. 107 of 18 & 19 Vict. c. 120 contained a similar provision to that in the last proviso to the section but one, that nothing in the Act was to authorise the removal of any bar, gate, rail, or other fence fixed for preventing any thoroughfare into or from any square, street, or way, without the consent of the proprietor of the estate or property on which it was situate. The section only applied to bars, &c., which existed at the time of the passing of the Act, and it and the proviso to sect. 72 have become inoperative, various local Acts having been since passed under which such bars, &c., have been removed.

For the purpose of widening and improving streets, Vestries and District Boards are empowered to borrow money by sect. 100 of the Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), which enacts that:—

'It shall be lawful for every Vestry and District Board mentioned in Clause One hundred and eighty-three of the first-recited Act to exercise the Power to borrow Moneys therein

57 & 58 Vict. c. ccxiii. s. 7.

mentioned, with the Sanction of the Metropolitan Board of Works granted under their Common Seal, for the Purpose of enabling such Vestry or District Board to make, extend, widen, alter, or improve any Street, Road, or Way, for facilitating the Passage and Traffic within the Parish or District for which such Vestry or District Board is appointed, or for the Purpose of contributing to and of joining with the Metropolitan Board or with any other Board or Persons in any such Improvement.'

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.

Sanction of the Council.—The approval of the Council of any plans or particulars is to be signified in writing under the hand of the Superintending Architect (see sect. 195, *post*, p. 278), and such approval may be subject to any conditions the Council may think fit to prescribe, subject, however, to the reasonableness of such conditions, and to the appeal to the Tribunal of Appeal given by sect. 19, *post* (see sects. 9, *post*, p. 48, and 190, *post*, p. 276). Unless an order is made refusing to sanction the application, and notice is given of such refusal within two months, the Council is to be deemed to have given its sanction thereto (see sect. 9, *post*). The plans and particulars delivered pursuant to this sect. will, upon delivery, become the property of the Council (see sect. 194, *post*, p. 278). Should any person commence to form or lay out a street without having first obtained the sanction of the Council, or should he commence to do so otherwise than in accordance with any conditions prescribed by the Council or by the Tribunal of Appeal, he will render himself liable to a penalty not exceeding ten pounds, and to a daily penalty not exceeding forty shillings, see sect. 200 (1, *a*), *post*, p. 281.

Previously to the commencement of this Act, the application to the Council for its sanction to the formation of a public carriage way was not necessary unless it was proposed to lay out as a public carriage way a road, passage, or way, which would not, when completed, directly communicate at both ends with a public carriage way, London Council (General Powers) Act, 1890, s. 35, *London County Council* v. *Edmonson* (66 L. T. (N.S.) 200; 56 J. P. 343). The sanction of the Council was,

however, necessary if it was proposed to lay out a passage or way for building as a street for foot traffic only. Metropolitan Building (Amendment) Act, 1882, sect. 8. Under those sections three months' notice to the Council was required. 57 & 58 Vict. c. ccxiii. s. 7.

Sect. 8, *post*, specifies when a person shall be deemed for the purposes of this Part of the Act to form or lay out a street; and sect. 9, *post*, limits the power of the Council to refuse to sanction, or to sanction subject to conditions, the formation or laying out of a street to the cases therein mentioned.

Person.—This expression includes any body of persons corporated or unincorporated. See the Interpretation Act, 1889 (52 & 53 Vict. c. 63, s. 19).

Plans, sections, and particulars.—Power is conferred upon the London County Council by sect. 164, *post*, p. 249, to make byelaws with respect to the regulation of the plans, level, width, surface, and inclination of new streets, &c., which byelaws are to be published in the *London Gazette*, and printed and hung up at the County Hall, and are to be open to public inspection without payment, and copies whereof are to be delivered to applicants on payment of a sum not exceeding twopence. The Act does not say where the County Hall is, but presumably the offices of the London County Council in Spring Gardens are meant by such expression. See sect. 194, *post*, p. 278; and the byelaws and Standing Orders of the Council of January 1, 1895, in Appendix III., *post*.

Printed regulations.—Copies of the printed regulations of the Council issued for the purposes of this Part of the Act are to be kept at the County Hall, and are to be supplied to applicants without charge, see sect. 18, *post*, p. 75. These regulations will be found in No. II. (1) of the Council's regulations of January 1, 1895, in Appendix III. Pt. II., *post*.

Exemptions.—Sect. 20, p. 76, exempts from the provisions of this Part of the Act private roads formed or laid out by Railway Companies as approaches to stations or station yards, or as approaches to lands used for railway purposes; and sect. 21 prevents the Act from applying to buildings to be erected upon lands belonging to the School Board for London in certain cases.

Width of streets.—As the Council is only empowered, except in the cases mentioned in sect. 12, to refuse its sanction to the formation or laying-out of a street, so far as the width of the proposed street is concerned where such street, if intended for carriage traffic, will not be forty feet in width, or if intended for foot traffic only will not be twenty feet in width, it is obvious that the width of new streets intended for carriage traffic is intended to be forty feet at least, and the width of new streets intended for foot traffic only is intended to be twenty feet at least. These were the widths prescribed by the previous Acts.

Sect. 12 enables the Council in certain cases to require new streets intended for carriage traffic to be formed or laid out of a width greater than forty feet, but not greater than sixty feet.

Should the Council refuse its sanction to the formation or

57 & 58 Vict. c. ccxiii. s. 7.

laying out of a street which when formed or laid out will not in any respect contravene the Act or come within any of the cases specified in sect. 9, such refusal will form a ground for appeal to the Tribunal of Appeal under sect. 19, *post*, p. 75.

District Surveyors are, under section 155, *post*, p. 245, to be paid by the London County Council such fees in respect of services which they may perform in pursuance of the Act in relation to the formation or laying out of streets as the Council shall from time to time determine; and by sect. 158, *post*, p. 247, the Council is empowered to cause such surveyors to be remunerated by means of a fixed salary instead of by fees.

Street.—This expression is defined by section 5 (1), *ante*, p.6, and since the expression 'way' is defined by the following subsection to include roads, ways, or footpaths which are not streets, the expression 'street' would appear to be confined to such roads, ways, or footpaths as would ordinarily be described as streets, that is to say, as roads, ways, or footpaths having or intended to have houses more or less on both sides thereof. See the notes to the definition of 'street,' *ante*, p. 6.

It is noticeable that the Act draws a distinction between the laying out or formation of a street for carriage or foot traffic, and the adaptation of a street or way not previously used for such traffic, for use either as a carriage-way or as a foot-way, see sect. 10, *post*, p. 55. The present and the two following sections appear therefore to apply solely to *new streets*.

As to when an old way may become a new street see the cases referred to in the note to sect. 5 (1), *ante*, p. 7, and the cases mentioned in the note to section 9, *post*, p. 50.

Form or lay out any street.—The present section deals with the formation and laying out of streets for carriage or foot traffic as the case may be; while sect. 10 deals with the adaptation of a carriage or foot traffic of streets or ways not previously so adapted or used. With regard to the formation and laying out of streets upon areas which have been cleared of the buildings previously existing thereon, see sect. 44, *post*, p. 108. See also sect. 124 of 18 & 19 Vict. c. 120 in Appendix I., *post*, for the provisions for the protection of the public during the laying out and forming of streets. It will be a question of fact in every case whether what is proposed to be done will be or will amount to the formation or laying out of a street within this section or merely the adaptation of a street or way within sect. 10.

The following may be cited as instances, viz., in 1864, several plots of land abutting on one side of a lane which was an ancient carriage-way with buildings at intervals on both sides erected before 1862, were sold for building purposes, the lane varied in width from forty-one feet to twenty-eight feet, which was the width opposite the plots, and on the other side of the road was a permanent enclosure belonging to a church and other buildings erected before 1862. In July, 1865, the appellant bought the plots, houses having been built upon two of them, the front walls of which were

twenty-seven feet from the old wooden boundary fence of the lane. On the 26th September, 1865, the appellant began to remove the fence, which had been left untouched, and to substitute a permanent wall and railings, such work being completed upon the 14th October. On the 6th October the Metropolitan Board of Works was informed of what the appellant was doing, and in March, 1866, an information was laid against him to recover penalties for forming or laying out the lane for building as a street for the purposes of carriage traffic of less width than forty feet. At the hearing of the information the magistrate found that the appellant, by taking down the old fence and erecting the permanent fence, began to form and lay out the lane for building as a street upon the 26th September, and completed such formation on the 14th October ; but that the lane was not required by sect. 98 of the Metropolis Management Amendment Act, 1862, to be widened to forty feet from the opposite fence, but merely to the width of 20 feet from the centre of the roadway to the boundary fence of the appellant's ground ; as, however, there was not this distance left by the appellant, he convicted him, and such conviction was affirmed by the Court of Queen's Bench, *Taylor* v. *the Metropolitan Board of Works*, L. R. 2 Q. B. 213 ; 36 L. J. M. C. 53 ; 15 W. R. 765. 57 & 58 Vict. c. ccxiii. s. 7.

In another case the respondent was the owner of land upon which he had in 1866 erected some houses, the gardens in the rear of which abutted upon an ancient lane, and some of the owners of land adjoining this lane had in 1867 begun to form it into a street for carriage traffic within the meaning of sect. 98 of the Metropolis Management Amendment Act, 1862, which provided that no existing roadway of a width less than forty feet should be laid out for building as a street for carriage traffic, unless such road should be widened to the width of forty feet taken half on either side of the centre of the roadway. The respondent had done no act himself towards forming or laying out the land as a street for the purposes of carriage traffic, otherwise than by the removal in 1866 of an old bank and thorn fence and the substitution of an oak fence, three feet within his own land, and had no intention of so doing, or of erecting any building fronting towards the lane. The case of *Taylor* v. *the Metropolitan Board of Works* (*ubi supra*) was relied upon by the appellants, but the Court of Common Pleas held that the respondent had not committed any offence against the Act, and was not bound to set back his oak fence, so as to leave a space of twenty feet between it and the centre of the land. See *The Metropolitan Board of Works* v. *Clever*, L. R. 3 C. P. 531 ; 37 L. J. M. C. 126 ; 18 L. T. (N.S.) 723 ; 16 W. R. 1016. In so holding the Court followed the case of *The Metropolitan Board of Works* v. *Cox*, 19 C. B. (N.S.) 445, where the provisions of sect. 98 were held not to apply in the case of the erection of buildings abutting in the rear upon an old lane of a less width than 40 feet.

The byelaws and also the Standing Orders of the Council,

57 & 58 Vict. c. ccxiii. s. 9.

with respect to the formation and widening of streets, will be found in Appendix III., *post*.

Evidence of commencement of street.

8. For the purpose of this Part of this Act a person shall be deemed to commence to form or lay out a 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 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.

Commencing to form, &c. street.—The provisions of this section are so wide that some limitation must clearly be placed upon them. It is submitted, therefore, that in all cases it will be a question of fact whether or not it can reasonably be said that what is being done, though it may be an act mentioned in the section, may result in the formation or laying out of a street.

The section was no doubt intended, by making as far as possible the question one of law, to avoid the difficulty which arose under the Public Health Act, 1875, in cases in which it was necessary to decide whether a person had by building houses, &c., laid out or formed a new street. See *Gozzett* v. *the Maldon Urban Sanitary Authority* (1894), 1 Q. B. 327; 70 L. T. (N.S.) 414; 58 J. P. 229; *Robinson* v. *Barton Eccles Local Board*, 21 Ch. D. 627; 52 L. J. Ch. 5; 47 L. T. (N.S.) 286; on appeal, 8 App. Case, 798; 53 L. J. Ch. 226; 50 L. T. (N.S.) 57; 32 W. R. 249; 48 J. P. 74; and *Williams* v. *Powning*, 48 L. T. (N.S.) 672; 47 J. P. 486. But it is obvious that though, on proof that a person has done one of the acts specified in the section, he will, unless, by proof of the intention with which the act was done, he rebuts the presumption which arises under the section, incur the liabilities consequent on the commencement of the formation or laying out of a street, yet it will be for the Court before which the question arises to decide as a question of fact whether the doing of the act of which evidence is given was the commencement of the formation or laying out of a street for carriage or foot traffic as the case may be.

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 forty feet clear or

such other width as may be required under the provisions of this Act ; 57 & 58 Vict. c. ccxiii. s. 9.

(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 twenty feet clear ;

(3) Where any street exceeding sixty feet in length or any street not exceeding sixty 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 streets 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 one in twenty ;

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

it shall be lawful for the Council by order at any time within the period of two 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 :

Provided that if within the said period of two 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.

57 & 58 Vict. c. ccxiii. s. 9.

Grounds for refusal.—This section applies to the formation or laying out of streets which had no previous existence. See the note under the heading 'street' to section 5 (6), *ante*, p. 6. The following section deals with the adaptation of existing streets or ways for use for carriage traffic or foot traffic as the case may be.

The present Act does not, as the previous Acts did, prohibit the laying out of streets unless the provisions of the Act or of any byelaws thereunder were complied with, except that it requires the sanction of the Council to be first obtained. But the Act lays down certain grounds upon which the Council may refuse to grant its sanction to the formation or laying out of streets, and prohibits the Council from withholding its sanction upon any other grounds. There does not appear, however, to be any obligation upon the Council to withhold its sanction in the event of its being proposed to form or lay out a street in a way which would entitle the Council to withhold its sanction under sect. 9, and it would follow, therefore, that the Council has power, if it thinks fit, to sanction the formation or laying out of streets in any of the manners mentioned in the section. This power may, however, be to a certain extent limited by the byelaws of the Council, inasmuch as any byelaws when made are equally binding upon the Council as upon others, such byelaws being made for the benefit of the public. See *Baxter* v. *the Mayor of Bedford*, 1 Times L.R. 424.

On the other hand, the section having specified the grounds upon which the Council may refuse its sanction to the formation or laying out of streets, its powers of refusal are limited to such grounds, except that in the cases mentioned in sect. 12 it may refuse to sanction the formation or laying out of a street unless it is formed or laid out, either throughout or in part, of a greater width than 40 ft. Notwithstanding the fact that the Council is by subsect. 7 of sect. 9 empowered to refuse to sanction the formation or laying out of a street proposed to be formed or laid out in a manner which will be in contravention of any of its byelaws, the Council cannot by means of byelaws extend the powers conferred upon it by the Act, but can only make byelaws in order to carry out the objects of the Act; such byelaws must therefore be consistent with the provisions contained in the Act, and they must also be reasonable. See the note to sect. 164, *post*, p. 249.

The Council has no power to refuse to sanction the formation or laying out of a street which, when laid out, will conform with the Act and with the Council's byelaws, merely because in the opinion of the Council what is proposed to be done will be unsuitable to the locality, or tend to depreciate the character of the neighbouring property. See *Reg.* v. *the Mayor and Corporation of Newcastle-upon-Tyne*, 60 L.T. (N.S.) 963, 53 J.P. 788; and *Reg.* v. *Wandsworth District Board of Works, ex parte Major Child*, 49 J.P. 806. The Court will not, however, in the exercise of its discretion, compel by mandamus a local autho-

rity to approve of plans where what is proposed to be done cannot lawfully be done, although when done it will in all respects comply with the authority's byelaws. See *Reg.* v. *Llandudno Improvement Commissioners*, 92 L. T. 219. 57 & 58 Vict. c. ccxiii. s. 9.

Appeal.—An appeal against the refusal of the Council to sanction the formation or laying out of a street, and against the conditional grant of such sanction, or against any condition imposed by the Council in granting its sanction, lies to the Tribunal of Appeal under sect. 19, *post*, p. 75.

Street.—See the definition of the expression contained in sect. 5, *ante*, p. 6.

An approach to artisans' dwellings newly erected upon the site of some old warehouses which had abutted upon a roadway, on the same site as the approach, was held not to have been laid out as a 'street for foot traffic only' within the meaning of sect. 8 of the Metropolis Management and Building Acts (Amendment) Act, 1882. At the entrance to the approach a gateway had been erected upon the site of a former gateway which had been pulled down and altered to a greater width, and the approach was intended for the sole use and convenience of the tenants of the dwellings to the exclusion of the public, no right of way over the same having ever been dedicated to or used by the public at large. See *The Metropolitan Board of Works* v. *Nathan*, *ante*, p. 8.

Such other width as may be required.—These words refer apparently to the powers conferred upon the Council by sect. 12. Under that section the Council may in certain cases require streets to be formed or laid out for carriage traffic of a width greater than 40 ft., but not greater than 60 ft.; but the Act nowhere enables the Council to require streets to be formed or laid out for carriage traffic of a less width than 40 ft., or for foot traffic of a width less than 20 ft.

It is noticeable that, whereas sect. 98 of the Metropolis Management Amendment Act, 1862, which is repealed by the present Act, contained an absolute prohibition against the formation or laying out of a street for carriage traffic of a less width than 40 ft., or for foot traffic of a less width than 20 ft., the present Act contains no such prohibition, but merely enables the County Council to refuse its sanction to the formation or laying out of streets if they are not intended to be of one or other of such widths according to the purpose for which they are intended. It is therefore to be inferred that the Council has now power, should it think fit, to sanction the formation or laying out of streets for carriage traffic of a less width than 40 ft., and for foot traffic of a less width than 20 ft.

Open from the ground upwards.—Under sect. 98 of the Metropolis Management Amendment Act, 1862, which prohibited the formation or laying out of streets unless (*inter alia*) such streets were open at both ends, from the ground upwards, the Queen's Bench Division held that no street laid out for building

57 & 58 Vict. c. ccxiii, s. 9.

subsequently to the passing of that Act could have barriers across it to exclude the public. *Daw & Sons* v. *the London County Council*, 62 L. T. (N.S.) 937 ; 59 L. J. M. C. 112 ; 54 J. P. 502.

It follows, therefore, that the effect of subsection (3) is to enable the Council to prevent the formation or laying out of streets of the length therein mentioned, unless such streets are thrown open to the use of the public.

The byelaws of a local board provided as follows : 'Every person who shall lay out a new street shall so lay out such street that the width thereof shall be 40 ft. at the least,' and 'Every person who shall construct a new street shall provide at one end at least of such street an entrance of a width equal to the width of such street, and open from the ground upwards.' These byelaws were held by North, J., to be *intra vires*, and reasonable, and to prevent a landowner from constructing a new street upon his land until he had provided an entrance to such street of the specified width, even though that entrance could only be made upon the land of another person over whom he had no control. The street in question had no outlet for carriage traffic at one end, where it terminated in a public footway running at right angles across it, and the outlet at the other end was an old narrow way which previously led from the main road to some stables, and which formed a continuation of the new street, making what is commonly termed a bottle-neck end. North, J., held that the construction of a new street included the building of the houses abutting upon it, and granted an injunction restraining the landowner and the builder from erecting houses upon the proposed new street until an adequate entrance had been provided. Upon the plans deposited with the Board a street in continuation of, and at right angles to, the proposed new street was shown at the end where it was crossed by the public footpath, but such continuation passed over lands which did not belong to the person who was laying out the proposed new street, and there was nothing to show that the owner of the land over which the continuation passed had any intention of allowing his land to be used in the way shown on the plans. In granting the injunction North, J., said : 'It is said that it would be unreasonable to suppose that the byelaw compels them to do this' (*i.e.* provide an entrance of the requisite width) 'on some one else's land. It does not do anything of the sort. As I construe it, all that the byelaw does is this—it prevents the landowner from building upon his own land until he has provided an entrance to it of the specified width ; he may be able to provide the entrance over another man's land by arrangement with him, but, if he cannot provide the requisite entrance, either over his own land or by arrangement with some other landowner, then the only result is that he cannot utilise his own land by constructing a new street and building houses upon it. The byelaw does not require him to do anything upon another

man's land ; it only says you cannot construct a new street on your own land unless you provide an adequate entrance to it.' *Hendon Local Board* v. *Pounce*, 42 Ch. D. 602 ; 61 L. T. (N.S.) 465 ; 38 W. R. 377. 57 & 58 Vict. c. ccxiii. s. 9.

The judgment of North, J., in this case was considered by Kekewich, J., and followed in *Bromley Local Board* v. *Lloyd*, 66 L. T. (N.S.) 462, 56 J. P. 278, where it was held that it made no difference that a mode of access to a proposed new street shown upon the deposited plans was by means of a public street, if such street was of less than the required width. An appeal against this last judgment was dismissed by consent (93 L. T. 7), but the interim injunction which had been granted was dissolved by Wills, J., before whom the action was tried without a jury, upon his finding that there was, in fact, an entrance of the required width.

Direct communication between two streets.—In sect. 35 of the London Council (General Powers) Act, 1890, which superseded the provisions of sect. 7 of the Metropolitan Building (Amendment) Act, 1882, the enactment was 'No road, passage, or way which will not directly communicate at both ends with a public carriage-way shall be formed or laid out as a public carriage-way without the consent in writing of the Council ;' and in the *London County Council* v. *Edmonson*, 66 L. T. (N.S.) 200 ; 56 J. P. 343, the difference was pointed out between the language 'will not directly communicate at both ends *with a public carriage-way*,' and the language in the previous Act, which was 'where, after the passing of this Act, it is intended by any person to form or lay out any road, passage, or way for building as a street for the purposes of carriage traffic or of foot traffic only, in such manner that such road, passage, or way will not afford direct communication between two streets.' In the case referred to the Court held that a road which led out of a street, and after going round some distance came back again into the same street, did not contravene sect. 35 of the Act of 1882. Under the present Act it is necessary, however, that the proposed street should lead from one street into another street. In the case referred to it was contended on behalf of the County Council that it was sufficient for it to show that the street in question did not, at the time the proceedings were taken, communicate with a public carriage-way at both ends ; the Court, however, held that it was sufficient if it was shown that the proposed way would, when completed, communicate with a public carriage-way at both ends. In the present Act it will be seen that the words '*at and from the time of forming and laying out the same*' have been introduced with the object apparently of getting rid of such decision. It is difficult, however, to see that any useful purpose has been served by the introduction of the words, as the section only relates to proposed streets existing only on paper ; and in the nature of things therefore it must be a question of whether or not there is a *bonâ fide* intention on the part of the applicant to carry out his

57 & 58 Vict. c. ccxiii. s. 9.

plans, and form or lay out his proposed street in such manner that it will afford communication between two streets. The effect of the words may possibly be to enable the Council to refuse to sanction plans unless the applicant is in a position to show that he can form or lay out the proposed street so as to afford direct communication between two streets, and unless the Council is satisfied that he *bonâ fide* intends, &c., to form or lay out the street. See *Hendon Local Board* v. *Pounce*, *ante*, p. 52.

What is direct communication has never yet been expressly decided, but it is clear that unless each end of the proposed street opens into a different street with an opening of the full width of the proposed street, it will not afford direct communication between two streets ; and having regard to the fact that the Queen's Bench Division in the *London County Council* v. *Edmonson*, *ante*, p. 53, held that a V-shaped road met the requirements of a section which required roads to directly communicate at both ends with a public carriage-way, it is also clear that a street need not lie in a straight line between the two streets with which it will communicate, in order to meet the requirements of subsect. 4 of sect. 9 of the present Act.

Conditions.—In certain cases the Council may require as a condition to its sanction to the formation or laying out of a street, that such street shall be formed or laid out of a greater width than 40 feet, but not greater than 60 feet ; and when such a condition is imposed and the land necessary for widening the street was at the commencement of the Act (*i.e.* January 1st, 1895), or at any time within seven years previously, occupied by buildings or by market gardens, provision is made by sect. 15, *post*, for the payment by the Council to the owner of the buildings or land of compensation for the loss or injury sustained by him by the Council's requirement.

City.—This expression is defined by sect. 5 (43), *ante*, p. 39. See also the note to sect. 4, *ante*, p. 4.

Subject to conditions.—The power given to the Council by the last clause of the section would appear to be limited to those cases which come within subsection 5, otherwise there seems to be no object in specially mentioning the case of its appearing to the Council that a street proposed to be formed or laid out for foot traffic only should be so formed or laid out subject to conditions only. On the other hand, sect. 190 of the Act enables the Council, in any case where it is authorised to refuse its sanction, consent, or allowance to the doing or omission of any act or thing, to give its sanction, consent, or allowance, subject to such terms and conditions in relation to the subject matter of such sanction, consent, or allowance, as it may think fit. Presumably, therefore, it is intended that the Council shall have power in all cases, which come within sect. 9, to grant its sanction, subject to conditions.

Gradient.—The Council had no control previously to the passing of the present Act over the gradient at which it was proposed to form or lay out a street, except by means of byelaws under sect. 202 of the Metropolis Management Act, 1855, regu-

lating the level of new streets. No such byelaws were, however, made by the Metropolitan Board of Works or the Council. 57 & 58 Vict. c. ccxiii. s. 10.

Byelaws.—The Council is empowered by sect. 164, *post*, p. 249, to make byelaws for the better carrying into effect the objects and powers of the Act with respect *inter alia* to the regulation of the plans, level, width, surface, and inclination of new streets, the forms of notice and other documents to be used for the purposes of the Act, and other like matters of procedure, the duties of District Surveyors in relation to any byelaws made by the Council, the regulation of the fees to be paid to District Surveyors in respect of such duties, and the imposition of a penalty for any offence committed against any of its byelaws.

The power given to the Council to make byelaws is, however, subject to the provisions of the Act, and any byelaws it may make are not to be repugnant or contrary to the provisions of the Act. Any byelaws, therefore, not authorised by some provision of the Act would be *ultra vires*, as also would be any byelaw which purported to carry out the provisions of the Act in an unreasonable manner. See sect. 164, *post*, and the note thereto, and also the notes as to the grounds for refusal under sect. 9, *ante*, p. 49.

All byelaws made by the Council in pursuance of the Act are, when confirmed and allowed in the manner provided by sect. 16, to be published in the first instance in the *London Gazette*, and are then to be printed and hung up in the County Hall, where they are to be open to public inspection without payment, and copies thereof are to be delivered to any applicant upon payment of a sum not exceeding twopence. See sect. 164 (5), *post*, p. 250. Byelaws made by the Council, with respect to the formation and widening of streets, will be found, together with the standing orders of the Council, in Appendix III., *post*.

By order.—All orders of the Council are to be under the Seal of the Council, see sect. 187 (2). Notices of such orders shall be sufficiently authenticated if signed by the Clerk to the Council, or by the Officer by whom the same are given or served, *ib.* (1).

Service of orders and notices.—As to service of the Council's orders and notices, see sect. 188 (1), *post*, p. 274.

'*Month.*'—This expression means calendar month. See the Interpretation Act, 1889 (52 & 53 Vict. c. 63), sect. 3. If the period prescribed will expire on a day between August 8 and September 14, it is to be deemed to be extended for twenty-eight days, see section 174, *post*, p. 268.

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;

57 & 58 Vict. c. ccxiii. s. 10.

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 two 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 two 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 three 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 sub-section 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 forty feet in width or (being adapted for foot traffic only) is less than twenty 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 two months from the date of such notice unless with the previous sanction of the Council.

Adapt for traffic.—This section of necessity applies only to existing streets or ways, the first clause (*a*) of subsect. 1 applying

only to footways and their adaptation for carriage traffic; and the second clause (*b*) to the adaptation of ways which are not streets and private roadways or footpaths for the purposes of public foot traffic only. 57 & 58 Vict. c. ccxiii. s. 10.

'*Street.*'—This expression is defined by sect. 5 (1), *ante*, p. 6. See the note to such subsection, and also the note to sect. 9, *ante*, p. 51.

'*Way.*'—This expression is also defined by sect. 5, see subsect. (2) of that sect.

'*Permit to be used.*'—Some intention of permitting the street or way to be permanently used contrary to the section will have, it is presumed, to be shown on the part of the person alleged to permit the user, having regard to the fact that the word 'traffic' is used, and having regard also to the proviso at the end of the section.

Sanction of the Council.—The Council's approval of plans or particulars is, under sect. 195, *post*, p. 278, to be signified in writing under the hand of the superintending architect. And such approval may be made, subject to any conditions that the Council may think fit to impose, provided that such conditions are reasonable, see section 190, *post*, p. 276. Should the Council fail, where it does not expressly sanction the proposed adaptation, to give notice of its disapproval within two months of the application for the sanction, it will by virtue of subsect. 2 of sect. 10 be deemed to have sanctioned the adaptation. The grounds upon which the Council may withhold its approval to the proposed adaptation of a street or way are stated in sect. 11, *post*, the effect of that section being to limit the power of the Council to withhold its sanction to the cases therein mentioned, with regard to which see the notes to the section.

Appeal.—Under sect. 19, *post*, an appeal is given to the Tribunal of Appeal constituted under sect. 175, *post*, p. 269, against the refusal by the Council of its sanction to the adaptation of a street or way for carriage or foot traffic, or from any condition imposed by the Council in sanctioning such adaptation.

Plans, sections, and particulars.—Under sect. 164, *post*, p. 249, the Council is empowered to make byelaws with respect to the regulation of the plans, level, width, surface, and inclination of *new streets*, which byelaws would presumably be applicable to the adaptation of a street or way for purposes for which such street was not previously used, if the effect of the adaptation was to convert the street or way into a 'new street.'

Byelaws.—See with regard to the power of the Council to make byelaws the note on p. 54, *ante*.

Printed regulations.—Copies of any regulations issued by the Council for the purpose of this Part of the Act are to be kept at the County Hall, and are to be supplied to applicants without charge, see sect. 18, *post*, p. 75. The Regulations issued by the Council on January 1, 1895, will be found in Appendix III. Pt. II., *post*, see *ib.*, Nos. I. and II. (1).

Width of streets or ways.—The Council is empowered by

57 & 58 Vict. c. ccxiii.' s. 11.

sect. 12, *post*, in cases therein mentioned, upon the adaptation of a street or way for use for carriage traffic, which street or way was not previously so adapted, to require as a condition of its sanctioning such adaptation that the street or way shall be widened to a width greater than 40 feet, but not greater than 60 feet. Provision is made by sect. 15, *post*, for the payment by the Council of compensation in such cases to the owner of lands required for such greater width. Should the Council not require the street or way to be widened more than 40 feet, it will still be necessary to widen any street or way adapted under the section to the width of 40 or 20 ft., according as it may be intended to adapt it for carriage or foot traffic, unless the Council sanction a less width. See subsect. 4.

Commencement of work.—See the notes to sect. 8, *ante*, p. 48. By sect. 200, *post*, every person who commences to alter or adapt any street or way without having first obtained the sanction of the Council, or otherwise than in accordance with the conditions imposed by the Council or the Tribunal of Appeal, is to be deemed to have committed an offence against the Act, and to be liable to the penalties therein mentioned.

Prescribed distance.—This expression is defined by sect. 5 (5), *ante*, p. 10.

'*Month.*'—This expression means calendar month. See the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 3. If the period prescribed by the section expires on a day between August 8 and September 14, it is to be deemed to be extended for twenty-eight days ; see sect. 174, *post*.

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 twenty 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 twenty 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 so 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 ; 57 & 58 Vict. c. ccxiii. s. 11.

(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 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 one in twenty ;

(7) Where the adaptation is proposed to be made in such a manner as to be in contravention of any bye-law of the Council :

it shall be lawful for the Council by order at any time within the said period of two 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 two months the Council fail to give notice of their refusal to sanction such adaptation or of their sanction of the adaptation subject to conditions they shall be deemed to have given their sanction thereto.

Grounds for refusal.—See the note under this heading to sect. 9, *ante*, p. 49.

Street or way.—These expressions are defined by sect. 5 (1) and (2), *ante*, pp. 6 and 9. See the notes to such subsections, and the notes to sect. 9 sub 'street,' *ante*, p. 51.

Centre of the roadway.—This expression is defined by sect. 5 (4), *ante*, p. 9.

External wall.—See sect. 5 (15), which defines this expression.

Open at both ends.—See the note under the heading, 'open from the ground upwards,' *ante*, p. 51.

Direct communication.—See as to this the note to sect. 9, *ante*, p. 53.

57 & 58 Vict. c. ccxiii. s. 12.

Subject to conditions.—Though the section only mentions specifically one case in which the Council is empowered to impose conditions in granting its sanction to the adaptation of a street or way, namely, where the adaptation will result in the formation or laying out of a street not within the City for foot traffic only (see subsection 5), by section 190, *post*, p. 276, the Council, in any case where it is authorised to refuse its sanction to the doing or omission of any act or thing, may if it thinks fit, instead of refusing such sanction, give the same subject to such terms and conditions as it thinks fit.

Appeal.—Section 19, *post*, gives any applicant for the sanction of the Council to the adaptation of a street or way who is dissatisfied with the refusal or conditional grant of such sanction, or with any condition imposed by the Council, a right of appeal to the Tribunal of Appeal, constituted under sect. 175, *post*, p. 269. As to which, see the notes to that section and to section 19, *post*, p. 75.

Gradient.—Previously to the present Act, streets could be formed or laid out at any gradient. The County Council had power under sect. 202 of the Metropolis Management Act, 1855, to make byelaws regulating the level of streets, but no such byelaws were ever made either by the Metropolitan Board of Works or by the County Council.

Byelaws.—See the note under this heading to sect. 9, *ante*, p. 54, and sect. 164, *post*, p. 249, and the notes thereto.

By Order.—Sect. 187 (2), *post*, p. 273, requires all orders of the County Council to be under the seal of the Council; and by subsection 1 of the same section notices of such orders are to be sufficiently authenticated if signed by the Clerk to the Council, or by the officer by whom the same may be given or served.

Service of orders and notices.—Sect. 188 (1), *post*, p. 274, contains provisions as to the service of the Council's orders and notices.

Months.—Calendar months are meant by this expression. See the note under this heading to sect. 10, *ante*, p. 58.

Penalty.—The Council has power by its byelaws to provide (see sect. 164, *post*) for the imposition, for every offence committed against such byelaws, of a penalty not exceeding five pounds, and a daily penalty not exceeding two pounds; and by sect. 200, *post*, p. 281, every person who commences to adapt any street or way without the sanction of the Council, or contrary to the conditions imposed by it in granting its sanction, is rendered liable to a penalty of 10*l.* for every offence, and to a daily penalty not exceeding forty shillings.

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 Saint Paul's Cathedral for carriage traffic;

(*b*) To adapt or permit to be used for carriage traffic any street or way (not being within two miles

of Saint Paul's Cathedral) not previously so adapted; 57 & 58 Vict. c. ccxiii. s. 13.

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:

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.

'*Street.*'—See the definition of this expression in s. 5 (1), *ante*, p. 6, and the notes thereto.

'*Way.*'—This expression is defined by s. 5 (2), *ante*, p. 9.

'*Sanction.*'—The sanction of the Council to the formation or laying out of a street is rendered necessary by sects. 6 and 7, *ante*, pp. 39, 44, and the sanction of the Council to the adapting or permitting of streets or ways to be used for carriage traffic by sects. 6 and 10, *ante*, pp. 39 and 55.

'*Compensation.*'—Where the Council requires a street or way to be widened under this section, it will be liable in the case of the formation or laying out of a street for carriage traffic over land at the commencement of the Act (*i.e.* 1st January, 1895), or at any time within seven years previously, occupied by buildings or by market gardens, and in the case of the adaptation or use for carriage traffic of any street or way not previously so adapted or used, to pay compensation to the owner of any land or buildings required for such widening. See sect. 15, *post*, p. 70, and the notes thereto.

'*Local Authority.*'—For a definition of this expression see sect. 5 (42), *ante*, p. 39.

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

57 & 58 Vict. c. ccxiii. s. 13.

from the centre of the roadway of any street or way (being a highway).

(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 sub-section shall not apply to any street or way within two miles of Saint Paul's Cathedral.

(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 sub-section may appeal to the Tribunal of Appeal.

(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 : 57 & 58 Vict. c. ccxiii. s. 13.

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 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:

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.

'*New Building.*'—What is a 'new building' within the meaning of the Act is defined by sect. 5 (6), *ante*, p. 11. The expression 'building' is not, however, defined, but see the note to sect. 5 (6) with regard to its meaning.

The provisions of the previous Acts which correspond with

57 & 58 Vict. c. ccxiii. s. 13.

and are superseded by the provisions of the present section, extended to 'buildings, structures, or erections.' The term 'erections' has been omitted in the present section, and a structure to be within the section must presumably be *ejusdem generis* with a building. An addition to an old building was held in the case of *Shiel* v. *the Mayor of Sunderland*, *ante*, p. 14, not to be a 'new building,' within byelaws made by a local authority under an Act which enabled the authority to make byelaws with respect to 'new buildings.' But by section 209, *post*, p. 300, any addition to or alteration of a building is, so far as regards such addition or alteration, to be subject to the provisions of the Act, and of any byelaws thereunder relating to new buildings.

'*External wall.*'—This expression is defined by sect. 5 (15), *ante*, p. 17.

'*Prescribed distance.*'—Sect. 5 (5), *ante*, p. 10, contains a definition of this expression.

'*Centre of the roadway.*'—This expression is defined by sect. 5 (4), *ante*, p. 9.

'*Extend.*'—This word must relate to the extension of the forecourt or space between the external wall of the new building or new structure and the roadway.

'*Street or way.*'—These expressions are defined in subsects. 1 and 2 of sect. 5, *ante*, pp. 6 and 9. In order that the section should be applicable the street or way must be a highway, as to which term see the note to sect. 5 (1), *ante*, p. 9. The distance at which buildings are to be erected in streets or ways, which are not highways, is regulated by sect. 16, *post*, p. 72.

'*Any direction.*'—These words were first introduced in sect. 34 of the London Council (General Powers) Act, 1890, which section extended the provisions of sect. 6 of the Metropolitan Building (Amendment) Act, 1878, which corresponded to the provisions of subsection 1, to 'buildings, structures, or erections.' Both these sections are repealed by sect. 215, *post*, p. 302, and the provisions of the present section substituted therefor. The words 'in any direction' do not appear capable of having any practical effect given to them.

'*Greater distance.*'—Under sect. 12, *ante*, p. 60, the Council has a similar power to that contained in subsection 2 of requiring streets in certain cases to be widened to a width greater than 40 feet, but not greater than 60 feet. Where the Council avails itself of the power given by subsection 2, to require a greater distance to be left between the boundary wall or fence and the roadway, it will be liable under sect. 15 (2), *post*, p. 70, to pay the owner of any land or buildings required for the greater distance compensation for any loss or injury he may sustain by reason of such requirement.

'*Local authority.*'—This expression is defined by sect. 5 (42), *ante*, p. 38.

'*Appeal.*'—The Tribunal of Appeal is constituted by sect. 175, *post*, and that and the following sections regulate its powers

and the procedure upon appeals to it. Appeals under this section are to be lodged at the offices of the Tribunal within fourteen days after notice of the determination, and notice of the appeal is to be given within the same period to the Council, and where the original applicant is not the appellant to such applicant. Notice of an appeal under subsect. 3 is also to be given to the Local Authority; and notice of an appeal under subsect. 4 is also to be given to the owner and occupiers of the nearest building on each side of the proposed building; see the Regulations of the Tribunal of Appeal in Appendix III. Part II., *post*. 57 & 58 Vict. c. ccxiii. s. 13.

Conditions.—Power is also given to the Council by sect. 190, *post*, of imposing conditions upon giving its consent to the doing or omission of any act or thing with regard to which its consent is required by the Act. The non-observance or failure to fulfil any such condition will subject the owner or occupier in default to a penalty not exceeding ten pounds, see sect. 200 (10).

Rights of owners of adjoining lands.—Who is the owner of land within the meaning of the Act is defined by sect. 5 (29), *ante*, p. 25, and the term land by sect. 3 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63) is to include 'messuages, tenements, and hereditaments, houses and buildings of any tenure.' The Council cannot by giving its consent to any act under the section confer upon the person to whom the consent is given the right to carry out such act so as to cause an injury to the owner of any adjoining lands, which would give such owner a right of action in respect of such act if carried out. For instance, if the owner of the adjoining land possessed an easement of light or way over the space or land upon which the Council is asked to allow a building or structure to be erected, the fact that the Council may give its consent to such erection will not justify the erection, if it will deprive the adjoining owner of the access of light to his buildings, or of the means of access to his land as the case may be. The right to a view merely over the land proposed to be built upon is not, however, a right which the Courts will protect, see *Foli* v. *the Devonshire Club*, 83 L. T. 147; but the Court will prevent the building upon land so as to render access to water pipes, by means of which the owner of the adjoining lands is entitled to receive a supply of water for his premises, more inconvenient and costly, see *Goodhart* v. *Hyett*, 25 Ch. D. 182; 50 L. T. (N.S.) 95. Where a question arises as to whether or not the rights of an adjoining owner have been or are being infringed, although the Court will not, pending the trial of an action to try the question, order the demolition of any of the buildings alleged to be an infringement, which have been erected before proceedings were commenced, or notice given of the intention to commence proceedings to restrain the building, it will order the demolition of any portion of a building which has been hurried up after notice that an injunction was about to be

57 & 58 Vict. c. ccxiii. s. 13.

applied for. See the Court of Appeal in *Daniel* v. *Ferguson*, (1891), 2 Ch. 27 ; 39 W. R. 599 ; 90 L. T. 337.

Alteration of existing buildings.—Sect. 6 of the Metropolitan Building Amendment Act, 1878, the provisions of which corresponded to the provisions of sect. 13, contained provisoes whereby its provisions were prevented from applying to the construction or extension of any buildings within the limits of any area lawfully occupied by any house or building within two years before the passing of that Act ; and to the construction or extension of any house or buildings in or abutting upon any street existing, formed, or laid out for building at the time of the passing of the Act, with regard to which it was held that the finding of a magistrate that an old highway which existed before the passing of the Act was not an existing street within the meaning of the proviso was wrong in law, such highway being a street within the definition of that expression in the Act, see *Ellis* v. *the London County Council*, 67 L. T. (N.S.) 558 ; 57 J. P. 24. Subsect. 5 of the present section considerably limits the extent to which such proviso rendered it possible to erect or extend buildings within the prescribed distance of the centre of the roadway. In the first place, it will be seen that the section makes the right to build within such distance dependent not upon the existence of the street prior to the passing of the Act, but upon the existence of a building or structure, or of a portion of a building or structure, within the prescribed distance, either at the commencement of the Act (*i.e.* on the 1st January, 1895), or at some time within seven years previously to that date ; and in the second place, the present section limits the right to the alteration or re-erection of a building or structure so as only to occupy land within the prescribed distance which was occupied by the building or structure which existed previously.

Further, as to additions to and alterations of buildings, see sect. 209, *post*.

Under sect. 147, *post*, every notice served in pursuance of the Act, as to which see *inter alia* sect. 145, is to be deemed to be *primâ facie* evidence as against the builder of the nature of the building, structure, or work proposed to be built or done.

The Act does not define what is meant by a building or structure, but in the case of a dwelling-house the law considers whatever is within the curtilage of the building as part of such building ; and where under sect. 75 of the Metropolis Management Amendment Act, 1862, an order of a magistrate was obtained requiring the demolition of so much of a building erected upon the site of an old dwelling-house and a yard at the back of such house as had been erected in advance of the general line of buildings in the street upon which the side of such house and the yard abutted, the Court of Appeal restrained the carrying out of such order in respect not only of the portion of the building erected upon the site of the dwelling-house, but also in respect of the portion built upon the yard, holding that no distinction could be made between the

dwelling-house and anything within the curtilage, see *Lord Auckland* v. *the Westminster District Board of Works*, 7 Ch. App. 597 ; 41 L. J. Ch. 723 ; 26 L. T. (N.S.) 961 ; 20 W. R. 845. 57 & 58 Vict. c. ccxiii. s. 13.

Curtilage (Curtilagium, from the Fr. *cour*, court, and Sax. *leagh*, *locus*) is a courtyard, backside, or piece of ground lying near and belonging to a dwelling-house. 4 Ed. I. cap. 1 ; 35 Hen. VIII. cap. 4 ; 39 Eliz. cap. 10 ; 6 Rep. 64 : 'Mihi dici videtur Curtilagium à Curtillum et ago, scil. locus ubi curtis vel curtilli negotium agitur' (Spelman). And though it is said to be a yard or a garden belonging to a house, it seems to differ from a garden, for we find 'cum quodam gardino et Curtilagio' (15 Ed. I. No. 34), Jacobs' 'Law Dictionary.' A similar definition is contained in Tomlin's 'Law Dictionary.'

In East's 'Pleas of the Crown,' vol. ii. ch. 15, s. 10, under the title 'Burglary,' it is stated that 'the mansion not only includes the dwelling-house, but also the outhouses, such as barns, stables, cowhouses, dairy-houses, and the like, if they be parcel of the messuage, though they be not under the same roof, or joining contiguous to it.' . . 'And it is clear that any outhouse within the curtilage or same common fence as the mansion itself, must be considered as parcel of the mansion.' In *Caxden* v. *Tuck*, 1 Cro. El. 89, it was held that upon a devise of a messuage without mention of the appurtenances, the garden and curtilage did pass, 'for they agreed clearly, that a curtilage is as parcel of a house, and shall pass in case of a feoffment without saying *cum pertinentiis*.'

Where a Local Improvement Act imposed a rate upon all 'houses' within a parish, the Court held that no buildings and yards used for purposes of business came within such description, unless they were also within the curtilage of a house ; and in giving judgment Cockburn, C. J., said : 'As to what comes within the curtilage (curtilage for the purpose of burglary) as part of the *domus mansionalis*, as Lord Hale lays it down, such as barns, stables or warehouses, if they be parcel of the messuage, though not under the same roof but adjoining (and here there are stables, outhouses, and buildings), it is burglary.' And the Court held that a flour mill which communicated with an out-building or washhouse belonging to a house, which house and mill were occupied by the miller together, for the purposes of his residence and business, was within the curtilage of the house. Blackburn, J., in his judgment, after describing the different buildings in question, said : 'It seems to me that that is an enclosed yard on which all these buildings open, and that that therefore would come to be one entire building, and that, *primâ facie* at all events, every one of the buildings that opened into that yard must be considered as part of the dwelling-house in which he dwells.' *Hale* v. *Corporation of Milton*, 31 J. P. 804.

In another case a piece of ground was held to come within the definition of a 'curtilage' which was in front of a public house, and was bounded upon the side by a street from which

57 & 58 Vict. c. ccxiii. s. 13.

it was not fenced off, on another side by land belonging to a railway company from which it was fenced off, and on its fourth side by garden walls. Between the piece of land and the public house was a narrow foot pavement not fenced off from the lane in question, along which the public were accustomed to pass except during such time as the footway was closed, which happened regularly once a year. In his judgment Giffard, V.C., said: 'The land is, no doubt, convenient for the occupation of the house; the fact of principal importance being, that in order to drive to the front door it is necessary to pass over it. I must consequently hold it to be part of the curtilage to the house.' *Marson* v. *London, Chatham, & Dover Railway Company*, L.R. 6 Eq. 101; 37 L. J. Ch. 483; 18 L. T. (N.S.) 319. See also *Lord Grosvenor* v. *Hampstead Junction Railway Company*, 1 De G. & J. 446; 26 L. J. Ch. 731; 3 Jur. (N.S.) 1085. *Pilbrow* v. *the Vestry of St. Leonard, Shoreditch* (1895), 1 Q. B. 33; 71 L. T. (N.S.) 697; 64 L. J. M. C. 29, affirmed by the Court of Appeal (Rigby, L. J., diss.) (1895), 1 Q. B. 433; 64 L. J. M. C. 130; 72 L. T. (N.S.) 135, where it was held that a yard between two blocks of buildings was within the curtilage of the premises; and see *The Vestry of St. Martin in the Fields* v. *Bird* (1895), 1 Q. B. 428; 64 L. J. M. C. 230; 71 L. T. (N.S.) 868; 14 R. March 228; 43 W. R. 194.

It will have been seen from the foregoing that it is only a dwelling-house that can have a curtilage; whether or not then the Act, when it speaks of a building or erection, applies, in the case of a building or erection which is not a dwelling-house, to the actual ground which it covers and no more, may be open to question.

In *The Attorney-General* v. *Hatch* (1893), 3 Ch. 36; 62 L. J. Ch. 857; 69 L. T. (N.S.) 469; 57 J. P. 825; 2 R. 533, the owner of a house in a street had taken out the front wall of the ground and first floors, and had removed the first floor with the view of turning the two lowest storeys into one lofty shop, which was also to be extended behind the house. The second floor had not been disturbed, but had been shored up with timber, which was afterwards replaced by iron girders and brick piers. Shortly after the erection of the iron girders and piers had been completed, the local authority prescribed a building line under sect. 155 of the Public Health Act, 1875, which enables such a line to be prescribed where any house or building situated in a street, or the front thereof has been taken down in order to be rebuilt or altered. The local authority having commenced an action to restrain the owner from building in front of such line, the Court of Appeal held that, inasmuch as a substantial part of the house and of its front wall had been left standing, neither the house nor the front thereof had been taken down within the meaning of the section.

Plans.—Under sect. 164, *post*, the Council is empowered to make byelaws with respect to the regulation of the plans and level of sites for new buildings, the deposit with the District Surveyor

of plans of buildings submitted under this section, and the regulation of the amounts of the fees to be paid to District Surveyors in respect of their duties under any such byelaws; and regulations have accordingly been made which will be found in Appendix III. *post*. See the Regulations of the Council of the 1st January 1895, Nos. I. and II. (2). The fee payable by the builder, or in his default by the owner or occupier as the case may be, under sect. 154 (1), *post*, p. 244, for examining and certifying plans of old buildings under sect. 13, is *2l. 2s.*, see Sch. 3, Part I., *post*, pp. 318 *et seq*. Applications, plans, and other documents delivered at the office of the Council, or to the District Surveyor in pursuance of the Act or of any byelaw of the Council thereunder become on delivery the property of the Council, see sect. 194, *post*, p. 278. An appeal is given by sect. 19, *post*, p. 75, to the Tribunal of Appeal constituted by sect. 175, *post*, against the refusal of the District Surveyor to certify under sect. 13 (5), *ante*, p. 62. 57 & 58 Vict. c. ccxiii. s. 14.

Dwellings for the working-class.—The erection of these dwellings is dealt with in sect. 42, *post*, p. 101. The mode in which the height of a building is to be ascertained is prescribed in the definition of the expression 'height' in sect. 5 (21), *ante*, p. 22.

Local Authority.—This expression is defined by sect. 5 (42), *ante*, p. 39.

Exemptions.—See the saving as to private roads formed or laid out by railway companies in sect. 20, *post*, p. 76, and as to buildings erected upon lands belonging to the School Board for London in sect. 21, *post*, p. 77.

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 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.

New building or new structure. See the note under the heading 'new building' to section 13, *ante*, p. 63; and with regard to this section see the preceding section and the notes thereto.

57 & 58 Vict. c. ccxiii. s. 15.

Owner or occupier.—Both these terms are defined by sect. 5, see subsects. 29 and 30 of that sect., *ante*, pp. 25 and 32.

Tribunal of Appeal.—This tribunal, which is constituted by sect. 175, *post*, has power under sect. 183, upon appeal to it under sect. 19, to hear and determine such appeal, and to confirm, reverse, or vary any decision which is the subject-matter of such appeal, and to make any such order as it may think fit.

Notices.—Notices under the Act are to be in writing, and when issued by the Council will be sufficiently authenticated if signed by its clerk or by the officer by whom they are given or served, see sects. 187 and 188, *post*, pp. 273 and 274, with regard to the method in which notices under the Act are to be served.

By sect. 200 (2), *post*, p. 283, every person who neglects or refuses for twenty-eight days after the service of a notice under this section 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 limited in the notice, is rendered liable to a penalty of not less than forty shillings, and not more than five pounds, and to a daily penalty of not less than ten shillings, and not more than forty shillings. Such penalties do not attach, however, in the case of a way which is not a highway, so long as it is not opened as a highway. See the proviso to the subsection.

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 seven 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 forty feet ; or

(2) The Council determine that the prescribed distance from the centre of the roadway shall be greater than twenty 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 fifty 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 : 57 & 58 Vict. c. ccxiii. s. 16.

Provided always that within two 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.

Formation, &c. of street.—The power to sanction the formation or laying out of a street, or the adaptation of a street or way for carriage traffic, subject to its being widened to a greater width than 40 feet, is contained in sect. 12, *ante*, p. 60 ; and the power to increase the prescribed distance from the centre of the roadway at which buildings may be erected in any case is contained in sect. 13 (2), *ante*, p. 62.

Owner.—For the meaning of this term, see sect. 5 (29), *ante*, p. 25, and the notes thereto ; see also the note under the heading '*arbitration*' to the present section, *infra*.

Recovered in summary manner.—*I.e.* in manner directed by the Summary Jurisdiction Acts ; see sect. 166, *post*, p. 254.

Arbitration.—The provisions of the Lands Clauses Acts referred to in the section are sects. 25 to 37 of the Lands Clauses Act, 1845 (8 Vict. c. 18), which will be found in the Appendix, *post*, together with the provisions of the Arbitration Act, 1889, applicable to arbitrations thereunder. The definition of the term owner in sect. 5 (29), *ante*, p. 25, of the present Act is by sect. 3 of the Lands Clauses Act, 1845, limited for the purposes of sect. 15 of the present Act to persons or corporations who, under the provisions of this Act, are enabled to sell and convey lands to the County Council.

'*Months*'—*i.e.* calendar months ; see the note under this heading to sect. 10, *ante*, p. 58.

57 & 58 Vict. c. ccxii s. 16.

As to erection of buildings at less than prescribed distance from centre of ways not being highways.

16. Where, after the commencement of this Act—

(1) 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

(2) 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

(3) 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 two 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. 57 & 58 Vict. c. ccxiii. s. 16.

Commencement of the Act.—*I.e.* 1st Jan. 1895, see sect. 3, *ante*, p. 3.

New building or structure.—See the definition of this expression in sect. 5 (6), *ante*, p. 11, and the note under the heading of 'new building' to sect. 13, *ante*, p. 63.

External wall.—See definition in sect. 5 (15), *ante*, p. 17.

Centre of the roadway.—See definition in sect. 5 (4), *ante*, p. 9.

Way.—This section relates to public roads, ways, or footpaths which are not streets, and to private roads, ways, or footpaths which it is proposed 'to convert into highways, or to form, lay out, or adapt as streets.' See the definition of the term 'way' in sect. 5 (2), *ante*, p. 9, and the definition of 'street' in subsect. 1 of that sect., *ante*, p. 6.

Prescribed distance.—This means twenty feet from the centre of a roadway used for carriage traffic, and ten feet from the centre of a roadway used for foot traffic only, see sect. 5 (5), *ante*, p. 10.

From the present section it would appear to be lawful to erect buildings in a way which is not a highway, even though this might convert the way into a street, or be the commencement of such conversion. Apparently, then, it must be possible in some way or other to prevent the public acquiring a right of passage over such way, otherwise upon such right being acquired the way would become a highway, and the provisions as to streets in sects. 6 to 11, *ante*, would be applicable, and also those contained in sect. 13, *ante*, p. 61.

Conditions.—The Council is empowered by sect. 17, *post*, to impose conditions when it gives its sanction under the present section, see also sect. 190, *post*, p. 276. Its refusal to give its sanction or the imposition of any conditions will presumably afford ground for an appeal to the Appellate Tribunal constituted by sect. 175, *post*, p. 269, though the Act does not expressly give such a right.

Service of notice.—Provision is made by sect. 188, *post*, p. 274, as to the mode in which notices may be served upon persons other than the County Council, but no provision is made by the Act for the service of notices upon the Council itself. Presumably it would be sufficient service to leave a notice addressed to the Council with its clerk at its offices in Spring Gardens. It is questionable, however, whether proof of the postage of a notice addressed to the Council at its offices would be sufficient evidence of service of a notice on the Council.

'*Month.*'—See the note under this heading to sect. 10, *ante*, p. 58.

Penalty.—Inasmuch as the section contains a provision enacting what is to be the result of non-compliance with its enactments, namely, that a way in which a building or structure is erected contrary to its provisions is not to become a highway, it is open to question whether the provisions of sect. 200 (2)

57 & 58 Vict. c. ccxiii. s. 17.

are applicable to the case of a neglect or refusal to comply with the requirements of a notice served by the Council under it.

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.

Conditions.—Any terms or conditions imposed by the Council would have to be reasonable, and though no right of appeal is expressly given by the Act, the imposition of conditions and the conditions themselves would, having regard to the mention in sect. 16 of the Tribunal of Appeal, be subject to appeal to that tribunal, as to which see sect. 175 *et seq.*, *post*, pp. 269–273.

The power of the Council to frame its sanction, so that any conditions it may impose may apply to all new buildings in the way in question, can obviously apply only where the whole of the adjoining land is the property of the person applying for the sanction. Otherwise the effect would be to impose conditions upon persons without their being given an opportunity of being heard, as to which see *Hopkins* v. *Smethwick Local Board*, in the note to section 83, *post*, p. 160.

Sanction of the Council.—With regard to the mode in which applications for the sanction of the Council under this section are to be made, see Nos. I. and II. (2) of the Regulations issued by the Council on the 1st Jan. 1895 in Appendix III., *post*. The provisions of sect. 195, *post*, p. 278, with regard to the mode in which the approval by the Council in certain cases is to be given, do not appear to be applicable to the sanctioning of the erection of any building or structure under this section. But under sect. 187, *post*, p. 273, notices and documents other than orders issued by the Council are to be sufficiently authenticated if signed by its clerk, or by the officer by whom the same are given or served. Since, then, all that will be requisite in any case arising under the section will be to prove that the Council has duly passed a resolution sanctioning the erection of the particular building or structure, a notice of such fact authenticated in the manner stated in sect. 187 (1) should, it is presumed, be sufficient to estop the Council from denying the fact of the Council's sanction having been duly

given. Otherwise, the fact of the Council's sanction having been given will have to be proved by the production of the minutes of the Council containing the resolution sanctioning the erection, or at least by the production of a written sanction sealed, and purporting to have been sealed at a meeting of the Council. 57 & 58 Vict. c. ccxiii. ss. 18, 19.

Rights of the owners of adjoining land.—See as to this proviso the note under this heading to section 13, *ante*, p. 65.

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. Regulations to be printed and supplied.

Printed Regulations.—The Council is empowered by sect. 7, *ante*, p. 44, to issue printed regulations with respect to the particulars which are to accompany applications for its sanction to the formation or laying out of streets, and by sect. 10, *ante*, p. 55, it is empowered to make similar regulations with respect to the particulars by which applications under that section are to be accompanied. Regulations issued by the Council on the 1st January, 1895, as to applications under the Act, will be found in Appendix III., Part II., *post*.

County Hall.—By this expression the offices of the London County Council in Spring Gardens are meant.

Reasonable times.—The office hours of the London County Council are from 9 A.M. to 5 P.M. upon week days, with the exception of Saturday, when they are from 9 A.M. to 2 P.M., and these, it is presumed, would constitute reasonable times under this section. Should, however, the question arise as to whether any particular application was made at a reasonable time, it will be a question of fact to be decided in connection with all the surrounding circumstances of the case. See *Tennant* v. *Bell*, 16 L. J. M. C. 31 ; 9 Q. B. 684 ; 10 Jur. 946.

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. Appeal.

Tribunal of Appeal.—This tribunal is constituted by sect. 175, *post*, p. 269, and under sect. 183, *post*, p. 272, has jurisdiction and power to hear and determine appeals referred to it under the Act, to confirm, reverse, or vary any decision appealed against, and to make any such order as it may think fit.

Appeals.—The procedure to be followed in cases of appeal to the Tribunal of Appeal, including the time and notice of appeal, and as to fees to be paid by the appellants and other

57 & 58 Vict. c. ccxiii. s. 20.

parties, is by sect. 184, *post*, p. 273, to be regulated from time to time by regulations made by the tribunal and approved by the Lord Chancellor. Appeals under this section are to be lodged at the offices of the tribunal within fourteen days after notice of the decision of the Council or Surveyor ; and notice of the appeal is to be given to the Council, and, where the original applicant is not the appellant, to such applicant. Notice of an appeal under this section is also to be given to the Local Authority, which expression is defined by sect. 5 (42), *ante*, p. 39 ; and in the case of an appeal against the decision of the District Surveyor also to such Surveyor. See the Regulations of the Tribunal of Appeal in Appendix III., *post*. Under sect. 182, *post*, p. 272, the tribunal has power to state, and may be ordered by the High Court or a judge to state, a case for the opinion of the High Court upon any question of law involved in any appeal submitted to it ; and by sect. 185, *post*, p. 273, orders of the tribunal are enforceable by the High Court as if they had been orders of that Court.

Costs.—The costs of appeals to the Tribunal of Appeal are by sect. 183, *post*, p. 272, in the discretion of the tribunal.

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.

'*Railway Companies.*'—These companies are also not to be affected in the exercise of their statutory powers by anything contained in Part III. of the Act, see sect. 31, *post*, p. 88 ; and exceptions are made by sects. 86 and 201 (8), *post*, in respect of certain buildings belonging to Railway Companies from Parts VI. and VII. of the Act, subject to the exception contained in sect. 81, and to the limitation of time during which such exception is to continue, contained in sect. 206. Apart from these exceptions, however, it has been laid down that lands acquired by a public body in pursuance of statutory powers for a particular purpose, must be used for that purpose only ; and that any provisions of a general Act which are inconsistent with the use of such lands for the purposes for which they are acquired, are inapplicable. See *Rolls* v. *the School Board for London*, 27 Ch. D. 639 ; 51 L. T. (N.S.) 567.

See also *Clark* v. *the School Board for London*, L. R. 9 Ch. 120 ; 43 L. J. Ch. 421 ; 29 L. T. (N.S.) 903 ; 22 W. R. 354 ; S. C. 28 L. T. (N.S.) 657 ; *Mulliner* v. *the Midland Railway Company*, 40 L. T. (N.S.) 121 ; 11 Ch. D. 611 ; 48 L. J. Ch. 258 ; 27 W. R. 330 ; and *The City and South London Railway Company* v. *the London County Council* (1891), 2 Q. B. 513 ; 65 L. T. (N.S.) 362 ; 60 L. J. M. C. 149 ; 40 W. R. 166 ; 56 J. P. 56. In the last-mentioned case the Court of Appeal held that when a railway company was empowered by its special Act to make its railway according to the deposited plans with all

necessary approaches, works, &c., the words 'necessary works' meant works necessary for the purposes of the undertaking, without reference to any particular position of such works, provided they were within the lines shown on the deposited plans, see per Lindley, L. J. (1891), 2 Q. B. 521. The Court of Appeal, therefore, affirmed the decision of the Queen's Bench Division, which quashed an order of a magistrate under sect. 75 of the Metropolis Management Amendment Act, 1862, for the demolition of portion of a station which had been erected in advance of the general line of buildings. 57 & 58 Vict. c. ccxiii. s. 22.

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.

'*School Board.*'—It was held in *The London County Council* v. *the School Board for London*, (1892), 2 Q. B. 606; 40 W. R. 604; 56 J. P. 791, that the provisions of the Metropolitan Building Acts being inconsistent with the statutory powers of the School Board, that Board could use its lands for its statutory purposes free from the restrictions of those provisions. See also the cases cited in the note to sect. 20, *ante*, p. 76.

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 fifty feet or within fifty feet of the highway when the distance of the line of buildings therefrom amounts to or exceeds fifty 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 one month from the date of the application therefor.

(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.

57 & 58 Vict. c. ccxiii. s. 22.

No building or structure.—The provisions of this part of the Act do not apply within the City, see sect. 30, *post*, and shall not affect the exercise by railway companies of any powers conferred on them by their Acts for railway purposes, see sect. 31, *post*, p. 88. In the corresponding section, viz. sect. 75, of the Metropolis Management Amendment Act, 1862, the words used were 'no building structure or erection.' In the present enactment the word 'erection' is omitted, only buildings or structures being mentioned, with regard to which term see the note under the heading of 'alteration of existing buildings' to sect. 13 on p. 66, *ante*. The present section has no application to the re-erection of a building or structure which at any time subsequently to the commencement of the Act is taken down, destroyed, demolished, pulled down, or removed to an extent not exceeding one-half of its cubical extent, inasmuch as under the following section the County Council can only require buildings or structures which have been taken down to a greater extent to be set back where any portion of them is being re-erected in advance of the general line of buildings upon payment of compensation. See *Lord Auckland* v. *the Westminster District Board of Works*, 7 Ch. App. 597; 41 L. J. Ch. 723; 26 L. T. (N.S.) 961; 20 W. R. 345, where the Court of Appeal held that a case which came within sect. 74 of the Metropolis Management Amendment Act, 1862, the corresponding section to sect. 23 of the present Act, could not come within sect. 75 of that Act.

Shop fronts, projecting windows, water-pipes, cornices, &c. and architectural decorations, may in certain cases project beyond the general line of buildings, see sect. 73 (5) (6), *post*, p. 142.

A wall 13 feet high, separating a forecourt from the adjoining land upon which it was intended to lay out a street, was held to be a structure within sect. 75 of the Act of 1862. In so holding the Court said that the Act did not prohibit the erection of a fence or garden wall, so as to protect a man's property from trespass; and it was for the good sense of the magistrate to decide whether that which was erected was an infringement of the Act. See *Ellis* v. *the Plumstead District Board of Works*, 68 L. T. (N.S.) 291; 57 J.P. 359; 37 Sol.J. 253.

Street or part of a street.—These words are new, and may possibly have been introduced in consequence of the remarks of Lord Bramwell in *Barlow* v. *the Vestry of St. Mary Abbott's, Kensington*, 11 App. Cas. at p. 268. The expression 'street' is defined by sect. 5 (1), *ante*, p. 6. The introduction of the words 'part of a street' would appear to show that for the purposes of the section there may be more than one general line of buildings in the same street. The Act does not state who is to decide as to how much of a street is to be dealt with in defining the general line of buildings in a particular case, the functions of the superintending architect being limited to defining the general line of buildings referred to in the previous

portion of the section ; that is to say, the general line of buildings in the street, or in the part of a street, place, or row of houses according as he is required to define such line, and to the determining under sect. 29 in what street or streets a particular building or structure is situate. As, however, sect. 200 (3), *post*, renders any person who acts in contravention of this part of the Act liable to a penalty, where proceedings for the recovery of any penalty are instituted by the Council, it will be for the Council in the first instance to specify whether such proceedings are taken in respect of a building or structure in a street, or in a part of a street, or in a place or row of houses. If, however, the person against whom such proceedings are taken is dissatisfied with a general line of buildings being defined in respect of a portion only of the street in which his building or structure is situate, or if, on the other hand, he is dissatisfied with such line being defined in respect of the whole of the street, he would appear, notwithstanding that the superintending architect has defined what is the general line of buildings in that portion of the street to which the Council may have sought to limit the proceedings, to be entitled to require the superintending architect to define the general line of buildings in respect of the whole, or in respect of a portion only of the street, as the case may be. In this way it may happen that the general line of buildings defined upon the requisition of the person proceeded against might prove to be different from that previously defined. In this view of the section, many of the difficulties which were thought by some of the judges who were called upon to interpret sect. 75 of the Act of 1862 to have existed until the House of Lords held otherwise in *Spackman* v. *the Plumstead District Board of Works*, 10 App. Cas. 229 ; 54 L. J. M. C. 81 ; 53 L. T. (N.S.) 157 ; 53 W. R. 661 ; 49 J. P. 420, appear to arise under the present enactment.

57 & 58 Vict. c. ccxiii. s. 22.

Consent in Writing.—The Council has issued regulations with regard to the mode in which applications for its consent under this section are to be made. See Nos. I. and II. (2) of the Council's Regulations of the 1st Jan. 1895 in Appendix III., Part II., *post*. Applications under this section are to be communicated by the Council to the Local Authority of the District ; see Part III. of the standing orders of the Council of the 1st January 1895, in Appendix III., Part I., *post*. The document containing the consent will be sufficiently authenticated if signed by the Clerk of the Council, see sect. 187, *post*, and the note to sect. 17, *ante*, p. 74. Under sect. 26, *post*, and also apparently under sect. 190, the Council may attach conditions to a consent given by it to the erection of a building or structure beyond the general line of buildings. Where consent is given in respect to any particular building or structure, it will not affect or alter the general line of buildings existing at the time of the consent, see sect. 27, *post*.

General line of buildings.—This line is not an imaginary

57 & 58 Vict. c. ccxiii. s. 22.

line, but one which must exist in fact, and the Act does not give power to define a line arbitrarily. An attempt was made under the corresponding enactment in sect. 75 of the Metropolis Management Amendment Act, 1862, to prescribe a line upon the site of the present St. Stephen's Club at the corner of the Thames Embankment and Westminster Bridge Road, in advance of which the Metropolitan Board of Works sought to prevent any building being erected, notwithstanding the fact that no general line of buildings existed which affected the site in any way. Upon a writ of certiorari having been obtained in the Court of Queen's Bench, the certificate of the Superintending Architect laying down such line was quashed.

The power to define a general line of buildings under sect. 22 would appear to be limited to a distance of 50 ft. on each side of the building to which the certificate defining the line relates, having regard to sect. 24, *post*, p. 84, which requires notice of such certificate to be served on the owner of the houses in the same block or row within that distance only.

In laying down what is the general line of buildings in respect of a site at the end of a street on the same line with another street, North, J., said that the superintending architect was bound under the Act of 1862 to take into consideration the buildings on each side of the site. See *Worley* v. *the Vestry of St. Mary Abbott's, Kensington*, 66 L. T. (N.S.) 747 ; (1892) 2 Ch. 404 ; 61 L. J. Ch. 601 ; 40 W. R. 566.

Under the Act of 1862 it was left to a certain extent doubtful whether or not the superintending architect had power finally to decide as to the street in which a building or structure, with regard to which he was called upon to determine a general line of buildings, was situate, the decision of the Queen's Bench Division to the effect that he had such power having been overruled by the Court of Appeal upon other grounds. See *The London County Council* v. *Cross*, 66 L. T. (N.S.) 731 ; 61 L. J. M. C. 160. Sect. 29 of the present Act, however, enables the superintending architect, if required so to do, to determine in what street or streets a building or structure is situate. It was held, under the corresponding provision of the Act of 1862, that a building may be situate in more than one road, and be therefore bound to conform to the general line of buildings in each of the roads in which it is situate. See *Gilbart* v. *Wandsworth District Board of Works*, 60 L. T. (N.S.) 149. See also *Warren* v. *Mustard*, 61 L. J. M. C. 18 ; 66 L. T. (N.S.) 26 ; 56 J. P. 502 ; and Lord Herschell, L.C., in *Barlow* v. *the Vestry of St. Mary Abbott's, Kensington*, 11 App. Cas. at p. 264.

Notice of a certificate under this section is to be given to the persons, and within the time prescribed by sect. 24, *post*, p. 84.

Appeal.—Under sect. 25, *post*, the local authority or any person aggrieved by the certificate defining a general line of buildings may appeal to the Tribunal of Appeal constituted under sect. 175, *post*. Under sect. 29, *post*, a similar appeal is

given against the determination of the situation of a building or structure. 57 & 58 Vict. c. ccxiii. s. 22.

Penalty.—The previous Acts imposed no pecuniary penalty for erecting buildings in advance of the general line of buildings, but merely enabled the Council to obtain an order from a magistrate ordering the demolition of so much of the offending building as projected beyond the general line. Now, however, by sect. 200 (3), *post*, any person who erects or brings forward any building or structure in contravention of any of the provisions of this Part of the Act, or in contravention of any conditions attached by the Council to any consent given pursuant to any of such provisions, is rendered liable to a penalty not exceeding twenty pounds a day during every day of the continuance of the non-compliance with an order of the Court in reference to the matter. By sect. 151, *post*, the District Surveyor is required to serve on the builder engaged in erecting any building or structure, or in doing any work, in contravention of the Act, a notice, called a 'notice of irregularity,' requiring him within forty-eight hours to cause anything done in contravention of the Act to be pulled down, and if default is made in complying with the notice of irregularity, the District Surveyor is empowered to make complaint to a Court of Summary Jurisdiction, which Court may make an order directing compliance with the notice within a certain time. Should this order in its turn not be obeyed, the Council is empowered by subsect. 2 of the last-mentioned section to do whatever may be necessary in order to comply with the order. By sect. 171, *post*, p. 266, the powers conferred by Part XV. of this Act upon the Council with respect to any building or structure in advance of the general line of buildings may be exercised by the local authority in like manner as by the Council. The term 'local authority' is defined by sect. 5 (42), *ante*, p. 39. Under the corresponding provisions of the previous Acts it was held that the limitation of six months contained in sect. 11 of Jervis's Act, 11 & 12 Vict. c. 43, applied to proceedings to obtain an order for demolition of so much of building as was erected in advance of the general line of buildings, and that such limitation commenced to run from the time when it first became obvious that the erection in course of construction would, when completed, project in front of the general line of buildings, see *Paddington Vestry* v. *Snow*, 45 L. T. (N.S.) 475, approved by the Court of Appeal in the *London County Council* v. *Cross*, 61 L. J. M. C. 160; 66 L. T. (N.S.) 731, and *Brutton* v. *the Vestry of St. George's, Hanover Square*, L. R. 13 Eq. 339; 41 L. J. Ch. 134; 25 L. T. (N.S.) 552; 20 W. R. 84, and *Hyde* v. *Entwistle*, 52 L. T. (N.S.) 760; 49 J. P. 517. How far these decisions are applicable to proceedings under the present Act is, however, questionable, having regard to the fact that sect. 200 (3), *post*, p. 284, makes it a continuing offence to act in contravention of this Part of the Act, and the limitation in Jervis's Act has been held

57 & 58 Vict. c. ccxiii. s. 23.

inapplicable to proceedings for the recovery of penalties in the case of a continuing offence. See *Rumball* v. *Schmidt*, 8 Q. B. D. 603 ; 46 L. T. (N.S.) 661 ; 30 W. R. 939 ; 46 J. P. 567, and *Higgins* v. *Northwich*, 22 L. T. (N.S.) 752 ; 34 J. P. 806.

Land occupied by building or structure.—So far as the provisions of subsect. 2 apply to any building or structure erected upon land lawfully occupied by a building or structure at the commencement of the Act, they are subject to the provisions of the following section, enabling the London County Council to require buildings erected upon such land to be set back as therein provided. Where, however, a building or structure has been taken down to the extent mentioned in that section, or destroyed or removed to such extent previously to the commencement of the Act, but within seven years previously, the re-erection of such building or structure would appear not to be subject to the restrictions imposed by sect. 23, *infra*.

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 fifty 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.

Building or structure.—With regard to these terms see the corresponding note to sect. 22, *ante*, p. 77, and also see the

note under the heading 'alteration of existing buildings' to sect. 13, *ante*, p. 65. 57 & 58 Vict. c. ccxiii. s. 23.

'*On either side.*'—In ascertaining whether a building, &c., does project beyond the front of the building, &c., 'on either side thereof,' only buildings within some degree of proximity must be considered. For in a case under the Public Health (Buildings in Streets) Act, 1888 (51 and 52 Vict. c. 52), by sect. 3 of which the erection or bringing forward of a house or building in a street beyond the front main wall of the house or building on either side thereof, is prohibited, Fry, L. J., and Matthew, J., held that a house 300 or 400 feet from another was not on either side of it within the meaning of the enactment. *Ravensthorpe Local Board* v. *Hinchcliffe*, 24 Q. B. D. 168; 59 L. J. M. C. 183; 61 L. T. (N.S.) 780; 54 J. P. 421.

In the case of *Warren* v. *Mustard*, *ante*, p. 80, Matthew and Smith, JJ., considered that magistrates were right in finding that cottages 64 feet distant from a building were on one side of it, but in *Attorney-General* v. *Edwards* (1891), 1 Ch. 194; 63 L. T. (N.S.) 639, Romer, J., thought that a building 57 feet distant from another and separated from it by a private road and a garden, could not be said to be on the side of that other building. It will be observed that in sect. 24 the Superintending Architect is required to give notice of his certificate defining the general line of buildings to the owners of houses in the same block or row, and within a distance not exceeding 50 feet on either side of the building to which the certificate relates. This provision may serve as a guide in ascertaining whether buildings are or are not to be taken into consideration in determining a question under this section.

Power of Council to cause buildings to be set back.—A power similar to that given by subsect. 1 of the present section was contained in sect. 74 of the Metropolis Management Amendment Act, 1862; it was only exercisable where a building had been taken down or demolished to an extent exceeding one-half of such building.

The powers of the County Council are therefore increased by the present section.

With regard to the removal of the lower portion of a building without disturbing the upper portion, see *The Attorney-General* v. *Hatch*, *ante*, p. 68.

Compensation.—With regard to the assessment and recovery of compensation payable under the Act, see the note to sect. 15, *ante*, p. 71.

Owner.—By sect. 3 of the Lands Clauses Consolidation Act, 1845 (8 Vict. c. 18), it is enacted that 'owner shall be understood to mean any person or corporation who, under the provisions of this or the Special Act, would be enabled to sell and convey lands to the promoters of the undertaking.' See also the definition of the term 'owner' in sect. 5 (29), *ante*, p. 25.

57 & 58 Vict. c. ccxiii. ss. 24, 25.

Notices of definition of general line.

24. The Superintending Architect shall within fourteen 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 fifty 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.

Superintending Architect.—This officer is appointed by the London County Council under sect. 136, *post*, p. 228. He is empowered by sect. 137 to appoint in certain cases a deputy to perform any duties which he may be temporarily prevented from executing.

Notice of certificate.—Both the notice and certificate are to be in writing, and will be sufficiently authenticated if signed by the Superintending Architect, see sect. 187, *post*.

Service of notice.—As to the service of notices see sect. 188, *post*.

Local authority.—This term is defined by sect. 5 (42), *ante*, p. 39.

Owner.—With regard to this term, see sect. 5 (29), *ante*, p. 25, and the notes thereon.

Appeal.—The certificate, notice of which is given under this section, may be appealed against under the following section.

Preservation and inspection of certificates.—This provision is new. Under sect. 28, *post*, the Council is, in addition, to keep a register of all conditional consents given by it under sect. 26, *infra*, open for inspection.

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.

Person deeming himself aggrieved.—With regard to the expression 'party aggrieved,' where used in a section of an Act of Parliament, giving such a party a right to commence proceedings for penalties for the infringement of any of the provisions of the Act, Bramwell, L.J., said in *Robinson* v. *Currey*, 7 Q. B. D. 465; 50 L. J. Q. B. 561; 45 L. T. (N.S.) 368; 30 W. R. 39; 46 J. P. 148: 'A party grieved is not brought into

existence by the statute which gives him a penalty ; he is a person who is supposed to exist, and the statute is passed on account of his grievance, and the action for penalty is given to him. There may be cases in which the statute states that A. B. shall be deemed a party grieved ; but a party grieved is a person who exists, and on account of his existence and his grievance the statute gives him a remedy.' 57 & 58 Vict. c. ccxiii. s. 26.

Tribunal of Appeal.—This tribunal is constituted under sect. 175 *et seq.*, *post*, pp. 269–273, and has jurisdiction under sect. 183, which section enables it to make rules of procedure, to confirm, reverse, or vary the decision of the Superintending Architect, and make such order as it may think fit.

Appeal.—The regulations as to the procedure to be followed in cases of appeal to the Appellate Tribunal will be found in Appendix III., *post*. These regulations require appeals to be lodged at the office of the Tribunal within fourteen days after notice of the certificate, and also require notice of the appeal to be given within such period to the Council, and where the original applicant is not the appellant to such applicant, and also to the Superintending Architect, and to all other persons entitled under sect. 24, *ante*, to notice of the Superintending Architect's certificate.

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.

Conditions to erections beyond general line of buildings.—This section removes the doubt which existed as to the power of the Council to enforce compliance with certain conditions often attached by it to consents to erect buildings in front of the general line of buildings. By sect. 9 of the Metropolitan Building (Amendment) Act, 1882, the Council had power to annex to such consent conditions as to the amount of land in front of any such building to be dedicated to, or left open for, the

57 & 58 Vict. c. ccxiii. ss. 27, 28.

use of the public. The Council constantly, however, in consenting to such erection, made various other stipulations, but had no statutory authority for so doing.

A register of all consents given under this section is to be kept by the Council for inspection by all persons interested. See sect. 28, *infra*.

Under sect. 190, *post*, p. 276, power is also given to the Council, in any case where it is authorised to refuse its consent to the doing of any act, to give, instead of refusing, such consent subject to such terms and conditions as it may think fit. Any term or condition imposed under sect. 190 will, if accepted, be binding on the owner and occupier of the building or structure or ground to which the consent relates, and the non-observance or non-fulfilment of any term or condition so imposed will subject the owner or occupier in default to a penalty.

Penalty.—The penalty for erecting or bringing forward any building or structure in contravention of any of the provisions of this Part of the Act, or of any conditions attached to a consent given by the Council under such provisions, is prescribed by sect. 200 (3), *post*, p. 284. See also subsect. 10 of sect. 200, which prescribes the penalty for not complying with any term or condition imposed under sect. 190

With regard to the recovery of penalties, see sect. 166, *post*.

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.

'*Line of buildings existing at time of consent*.'—Under the previous Acts it was possible for the erection of buildings in advance of the general line of buildings existing at the time of the giving of the consent to such erections, to create in course of time a general line of buildings different from such first-mentioned line. The present section appears to be intended to prevent this possibility taking place, by preventing any building or structure, which has been erected with the consent of the Council in advance of the general line of buildings in any part of a street, from being taken into consideration in defining at any subsequent time the general line of buildings in such part or in any other part of the street.

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.

'*Reasonable times*.'—See the note to sect. 18, *ante*, p. 75.

57 & 58 Vict. c. ccxiii. s. 29.

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.

'*Local authority.*'—For definition see sect. 5 (42), *ante*, p. 39.

Defining street or streets in which building situate.'—The provisions of Part III. only apply to buildings or structures in streets ; and the Superintending Architect does not appear to have power to determine whether or not a building or structure is situate in a particular 'way,' as to which term see sect. 5 (2), *ante*, p. 9.

It was left doubtful under the provisions of the previous Acts whether the Superintending Architect had jurisdiction to determine in what street a building was situate. Lord Bramwell, in *Barlow* v. *the Vestry of St. Mary Abbott's, Kensington*, 11 App. Cas. 257 ; 55 L. T. (N.S.) 221, was of opinion that he had no such jurisdiction. In *The London County Council* v. *Cross* (reported on this point only in 66 L. T. (N.S.) 731), Denman and Smith, JJ., held that he had jurisdiction to determine the street in which a building was situate, and Smith, J., pointed out that in the case in the House of Lords, though the decision was upon other grounds, Lords Herschell, Fitzgerald, and Watson did not appear to have agreed with Lord Bramwell. The decision of the Queen's Bench Division referred to was, however, reversed by the Court of Appeal upon another ground.

The present section puts the matter beyond question, and as it enables the Superintending Architect to determine in what streets a building is situate, it confirms the decisions of the Queen's Bench Division, not only upon the point referred to, but upon the point as to whether or not a building can for the purposes of the Act be considered as being in more than one street, it having been held in *Gilbart* v. *the Wandsworth District Board of Works*, 60 L. T. (N.S.) 149 ; 53 J. P. 229, and in *Warren* v. *Mustard*, 61 L. J. M. C. 18 ; 66 L. T. (N.S.) 26 ; 56 J. P. 502, that an order could be made under sect. 75 of the Metropolis Management Amendment Act, 1862, for the demolition of so much of the side of a building as projected beyond the general line of buildings in a street, notwithstanding the fact that such building faced another street which was at right angles to the first-mentioned street.

'*Appeal.*'—The provisions relating to appeals to the Tribunal of Appeal will be found in sects. 175 *et seq.*, *post.*

An appeal under this section is to be lodged at the office of the Tribunal within fourteen days after notice of the certificate. And notice of the appeal is to be given to the Council, and

57 & 58 Vict. c. ccxiii. ss. 30, 31.

where the original applicant is not the appellant to such applicant. Notice of the appeal is also to be given to the Superintending Architect, and to all other persons entitled to notice of his certificate under sect. 24, *ante*, p. 84. See the Regulations of February 21, 1895, in Appendix III., Pt. II., *post*.

Part of Act not to apply in City.

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

'*The City*.'—This expression is defined by sect. 5 (43), *ante*, p. 38. See also the note to sect. 4, *ante*, p. 4.

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.

'*Railway purposes*.'—With regard to this section, see the note to sect. 20, *ante*, p. 76.

When a railway company had erected upon vacant land acquired and held by it under its Acts of Parliament near to, but not forming part of, one of its stations, dwelling-houses for its servants, whose duties required them to live on the spot, the Queen's Bench Division held that such buildings, not being used for the purposes of the railway, were not within the proviso to sect. 157 of the Public Health Act, 1875, which exempted 'buildings belonging to any railway company, and used for the purposes of such railway under any Act of Parliament' from the provisions of the section as to byelaws made thereunder; and that such buildings were, therefore, subject to a byelaw, which required notice to be given to the local authority of the erection of new buildings within its district. *The Manchester, Sheffield, and Lincolnshire Railway Company* v. *the Guardians of Barnsley Union*, 67 L. T. (N.S.) 119; 57 J. P. 792.

In another case it appeared that a canal company had under its statutory powers erected a building upon one of its wharves, which building it had let to an institution for distributing firewood, and was used by such institution as a place in which to chop up wood for firewood. The Canal Company was not a carrying company, merely having power to take tolls for the passage of barges along the canal, but by the agreement under which the building was let to the institution, it was agreed that all wood required by the latter should be brought to the wharf and building in barges by means of the canal. No notice having been given by the Company under sect. 38 of the Metropolitan Building Act, 1855, of its intention to erect the building, and proceedings having been taken in respect of the neglect to give such notice, upon a case stated, the Queen's Bench Division held under the above circumstances that the building was not 'used for the purposes of the canal' within the meaning of sect. 6 of the Metropolitan Building Act, 1855, which section exempted from the operation of the part of the Act containing

sect. 38, 'the buildings belonging to any canal, dock, or railway company, and used for the purposes of such canal, dock, or railway, under the provisions of any Act of Parliament.' *Coole* v. *Lovegrove* (1893), 2 Q. B. 44 ; 62 L. J. M. C. 153 ; 69 L. T. (N.S.) 19 ; 5 R. 418 ; 41 W. R. 570 ; 57 J. P. 647. 57 & 58 Vict. c. ccxiii. s. 32.

Under the provisions of the Metropolitan Building Acts, which corresponded to those of Part III. of the present Act, however, the Court of Appeal had previously held that a railway company was not restricted in any way by such provisions in erecting any of its stations within the limits of deviation prescribed by its special Act. Under the special Act the Company was authorised to make a subway with all necessary works connected therewith, 'and to take and use such of the lands delineated on the deposited plans, and described in the deposited books of reference, as might be required for that purpose, and in delivering his judgment Lindley, L. J., said, 'It appears to me that the view taken of the word "necessary" by the Divisional Court is the right one—that is to say, that necessary works mean works necessary for the purposes of the undertaking, without reference to any particular position of those works, provided they are within the lines shown on the deposited plans.' *The City and South London Railway Company* v. *the London County Council*, *ante*, p. 76 ; see also *The London County Council* v. *the School Board for London*, in the note to sect. 21, *ante*, p. 77.

PART IV.

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 one month after receipt of 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 one month after notice thereof has been given as aforesaid to the Council or to set up any name objected to as aforesaid.

Naming and Numbering of Streets.—The provisions of this Part of the Act correspond to the provisions of the Metropolis Management Act, 1862, sect. 87, under which rules with regard to the naming of streets and numbering of houses, and for the prevention of the unauthorised adoption of names for new streets, were made by the Metropolitan Board of Works on June 30, 1876. By sect. 216, *post*, p. 303, such byelaws are continued in force so far as they are applicable for the purposes

57 & 58 Vict. c. ccxiii. s. 33.

of this Act. Under sect. 33, *infra*, the local authority is required to see that the names of streets are exhibited in conspicuous positions, and to renew them whenever necessary. And under sect. 34, *post*, the Council is empowered to alter the name of any street after notice given in the manner prescribed by sect. 35. The numbering of houses in streets is provided for by sects. 36 and 37 ; and under sect. 38, *post*, p. 94, the Council is to keep a register of all alterations which it may make in the names of streets or in the numbering of houses in streets. Regulations have been issued by the Council with regard to applications under this Part of the Act ; see Part I. and Rule 11 of Part II. of such Regulations in App. III., Pt. II., *post*. Applications under this Part of the Act are to be communicated to the local authority of the district, and intimation of any order renaming a street is to be sent to the Post Office authorities. See Part IV. of the Standing Orders of the Council in App. III., Pt. I., *post*.

Notice.—Provision is made by sect. 188, *post*, p. 274, with regard to the service of notices.

'*Month.*'—This expression means calendar month. See sect. 3 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63).

'*Street.*'—This expression is defined by sect. 5 (1), *ante*, p. 6. In the corresponding provision of the Act of 1862, the expression 'new street' was used ; the present section by the omission of the word 'new' is made to apply to all streets, and therefore prevents any change being made in the name of a street except in accordance with its provisions or with sect. 34, *post*, p. 91.

Penalty.—A penalty not exceeding forty shillings is imposed by sect. 200 (11 *j*), *post*, p. 291, upon anyone who does anything prohibited by the Act, or fails, neglects, or omits to do anything which he is required to do under or in pursuance of the Act. Such penalty is recoverable summarily under sect. 166, *post*, p. 254.

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.

Local authority.—This expression is defined by sect. 5 (42), *ante*, p. 39. Under sect. 200 (4), *post*, p. 285, every person who hinders or obstructs any person empowered by the Act to enter any premises for the purpose of executing any work authorised or directed to be done under the Act, is made liable to a penalty not exceeding ten pounds ; and this provision will apply where it is necessary, as in all cases it must to a certain extent be necessary, for a local authority to enter upon premises for the purpose of carrying out the requirements of this section. Should the local authority make default in carrying out under

this section any order of the Council made pursuant to sect. 35, *post*, altering the name of a street, the Council is empowered by sect. 37, *post*, to do itself whatever may be necessary in order to carry out such order. 57 & 58 Vict. c. ccxiii. ss. 34, 35.

Affixing names.—The previous enactment required the name to be affixed at or near each corner of the street, as well as at each end ; this is no longer necessary.

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.

Order.—By sect. 187 (2), *post*, orders issued by the Council are required to be under the seal of the Council.

The following section requires the Council to give notice of its intention, previously to altering the name of a street, of which notice a day is to be fixed before which objections to the proposed alteration may be made in writing to the Council.

An order issued in pursuance of this section is to be carried out by the local authority under sect. 33, the Council being empowered by sect. 37, *post*, to carry out the order itself, should the local authority make default in so doing. Under sect. 38, *post*, a register is to be kept by the Council of all alterations it may make in the names of streets, and such register is to be kept open to inspection.

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.

'*Local authority.*'—This expression is defined by sect. 5 (42), *ante*, p. 39.

'*Month.*'—This expression means calendar month, see sect. 3 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63).

'*Objection in writing.*'—Section 188, *post*, p. 274, provides for the service of notices, but the Act does not specifically prescribe for the giving of notices to or the service of notices on the Council. Presumably, however, it will be sufficient if the objection is addressed to the Council and delivered at or sent by post to its offices at Spring Gardens.

It is presumed that when the period for objecting expires on any day between August 8 and September 14 (both inclusive) such period is to be deemed to be extended for

57 & 58 Vict. c. ccxiii. s. 36.

28 days (see sect. 174, *post*, p. 268), but it is to be noticed that the wording of that section is ambiguous, and may be confined to objections by 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 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.

'*Order*.'—Orders issued by the Council are to be under its seal, see sect. 187, *post*, p. 273.

'*Street or way*.'—These expressions are defined by sect. 5 (1) and (2) respectively, *ante*, pp. 6, 9.

'*Local authority*.'—Who is the local authority is defined by sect. 5 (42), *ante*, p. 39.

Should the owner or occupier not comply with an order of the Council issued under this section, and the local authority fail to carry out the order or cause it to be carried out, the Council is empowered by sect. 37, *post*, to do whatever may be necessary in order to carry out the order. Under sect. 200 (4), *post*, p. 285, every person who hinders or obstructs any person empowered by the Act to enter any premises for the purpose of executing any work authorised or directed to be done under the Act, is rendered liable to a penalty.

Alteration of numbers.—The Act does not provide, as in the case of the naming of streets, for the alteration of the numbers of the houses, but as sect. 38, *post*, requires the Council to keep a register of all alterations it may order to be made in

the numbers of the houses in any street, it is to be presumed that it has power to make such an order should it think fit. 57 & 58 Vict. c. ccxiii. s. 37.

Penalty.—Any person failing, neglecting, or omitting to do anything which he is required to do under or in pursuance of the Act, is rendered liable to a penalty not exceeding forty shillings by sect. 200 (11 *j*), *post*, p. 291.

'*Owner or occupier.*'—The expression 'owner' is defined by sect. 5 (29), *ante*, p. 25, and by sect. 5 (30), *ante*, p. 32, the expression 'occupier' is not to include a lodger.

An owner is empowered by sect. 192, *post*, for the purpose of complying with any notice or order served or made on him in pursuance of the Act, in respect of any building, to enter such building after notice to the occupier, in order to comply with the notice or order; and by sect 200 (11 *g*), *post*, p. 291, any person refusing to admit the owner or workmen, &c., or to afford him all reasonable assistance in complying with the notice or order, is liable to a penalty.

'*Expenses.*'—These are recoverable in the manner directed by sect. 166, *post*, p. 254, and are apparently, unless there is a special covenant to the contrary between the owner and the occupier, to be borne ultimately by the owner, inasmuch as though recoverable by the local authority under this section from the owner, under sect. 37, *infra*, similar expenses incurred by the Council are only recoverable from the owner; and by section 173 (5), *post*, p. 267, the occupier is enabled to deduct from his rent the amount of any expenses which he has paid, which expenses may under the Act be recovered from the owner. With regard to payment of expenses by owners, see sect. 173, *post*.

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 three 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.

'*Local authority.*'—This expression is defined by sect. 5 (42), *ante*, p. 39.

'*Months.*'—That is calendar months. See sect. 3 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63).

'*Expenses.*'—Where the Council incurs expenses under this

57 & 58 Vict. c. ccxiii. ss. 38, 39.

section, it can only recover them from the owner of the premises, and not from the occupier. The expenses are recoverable in the manner provided for by sect. 166, *post*, p. 254, and the payment of such expenses by the owner is subject to the rules prescribed by sect. 173, *post*, p. 266.

'*Owner*.'—For definition see sect. 5 (29), *ante*, p. 25.

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.

'*Register*.'—This will presumably be kept at the offices of the Council in Spring Gardens. The alteration by the Council of the names of streets is provided for by sect. 34, *ante*, p. 90, but no express power is given to the Council to alter the numbers of buildings in any street. Such power is, however, it is presumed, to be implied from the direction in the present section to the Council to keep a register of all alterations it may make in the numbers of the houses in any street.

'*Fee*.'—Under the Regulations issued by the Council which are set out in App. III., Pt. II., *post*, a fee of 1*s*. is to be charged to persons seeking information involving a reference to its records with regard to orders under this Part of the Act.

PART V.

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.

'*Domestic building*.'—This expression is defined by sect. 5 (26), *ante*, p. 24, as including a dwelling-house and any other building not being a public building or of the warehouse class. A dwelling-house is by the previous subsection a building used or constructed or adapted to be used wholly or principally for human habitation. The expressions 'public building' and 'building of the warehouse class' are defined by subsects. 27

and 28 of the section. See the notes to the respective sub-sections. The previous enactments did not use the expression domestic building. By sect. 52, *post*, p. 115, a domestic building fronting upon a street and a stable in its rear abutting on a mews are in certain cases to be deemed to form one domestic building.

57 & 58 Vict c. ccxiii. s. 40.

Light and ventilation of habitable basements.

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 one hundred 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.

'*Domestic building*.'—See as to this expression the preceding section.

'*Commencement of the Act*'—*i.e.* January 1, 1895. See sect. 3, *ante*, p. 4.

'*Habitable basement*.'—The expression 'habitable' is defined by sect. 5 (38), *ante*, p. 37, and applied to a room means a room constructed or adapted to be inhabited, and the expression 'inhabited' is defined by the preceding subsection to mean, when applied to a room, 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. What is a 'basement storey' is defined by subsect. 12 of the same section to be a storey of a building which is under the ground storey, as to which see sect. 5 (11), *ante*, p. 16.

'*Open space*.'—The section is intended to secure the adequate lighting and ventilation of habitable basements, and must be read in connection with sect. 41. By the latter section it is permitted, under certain circumstances, to build over the whole of a site to the height of one storey, but by the operation of sect. 40 this would not be permissible if the building had a habitable basement; for it is necessary in every case that an open space should be left to the extent of not less than 100 square feet, for the purpose of giving light and air to such basement. It would not therefore be permissible to construct a habitable basement to a building which either had no means of light or ventilation, other than those which it derived from openings into the interior of the storey above it, or from openings into an area in the front of the building, as this section requires that an open space shall be provided in the rear of the building. As, however, such open space need not necessarily adjoin the rear boundary of the premises, it may be

57 & 58 Vict. c. ccxiii. s. 41.

provided in such a position as to abut on the rear of the main building, but to be at the side of that part of the building which is built out at the rear to the height of one storey. If the result is to form a 'court,' regard should be had to the provisions of sect. 45, *post*. A diagram illustrating this section will be found in App. V., Pl. I., *post*.

Space at rear of domestic buildings.

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 :—

(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 one hundred and fifty 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 sixteen 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 watercloset earthcloset or privy and a receptacle for ashes and enclosing walls none of which erections shall exceed nine feet in height :

(ii) Such open space shall extend throughout the entire width of such building and to a depth in every part of at least ten feet from such building :

(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 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; 57 & 58 Vict. c. ccxiii. s. 41 (1).

(*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 sixty-three and a half 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 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 im-

57 & 58 Vict. c. ccxiii. s. 41 (1).

mediately 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 :

(iv) The Council may—

(*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 forty 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 ;

permit the erection of buildings not exceeding thirty 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 thirty 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 :

(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 forty feet or for such less distance as the requirements for open space at the rear may demand :

(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 sub-section may appeal to the tribunal of appeal. 57 & 58 Vict. c. ccxiii. s. 41 (2).

(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 sixteen 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 sub-section 1 of this section may be provided above the level of the ceiling of the ground storey or above a level of sixteen feet (exclusive of lantern lights) above the level of the adjoining pavement.

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 sub-section 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 eighty 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.

'*Horizontal and diagonal lines.*'—See as to these the diagram in Appendix V., Plate I., *post.*

'*Domestic buildings.*'—See the note under this heading to sect. 39, *ante*, p. 94. With regard to dwelling-houses for the working classes, which do not abut on a street, see sect. 40, *post.*

'*Commencement of the Act*'—*i.e.* the 1st January, 1895, see sect. 3, *ante*, p. 3. The provisions of sect. 41 are modified by subsect. 2 in the case of buildings abutting on streets formed or laid out before that date.

'*Street.*'—This term is defined by sect. 5 (1), *ante*, p. 6.

57 & 58 Vict. c. ccxiii. s. 41.

'*Rear of building.*'—If any question arises with regard to which is the front and which is the rear of a building, the Superintending Architect of the Council is empowered by sect. 46, *post*, p. 110, to determine it by his certificate, subject, in case any person is dissatisfied with his determination, to appeal to the Tribunal of Appeal.

Where a domestic building abutting on a street has in its rear a stable abutting on a mews, the open space required by this section may in certain cases be provided between the building and the stable, and in such case the domestic building and the stable, whether in the same occupation or not, are to be deemed to be one domestic building with the rear abutting upon a street. See sect. 52, *post*, p. 115.

'*Plans and sections.*'—For the Regulations issued under this section see Nos. I. & II. (3) of the Regulations of 1st Jan. 1895, in App. III., Pt. II., *post*.

'*Open space.*'—The first portion of subsection (1) requires that there shall be in the rear of every domestic building an open space exclusively belonging thereto of an aggregate extent of not less than 150 square feet; and, except in the specified case of a building having a basement storey sufficiently lighted and ventilated by the open space provided under sect. 40, or where there is no basement storey, but where the ground storey is not constructed or adapted to be inhabited, that 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 receptacle for ashes and enclosing walls, none of which erections may exceed 9 ft. in height. This open space is to be in the rear of the building; but as subsect. 2 requires the space to extend throughout the entire width of the building, it must be situated in such a position as to be at the rear of every part of the building, and cannot therefore be at the side of an outbuilding, such as a kitchen or scullery. A small wooden fence 2 ft. 6 in. high, erected upon an open space provided at the rear of a building in compliance with the byelaws of a local board, which prohibited erections being built upon such space, was held to be an erection within the prohibition in *Adams* v. *Bromley Local Board*, 57 J. P. 662.

The 'level of the adjoining pavement' means the level of the pavement formed or to be formed in front of the building or the mean level of such pavement, if it is not all upon one level. In the latter case the level of the pavement would apparently have to be determined by the District Surveyor, or, in the event of disagreement, by the Superintending Architect, from whose decision an appeal would lie to the tribunal of appeal. See the definition in sect. 5 (8), *ante*, p. 15.

A diagram explaining the provisions of sect. 41 as to open spaces will be found on Pl. II. in App. V., *post*.

A similar mode of calculating the amount of open space which is required in connection with a building to that here adopted is in force in Liverpool under the byelaws made by

the Corporation, and confirmed by the Local Government Board. Its aim is to control the height of buildings in relation to the amount of open space to be provided for the purpose of securing the circulation of air. The subject was dealt with in the Report of the Royal Commission upon the Housing of the Working Classes in 1884 ; and in dealing with the Metropolis, where very insufficient provision had previously been made for securing a proper amount of open space about houses, the Commission reported that 'in the rear of every new dwelling-house or other building to be controlled by rules ordinarily applicable to dwelling-houses, and whether in old or in new streets, there should be provided a proportionate extent of space exclusively belonging to the dwelling-house or building ; that this space be free from erections from the ground level upwards ; that it extend laterally throughout the entire width of the dwelling-house or building ; that for the distance across the space from the building to the boundary of adjoining premises a minimum be prescribed, and that this minimum increase with the height of the dwelling-house or building.

57 & 58 Vict. c. ccxiii. s. 41.

The corresponding section (sect. 29) of the Metropolitan Building Act, 1855, required an open space of 100 square feet only, and that in case of buildings used or intended to be used as dwelling-houses, and of which all the rooms could not be lighted and ventilated from a street and alley adjoining.

Any such buildings begun to be erected after the passing of the Metropolitan Building (Amendment) Act, 1882, had to be provided with a space of not less than 150 square feet, unless the frontage of the building exceeded 15 ft., in which case the space was proportionately increased. This proportionate increase is secured by subsect. (ii) of the present section.

The Council has power under sect. 44 to modify these conditions in cases of new streets laid out on cleared areas.

'*Basement storey*.'—This expression is defined by sect. 5 (12), *ante*, p. 16. See also the note under this heading to sect. 40, *ante*, p. 95. With regard to the ventilation of basements see sect. 96 (c), *post*, p. 136.

'*Ground storey*.'—This is defined by sect. 5 (11), *ante*, p. 16.

'*Height*.'—A definition of this expression will be found in sect. 5 (21), *ante*, p. 22. The height of buildings in general is limited by sects. 47, 48, and 49, *post*. In the case of the formation or laying out of a new street upon a cleared area, the Council may modify or relax any of the provisions of this section (see sect. 44, *post*) ; and sect. 50 provides that nothing in the Act contained is to prevent the raising of any building by increasing the height of the topmost storey, so as to comply with the requirements of the Act as to habitable rooms.

Building on corner site.—This enactment will allow a building to be erected on a corner site, but not of the same height throughout, as by the application of the rules in subsect. (iii) it will first be necessary to determine how much open

57 & 58 Vict. c. ccxiii. s. 42.

space will have to be provided for a building of the desired height. This space may then, with the sanction of the Council, have erected upon it outbuildings, which may form part of the main building, but may not exceed 30 ft. in height. As these extensions of the main building or separate building are to be so placed as not to interfere unduly with the access of light and air to neighbouring buildings, they will probably not be permitted to cover the open space to the whole of its depth if by so doing they would adjoin another building, and thus prevent the circulation of air from the side street or the open space at the side referred to in (*b*) to the rear of other houses situated on the opposite side of the main building.

'*Return front*'—*i.e.* that side of the building at an angle to the main front, and abutting on the side street or open space, as referred to in subsection (iv). The object is to prevent the rule as to building within the diagonal line so operating as to prevent a corner building being carried up at a uniform height to a depth of 40 feet from the main front, so long as the open space required to be left at the rear of the building is not encroached upon.

'*Street laid out after commencement of the Act.*'—The provisions of subsection (1) relate to domestic buildings erected after 1st January, 1895, and abutting upon a street formed or laid out after that date.

'*Street laid out before commencement of Act.*'—Subsection (2) relates to domestic buildings erected after the 1st January, 1895, and abutting upon a street formed or laid out before that date, and its effect is to allow the site of a building to be wholly built upon to the height of one storey on condition that an amount of open space equal to what is required under subsection (1) of this clause be provided at the level of the ceiling of the ground storey, or at a level of 16 ft. This provision, however, does not apply to dwelling-houses to be inhabited or adapted to be inhabited by persons of the working classes.

'*Appeal.*'—The provisions regulating appeals to the tribunal of appeal will be found in sects. 175 *et seq.*, *post*, pp. 269–273.

Alterations or additions to buildings.—Under sect. 209, *post*, p. 300, every addition to or alteration of a building, so far as regards such addition or alteration, is subject to the provisions of the Act relating to new buildings.

'*Penalty.*'—The erecting, altering, enlarging, rebuilding, or raising any building, or the commencing so to do, so as to contravene any of the provisions of this Part of the Act, is made an offence against the Act by sect. 200 (3 *b*), *post*, p. 284.

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 one 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 : 57 & 58 Vict. c. ccxiii. s. 42.

(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 before the expiration of one 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 to sanction 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 by him :

(iv) Unless the Council shall within one 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.

Artisans' dwellings.—The Council represented to the Parliamentary Committee that a considerable proportion of buildings in the Metropolis erected in blocks for use as artisans'

57 & 58 Vict. c. ccxiii. s. 42.

dwellings, were constructed on plans that did not give adequate means of ventilation to the rooms in such buildings or allow for the proper circulation of air round and about such buildings. As, however, it was not possible to prescribe in all cases what requirements should be insisted upon, power was given to the Council to prevent the erection of any such dwelling unless there is provided in connection therewith a sufficient open space or spaces for the admission of light thereto. The Council requires applications under this section to be reported upon by its Medical Officer, as well as by the Superintending Architect ; see the Regulations of the Building Act Committee of the 1st January, 1895, in App. III., Pt. II., *post*.

'*Dwelling-houses*.'—The expression 'dwelling-house' is defined by sect. 5 (25), *ante*, p. 23. The erection of dwelling-houses for the working classes abutting upon a street is dealt with in sect. 41, *ante*, p. 96.

'*Inhabited*.'—This term is defined in sect. 5 (37), *ante*, p. 37.

'*Commencement of the Act*'—*i.e.* the 1st January, 1895 ; see sect. 3, *ante*, p. 3.

'*Month*.'—This means 'calendar month ;' see sect. 3 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63). Where the period prescribed by the section will expire on a day between August 8th and September 14th, it will be deemed to be extended for 28 days ; see sect. 174, *post*, p. 268.

'*County Hall*.'—The offices of the Council in Spring Gardens are meant.

'*Plans*.'—Regulations have been issued with regard to the plans and sections by which applications under this section are to be accompanied ; see Nos. I. & II. (3) of the Regulations of the 1st Jan. 1895, in App. III., Pt. II., *post*. Upon delivery of any plan in pursuance of the Act at the office of the County Council it will become the property of the Council ; see sect. 194, *post*, p. 278. Failure to deliver plans in accordance with this section will render the person intending to erect a dwelling-house to which this section refers liable to a penalty under sect. 200 (11 *j*), *post*, p. 291.

'*Order*.'—Orders of the County Council are required by sect. 187 (2), *post*, p. 273, to be under the seal of the Council.

'*Conditions*.'—The Council has also power under sect. 190, *post*, to impose conditions instead of refusing its sanction in any case where it is authorised by the Act to refuse its sanction to the doing of any act. Any condition imposed by the Council when accepted will be binding on the owner and occupier of the building, and the non-observance or non-fulfilment of the condition will render the owner or occupier in default liable under sect. 190, *post*, p. 276, to the penalty prescribed by sect. 200 (10), *post*, p. 288. The provisions of the Act with regard to open spaces referred to in subsection (ii) are those contained in sect. 41.

'*Sanction of the Council*.'—The approval of the Council to any plans for the purposes of this Act is to be signified in

writing under the hand of the Superintending Architect ; see sect. 195, *post*, p. 278. Notice of such approval or of the disapproval of the Council of any plans may be given in the mode provided by sect. 188, *post*, p. 274. A refusal to sanction plans or the sanctioning of plans subject to conditions under subsection (ii) of sect. 42 is to be by order of the Council under its seal. See sect. 187 (2), *post*, p. 273. 57 & 58 Vict. c. ccxiii. s. 43.

Should the period within which the Council is to approve or disapprove of plans delivered under this section expire on any day between August 8 and September 14, such period is, by virtue of sect. 174, *post*, p. 268, extended for twenty-eight days.

The provisions of this section are not to prevent the re-erection upon the same site and of not greater dimensions of any dwelling-house for the working classes erected by a local authority previously to the passing of this Act, *i.e.* previously to August 25, 1894 ; see sect. 51, *post*, p. 114.

If any building is so constructed as to have open space or spaces equivalent to the space or spaces which would have to be provided in the case of a building coming within sect. 41 (2), the Council is prevented by subsect. (ii) from refusing its sanction to the plan of such building, or to prescribe any conditions when sanctioning it, but such fact will not absolve the person intending to erect the building from the obligation to deposit the plan and obtain the sanction of the Council before commencing to erect the building.

'*Appeal.*'—The provisions regulating appeals to the Tribunal of Appeal will be found in sects. 175 *et seq.*, *post*, pp. 269–273.

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 seven years previous to the commencement of this Act the following provisions shall have effect :

(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

57 & 58 Vict. c. ccxiii. s. 43.

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:

(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 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:

(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.

'*Domestic building*.'—This expression is defined by sect. 5 (25), *ante*, p. 23. The erection of dwelling-houses for the working classes is dealt with in sects. 41 and 42, *ante*, pp. 96 and 102.

'*Street*.'—This expression is defined by sect. 5 (1), *ante*, p. 6.

'*Commencement of this Act*'—*i.e.* the 1st January, 1895; see sect. 3, *ante*, p. 3.

'*Site*.'—The definition of this word in the Act of 1878 was as follows:—'The term "site" in relation to a house, building, or other erection shall mean the whole space to be occupied by such house, building, or other erection between the level of the bottom of the foundations, and the level of the base of the walls' (41 & 42 Vict. c. 32, sect. 14). That definition is, however, repealed by the present Act, no other definition being substituted; it is therefore doubtful whether or not the term as here used in the present Act includes the whole area within the curtilage of the particular building, inasmuch as the definition of the expression 'domestic building' includes a dwelling-house, and in law all that is within the curtilage of a dwelling-house forms part of such house; see note to sect. 13, *ante*, p. 67, under the heading *Curtilage*. Under sect. 16 of the Act of 1878, which gave power to make byelaws with

respect *inter alia* to the foundations and sites of houses, buildings, and other erections to be constructed after the passing of the Act, and the mode in which and the materials with which such foundations and sites should be made, formed, excavated, filled up, prepared, and completed for securing stability, the prevention of fires, and for purposes of health, the Metropolitan Board of Works made a byelaw prohibiting the erection of any house, building, or other erection on any site which shall have been filled up or covered with any material impregnated or mixed with any fæcal, animal, or vegetable matter, &c. A builder having commenced to erect houses upon a piece of ground which had previously formed part of an old private unconsecrated cemetery, closed by an order in Council, proceedings were taken against him by the Board of Works for commencing to build on a site and foundations which had been filled up with materials impregnated with animal matter—to wit some number unknown of dead human bodies, without the said animal matter having first been properly removed. The builder having done all that was required by the byelaws, assuming that he was not compelled to excavate below the footings of the walls to a greater extent than was necessary to enable him to make concrete foundations to the walls, nor to excavate beyond the space enclosed by such walls to a greater extent than was necessary to cause the foundations to project the prescribed distance beyond the footings of the walls, the Court held that he had done all that he could be required under the byelaws to do; and that the word 'site' in the byelaws could not have a more extensive meaning than that given to it by the definition, and therefore meant the space which would necessarily be taken up when the house and walls came to be built, and that the builder could not be compelled to excavate to any depth that contained animal or vegetable matter. See *Blashill* v. *Chambers*, 14 Q. B. D. 479; 23 L. T. (N.S.) 38. Hawkins, J., in such case said that he hardly went to the same extent as Grove, J., had suggested, that 'the site' was to be construed to be the whole surface of the ground which was intended to be used for the building, that was to say, the whole floor space of the site and the space occupied by the external wall, and that he would be rather inclined to think that the site was confined to that portion of the house over which the inhabitants were to dwell.

57 & 58 Vict. c. ccxiii. s. 43.

Plans.—The provisions of this section are quite new, and are similar to those contained in sect. 13 (5), *ante*, p. 62, with regard to which see the notes to that section. The Council has power under sect. 164, *post*, to make byelaws regulating the deposit of plans with the District Surveyor; and such regulations have been issued, see Nos. I. & II. (4) of the Regulations of 1st Jan. 1895 in Appendix III., Part II., *post*. Under sect. 154, and schedule 3, Part I., *post*, the Surveyor is entitled to a fee of *2l. 2s.* for examining and certifying plans submitted to him under this section. The fee is payable by

57 & 58 Vict. c. ccxiii. s. 44.

the builder, or, in his default, by the owner or occupier, see sect. 154, upon the surveyor certifying as well as examining, no fee apparently being payable where the surveyor does not certify.

Under sect. 194, *post*, plans delivered to the District Surveyor in pursuance of the Act become, upon delivery, the property of the Council.

'*Conditions*.' — The conditions for domestic buildings erected after the commencement of the Act abutting on a street formed or laid out after that date are prescribed by sect. 41, *ante*, p. 96. Under sect. 190, *post*, also, the Council is empowered to impose conditions upon sanctioning the doing of any act, and any such conditions are, when accepted, to be binding upon the owner and occupier of the building or ground to which they relate, the non-observance or non-fulfilment thereof rendering the owner or occupier in default liable to the penalty prescribed by sect. 200 (10).

'*Appeal*.'—The Tribunal of Appeal is constituted under sect. 175, *post*, p. 269, and the procedure on appeals to it is regulated by sects. 182–186, *post*, pp. 272 and 273. An appeal under this or the following section is to be lodged at the office of the Tribunal within fourteen days after notice of the determination ; and notice of the appeal is to be given within such period to the Council, and where the original applicant is not the appellant to such applicant, and notice is also to be given to the Local Authority, which expression is defined by sect. 5 (42), *ante*, p. 39 ; see Regulations of the 21st February, 1895, in Appendix III., Part II., *post*.

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

Within two 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 two 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.

'*Sanction of plans, &c.*'—The approval of the Council of plans for the purposes of the Act is to be signified in writing under the hand of the Superintending Architect, see sect. 195, *post*. Regulations have been issued by the Council with regard to the plans and sections by which applications under this section are to be accompanied ; see Nos. I. and II. (5) of the Regulations of the 1st January, 1895, in Appendix III., Part II., *post*. 57 & 58 Vict. c. ccxiii. s. 45.

'*Plans and sections required by the Council.*'—The Council is empowered by sect. 164 (1), *post*, to make byelaws with respect to the regulation of the plans, level, width, surface, and inclination of new streets. See as to this the Byelaws, Regulations, and Standing Orders of the Council in Appendix III. *post*.

'*Notice of disapproval.*'—If the period of two months, within which the Council may give notice of its disapproval of any plans under this section, will expire between the 8th August and the 14th September, such period is to be deemed to be extended for twenty-eight days ; see sect. 174, *post*.

'*Appeal.*'—See the note under this heading to sect. 43, *ante*.

'*Months.*'—See the note under this heading to sect. 42, *ante*, p. 104.

Courts within a building.

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 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.

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.

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

57 & 58 Vict. c. ccxiii. ss. 46, 47.

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.

Courts within buildings.—See the diagram illustrating this section in App. V., Pl. I., *post*; and also the Instructional Letter of 15th Dec. 1894 in App. IV., *post*.

'*Domestic buildings.*'—See the note to sect. 39, *ante*, p. 94.

'*Ground storey.*'—This is defined by sect. 5 (11), *ante*, p. 16.

'*Habitable room.*'—The expression 'habitable' by sect. 5 (38), *ante*, p. 37, means, when applied to a room, a room constructed or adapted to be inhabited, and the expression 'inhabited' is by the preceding subsection defined to mean a room in which some person passes the night, or which is used as a living room, or 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.

Superintending architect may define front or rear of buildings.

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. Any person dissatisfied with such certificate may appeal to the tribunal of appeal.

'*Superintending architect.*'—This officer is appointed by the County Council under sect. 136, *post*, p. 228.

'*Tribunal of Appeal.*'—See the note sub '*Appeal*,' *ante*, p. 108.

'*Appeal.*'—By the Regulations of the 21st February, 1895, made by the Tribunal under sect. 184, *post*, an appeal under this section is to be lodged at the office of the Tribunal within fourteen days after notice of the certificate; and notice of the appeal is to be given to the Council, and where the original applicant is not the appellant to such applicant. Notice is also to be given to the Superintending Architect. For the Regulations see App. III., Pt. II., *post*.

Height of buildings limited.

47. A building (not being a church or chapel) shall not be erected of or be subsequently increased to a greater height than eighty feet (exclusively of two storeys in the roof and of ornamental towers turrets or other architectural features or decorations) without the consent of the Council.

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 eighty 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.

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 eighty feet. 57 & 58 Vict. c. ccxiii. s. 47.

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.

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.

'*Building*.'—With regard to this expression see the note to sect. 13, *ante*, p. 63.

'*Height*.'—This expression is defined by section 5 (21), *ante*, p. 22. Under the corresponding provisions of the London Council (General Powers) Act, 1890, sect. 36, for which the provisions of this section are substituted, the height above which buildings might not be erected was fixed at ninety feet. The limitation contained in this section is not to apply so as to prevent the topmost storey of a building being raised so as to comply as far as any habitable rooms in such storey are concerned with the provisions of the Act relating to habitable rooms; see sect. 50, *post*, p. 114.

Nor are the provisions of the section to prevent the re-erection upon the same site, and of not greater dimensions, of any dwelling-house for the working classes erected by a local authority previously to the 25th August, 1894; see sect. 51, *post*.

'*Passing of this Act*'—*i.e.* the 25th August, 1894.

'*Railway company*.'—With regard to the application of the provisions of the Act to the property of a railway company, see the note to sect. 20, *ante*, p. 76.

Consent of the Council.—Regulations have been issued by the Council as to applications for its consent under this section and under section 49. See Nos. I. & II. (6) of the Regulations of the 1st January, 1895, in App. III., Pt. II., *post*. Notice of any consent under this section is required to be given by the Council in the manner prescribed by sect. 48, *post*, under which section an appeal is given against the grant or refusal of a consent under this section. Under sect. 190 the Council is empowered, in any case where it is authorised by the Act to refuse its consent to the doing of any act, to give its consent subject to conditions, which conditions, when accepted, are to be binding on the owner and occupier of the building or ground to which they relate, their non-observance or non-fulfilment rendering the person in default liable to a penalty. A consent given by the Council under this section is not to be acted on until twenty-one days after notice of it has

57 & 58 Vict. c. ccxiii. s. 48.

been published, or if it is appealed against, until after the determination of the appeal, see sect. 48 (1).

Penalty.—Under sect. 200 (3 *b*), *post*, every person who erects or raises, or commences to erect or raise, any building, so as to contravene any of the provisions of this Part of the Act, is liable to a penalty not exceeding twenty pounds a day during every day of the continuance of non-compliance with an order of the Court under sect. 153, *post*.

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 one 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 twenty-one 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 one hundred 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 twenty-one 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 twenty-one days of such refusal in such manner as the Council may direct to the owner or lessee of any building or land within one hundred 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 one hundred 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.

'*Owner*.'—This expression is defined by sect. 5 (29), *ante*, p. 25.

It would seem that the owner or lessee of any building or land who may appeal under subsect. (2 a) of this section would mean the owner defined in sect. 5 (29), *ante*, p. 25, and any person holding a lease for any term, however short. The

building or land need not be wholly within 100 yards of the site of the intended building which is to be erected under the consent given by the Council, and it would be sufficient if any part of such site or building is within that distance : the distance, however, must be measured in a straight line on a horizontal plane. See Interpretation Act, 1889, sect. 34. 57 & 58 Vict. c. ccxiii. s. 49.

Appeal.—See the note sub '*Appeal*,' *ante*, p. 108. An appeal under this section is to be lodged at the offices of the Tribunal within the time limited by the section ; and notice of the appeal is to be given within such period to the Council and to such owners or lessees as the Council may direct ; see the Regulations made by the Tribunal under sect. 184, *post*, of February 21, 1895, in App. III., Part II., *post*.

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 fifty feet shall without the consent 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.

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 forty feet from the wider street 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.

'*Commencement of this Act.*'—*i.e.* Jan. 1, 1895, see sect. 3, *ante*, p. 3.

'*Building.*'—With regard to what is a building see the note to sect. 13, *ante*, p. 63 ; the term 'new building' is defined by sect. 5 (6), *ante*, p. 11.

'*Consent of the Council.*'—See the note under this heading to sect. 47, *ante*, p. 111 ; and Nos. I. and II. (6) of the Regulations of 1st Jan. 1895, in App. III., Pt. II., *post*.

'*Height.*—The mode in which the height of a building is

57 & 58 Vict. c. ccxiii. ss. 50, 51.

to be ascertained is prescribed by sect. 5 (21), *ante*, p. 22 ; see also the diagram on Pl. III., App. V., *post*. The provisions of this section are not to prevent the raising of the topmost storey of a building so as to comply with the provisions of the Act as to habitable rooms; see sect. 50, *post*. Nor are such provisions to prevent the re-erection upon the same site and of not greater dimensions of dwelling-houses for the working classes, erected by a local authority previously to August 25, 1894 ; see sect. 51, *post*.

'*Street*.'—This term is defined by sect. 5 (1), *ante*, p. 6.

'*External wall*.'—See definition in sect. 5 (15), *ante*, p. 17.

'*Railway company*.'—See with regard to the application of the provisions of the Act to the property of a railway company the note to sect. 20, *ante*, p. 76.

Penalty.—Under sects. 151 and 152, *post*, pp. 239 and 241, the District Surveyor is to give notice of irregularity where any person acts in contravention of this section ; and by sect. 153 he is empowered to take proceedings where such notice is not complied with, and non-compliance with an order of a court in such proceedings will render the person in default liable to the penalty prescribed by sect. 200 (3 *b*), *post*, p. 284.

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.

'*Height of buildings*.'—The provisions of the Act limiting the height of buildings are contained in sects. 47 and 49, *ante*.

'*Topmost storey*.'—This expression is defined by sect. 5 (14), *ante*, p. 16, and means the uppermost storey of a building, whether constructed wholly or partly in the roof or not.

'*Habitable rooms*.'—The expression 'habitable' is defined in sect. 5 (38), *ante*, p. 37. The height of habitable rooms not wholly or partly in the roof is fixed by sect. 70 (1 *a*), *post*, p. 134, at 8 feet 6 inches from the floor to the ceiling, and that of habitable rooms which are wholly or partly in the roof at 8 feet throughout not less than half their area, *ib*. (1 *b*) ; see also the note to sect. 62, *post*, p. 124. The height of habitable rooms in the roof of a building was 7 feet under the Metropolitan Building Act, 1855.

As to re-erection of certain working-class dwellings by 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.

'*Working-class dwellings.*'—The provisions of the Act regulating the erection of dwellings for the working classes are contained in sect. 42, *ante*, p. 102. 57 & 58 Vict. c. ccxiii. ss. 52, 53.

'*Inhabited.*'—This is defined in section 5 (37), *ante*, p. 37.

'*Local authority.*'—This is defined by sect. 5 (42), *ante*, p. 39.

'*Passing of this Act.*'—This date was August 25, 1894.

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 one hundred and fifty 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 fifty feet measured from the mews frontage and to a height of twenty-five 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.

'*Domestic buildings.*'—The expression 'domestic building' is defined by sect. 5 (26), *ante*, p. 24.

'*Street.*'—The expression is defined by sect. 5 (1), *ante*, p. 6, and means and includes *inter alia* 'any mews,' whether a thoroughfare or not, and part of any such mews.

'*Front or rear.*'—In case of any question arising as to which is the front and which is the rear of a building, such question is to be determined by the superintending architect. See sect. 46, *ante*, p. 110.

PART VI.

Construction of Buildings.[1]

Structure and thickness of walls.

53. Subject to any bye-laws 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.

[1] The provision of works of water supply and of drainage and the provision of conveniences to buildings are regulated by sects. 37 to 42 and sect. 46 of the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76). These sections will be found, together with the byelaws of the 22nd June, 1893, made by the Council thereunder, set out in Appendices I. and III., *post*.

57 & 58 Vict. c. ccxiii. s. 53.

Byelaws.—Under sect. 164, *post*, the Council is empowered to make such byelaws as it thinks expedient with respect *inter alia* to the thickness and the description and quality of the substances of which walls may be constructed, the dimensions of wooden bressummers and joists of floors; the protection from fire of ironwork used in the construction of buildings, with respect to woodwork in external walls, and the description and quality of the substances of which plastering may be made; and with respect to the means of escape from fire in buildings exceeding 60 ft. in height.

The byelaws made by the Metropolitan Board of Works under the corresponding provisions of the previous Acts, which are continued in force by sect. 216, *post*, p. 303, will be found in App. III., Pt. II., *post*.

Such byelaws may provide for the imposition for any offence committed against any byelaw of a penalty not exceeding 5*l.*, and a future penalty in the case of continuing offences of 2*l.* per diem; see sect. 164, *post*, p. 249. Failure to comply with any provision of Part VI. is also an offence against the Act, in respect of which a penalty is imposed. See sect. 200, subsect. (3 *c*), *post*, p. 284.

The Council has also power to demolish or alter any offending building on the conviction of the person who has committed an offence against the Act by constructing, erecting, adapting, extending, raising, altering, uniting, or separating a building or structure, and who has made default in complying with a notice to bring such building or structure into conformity with the Act (see sect. 170, *post*, p. 264).

Walls.—The present Act, like the previous Acts, does not contain any express enactment that every building or erection erected within the Metropolis shall be enclosed with walls, nor does it anywhere enact that buildings shall be constructed in accordance with the rules contained in the first schedule. But by Rule 1 of Part I. of that schedule every building, unless otherwise sanctioned in accordance with the Act, shall be enclosed with walls constructed of brick, stone, or other hard and incombustible substances. The power to sanction a departure from this requirement is that conferred upon the Council by Part VII. of the Act, enabling it to sanction a departure from any of the requirements of this Part of the Act in the case of buildings or structures to which the general provisions of the Part are inapplicable, or, in the opinion of the Council, inappropriate, having regard to the special purposes for which the building or structure is designed and actually used.

See, with regard to the bonding of brickwork and the composition of mortar, the Instr. Letters of December 15, 1866; November 23, 1880; and July 6, 1894, in App. IV., *post*.

Exemptions.—The buildings and works specified in sects. 201–205, *post*, are exempt from this Part of the Act.

'*Penalties.*'—By sect. 200 (3 *c*), *post*, every person who

fails to comply with any of the provisions of this Part of the Act shall be liable to a penalty not exceeding twenty pounds a day during every day of the continuance of the non-compliance with the order of the Court in reference to such failure. Under sects. 151 and 152, *post*, pp. 239 and 241, 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 the Act is omitted to be done, the district surveyor is empowered to serve notice of the irregularity. And if default is made in complying with such notice, a petty-sessional court is empowered by sect. 153, *post*, p. 239, upon complaint by the district surveyor, to make an order requiring the notice of irregularity to be complied with. Penalties are recoverable under sect. 166, *post*, p. 254. 57 & 58 Vict. c. ccxiii. s. 54.

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 eight and a half 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.

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

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

(*b*) That over every recess so formed an arch of at least two 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 five 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 thirteen and a half 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

57 & 58 Vict. c. ccxiii. s. 55.

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

'*Recesses and openings.*'—A diagram illustrating this section will be found in App. V., Pl. V., *post.*

'*External walls.*'—The expression 'external wall' means an outer wall or a vertical enclosure of any building not being a party wall; see the definition in sect. 5 (15), *ante*, p. 17.

'*Ground storey.*'—This is defined by sect. 5 (11), *ante*, p. 16.

'*Party walls.*'—What is a party wall is defined by sect. 5 (16), *ante*, p. 17; see the notes thereto. A party wall cannot be cut into except upon condition of making good all damage occasioned to the adjoining premises, see sect. 88 (8), *post*, and after a month's notice has been given in accordance with sect. 90 (1), *post*, p. 173. Such notice must have been given within six months of the work having been begun, and the work when begun must be prosecuted with due diligence, except in the case of a difference arising between the person giving the notice and the owner of the adjoining premises, in which case the difference is to be settled in the manner provided by sect. 91, *post*, p. 177. By sect. 77 (3), *post*, p. 148, conditions are prescribed subject to which openings may be made in party walls dividing buildings, which, if taken together, would exceed in extent 250,000 cubic feet.

'*Superintending architect.*'—The power given to the superintending architect to modify or relax in any case the requirements of the section is new.

'*Area.*'—This word is defined by sect. 5 (22), *ante*, p. 22, but such definition is not applicable to the present section, and the definition contained in the last paragraph of the section must therefore be substituted for it when construing or applying this section. A limitation is placed by subsect. (1 *b*) of sect. 54 upon the extent to which recesses and openings may be made in external walls above the ground storey. The section is, however, silent as to external walls belonging to or below the ground storey. In the corresponding provisions of the Metropolitan Building Act, 1855, sect. 13, the limitation applied to recesses or openings made in any external walls. On the other hand, that Act did not prescribe, as the present section does, the character of the arch to be made over recesses in party walls, which recesses might be made to extend to one foot from the inner face of the external walls.

Penalties.—See the note under this heading to sect. 53, *ante*, p. 116.

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 four inches at the least from the external face of such wall But loop-

hole frames and frames of doors and windows may be fixed flush with the face of any external wall: 57 & 58 Vict. c. ccxiii. s. 56.

Provided that it shall be lawful for the Council by bye-law 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.

'*External walls.*'—This expression is defined by sect. 5 (15), *ante*, p. 17.

'*Bressummer.*'—Means 'a wooden beam or a metallic girder which carries a wall,' see sect. 5 (7), *ante*, p. 15.

'*Storey posts.*'—These are upright timbers disposed in the storey of a building, for supporting the superincumbent part of the exterior wall by means of a beam over them. Crabb's 'Technical Dictionary' and Gwilt's 'Encyclopædia of Architecture.'

Timber in external walls.—The corresponding provision to this section in the Metropolitan Building Act, 1855, sect. 14, allowed no woodwork whatever to be fixed flush with the face of a wall. All woodwork was by that section required to be set back four inches except loophole frames, which were allowed to be fixed within an inch and a half of the face of the wall. The present enactment, it will be seen, permits of the frames of doors and windows, as well as loophole frames, being fixed flush with the face of any external wall; and further enables the Council by its byelaws to exempt any woodwork from the operation of the section, provided it is constructed to the satisfaction of the district surveyor. The placing of timber or woodwork in walls in certain cases is prohibited by sect. 64 (21), *post*, p. 128. With regard to the plans and sections to be deposited with the Council, where it is intended to place timber in an external wall, see No. II. (7) of the Council's Regulations of the 1st Jan. 1895, in App. III., Pt. II., *post*.

Byelaws.—The Council is empowered by sect. 164, *post*, p. 249, to make byelaws with respect *inter alia* to 'woodwork in external walls.'

Penalties.—See the note under this heading to section 53, *ante*, p. 116.

Rules as to bressummers.

56. (1) Every bressummer whether of wood or metal shall have a bearing in the direction of its length of four 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

57 & 58 Vict. c. ccxiii. s. 56.

be placed nearer to the centre line of the party walls than four inches.

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

(3) A bond timber or wood plate 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 four inches distant from the centre line of the party walls.

(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.

(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 eight and a half inches or otherwise supported to the satisfaction of the district surveyor.

'*Bressummer*.'—This expression is defined by sect. 5 (7), *ante*, p. 15, to mean 'a wooden beam or a metallic girder which carries a wall.' See the diagram in App. V., Pl. VI., *post*.

The present section corresponds to sect. 15 of the Metropolitan Building Act, 1855. Its provisions, however, are not quite so stringent as those contained in the previous enactment. At the same time the present enactment empowers the district surveyor to require additional storey posts &c. to be placed under a bressummer should he consider that those proposed to be placed are insufficient to carry the weight intended to be placed upon the bressummer ; it also allows the ends of wooden bressummers to be placed four inches from the centre line of party walls, and is silent as to the distance of the ends of metallic bressummers from such line, whereas the previous enactment prohibited the placing of the end of any bressummer nearer to such line than four and a half inches.

'*Pier*.'—A pier is defined in Gwilt's 'Encyclopædia' as 'a solid between the doors and windows of a building, the square or other formed mass or post on which a gate is hung ; also the solid support from which an arch springs.' According to Brande & Cox's 'Technical Dictionary,' 'the solid between the openings of a building, or that from which an arch springs.' The expression also includes buttresses, or additions erected at intervals along a wall, and built into the wall for the purpose of increasing its strength.

'*Storey post*.'—See the note to sect. 55, *ante*, p. 119.

'*Stanchion*.'—Any upright support is included in this term.

'*Corbel*.'—A corbel is the technical term for a projecting bracket for the purpose of supporting a superincumbent object,

or for retaining the springing of an arch. Gwilt defines it as 'a range of stones projecting from a wall for the purpose of supporting a parapet or the superior projecting part of a wall.' 57 & 58 Vict. c. ccxiii. ss. 57, 58.

'*Expansion.*'—The previous enactment made no provision for guarding against the expansion of metallic bressummers.

'*Bond timber.*'—The expression 'bond' used in the plural number signifies, according to Gwilt, 'the timbers disposed in the walls of a house, such as bond timbers, lintels, and wall plates.' 'Bond timber' is the technical term for timber worked in with a wall as it is carried up, for the purpose of tying it together in a longitudinal direction while the work is setting. Brande & Cox's 'Technical Dictionary.'

'*Wood plate.*'—This is a piece of timber lying horizontally on a wall for the purpose of receiving the ends of girders, joists, rafters, &c.

Joist.—'The timber whereto the boards of a floor or the laths for a ceiling are nailed. Joists rest on the walls or on girders, sometimes on both.' Gwilt's 'Encyclopædia.'

The distance required by the previous enactment to be left between the ends of a wooden beam or joist, and the centre line of any party wall upon which it had a bearing, was four and a half inches. Under the present enactment four inches is sufficient.

'*Templet*' *or* '*template*'—is 'a short piece of timber or stone' laid under the bearing of a girder with the object of distributing the weight of the latter.' Brande & Cox, 'Technical Dictionary;' see also Gwilt's 'Encyclopædia.'

'*Tailed through.*'—To tail in anything is to fix one end in the wall, so that the leverage exercised by the projecting part should be counteracted by the weight above it.

'*Timber in walls.*'—Sect. 64 (21), *post*, p. 128, contains prohibitions against the placing of timber or woodwork in a wall in certain cases.

Penalties.—See the note under this heading to sect. 53, *ante*, p. 116.

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 one foot at the least above the highest part of the gutter and the thickness of the parapet so carried up shall be at least eight and a half inches throughout. Height and thickness of parapets to external walls.

Height and thickness of parapets.—The present enactment is practically the same as that which was contained in sect. 16 of the Metropolitan Building Act, 1855. A diagram illustrating this section will be found in Appendix V., Plate VII., *post*.

Penalties.—See the note to sect. 53, *ante*, p. 116.

58. In either of the following cases:— Cases in which a wall to be deemed a party wall.

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

57 & 58 Vict. c. ccxiii. s. 59.

(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.

'*Party wall.*'—This expression is defined by sect. 5 (16), *ante*, p. 17. See also the notes to that subsection.

Under the previous Acts it was held by Fry, J., that a wall could be a party wall for part only of its length, *Knight* v. *Pursell*, 11 Ch. D. 412; 48 L. J. Ch. 395; 40 L. T. (N.S.) 391; 27 W. R. 817; 43 J. P. 622, following the judgment of the Court of Appeal with reference to an enactment contained in the Bristol Improvement Act, 1847, that every wall between separate houses was to be deemed to be a party wall, by which it was decided that a wall could be a party wall for part of its height only, *Weston* v. *Arnold*, L. R. 8, Ch. 1084.

'*Penalties.*'—See the note under this heading to sect. 53, *ante*, p. 116.

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 eight and a half 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 thirty feet in height) of at least three feet and (in any other building) of fifteen inches measured at right angles to the slope of the roof or fifteen 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 four feet from such party wall and shall extend at the least twelve 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 four feet therefrom.

Height of party walls.—The present enactment corresponds to that which was contained in sect. 17 of the Metropolitan Building Act, 1855, by which, however, the thickness of the party wall was not prescribed.

The thickness of party walls is prescribed by Parts I. and II. of the first schedule, *post*, the Council having, however, under Rule 4 of the schedule power to approve of a

thickness other than that prescribed by such Parts. Diagrams showing the thicknesses required by the Act are in App. V., Pls. XIV.–XVII., *post*; see also the diagram on Pl. VII. 57 & 58 Vict. c. ccxiii. s. 59.

'*Party walls.*'—See sect. 5 (16), *ante*, p. 17, for the definition of this term, and sect. 58, *ante*, p. 120; see also as to the necessity for observing the provisions of this section the Instructional Letter of October 31, 1864, in App. IV., *post*.

'*Topmost storey.*'—This is defined by sect. 5 (14), *ante*, p. 16.

Penalties.—See the note to sect. 53, *ante*, p. 116.

Rules as to chases in party walls.

60. In a party wall a chase shall not be made wider than fourteen inches nor more than four and a half inches deep from the face of the wall nor so as to leave less than eight and a half inches in thickness at the back or opposite side thereof and a chase shall not be made within a distance of seven feet from any other chase on the same side of the wall or within thirteen inches from an external wall. No chase shall be made in a wall of less thickness than thirteen inches.

'*Chase.*'—'An upright indent cut in a wall for the joining another to it. It also means an indent cut in a wall, into which a pipe or some such article is placed.' Gwilt's 'Encyclopædia.' See the diagram in App. V., Pl. V., *post*.

The present section corresponds to sect. 17 of the Metropolitan Building Act, 1855. The prohibition against the making of chases within thirteen inches from external walls or in walls of a less thickness than thirteen inches is new.

Penalties.—See the note to sect. 53, *ante*, p. 116.

Rules as to construction of roofs.

61. (1) The flat gutter and roof of every building and every turret dormer lantern-light 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 bargeboards to dormers not exceeding twelve inches in depth and the doors door frames windows and window frames of such dormers turrets lantern-lights skylights or other erections.

(2) Every building exceeding thirty 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.

(3) The plane of the surface of the roof of a building

57 & 58 Vict. c. ccxiii. s. 62.

of the warehouse class shall not incline from the external or party walls upwards at a greater angle than forty-seven degrees with the horizon Provided that this sub-section shall not apply to towers turrets or spires.

(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 seventy-five degrees with the horizon Provided that this sub-section shall not apply to towers turrets or spires.

'*Dormer*'—is a window inserted on the inclined plane of the roof of a house, the frame being placed nearly vertically with the line of the rafters.

'*Lantern light.*'—A lantern in architecture is the technical expression for a drum-shaped erection, either square, circular, elliptical, or polygonal in plan, placed on the top of a dome, or on that of an apartment, to give light.

'*Incombustible materials.*'—In the second schedule, *post*, certain materials are specified which are for the purposes of the Act to be deemed to be fire-resisting materials, and by force of the definition, sect. 5 (36), *ante*, p. 36, these and no others will satisfy the requirements of the Act in cases in which 'fire-resisting' materials are necessary. It is obvious, however, when the nature of some of those materials is considered, that the mere fact of a material being mentioned in the schedule as to be deemed to be fire-resisting will not render such material an incombustible material within the meaning of this section.

A material which is merely partly incombustible, part being combustible, will not be an incombustible material within the meaning of this section, this having been so held in *Payne* v. *Wright* (1892), 1 Q. B. 104; 65 L. T. (N.S.) 45; 8 *Times* L. R. 54; 61 L. J. M. C. 7; 40 W. R. 161; 56 J. P. 129.

'*Barge boards.*'—These are inclined projecting boards placed at the gable of a building, which hide the ends of the horizontal timbers of a roof.

Penalties.—See the note under this heading to sect. 53, *ante*, p. 116.

Storeys in roofs.

62. (1) Not more than two 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 the height of above sixty feet from the street level shall be constructed of fire-resisting materials throughout.

'*Storey.*'—This is a colloquial term for that portion of a building in which the floors of all the rooms in such portion

are upon the same level. According to Gwilt the term means 'one of the vertical divisions of a building—a series of apartments on the same level.' 57 & 58 Vict. c. ccxiii. s. 63.

With regard to what is a storey in the roof of a building it may be mentioned that in a case where magistrates had found that a room at the back of a dwelling-house which had a lean-to roof in continuation of the sloping roof over the main portion of the building, but the walls of which room were upright, was a 'room in the roof' within the meaning of certain provisions of sect. 136 of the Hastings Improvement Act, 1885, relating to the height of any room in the roof of a new building, the Queen's Bench Division refused to interfere with such finding upon a special case stated by such magistrates, it being a question of fact for the magistrates to decide whether or not the room in question was a room in the roof of the house. *Meadows* v. *Taylor*, 18th April, 1890, M. S.

A room in the roof of a building, the walls of which were formed by the roof, was held to be a storey in *Foot* v. *Hodgson*, 25 Q. B. D. 160; 89 L. T. 27.

'*Domestic building.*'—This expression is defined by sect. 5 (26), *ante*, p. 24.

'*Fire-resisting materials.*'—A list of materials which are for the purposes of this Act to be deemed to be fire-resisting materials, see sect. 5 (36), *ante*, p. 36, will be found in the second schedule to the Act, *post*. In addition to the materials specifically mentioned in such schedule, any material which the Council may from time to time approve as fire-resisting is to be deemed for the purposes of the Act to be a fire-resisting material.

Penalties.—See the note under this heading to sect. 53, *ante*, p. 116.

63. Every new building exceeding sixty feet in height shall be provided on the storeys the upper surface of the floor whereof is above sixty 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. Means of escape at top of high buildings.

'*New building.*'—A definition of this expression will be found in sect. 5 (6), *ante*, p. 11. See also the notes under this heading to sect. 13, *ante*, p. 63.

'*Means of escape.*'—The Council is empowered by sect. 164, *post*, to make byelaws with respect to the means of escape from fire in buildings exceeding sixty feet in height, and with respect to the duties of district surveyors in relation to any such byelaws.

57 & 58 Vict. c. ccxiii. s. 64.

Whether the means of escape provided in a particular case are such as 'can reasonably be required under the circumstances of the case' will necessarily be a question of fact. The decision of such question appears to be left to the determination of the Council, whose discretion in the matter will have to be exercised reasonably, and not arbitrarily.

Penalties.—See the note under this heading to sect. 53, *ante*, p. 116.

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.

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

All soot doors shall be at least fifteen inches distant from any woodwork.

(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 four inches from the face of the wall and the jamb on either side be of less width than seventeen and a half 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 eight and a half inches on each side.

(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 eight and a half 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

twenty feet in height measured from the level of the floor on which such engine is placed. 57 & 58 Vict. c. ccxiii. s. 64.

(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.

(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 eight and a half inches wide on each side of the opening thereof.

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

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

(11) The thickness of the upper side of every flue when its course makes with the horizon an angle of less than forty-five degrees shall be at least eight and a half inches.

(12) Every chimney shaft or smoke flue shall be carried up in brick or stone work at least four inches thick throughout to a height of not less than three 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.

(13) The highest six 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 than a height equal to six 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.

(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

57 & 58 Vict. c. ccxiii. s. 64.

six inches longer on each side than the width of such opening and at the least eighteen 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.

(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 six inches at 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 four inches in thickness properly bonded.

(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.

(20) A chimney shaft jamb breast or flue shall not be cut into except for the purpose of repair or during 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 twelve inches to any timber or combustible substance.

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

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

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

(*c*) Within two 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 eight and a half inches thick unless the face of such brickwork or stonework is rendered.

(22) Wooden plugs shall not be driven nearer than six inches to the inside of any flue or chimney opening nor any iron holdfast or other iron fastening nearer than two inches thereto. 57 & 58 Vict. c. ccxiii. s. 64.

'*Chimneys.*'—The statute regulating the construction of chimneys, 3 & 4 Vict. c. 85, was repealed as to the Metropolis by 7 & 8 Vict. c. 84, sect. 1. The construction of furnace chimney shafts is regulated by sect. 65, *post*. Rules as to pipes for conveying smoke &c. are contained in sect. 66, *post*, p. 131. A diagram illustrating the provisions of sect. 64 as to chimneys will be found on Pl. VIII. in App. V., *post*.

'*Corbel.*'—This is the technical term for a projecting bracket constructed for the purpose of supporting a superincumbent object, or for retaining the springing of an arch. See the note to sect. 56, *ante*, p. 120.

'*Footings.*'—This term means the spreading courses at the base or foundation of a wall, by means of which the weight of the superincumbent mass is distributed over a larger area.

'*Party external walls.*'—The expression 'party wall' is defined by sect. 5 (16), *ante*, p. 17; and a definition of the expression 'external wall' will be found in subsect. 15 of that section.

'*Cross walls.*'—The expression 'cross wall' is defined in sect. 5 (17), *ante*, p. 20.

'*Flue.*'—The tube or cavity of a chimney from the point where the 'gathering' (*i.e.* the part of the cavity or funnel from the fireplace, which contracts as it ascends) ceases up to the top of the chimney. See diagram on Pl. VIII., App. V., *post*.

'*Soot-doors.*'—The Act is silent as to what is a proper soot-door. Under sect. 20 of the Metropolitan Building Act, 1855, such doors were required to be not less than six inches square.

'*Breast.*'—The breast of a chimney is the part of the wall in which the chimney is which faces the room, and forms one side of the funnel of the chimney parallel thereto, or the part of such wall forming the sides of the funnel where there is more than one. See diagram on Pl. VIII., App. V., *post*.

'*Abutment.*'—This is the technical term for the solid part of a structure against which the ultimate dynamical effect of an arch is exerted.

'*Jambs.*'—These are the sides or vertical pieces of any opening in a wall which bears the piece that discharges the superincumbent weight of the building or parts of the wall above them. See diagrams on Pl. VIII., App. V., *post*.

'The sides of an aperture which connect the two sides of a wall.' Gwilt.

'*Cockle.*'—This is a kind of stove.

'*Rendered.*'—This is the technical term to denote the plastering executed in two coats on naked brick or stone work.

'*Pargeted.*'—This denotes the coating of the flue of a chimney.

57 & 58 Vict. c. ccxiii. s. 65.

'*Mantel*.'—'The head of the foreplate resting on the jambs.' Gwilt, sub nom. *Chimney*. See diagram on Pl. VIII., App. V., *post*.

'*Shaft*.'—This is the part of a chimney which rises above the roof for discharging the smoke into the air.

'*Bearers*.'—A bearer is a term used to denote any upright piece used to support another.

'*Trimmers*.'—A trimmer is the technical term for a piece of timber framed at right angles to the joists of a floor opposite to a chimney, or the wall holes of a stair, which receives the ends of the joists intercepted by the opening.

'*Incombustible materials*.'—See the note to sect. 61, *ante*, p. 124.

'*Party structure*.'—The expression is defined by sect. 5 (20), *ante*, p. 21. With regard to the rights of the owner of a building to cut into party structures, and the conditions precedent to the exercise of such rights, see sects. 88 *et seq.*, *post*.

'*Smoke jacks*.'—These are machines fixed in chimneys for the purpose of turning spits. They are so called from their appearance of being moved by the smoke from the fire; in reality a smoke jack is moved by the ascending current of rarefied air acting upon a fan forming part of it.

'*Timber or woodwork in walls*.'—Sects. 55 and 56, *ante*, pp. 118, 119, contain regulations with respect to the placing of timber or woodwork in walls.

'*Penalties*.'—See the note to sect. 53, *ante*, p. 116.

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 two inches and a half in ten feet of height:

(2) The thickness of brickwork at the top of the shaft and for twenty feet below the top shall be at least eight and a half inches and shall be increased at least one half brick for every additional twenty 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:

57 & 58 Vict. c. ccxiii. s. 66.

(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.

'*Otherwise permit.*'—Applications for permission to construct a shaft contrary to the rules in sect. 65 are to be made in the manner prescribed by Nos. I. and II. (7) of the Regulations of Jan. 1, 1895, in App. III., Pt. II., *post*.

'*Furnace chimney shafts.*'—The provisions of this section are new; under the previous Acts furnace chimney shafts were treated as coming within sect. 56 of the Metropolitan Building Act, 1855, and subject to the rules made by the Metropolitan Board of Works under that section with respect to buildings to which the rules of the Act were inapplicable. For an illustration of this section, see the diagram on Pl. VIII., App. V., *post*.

'*Plinth.*'—This is the technical term for the lowest member of the base of a column, which is usually in the form of a square brick. In a wall the two or more rows of bricks at the base projecting from the face form the plinth. See Gwilt's 'Encyclopædia.'

'*String course.*'—This is a course of bricks or stone round the face of a building which projects beyond such face to an extent less than the height of the course.

'*Offsets.*'—These are ledges formed by thickness of the brickwork diminishing above each course of bricks.

Penalties.—See the note to sect. 53, *ante*, p. 116.

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 eighteen inches be formed of materials of an incombustible and non-conducting nature not less than six inches thick.

(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.

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

57 & 58 Vict. c. ccxiii. ss. 67, 68.

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

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

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.

'*Incombustible materials.*'—See note to sect. 61, *ante*, p. 124.

'*Close fires, &c.*'—Under the corresponding sect. 21 of the Metropolitan Building Act, 1855, no exception was made in the case of ovens &c. heated by gas. See with regard to this section the Instructional Letter of February 17, 1867, in App. IV., *post*.

Penalties.—See the note to sect. 53, *ante*, p. 116.

Floors above furnaces and ovens.

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

'*Fire-resisting materials.*'—By sect. 5 (36), p. 36, the expression 'fire-resisting material' means any of the materials and things described in the second schedule to this Act. By rule 8 of that section, in addition to the materials specifically described in the schedule, any material from time to time approved by the Council as fire-resisting is to be deemed for the purposes of the Act to be a fire resisting material.

Penalties.—See the note to sect. 53, *ante*, p. 116.

Rules as to accesses and stairs in certain buildings.

68. In every public building and in every other building of more than one hundred and twenty-five thousand 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.

'*Public building.*'—What are public buildings within the meaning of the Act is defined by sect. 5 (27), *ante*, p. 24. See, however, sect. 201, *post*, which exempts certain buildings from the operation of this Part of the Act. See also sect. 78, *post*, p. 150, and the notes thereto.

The rules to be observed with respect to staircases in new churches, chapels, meeting-houses and public halls, lecture rooms, exhibition rooms, and places of assembly, are contained in sect. 80, *post*. 57 & 58 Vict. c. ccxiii. s. 69.

'*Fire-resisting materials*.'—See the note under this heading to sect. 67, *ante*.

Under sect. 12 of the Metropolis Management and Building Acts Amendment Act, 1878, Appendix I., *post*, regulations were made by the Council with respect to the requirements for the protection from fire of theatres, houses, rooms and other places of public resort within the Metropolis to be kept open for the public performance of stage plays, and for the protection of houses, rooms, and other places of public resort therein containing a superficial area for the accommodation of the public of not less than 500 square feet to be kept open for public dancing, music, or other public entertainment of the like kind, under the authority of letters patent from Her Majesty, her heirs, or successors, or of licences by the Lord Chamberlain of Her Majesty's household, or by the London County Council, other than letters patent, or licences granted for the first time before the passing of the Act of 1878. By the same section it is made unlawful for any persons to have or keep open any such house for such purposes unless a certificate that such house has been completed in accordance with such regulations has been granted by the Metropolitan Board of Works, now the London County Council. These regulations are still in force, and will be found in App. III., Pt. II., *post*. The provisions of sect. 12 of the Act of 1878 referred to apply to a house which has no licence under 25 Geo. II. c. 36, or under 6 & 7 Vict. c. 68.

The London County Council is now, by virtue of 51 & 52 Vict. c. 41, sect. 3, the licensing authority for music and dancing; and by Order II. of the Orders made by the Council on July 5, 1892, under that Act, 'No application for a licence in respect of any such premises' (*i.e.* premises in respect of which no current licence is in force) 'will be entertained unless the premises for which the licence is required have been certified by the Superintending Architect, and approved by the Council. Applications for annual licences for theatres and houses for the performance of stage plays outside the jurisdiction of the Lord Chamberlain are subject to such Orders also. *Ib.*, Order 17.

Penalties.—See the note to sect. 53, *ante*, p. 116.

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.

57 & 58 Vict. c. ccxiii. s. 70.

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

'*Ventilation of staircases.*'—The provisions of this section are new.

'*Ground storey.*'—This expression is defined by sect. 5 (11), *ante*, p. 16.

Penalties.—See the note to sect. 53, *ante*, p. 116.

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 eight feet six inches in height from the floor to the ceiling;

(*b*) Every habitable room wholly or partly in the roof of any building shall be at least eight 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 superficies 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 seven 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 superficies 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 five 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;

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

(*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 three 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. 57 & 58 Vict. c. ccxiii. s. 70.

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 nine inches in thickness;

(*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.

(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.

'*Habitable rooms.*'—By sect. 5 (38), *ante*, p. 37, the expression 'habitable' applied to a room means a room constructed or adapted to be inhabited, and a definition of the expression 'inhabited' is contained in sect. 5 (37), *ante*, p. 37. The minimum height of habitable rooms not in the roof was, under sect. 23 of the Metropolitan Building Act, 1855, fixed at 7 feet. Subsect. 1 (*a* and *b*) is illustrated by diagrams on Pl. II., App. V., *post*. See also the Instructional Letter of December 15, 1894, in App. IV., *post*.

'*Rooms in the roof.*'—See the note under the heading 'storey' to sect. 62, *ante*, p. 124. Under sect. 23 of the Metropolitan Building Act, 1855, the minimum height for rooms in the roof of a building was 7 feet throughout not less than one-half the area.

'*Area.*'—This is defined by sect. 5 (22), *ante*, p. 22.

'*Lantern-light.*'—See the note to sect. 61, *ante*, p. 124.

'*Basement room.*'—By sect. 5 (12), *ante*, p. 16, the expression 'basement storey' means any storey of a building which is under the ground storey, and what the expression 'ground storey' means is defined by section 5 (11), *ante*, p. 16.

'*Underground rooms.*'—By the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), it is enacted as follows:—

Underground Rooms.

Sect. 96. *Provisions as to the occupation of underground rooms as dwellings.*—(1) Any underground room, which was not let or occupied separately as a dwelling before the passing of this

57 & 58 Vict. c. ccxiii. s. 70. (54 & 55 Vict. c. 76, s. 96)

Act, shall not be let or so occupied unless it possesses the following requisites ; that is to say,

(*a*) unless the room is in every part thereof at least seven feet high measured from the floor to the ceiling, and has at least three 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 three feet, but it shall not in any case be less than one foot and the width of the area need not in any case be more than six 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 six inches below the level of the floor thereof an open area properly paved at least four feet wide in every part thereof : Provided that in the area there 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 ;

(*h*) unless there is appurtenant to the room the use of a water-closet and a proper and sufficient ash-pit ;

(*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 exceed-

ing twenty shillings for every day during which the room continues to be so let or occupied. 57 & 58 Vict. c. ccxiii. s. 70.

(3) The foregoing provisions shall at the expiration of six 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 that 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. (54 & 55 Vict. c. 76, s. 97)

(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 three feet below the surface of the footway of the adjoining street, or of the ground adjoining or nearest to the room.

Sect. 97. *Enforcement of provisions as to underground rooms.*—(1) Any officer of a sanitary authority appointed or determined

57 & 58 Vict. c. ccxiii. s. 70. (54 & 55 Vict. c. 76, ss. 98, 99)

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.

Sect. 98. *Provision in case of two convictions for unlawfully occupying underground room.*—Where two convictions for an offence relating to the occupation of an underground room as a dwelling have taken place within a period of three 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.

Authorities for execution of Act.

Sect. 99. *Definition of sanitary authority*—18 & 19 Vict. c. 120—48 & 49 Vict. c. 33—50 & 51 Vict. c. 17—(1) Subject to the provisions of this Act, the sanitary authority for the execution of this Act (in this Act referred to as 'the sanitary authority') shall be as follows; (namely)

(*a*) in the City of London the commissioners of sewers; and

(*b*) in each of the parishes mentioned in Schedule (A) to the Metropolis Management Act, 1855, as amended by the Metropolis Management Amendment Act, 1885, and the Metropolis Management (Battersea and Westminster) Act, 1887, other than Woolwich, the vestry of the parish; and

(*c*) in each of the districts mentioned in Schedule (B) to the same Act, as so amended, the district board for the district; and

(*d*) in the parish of Woolwich, the local board of health; and

(*e*) in any place mentioned in Schedule (C) to the Metropolis Management Act, 1855, the board of guardians for such place or for any parish or poor law union of which it forms part, or, if there is no such board of guardians, the overseers of the poor for such place, or for the parish in which it is situate, and the said

guardians and overseers respectively shall have the same powers for the purposes of this Act as a vestry or district board have under this Act, and their expenses shall be defrayed in the same manner as the expenses of the execution of the Acts relating to the relief of the poor are defrayed in the said place. 57 & 58 Vict. c. ccxiii. s. 71.

(2) The area within which this Act is executed by any sanitary authority is in this Act referred to as the district of that authority.

(3) The purposes for which a committee of a vestry or district board may be appointed under the Metropolis Management Act, 1855, and the Acts amending the same, shall include the purposes of this Act, and the provisions of those Acts with respect to committees shall apply accordingly.

(4) Where a sanitary authority appoint a committee for the purposes of this Act, that committee, subject to terms of their appointment, may serve and receive notices, take proceedings, and empower any officer of the authority to make complaints and take proceedings in their behalf, and otherwise to execute this Act.

(5) A sanitary authority may acquire and hold land for the purposes of their duties without any licence in mortmain.

Sect. 100. *Power of County Council to prosecute on default of sanitary authority.*—The County Council, on it being proved to their satisfaction that any sanitary authority have made default in doing their duty under this Act with respect to the removal of any nuisance, the institution of any proceedings, or the enforcement of any bye-law, may institute any proceeding and do any act which the authority might have instituted or done for that purpose, and shall be entitled to recover from the sanitary authority in default all such expenses in and about the said proceeding or act as the County Council incur, and are not recovered from any other person, and have not been incurred in any unsuccessful proceeding.

Penalties.—See the note under this heading to sect. 53, *ante*, p. 116. Penalties incurred under the Public Health (London) Act, 1891, are recoverable summarily under sect. 117 of that Act.

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 eight and a half inches at least and the centre of such arch shall be higher than the springing at the rate of one inch at least for every foot and also for any fractional part of a foot of span.

(3) If an arch or floor of other incombustible material

57 & 58 Vict. c. ccxiii. ss. 72, 73.

be used it shall be constructed in such manner as may be approved by the district surveyor.

'*Party arch.*'—This is defined by sect. 5 (19), *ante*, p. 21. This section is illustrated by the diagram on Pl. VI., App. V., *post*.

'*Incombustible materials.*'—See the note to sect. 61, *ante*, p. 124; and the Instr. Letter of October 31, 1864, in App. IV., *post*.

'*Arches.*'—Under the corresponding provision of the Metropolitan Building Act, 1855, sect. 24, arches of a span less than 9 ft. were allowed to be made of a thickness of $4\frac{1}{2}$ in.

'*Penalties.*'—See the note to sect. 53, *ante*, p. 116.

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 ten feet be of the thickness of eight and a half inches at least;

(*b*) Where its span exceeds ten but does not exceed fifteen feet be of the thickness of thirteen inches at least; and

(*c*) Where its span exceeds fifteen 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.

'*Premises in other occupation.*'—The corresponding provisions of the Metropolitan Building Act, 1855, sect. 25, were confined to arches under public ways.

'*Arches under public ways.*'—With regard to the construction of arches and cellars under streets, see 18 & 19 Vict. c. 120, sects. 101 and 102, App. I., *post*, and the City of London Sewers Act, 11 & 12 Vict. c. clxiii., sect. 125, App. II., *post*. See also the definition of the term 'street' in 18 & 19 Vict. c. 120, sect. 250, *post*; and the illustration given by the diagram on Pl. VI., App. V., *post*.

'*Incombustible materials.*'—See note to sect. 61, *ante*, p. 124.

'*Penalties.*'—See the note to sect. 53, *ante*, p. 116.

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 four inches beyond such eaves barge-boards or cornices shall be of brick tile stone artificial stone slate cement or other fire-proof material : 57 & 58 Vict. c. ccxiii. s. 73.

For the purpose of this sub-section a pair of semi-detached houses shall be deemed to be one building :

(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 two feet six inches over the public way :

(3) In a street or way of a width not greater than thirty feet any shop front may project beyond the external wall of the building to which it belongs to any extent not exceeding five inches and any cornice of any such shop front may project to any extent not exceeding thirteen inches and in any street or way of a width greater than thirty feet any shop front may project to any extent not exceeding ten inches and any cornice of any such shop front may project to any extent not exceeding eighteen 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 :

(4) No part of the woodwork of any shop front shall be fixed higher than twenty-five 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 four inches to the centre of the party wall where the adjoining premises are separated by a party wall or nearer than four 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 four 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 :

57 & 58 Vict. c. ccxiii. s. 73.

(5) In a street of a width not less than forty feet or to a building the front wall of which is not at a less distance than forty 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 three storeys in height above the level of the footway;

(*b*) Do not project more than three feet from the main wall of the building to which they are attached;

(*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:

(6) In a street of a width not less than forty feet or to a building the front wall of which is not at a less distance than forty 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 three feet from the face of the front wall of the building or more than twelve inches over the public way;

(*b*) No part of any such projection be less than ten feet above the level of the footway of the street;

(*c*) No part of any such projection (where it overhangs the public way) be within a distance of four 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 : 57 & 58 Vict. c. ccxiii. s. 73.

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.

(7) The roof flat or gutter of every building and every balcony verandah shop front or other similar projection or projecting window 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 :

(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.

'*Projections.*'—This section corresponds to sect. 26 of the Metropolitan Building Act, 1855. If a projection from a house is an annoyance in consequence of its 'projecting into, or being made in or endangering or rendering less commodious the passage along any street,' power is given by 18 & 19 Vict. c. 120, sect. 119, Appendix I., *post*, to the vestry or district board to require the owner or occupier of the house to remove it, and in the case of a projection made before 1855 the vestry or district board may remove it on giving notice to the owner or occupier of the house from which it projects. The vestry or district board must compensate any person who incurs loss or damage by such removal. This enactment impliedly repeals sect. 72 of Michael Angelo Taylor's Act, 57 Geo. III. c. xxix., *Fortescue* v. *Vestry of St. Matthew, Bethnal Green* (1891), 2 Q. B. 170 ; 65 L. T. (N.S.), 256, overruling *Vestry of St. Mary, Islington*, v. *Goodman*, 23 Q. B. D. 154 ; 61 L. T. (N.S.), 44 ; *Local Govt. Chronicle*, 1889, p. 654.

By the Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), sect. 60, subs. (7), a penalty is imposed on any person setting up or continuing any pole blind, awning line, or other projection, from any window, &c., so as to be an annoyance or obstruction to any thoroughfare. It was held that a magistrate, in proceedings taken under that section, was right in rejecting as irrelevant evidence that persons were, and that other persons

57 & 58 Vict. c. ccxiii. s. 74.

were not, in fact, incommoded by the projection. *Read* v. *Perrett*, L. R. 1 Ex. D. 349.

Applications for the consent of the Council to the erection, &c., of projections prohibited by sect. 73 are to be made in accordance with No. II. (2, 8) of the Regulations of Jan. 1, 1895, in App. III., Pt. II., *post*. See also the Standing Orders of the Council in App. III., Pt. I., *post*; and the diagram on Pl. VI., App. V., *post*.

'*Barge boards*.'—See the note to sect. 61, *ante*, p. 124.

'*Party wall*.'—This is defined by sect. 5 (16), *ante*, p. 17.

'*Corbelled out*.'—See 'corbel,' note to sect. 56, *ante*, p. 120.

'*Tailed into*.'—See the note, under the heading 'Tailed through,' to sect. 56, *ante*, p. 121.

'*External wall*.'—This is defined by sect. 5 (15), *ante*, p. 17.

'*Dwelling-house*.'—See the definition of this expression in sect. 5 (25), *ante*, p. 23.

'*Height*.'—The mode in which the height of a building is to be measured is prescribed in sect. 5 (21), *ante*, p. 22.

'*Prescribed distance*.'—This is defined by sect. 5 (5), *ante*, p. 10.

'*Centre of the roadway*.'—This is defined by sect. 5 (4), *ante*, p. 9.

'*Street*.'—What this expression means and includes is defined by sect. 5 (1), *ante*, p. 6.

'*Way*.'—This expression is defined by sect. 5 (2), *ante*, p. 9.

'*Bay-windows*.'—See the diagram on Pl. I., App. V., *post*.

'*General line of buildings*.'—The general line of buildings is to be defined when required by the superintending architect (see sect. 22, *ante*, p. 77), whose decision is subject to appeal under sect. 25, *ante*, p. 84.

'*Local authority*.'—This is defined by sect. 5 (42), *ante*, p. 39.

'*Penalties*.'—See the note to sect. 53, *ante*, p. 116.

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).

(2) In every building exceeding ten 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 two hundred and fifty thousand cubic feet) be subject to

the provisions of this Act relating to the cubical extent of buildings of the warehouse class: 57 & 58 Vict. c. ccxiii. s. 75.

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.

(3) In every building exceeding twenty-five 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.

'*Separation of buildings.*'—With regard to the rights which the Act confers upon the owner of land in respect to the erection of walls upon the line of junction between his and the adjoining lands, and in respect to party walls, see Part VIII. of the Act, *post*, p. 163.

'*External wall.*'—This expression is defined by sect. 5 (16), *ante*, p. 17.

'*Party wall.*'—For the definition of this expression see sect. 5 (17), *ante*, p. 20.

'*Party structure*' is defined by sect. 5 (21), *ante*, p. 22.

'*Squares.*'—The expression 'square' is defined by sect. 5 (23), *ante*, p. 22.

'*Area*' is defined by sect. 5 (22), *ante*, p. 22.

'*Dwelling-house.*'—This expression is defined by sect. 5 (25), *ante*, p. 23.

'*Fire-resisting materials.*'—By sect. 5 (36), *ante*, p. 36, this expression means 'any of the materials and things described in the second schedule to the Act.'

'*Buildings of the warehouse class.*'—These are the buildings mentioned in sect. 5 (28), *ante*, p. 25, the provisions relating to the cubical extent of which are contained in sect. 75, *infra*.

'*Inspection by district surveyor.*'—Under sect. 146, *post*, p. 236, the district surveyor is empowered to inspect any work affected by the provisions of the Act in order to secure the due observance of such provisions, and under sect. 154, *post*, p. 244, he is entitled to the fees specified in the third schedule to the Act.

'*Penalties.*'—See the note under this heading to sect. 53, *ante*, p. 115.

75. Except as in this section provided no building of the warehouse class shall extend to more than two hundred and fifty thousand cubic feet unless divided by party walls in such manner that no division thereof

Cubical extent of buildings.

57 & 58 Vict. c. ccxiii. s. 75.

extend to more than two hundred and fifty thousand 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 two hundred and fifty thousand cubic feet.

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 two miles from Saint 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.

'*Buildings of the warehouse class.*'—These are the buildings enumerated in sect. 5 (28), *ante*, p. 25.

'*Cubical extent.*'—This expression is defined by sect. 5 (24), *ante*, p. 23.

The Council had power, under the now repealed sect. 29 of the London Council (General Powers) Act, 1890 (see Sch. IV., *post*), to consent to the erection of a warehouse or building for the purposes of trade or manufacture not involving the use of explosives with a cubical extent of 450,000 ft. The Metropolitan Building Act (Amendment), 1860, which is also repealed by the present Act, exempted from the corresponding section of the Metropolitan Building Act, 1855, buildings constructed of incombustible material situate beyond the distance of three miles from St. Paul's Cathedral, and used only for the manufacture of machinery and boilers for steam vessels. Such buildings, if of greater dimension than 216,000 cubic feet, were subject to the approval of the Metropolitan Board of Works, and subsequently of the Council, in the same manner as iron buildings, or buildings to which the rules of the Metropolitan Building Acts were inapplicable.

For the provisions of the present Act with respect to buildings to which the general rules of the Act are inapplicable, see sect. 82, *post*, p. 155.

The Council is empowered by the following section to consent to buildings to be used for any trade or manufacture containing additional cubical extent to that prescribed by this section in certain cases.

'*Penalties.*'—See the note under this heading to sect. 53, *ante*, p. 115.

57 & 58 Vict. c. ccxiii. s. 76.

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:

Provided that such building shall not—

(i) Extend to a number of cubic feet exceeding four hundred and fifty thousand 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 sixty 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 purposes of the trade or manufacture in respect of which the consent was granted.

'*Party walls.*'—This is defined by sect. 5 (16), *ante*, p. 17.

'*Cubical extent.*'—This is defined by sect. 5 (24), *ante*, p. 23.

'*Height.*'—The mode in which the height of a building is to be ascertained for the purposes of the Act is prescribed by sect. 5 (21), *ante*, p. 22.

'*Consent.*'—Applications for the consent of the Council under this section are to be made in accordance with Nos. I. and II. (9) of the Council's regulations of Jan. 1, 1895, in App. III., Pt. II., *post*. Under sect. 190, *post*, p. 276, the Council is empowered, instead of refusing its consent in any case, to give the same, subject to such terms and conditions in relation to the subject matter of the consent as it may think fit.

'*Division by party walls.*'—Under the corresponding provision in sect. 29 of the London Council (General Powers) Act, 1890, which is repealed by the present Act, it was argued that a building divided by floors was divided by 'party walls' within the meaning of sect. 27 (4) of the Metropolitan Building Act, 1855. The Court held, however, that the division meant by the section was a vertical and not a horizontal division. *Holland* v. *Wallen*, 70 L. T. (N.S.) 396.

Having regard to the definition of the term 'party wall' in sect. 5 (16), *ante*, p. 17, it would appear to be necessary that the building should be divided so that each part into which it is divided is constructed or adapted to be occupied by different

57 & 58 Vict. c. ccxiii. s. 77.

persons, for otherwise the dividing walls will not be party walls within the meaning of the Act. No openings are allowed in party walls except in accordance with the regulations contained in sect. 77, *infra*.

'*Penalties*.'—See the note under this heading to sect. 53, *ante*, p. 115.

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.

(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.

(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 two hundred and fifty thousand cubic feet except under the following conditions :—

(*a*) Such opening shall not exceed in width seven feet or in height eight 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 twenty-four inches or the doors be placed at a distance from each other of not less than twenty-four inches such opening may be nine feet six inches in height.

(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 thirteen inches in thickness (except in the case of a wall eight and a half inches in thickness in which case eight and a half inches shall be sufficient) and properly bonded with such wall and any timber not in conformity with the Act placed in the wall shall be removed.

(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. 57 & 58 Vict. c. ccxiii. s. 77.

'*Uniting buildings.*'—The building of an addition to an existing building was held not to be a uniting of two buildings within the corresponding provisions of sect. 28 of the Metropolitan Building Act, 1855, unless the addition was at one time a separate building in itself. *Scott* v. *Legg*, 46 L. J. M. C. 267; 36 L. T. (N.S.) 456; 25 W. R. 594; 41 J. P. 773; reversing *ib.* L. R. 2 Ex. D. 39; 46 L. J. M. C. 117; 35 L. T. (N.S.) 487. Before the passing of the Metropolitan Building Act, 1855, a communication had been made between two old houses, Nos. 66 and 67, in the same occupation, by openings in the party wall. After the Act came into operation it was sought to make a communication between No. 66 and the house adjoining it upon the other side by openings in the wall which separated the two houses. These last two houses contained if taken together less than 216,000 cubic feet, the maximum cubical extent allowed by the Act of 1855. If, however, Nos. 66 and 67 were to be considered as one building within sect. 28 of the Act, such building and the third house taken together contained more than 216,000 cubic feet. It was held that Nos. 66 and 67 were to be considered for the purposes of the section as one building, and that the making of the communication was an alteration of an old building within sect. 9 of the Act, which corresponded to sect. 204, *post*, and was therefore subject to the regulations of the Act, and that the rules in sect. 28 of the Act of 1855 regulating the making of such communications were obligatory. It was also held that evidence was admissible to show whether the wall separating No. 66 and the house with which the communication was to be made was a party-wall or cross-wall. *Ashby* v. *Woodthorp*, 33 L. J. M. C. 68; 9 L. T. (N.S.) 409; 27 J. P. 792. No addition may be made to a building of the warehouse class or to any division thereof, if by such addition the cubical extent of the building or division will be made greater than 250,000 cubic feet. See sect. 75, *ante*, p. 145.

'*Openings.*'—For the regulations governing the making of openings in external and party walls, see sect. 54, *ante*, p. 117.

'*Party wall.*'—This is defined by sect. 5 (16), *ante*, p. 17.

'*External wall.*'—A definition of this expression will be found in sect. 5 (15), *ante*, p. 17.

'*Rebated frames.*'—A rebate is a groove, recess, or channel sunk on the edge of any piece of material.

'*Timber in walls.*'—See sect. 55, *ante*, p. 118, with regard to the placing of timber in external walls. Under sect. 164, *post*,

57 & 58 Vict. c. ccxiii. s. 78.

p. 249, the Council is empowered to make byelaws with respect to 'woodwork in external walls.'

'*Owner*.'—This is defined by sect. 5 (29), *ante*, p. 25.

'*Penalties*.'—See the note to sect. 53, *ante*, p. 115.

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 on the building without the approval of the district surveyor or such certificate as aforesaid.

'*Public building*.'—The meaning of this expression is defined by sect. 5 (27), *ante*, p. 24. The present section contains provisions corresponding to those of the repealed sect. 30 of the Metropolitan Building Act, 1855, which section enacted that notwithstanding anything therein contained every public building, including the walls, roofs, floors, galleries, and staircases, should be constructed in such manner as might be approved by the District Surveyor, or, in the event of disagreement, might be determined by the Metropolitan Board; and, save in so far as respected the rules of construction, every public building should throughout the Act be deemed to be included in the term 'building,' and be subject to all the provisions of that Act, in the same manner as if it were a building erected for a purpose other than a public purpose. The section referred to was held not to impose a necessity to comply with the rules of construction provided by the Act of 1855 for other classes of buildings than public buildings, in addition to such terms as might be insisted upon by the District Surveyor, but to leave the whole mode of construction to the approval of the surveyor, whose discretion was subject only to the determination of the Metropolitan Board of Works. See *Reg.* v. *Carruthers*, 33 L. J. M. C. 107; 9 L. T. (N.S.) 825; 10 Jur. (N.S.) 767; 4 B. & S. 804; 12 W. R. 372. In that case Cockburn, C. J., considered it doubtful whether, if

a public building was being constructed in a manner not approved by the district surveyor or by the Metropolitan Board of Works, on appeal to that Board there was a remedy by means of a notice under sect. 45 of the Act of 1855, which section contained provisions for the service by the District Surveyor of a notice of irregularity corresponding to those contained in sect. 151, *post*; and the prohibition contained in the present section against the using of a public building until after a declaration of approval of the construction thereof by the District Surveyor or the Tribunal of Appeal has been obtained, would appear to have been enacted with a view to meet this difficulty, section 206 (3 *c*) imposing a penalty on everyone who fails to comply with any of the provisions of this Part of the Act. See also subsect. (11 *j*) of sect. 200. 57 & 58 Vict. c. ccxiii. s. 78.

Vestries and District Boards are empowered to erect halls or other buildings for public purposes by 56 & 57 Vict. c. ccxxi. sect. 24.

The conversion or alteration of buildings into public buildings is regulated by the following section.

'*Tribunal of appeal.*'—This tribunal is constituted by sect. 175, *post* (see sect. 5 (47), *ante*, p. 39), and the provisions regulating appeals to it are contained in sects. 181 to 186. An appeal under this and the following sections is required to be lodged at the offices of the Tribunal within fourteen days after notice of the decision of the District Surveyor; and notice of the appeal is to be given within such period to the Council, and where the original applicant is not the appellant to such applicant. Notice is also to be given to the District Surveyor; see the regulations of the Tribunal of Feb. 21, 1895, in App. III., Part II., *post*.

'*Floors.*'—The floors of the lobbies, corridors, passages, and landings, and the flights of stairs are required by sect. 68, *ante*, p. 132, to be of fire-resisting materials, and to be carried by supports of fire-resisting material.

'*Staircases.*'—See sect. 80, *post*, with regard to the construction of staircases, corridors, or passage ways and doors or barriers in the public buildings enumerated therein; and see further, with regard to the protection from fire of places of public entertainment, the sections of the Metropolitan Building Act, 1878 (41 & 42 Vict. c. 32), and the regulations made thereunder, in App. III., Pt. II., *post*.

'*Penalties.*'—See the note to sect. 53, *ante*, p. 115.

'*Shall be used.*'—No building may be used for the public performance of stage plays or be kept open, if it contains a superficial area for the accommodation of the public of not less than 500 square feet, for 'public dancing, music, or other public entertainment of the like kind,' unless the Council has granted a certificate that such building was on its completion in accordance with the regulations made by the Council under the Metropolis Management and Building Acts (Amendment) Act, 1878, sect. 12. Sect. 11 of the same Act gives the Council

57 & 58 Vict. c. ccxiii. ss. 79, 80.

certain powers with regard to theatres, &c., licensed at the time of the passing of that Act. The unrepealed sections of that Act will be found in Appendix I., *post*. And the regulations of the Council will be found in App. III., Pt. II., *post*.

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.

'*Conversion of buildings.*'—See the notes to the preceding section.

'*Tribunal of Appeal.*'—See the note under this heading to sect. 78, *ante*.

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 nine 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 four feet six inches wide Provided that where not more than two hundred 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 three feet six inches :

(*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 accom-

modation of a larger number of the public than four hundred shall be increased in width by six inches for every additional one hundred persons until a maximum width of nine feet be obtained Provided always that in every case where the staircases are six feet wide and upwards they shall be divided by a hand-rail Provided also that in lieu of a single staircase corridor or passage-way of the width in this sub-section 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 sub-section 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 three feet six inches wide : 57 & 58 Vict. c. ccxiii. s. 81.

(*d*) In all cases where a portion of the public is to be accommodated over or 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.

'*Staircases, &c.*'—By sect. 68, *ante*, p. 132, the floors of the lobbies, corridors, passages, and landings of public buildings, and also the flights of stairs are required to be of fire-resisting material, and to be carried by supports of fire-resisting material. As to what are fire-resisting materials see sect. 5 (36), *ante*, p. 36, and the second schedule to the Act, *post*, p. 318.

'*Public places of assembly.*'—For the rules regulating the construction of public buildings and the conversion or alteration of buildings into public buildings, see sects. 78 and 79, *ante*, pp. 150 and 152. The construction of theatres and music halls is still regulated by the Metropolitan Building (Amendment) Act, 1878, sects. 11 and 12 of which will be found in App. I., *post*; regulations for protection from fire of places of public entertainment made by the Council thereunder on Feb. 9, 1892, will also be found in App. III., Pt. II., *post*.

'*Penalties.*'—See the note to sect. 53, *ante*, p. 115.

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 Application of Act to buildings

57 & 58 Vict. c. ccxiii. s. 81. under railway arches.

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.

'*Human habitation.*'—With regard to this expression see the definitions of the expressions 'inhabited' and 'habitable' contained in sect. 5 (37 and 38), *ante*, p. 37. The rules as to habitable rooms are contained in section 70, *ante*, p. 134. See also Part V., *ante*, p. 94.

'*Railway arch.*'—See the note to sect. 31, *ante*, p. 87. By sect. 201 (1), *post*, p. 293, bridges, piers, jetties, embankment walls, retaining walls, and wharf and quay walls, are exempt from the operation of this Part of the Act ; and by subsect. 8 of the same section any building or structure situate upon the railway or station premises and used for the purposes of or in connection with the traffic of a railway company, 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, and any building within the station premises of any railway company inhabited or adapted to be inhabited in whole or part by any official or servant of the railway company, are also exempted from the operation of this Part of the Act, provided that nothing in such subsection shall exempt any other buildings used for the purpose of human habitation, so far as they are so used.

Under sect. 6 of the Metropolitan Building Act, 1855, which exempted buildings belonging to any railway company and used for the purposes of the railway under any Act of Parliament from the provisions of Part I. of that Act, railway arches which had been converted into stables by the closing of the ends thereof, were held to come within the exemption. In the case where it was so held the railway in question was constructed upon a viaduct formed of arches of brickwork, standing upon ground belonging to the railway company, forming an essential part of the viaduct, and used for the purposes of the railway. The company had erected at each end of three of the arches a brick wall, with doors and other openings therein, thus enclosing spaces which were divided into two storeys, which were occupied by a licensee of the company as stables. Alterations having been made in the brick walls erected at the ends of the arches, the district surveyor claimed to be entitled to fees under the Metropolitan Building Act, 1855, for inspecting the alterations. The company having refused to pay the fees claimed, on the ground that the buildings were exempt from the provisions of the Act, was convicted by a magistrate for so refusing. Upon an appeal against the magistrate's decision it was held that the enclosed arches fell within the exemption in the Act, and that

the conviction was therefore wrong. In so holding Lord Campbell, C. J., said : 'I think that by the exemption in sect. 6, these stables are taken out of the operation of the statute. At the same time I would advise the owners of the property to avail themselves of the provisions of sect. 56' (which section contained provisions as to buildings to which the rules of the Act were inapplicable, similar to those contained in the following section of this Act), 'under which they may lay a plan before the Board, and obtain its sanction for the erection of these places. The main part was erected for the purposes of the railway, and the remainder is not a building.' See the *North Kent Railway Company* v. *Badger*, 27 L. J. M. C. 106 ; 30 L. T. (N.S.) 285 ; 6 W. R. 246 ; 4 Jur. (N.S.) 454 ; S. C. *re Badger*, 8 E. & B. 728. 57 & 58 Vict. c. ccxiii. s. 82.

'*Penalties*.'—See the note under this heading to sect. 53, *ante*, p. 115.

PART VII.

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. 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.

(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 two hundred and fifty thousand cubic feet except in accordance with the foregoing provisions of this Act.

(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.

(4) All expenses incurred in and about the obtaining the approval of the Council shall be paid by the builder

57 & 58 Vict. c. ccxiii. s. 82.

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.

(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 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.

'*Builder*.'—This expression means the person who is employed to build or to execute work on a building or structure, and where no person is so employed it means the owner of the building or structure; see section 5 (33), *ante*, p. 35. The expression 'owner' applies 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; see section 5 (29), *ante*, p. 25, and the notes thereto.

'*Building or structure*.'—The building and works enumerated in section 201, *post*, are exempt from the operation of this Part of the Act. Further exemptions are contained in sections 202 to 205.

'*Building or structure to which Part VI. is inapplicable*.'—Section 13 of the Metropolitan Buildings (Amendment) Act, 1882, which is repealed by the present Act, rendered it unlawful to erect or set up without the licence of the Council any wooden structure or erection of a movable or temporary character, unless the same was exempt from the operation of the First Part of the Metropolitan Building Act, 1855, which Part contained provisions corresponding to those contained in Part VI. of this Act. A structure, therefore, that did not come within the First Part of the Act of 1855 was not affected by such section, unless it was of a movable or temporary character, and it was held that a steam roundabout, not being in any sense intended for the habitation of man, did not even come within the prohibition contained in the section: see *Hall* v. *Smallpiece*, 59 L. J. M. C. 97; 54 J. P. 710; 89 L. T. 7. The present section is, however, much more extensive in its provisions and applies to any structure to which the general provisions of Part VI. are inapplicable, or to which such provisions are in the opinion of the Council inappropriate, having regard to the special purpose for which it is designed and actually used. But whether the section applies, any more than section 13 of the Act of 1855 was held to apply, to structures in no sense intended for the habitation of man, may still be open to question, having regard to the decision in *Hall* v. *Smallpiece*, (*ubi supra*). See also the case of *Slaughter* v. *the Mayor, &c. of Sunderland*, *ante*, p. 11, where it was held that four walls were

not sufficient by themselves to constitute a building, and that a space enclosed by four hoardings upon which advertisements were affixed, not being covered with any kind of roof, was not a building within the meaning of the term 'new building' in certain byelaws as to the construction of new buildings. In every case, however, the object with which the structure was erected must be considered. Thus a builder's pay-office upon wheels, and forming part of a builder's plant intended to be used during building operations wherever required, while standing in the forecourt of the builder's premises, was held not to be a structure of a movable or temporary character, within sect. 13 of the Metropolitan Building (Amendment) Act, 1882, *London County Council* v. *Pearce* (1892), 2 Q. B. 109; 66 L. T. (N.S.) 685; *ante*, p. 11; and an iron bungalow erected by a maker of iron buildings, and exhibited for sale upon a piece of land belonging to such builder, *London County Council* v. *Humphreys, Limited* (1894), 2 Q. B. 755; 10 Times L. R. 594; 71 L.T. (N.S.) 201; 10 R. 436; 58 J. P. 734. 57 & 58 Vict. c. ccxiii. s. 82.

The words 'and actually used' were probably introduced into the section subsequently to the original drafting of the section. What effect is to be given to them it is difficult to see, having regard to the fact that the section applies only where a builder is 'desirous of erecting' a building or structure to which the provisions of Part VI. are inapplicable, or in the opinion of the Council are inappropriate. The section would have been more intelligible had the words 'and intended to be used' been inserted instead of the words 'and actually used.'

It is a question of fact for the magistrate, in proceedings to enforce the provisions of an Act with regard to buildings, whether or not the erection in question is a building, provided of course there is some evidence before him to support his finding the erection to be a building. For this reason, in proceedings under section 8 of the Public Health (Building in Streets) Act, 1888, with respect to the erection of a building beyond the front main wall of the house or building on either side thereof, the Queen's Bench Division refused to interfere with the finding of the magistrates before whom the question came, that a structure of wood and glass intended by a photographer to serve as a showcase in lieu of a shop window was a building within the meaning of the Act. The case in question was an erection standing by itself—9 ft. long by 3 ft. wide and 7 ft. in height. It was fastened to the ground by four posts, one at each corner, which formed part of the structure, and was let into the ground to a depth of 9 or 12 inches. The erection was roofed over, and had a door at one end, and the Court said that the question whether or not such a structure was a building must depend upon the particular circumstances of the case, and that there were materials in the case upon which it could be found as a fact that the erection was a building. *Brown* v. *Corporation of Leicester*, 67 L. T. (N.S.) 686.

Plans of proposed building.—These are prescribed by

57 & 58 Vict. c. ccxiii. s. 83.

No. II. (10) of the Regulations of January 1, 1895, in App. III., Pt. II., *post*, and will, upon delivery at the Office of the Council in Spring Gardens, become the property of the Council; see section 194, *post*, p. 278.

Approval of the Council.—Applications for the approval of the Council to buildings or structures to which this Part of the Act applies, are to be made in accordance with No. II. (10) of the Regulations of Jan. 1, 1895, in App. III., Pt. II., *post*. The approval of the Council is by section 195, *post*, to be signified in writing under the hand of the superintending architect. Section 190, *post*, enables the Council to impose such terms and conditions as it thinks fit in any case where its consent is rendered necessary by the Act.

'*Building of the warehouse class.*'—The meaning of this expression is defined by sect. 5 (28), *ante*, p. 25. Under sect. 75, *ante*, p. 145, no building of the warehouse class shall extend to more than 250,000 cubic feet, unless it is divided by party walls into divisions none of which are of a greater extent than 250,000 cubic feet. And sect. 76 enables the Council to sanction a greater cubical extent in any of the cases therein mentioned.

'*Expenses.*'—Expenses under the Act recoverable in a summary manner are recoverable in manner directed by the Summary Jurisdiction Acts; see sect. 166, *post*, p. 254.

District surveyor.—See sect. 5 (35), *ante*, p. 36, as to this officer, to whom powers of entry to inspect works are given by sect. 148, *post*, p. 237. Any person refusing to permit the district surveyor to enter, survey, or inspect, or refusing or neglecting to afford him all reasonable assistance in such inspection, is liable to a penalty not exceeding 40*l.*, and to a daily penalty of the like amount; see sect. 200 (11 *c*), *post*, p. 289.

'*Penalties.*'—Under sect. 200 (3 *e*) every person who sets up, erects, or adapts any building or structure to which this Part of the Act applies without a licence, or makes default in observing any of the conditions contained in such licence, is liable to a penalty not exceeding 20*l.* a day during every day of the continuance of the non-compliance with the order of the Court in reference to such setting up, erecting, adapting, or default. The order of the Court referred to is an order made by a petty-sessional court under sect. 150 in an appeal against a notice of objection served by the district surveyor, in respect of any building or structure or work of which notice has been given to him, or under sect. 153, *post*, on complaint by a district surveyor, or by the Council (see sect. 159), of default having been made in complying with a notice of irregularity served by the district surveyor under sect. 151, *post*. The Council has also power to procure the removal of the offending building or structure under sect. 83, *post*.

83. Where an application is made to the Council by any person stating his desire to erect in any place

57 & 58 Vict. c. ccxiii. s. 83.

Control by Council of certain temporary buildings.

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 fourteen days after such removal) sell the same as they think proper.

'*Application.*'—This should be made in the manner prescribed by the Regulations of Jan. 1, 1895, see *Ib.* Nos. I. and II. (10) in App. III., Pt. II., *post.* Though the application under the section is in terms for the erection of a building, it is presumed that an application may be made under it for the extension of the period for which the sanction of the Council has been obtained to the erection of the building. Where such an application is made, the District Surveyor is to be requested to certify as to the condition of the building. See the Standing Orders of the Council of Jan. 1, 1895, in App. III., Pt. I., *post.*

'*Non-compliance with notice.*'—A complaint of non-compliance with a notice under this section should be made independently of any proceedings to recover penalties under sect. 200 (3 *d*), *post*, inasmuch as 'it has long been a received rule in the administration of justice that no one is to be punished in any judicial proceeding unless he has had an opportunity of being heard.' See Parke, B., *in re*

57 & 58 Vict. c. ccxiii. s. 83.

Hammersmith Rent-Charge, 4 Exch. p. 96. The provisions of this section requiring complaint to be made and an order obtained before the Council enter upon land to remove an offending structure have apparently been inserted in furtherance of this rule, which was applied by the Court of Appeal where a local authority had entered upon land without notice, and pulled down buildings which had been erected contrary to its byelaws, in holding that the authority had acted illegally, notwithstanding the fact that proceedings had been taken to recover penalties in respect of the contravention of the byelaws, and fines had actually been inflicted. See *Hopkins* v. *Smethwick Local Board of Health*, 24 Q. B. D. 712 ; 62 L. T. (N.S.) 783 ; 59 L. J. Q. B. 250 ; 54 J. P. 693 ; 38 W. R. 499. See also *Cooper* v. *Wandsworth District Board of Works*, 32 L. J. C. P. 185 ; 14 C. B. (N.S.) 180 ; 8 L. T. (N.S.) 278 ; 9 Jur. 1155 ; 11 W. R. 648 ; and *Masters* v. *Pontypool Local Board*, 9 Ch. D. 677 ; 47 L. J. Ch. 797.

Where, however, power was given to a local authority by a local Act to require the removal of projections from buildings over the highway which, in its opinion, were nuisances to passengers, and the owner of such a projection who had received notice to remove it had had ample opportunity of being heard by the authority had he desired it, Stirling, J., held that the onus was on the owner of the projection to require to be heard, and not on the authority to call on him to show cause why the projection should not be removed, and granted an injunction restraining him from interfering with the authority in the removal of the projection. *A.-G.* v. *Hooper*, 69 L. T. (N.S.) 340 ; (1893) 3 Ch. 483 ; 63 L. J. Ch. 18 ; 57 J. P. 564.

'*Occupier*.'—A lodger is not included in the expression 'occupier ;' see sect. 5 (30), *ante*, p. 32.

'*Owner*.'—This expression applies 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. See sect. 5 (29), *ante*, p. 25.

'*Services of notices*.'—Notices under the Act are required to be in writing, and are to be sufficiently authenticated by the signature of the Clerk to the Council, or by the officer by whom they are given or served ; see sect. 187, *post*. Notices are served in manner prescribed by sect. 188, *post*.

'*Removal of buildings by Council*.'—The Superintending Architect is to keep a register showing the periods for which temporary buildings are licensed by the Council ; and he is to report the non-removal of a building at the expiration of such a period to the Council's solicitor. See the Standing Orders of the Council of Jan. 1, 1895, in App. III., Pt. I., *post*. Under sect. 200 (4), *post*, p. 285, any person who hinders or obstructs any persons empowered by the 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 the Act, is liable to a penalty not exceeding 10*l.* In any case where the Council sell materials under this section, the refusal to admit the purchaser of such materials, his servants, or agents upon the land on which the materials are, or the impeding the removal of the materials, will subject the person so refusing or impeding to a penalty not exceeding 10*l.*, and a daily penalty not exceeding 5*l.* ; see sect. 200 (6). 57 & 58 Vict. c. ccxiii. s. 84.

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 lands and not exceeding in any part twelve 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. Wooden structures not to be erected without licence of Council.

(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.

Applications for licences.—These should be made in the manner prescribed by the Council's Regulations of January 1, 1895, Nos. I. and II. (10), in App. III., Pt. II., *post.*

'*Hoardings.*'—See as to these the Regulations of January 1, 1895, in App. III., Pt. II., *post.*

'*Wooden structure.*'—Under sect. 13 of 45 Vict. c. 14, repealed by this Act, it was held that a steam roundabout, not being in any sense intended for the habitation of man, was not within such provisions (see *Hall* v. *Smallpiece*, *ante*, p. 156) ; and that a builder's pay-office on wheels, which formed part of a builder's plant, and was intended for use during building operations whenever required, was not, while standing in the forecourt of the builder's premises, a structure of a movable or temporary character within such provisions, independently of a proviso to the section similar to that contained in subsect. 2 of the present section. *London County Council* v. *Pearce*, *ante*, p. 11.

So, too, an iron bungalow erected by a maker of iron buildings, and exhibited for sale on his premises, was held not to be a movable or temporary structure within such enactment. *London County Council* v. *Humphreys*, *ante*, p. 157.

57 & 58 Vict c. ccxiii. s. 85.

Under sect. 154 (1), *post*, the district surveyor is entitled to be paid by the builder, or, in his default, by the owner or occupier, the fees prescribed in Part I. of the third schedule to the Act, which prescribes a fee on inspection of any wooden structure of the same amount as the fee prescribed therein for a new building calculated on the area of the structure. The mode in which the area of a building is to be ascertained is prescribed by sect. 5 (22), *ante*, p. 22, and the expressions 'builder,' 'owner,' and 'occupier' are defined by subsects. 33, 29, and 30 respectively of the same section. See as to the powers of entry conferred on the district surveyor the note under the heading 'District Surveyor' to sect. 82, *ante*, p. 158. See also with regard to wooden enclosures the Instructional Letter of July 29, 1867, in App. IV. *post*.

'*Builder's movable or temporary structure.*'—The proviso to sect. 13 of the Metropolitan Building (Amendment) Act, 1882, which was in similar terms to the proviso to the present section, except that there was no word 'his' before the word 'use' as in the present section, was held by the Queen's Bench Division to be limited in its application to structures erected by a builder for his own use, and not to apply to a structure erected for the purpose of carrying on during the progress of the works the business usually carried on in the premises undergoing alteration or repair. See *The London County Council* v. *Candler & Sons*, 60 L. J. M. C. 114; 55 J. P. 679. See also *The London County Council* v. *Pearce*, *ante*, p. 11.

'*City.*'—The City is defined by sect. 5 (43), *ante*, p. 39. See also the note to sect. 4, *ante*, p. 4.

'*Local authority.*'—See sect. 5 (42), *ante*, p. 39.

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.

'*Timber stacks.*'—Under the previous Acts considerable diversity of opinion existed as to whether permanent erections intended for the storing and drying timber were buildings or erections to which the provisions of the Metropolitan Acts were applicable. In some cases these erections were held by magistrates to come within the Act, and the owners were compelled to enclose them with walls, and to a great extent unfit them for the purpose for which they were erected, while in other cases such erections were held not to be within the Acts. Stacks or piles of timber which merely rested on the ground were not affected by the previous Acts at all. The present enactment, however, removes all doubt on the point, the necessary inference being that an erection affixed or fastened to the ground for the purpose of stacking or storing timber is an erection or structure within this Part of the Act. At the same time, the present enactments give the Council a wide discretion as to its requirements in the case of such structures,

and as such discretion must be exercised properly and reasonably, it is presumed that no such vexatious requirements will be imposed, as were the necessary consequence of the compulsory provisions of the former Acts being held to apply to such structures. 57 & 58 Vict. c. ccxiii. ss. 86, 87.

Regulations with regard to the piling, stacking, or storing of cut or uncut timber, lathwood, firewood, casks or barrels, will be found in sect. 197, *post*, p. 278.

'*Penalties.*'—See the note to sect. 82, *ante*, p. 155.

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. As to structures of railway companies.

'*Railway companies.*'—See the note under this heading to sect. 20, *ante*, p. 76, and the exemption from this Part of the Act of buildings or structures of, or used for the purposes or in connection with the traffic of, railway companies in sect. 201 (8), *post*, p. 294.

PART VIII.

Rights of Building and Adjoining Owners.

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:— Rights of owners of adjoining lands respecting erection of walls on line of junction.

(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:

(4) If the adjoining owner do not consent to the building of a party wall the building owner shall not build the wall otherwise than as an external wall placed wholly on his own land:

57 & 58 Vict. c. ccxiii. s. 87.

(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 one 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.

'*Owner*.'—For the definition of this expression, see sect. 5 (29), *ante*, p. 25, and the notes thereon.

'*Building owner*.'—This expression is defined by sect. 5 (31), *ante*, p. 34.

'*Party wall*.'—See the definition of this expression in sect. 5 (16), *ante*, p. 17, and the notes thereon.

By the force of the definition of 'party wall' contained in sect. 5 (17), *ante*, p. 20, evidence of user is now of less value than formerly in determining whether or not a wall is a party wall. The user and the physical condition and position of a wall formerly determined the question (*Knight* v. *Pursell*, *ante*, p. 17), but now, since a party wall must be a wall forming part of a building, and used or constructed to be used for separation of adjoining buildings belonging to different owners, or constructed or adapted to be occupied by different persons, or a wall forming part of a building, and standing to a greater extent than the projection of the footings on lands of different owners (see sect. 5 (16), *ante*, p. 17), the evidence of user may be rebutted by evidence as to the boundary of the lands in question. In cases in which the ownership of adjoining lands has changed, it will always be open to question whether a wall built as an external wall in accordance with the provision contained in subsect. (4) is or is not a party wall, especially in cases in which an external wall has been built without footings against another external

wall by permission of the district surveyor, in accordance with the power given by this subsection, on the footings of the first. 57 & 58 Vict. c. ccxiii. s. 87.

'*Service of notices.*'—Notices under the Act are required to be in writing by sect. 187, *post*, p. 273, and the service of notices is provided for in sect 188.

'*Adjoining owner.*'—The definition of the expression will be found in sect. 5 (32), *ante*, p. 34.

'*Expenses.*'—Should any difference arise as to the apportionment of the expense of building a party wall, it must be determined in the manner appointed by sect. 91, *post*, p. 177. With regard to the manner in which expenses in respect to party structures are to be borne by the building and adjoining owners respectively, see sect. 95, *post*, p. 185.

'*External wall.*'—The expression is defined by sect. 5 (15), *ante*, p. 17, to mean another wall or vertical enclosure of a building not being a party wall. The provision in subsect. 4 of sect. 87 seems to imply that the building owner would otherwise have had some right to trespass on his neighbour's land by building half his wall thereon. But it was decided in very early times that the builder of a house upon a new foundation has no right to erect half his flank or side walls upon his neighbour's vacant ground; see *Barlow* v. *Norman*, 2 W. Bl. 959. Besides which *Quicquid plantatur solo, solo cedit.* If, therefore, the building owner did place half his wall on the land of the adjoining owner, that half would become the property of the adjoining owner, who would become a tenant in common of the wall, and entitled as of right to a partition, *Mayfair Property Company* v. *Johnston* (1894), 1 Ch. 508; 70 L. T. (N.S.) 485, 8 R. 781; 63 L. J. Ch. 399; 38 Sols. Journ. 253, and might remove his half without regard to the consequences to his neighbour's half, *Wigford* v. *Gill*, Cro. Eliz. But see note to sect. 101, *post*, p. 190, and the cases referred to in the note to the definition of 'party wall,' *ante*, p. 17 *et seq.* The provision in subsect. (5) with regard to a building owner building 'an external wall placed wholly on his own land' is inconsistent with the enacting portion of the section (1), by which the provisions of the section are applied only to the case of either owner being about 'to build on any part of the line of junction.' The provision probably refers to the power given by subsect. (6) to a building owner to place on the land of the adjoining owner the footings of an external wall; and the fact that the footings of a wall are necessarily part of the wall appears to have escaped notice.

The notices required to be served upon the adjoining owner under subsects. 4 and 5 of the above section are no doubt required, owing to the right conferred upon the building owner in either of the cases mentioned in those subsections to place the footings of his external wall on the land of the adjoining owner. Under that subsection a month is to elapse before the building owner is to be at liberty to exercise the right conferred upon him, in order presumably to afford the adjoining

57 & 58 Vict. c. ccxiii. s. 87.

owner time for objecting to the notices being proceeded with in which case a difference would arise within the meaning of sect. 91, *post*, p. 177, and would have to be settled in the manner provided by that section before the building owner could act upon his notices. If the wall which the building owner proposes to erect will, when erected, be within ten feet of a building belonging to an adjoining owner and extend to a lower level than the foundations of such building, two months' notice in writing will be required under section 93, *post*, p. 183. With regard to the steps to be taken where a party wall, in respect to which a building owner proposes to execute any works, is dangerous, see sect. 90, *post*, p. 173.

A power of entry on the adjoining premises for the purpose of executing any work which the building owner is entitled to execute is conferred by sect. 92, *post*, p. 182; and by sect. 200 (4), *post*, p. 285, every person who hinders or obstructs such entry is rendered liable to a penalty not exceeding 10*l.*

The provision enabling the building owner to place the footings of his wall upon the land of the adjoining owner, upon condition of his making compensation 'for any damage occasioned thereby,' will not, it is submitted, confer on the building owner any right of property or easement in the adjoining land. See the remarks of Lush, J., with regard to a similar proviso as to compensation in the Metropolitan Building Act, 1855, in *Crofts* v. *Haldane*, L. R. 2 Q. B., p. 199. The property in the footings will follow the property in the land upon which they are placed, *Wiltshire* v. *Sidford*, 1 Man. and Ry. 408, and become therefore the property of the adjoining owner. But he again will be unable to interfere with them to the detriment of the building owner's property, because of the duty cast upon him by the common law not to use his property so as to injure that of his neighbour; and see the note to sect. 101, *post*, p. 190.

The fact, however, that the footings of a wall have been placed on the land of the adjoining owner in exercise of the right given by sect. 87 will not prevent the adjoining owner, when he is desirous of erecting an external wall upon the boundary of his land, and immediately adjoining the first-mentioned wall, from removing such footings for the purpose of erecting his own wall, provided of course he has the permission of the district surveyor to his erecting his wall without footings on the side next his neighbour's wall, and takes care to provide the necessary support to that wall during and after the erection of his own wall, and makes good all damage that may be occasioned to the adjoining premises; see sects. 88 (7) and 95 (2 *d*), *post*, pp. 168 and 187.

Compensation.—The amount of compensation to be made under subsect. 6 of the above section is, in cases of difference, to be determined in the manner prescribed by sect. 91, *post*. The damage for which compensation is to be made is structural damage, and not damage for the invasion of a right; see per

Cockburn, C. J., in *Crofts* v. *Haldane*, L. R. 2 Q. B., at p. 198. 57 & 58 Vict. c. ccxiii. s. 88.

Making good damage.—A building owner who fails within a reasonable time to make good any damage he has done to the property of the adjoining owner in exercising his rights, or to do anything upon condition of doing which his rights arise, under the above section is liable to a penalty not exceeding 20*l.*, and to a daily penalty not exceeding such amount under sect. 200 (5), *post*, p. 286.

Existing walls not in conformity with Act.—See sect. 208, *post*, p. 299.

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:

(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 the requisite height all flues and chimney stacks belonging to the adjoining owner on or against such party structure or external wall:

57 & 58 Vict. c. ccxiii. s. 88.

(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:

(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:

(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:

(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 that 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.

'*Building owner.*'—This expression is defined by sect. 5 (subsect. 31), *ante*, p. 34.

The section purports to define the rights of a building owner 'in relation to party structures.' But it is obvious that it is intended to do more than this, for the building owner is given a right to interfere with an external wall (subsect. 9),

with such parts of any wall or building of an adjoining owner as may overhang his ground (subsect. 10), and with a party fence wall (subsect. 11). 57 & 58 Vict. c. ccxiii. s. 88.

'*Party structure.*'—The expression includes 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. Sect. 5, subsect. (20), *ante*, p. 21. As to when a wall is to be deemed a party wall, see sect. 58, *ante*, p. 121.

Rights of building owner.—These rights can only be exercised in accordance with the rules contained in sect. 90, *post*, and the Act does not authorise any interference with an easement of light, or any other easement in or relating to a party wall; see sect. 101, *post*, p. 190.

A building owner may enter any premises for the purpose of doing work to a party structure (see sect. 92, *post*, p. 182, and note thereto), and any person hindering or obstructing him is liable to a penalty under sect. 200 (4), *post*, p. 285.

A building owner who is liable under this part of the 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 declared by such Part to arise, and fails within a reasonable time to make good such damage, or to do such thing, is liable to a penalty under sect. 200 (5), *post*, p. 286.

Before exercising any rights conferred upon him by this section, the building owner is required by sect. 90, *post*, p. 173, to serve a notice on the adjoining owner of the intended work; and if any difference arises as to the right of the building owner to do the works proposed, or otherwise in respect of such notice, such difference will have to be settled in the manner provided by sect. 91 before the work is proceeded with. See also sect. 90, as to the precautions to be taken by the building owner during the exercise of any rights conferred by the Act, and as to the rights of the adjoining owner with regard to the service on the building owner of a counter notice in respect of works required by him to be executed by the building owner.

Making good a party structure.—The expense of this work is to be borne jointly by the building and adjoining owners in due proportion; see sect. 95 (1 *a*), *post*, p. 185.

Rebuilding party structure.—The expense will also be borne jointly, see sect. 95 (1 *b*), except where the structure is pulled down, under subsect. 7 of the above section, for the purpose of being rebuilt of greater strength, in which case the expense of such rebuilding is to be borne by the building owner alone; see sect. 95 (2 *b*), *post*, p. 186.

Partitions.—As to the construction of partitions between a part of a building used for trade or manufacture and a part used as a dwelling-house, see sect. 74, *ante*, p. 144; and as to the construction of wall generally, see sched. 1, *post*.

57 & 58 Vict. c. ccxiii. s. 88.

The expense of substituting a party wall for a timber partition is an expense to be divided between the building and the adjoining owner under sect. 95 (1 *c*), *post*, p. 185. As to buildings which are to be deemed to be in conformity with the provisions of the Act, see subsect. (11) of the above section.

Intermixed rooms or storeys.—A building owner being by virtue of sect. 5 (31), *ante*, p. 34, such one of the owners of buildings, storeys, or rooms, separated from one another by a party wall or a party structure, as does, or is desirous of doing, a work affecting that party wall or party structure. Sect. 88 (4) does not give a right to interfere with a room or storey not separated from another building by a party structure.

As to buildings which are to be deemed to be in conformity with the Act, see subsect. (11).

The expense of pulling down and rebuilding party structures, separated by intermixed rooms or storeys, is to be borne jointly by the building and adjoining owners; see sect. 95 (1 *d*).

Party arches.—The expression 'party arch' is defined by sect. 5 (19), *ante*, p. 21. For the rules regulating the construction of party arches over and under public ways, see sects. 71 and 72, *ante*, pp. 139 and 140. The expense of rebuilding such arches is to be borne jointly by the building and adjoining owners; see sect. 95 (1 *e*), *post*, p. 186.

See Instructional Letter of November 6, 1862, to District Surveyors, relating to buildings to which the rules of the Act are inapplicable, in Appendix IV., Part II., *post*.

Raising, &c., party structures and external walls.—The right to raise does not permit such raising as would interfere with any easement of light; see sect. 101, *post*, p. 190; and the height of buildings is limited by sects. 47 to 51, *ante*, pp. 110 to 114.

The building owner and the adjoining owner being tenants in common, neither has a right to build on the party wall so as to oust the other, *Stedman* v. *Smith*, 8 E. & B. 1, and *Watson* v. *Gray*, 14 Ch. D. 192; 49 L. J. Ch. 243; 42 L. T. (N.S.) 295, and see notes to sect. 5 (16), *ante*, p. 17. A wall may be raised by putting something on the bottom, per Jessel, M.R., *Standard Bank of British South Africa* v. *Stokes*, *ante*, p. 18.

Failure to make good damage occasioned to the adjoining premises, in executing works under subsect. 6 of sect. 88, within a reasonable time, is an offence against the Act, for which a penalty is imposed by sect. 200 (5), *post*, p. 286.

External wall is defined by sect. 5 (15), *ante*, p. 17.

Expenses incurred in raising or underpinning a party structure or external wall built against a party structure are to be borne by the building owner alone; see sect. 95 (2 *a*), *post*, p. 186.

The construction of chimneys and flues is regulated by sect. 64, *ante*, p. 126.

Cutting into party structures.—Rules as to the making of recesses and openings in party walls, which are included in the

expression 'party structure' by sect. 5 (20), *ante*, p. 21, are contained in sect. 54, *ante*, p. 117, and the making of chases in party walls is regulated by sect. 60, *ante*, p. 123. The expense of cutting into a party structure and of making good any damage occasioned to the adjoining premises thereby is to be borne by the building owner ; see sect. 95 (2 *c*), *post*. 57 & 58 Vict. c. ccxiii. s. 88.

Cutting away footings, &c.—Under sect. 87, *ante*, p. 163, the district surveyor is empowered to allow an external wall to be built against another external or party wall without footings on the side next to such other wall.

A chimney breast or shaft built with or in a party wall is not to be cut away unless the district surveyor certifies that it can be done without injuring the stability of the building ; see sect. 64 (19), *ante*, p. 128.

The expense of cutting away any footing, chimney breast, &c., is to be borne by the building owner ; see sect. 95 (2 *d*), *post*.

Overhanging walls, &c.—The right to cut away or take down such walls would appear to be given irrespective of whether or not the adjoining owner has acquired a prescriptive right to have his walls &c. overhanging, the damage to be made good being obviously confined to structural damage ; see Cockburn, C. J., in *Crofts* v. *Haldane*, L. R. 2 Q. B., at p. 198.

The building owner exercising a right conferred upon him by subsect. 10 of the above section will not be entitled to any contribution by the adjoining owner towards the re-erection of the overhanging wall or building unless the wall or portion of building cut away or taken down was a party structure in so defective a condition or in such want of repair as to make it necessary or desirable to cut it away or take it down, in which case the expense of rebuilding would have to be borne by the building owner and adjoining owner in due proportion, under sect. 95 (1 *b*), *post*, p. 185.

Incidental works.—When notice is served by a building owner requiring works to be done incidental to the connection of a party structure with his premises, the question whether such works are necessarily incidental will, in case of a difference arising between the building and the adjoining owner with regard thereto, be settled in the mode provided by sect. 91, *post*, p. 177.

The 'commencement' of an Act, by the Interpretation Act, 1889, 52 & 53 Vict. c. 63, sect. 36 (1), means the time when such Act comes into operation. The present Act, by sect. 3, *ante*, p. 3, came into operation on January 1, 1895 ; and by the Interpretation Act, 1889, sect. 36 (2), where an Act is expressed to come into operation on a particular day it is to be construed as coming into operation immediately on the expiration of the previous day. The qualification to subsect. 11 of sect. 88 of the present Act therefore relates to all buildings erected previously to January 1, 1895. With regard to the provisions of the Acts of Parliament regulating buildings in

57 & 58 Vict. c. ccxiii. s. 89.

London before the commencement of the present Act, see the *Metropolitan Building Acts*, by Cunningham Glen, published by Shaw & Sons, Fetter Lane.

'*Party fence wall.*'—This expression is defined by sect. 5 (18), *ante*, p. 21. By such definition a party fence wall to be within the Act cannot be part of a building, and by the definition of the expression 'party wall' such latter wall must form part of a building. The right to pull down a party fence wall can only arise where, when rebuilt as a party wall, the new wall will form part of a building, and will stand to a greater extent than the projection of the footings on lands of different owners. In all other cases, except where it is desired to raise a party fence wall, the building owner is left to his common law rights with regard to the wall and its repair, as to which see the note to section.

The expense of raising a party fence wall for a building is to be borne by the building owner ; see sect. 95 (2 *e*), *post* ; and the expense of rebuilding a party fence wall as a party wall is also to be borne by such owner ; see sect. 95 (2 *f*), *post*, p. 187.

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 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.

'*Building owner.*'—See sect. 5 (31), *ante*, p. 34, for the definition of this expression.

'*Party structures.*'—As to what is a party structure, see sect. 5 (20), *ante*, p. 21.

'*Adjoining owner.*'—This expression is defined by sect. 5 (32), *ante*, p. 34. The adjoining owner is liable for all expenses incurred by the building owner upon his (the adjoining owner's) requisition ; see sect. 100, *post*, p. 189. The requisition must by sect. 90 (5), *post*, p. 173, be by a notice served within a month after the receipt of notice by the building owner, under subsect. 1

of that section, of his intention to exercise the rights given by the statute or some of them in respect of the party structure, which latter notice must state the particulars required by that sub-section. Upon receipt of the adjoining owner's requisition, and before commencing his work, the building owner may serve the adjoining owner with a counter requisition requiring him to give security for the payment of any costs and expenses for which he may be liable ; see sect. 94, *post*, p. 184. 57 & 58 Vict. c. ccxiii. s. 90.

Notices.—These must be in writing (see sect. 187, *post*, p. 273), and may be served in the manner prescribed by sect. 188, *post*, p. 274. See also the note to sect. 101, *post*, p. 190.

Differences.—The manner in which differences between building and adjoining owners are to be settled is specified in sect. 91, *post*, p. 177.

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 one 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.

(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.

(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.

(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 six 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.

57 & 58 Vict. c. ccxiii. s. 90.

(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.

(7) If either owner do not within fourteen 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.

'*Building owner*.'—This expression is defined by sect. 5 (31), *ante*, p. 34.

'*Adjoining owner*.'—This means the owner or one of the owners of lands, buildings, storeys, or rooms adjoining those of the building owner. And the expression 'owner' is defined by subsect. 29 of the same section, *ante*, p. 25. Under the provisions of the Metropolitan Building Act, 1855, which required the building owner to give notice of intention to exercise any of the rights under that Act in respect of a party structure, Chitty, J., held that a tenant for a term of three years of part of a house which was in effect a separate tenement was entitled to notice from the building owner as an adjoining owner. The tenant, in the case referred to, occupied the shop parlour, with a workshop adjoining, the basement and also a back room upon the third floor of a house of which another person, who occupied the front room upon the third floor, was the lessee and in receipt of the rents of the other parts of the house. A notice had been duly served upon such lessee, addressed to him and to whomever it might concern, but no other notice had been served. *Fillingham* v. *Wood* (1891), 1 Ch. 51; 65 L.J. Ch. 232; 64 L. T. (N.S.) 436; 39 W. R. 252. The present enactment requires the consent of the adjoining occupiers, as well as of the adjoining owner, in order to enable the building owner to dispense with the notice required to be given by the section. As, however, the definition in sect. 5 (29), *ante*, p. 25, of the expression 'owner' includes in the meaning of such expression every person in possession or receipt of any part of the rents or profits of the adjoining premises, it will always be advisable, notwithstanding the fact that the expression 'adjoining owner' means the owner or 'one of the owners' of the adjoining premises, for the building owner to avail himself of the provisions of sect. 188, *post*, enabling him to serve notice of his intention to exercise any of the rights in respect of a party structure by delivering the same to some person on the adjoining premises, or, if no person is to be found on such premises, by fixing a copy thereof on some conspicuous part of the building. Such notice should be addressed to the owner of the premises, naming such premises without further name or description; see subsect. 3 of sect. 188, *post*. It will be noticed that although sect. 90 requires

the consent of the adjoining occupiers to be obtained, as well as of the adjoining owner, where no notice under it is given, it does not require notice to be given to such adjoining occupiers. The works which the adjoining owner is entitled by subsect. 5 of the present section to require the building owner to execute are those mentioned in sect. 89, *ante*, p. 172. 57 & 58 Vict. c. ccxiii. s. 90.

'*Adjoining occupiers.*'—This expression is defined by sect. 5 (32), *ante*, p. 34, to mean the occupier or one of the occupiers of lands, buildings, storeys, or rooms adjoining those of the building owner; the expression 'occupier' does not, however, include a lodger; see subsect. 30 of the same section, *ante*, p. 32.

'*Party structure.*'—This expression is defined by sect. 5 (20), *ante*, p. 21.

Rights of building owner.—These rights are conferred by sects. 87 and 88, *ante*, pp. 163 and 167. They are only to be exercised in accordance with the conditions annexed to them by the Act; and a building owner who exercises any of them without fulfilling the conditions upon which it is given to him, loses the protection of the Act, and renders himself liable to an action for trespass; see per Erle, C. J., in *Williams* v. *Golding*, L. R. 1 C. P. 69; 35 L. J. C. P. 1; 1 H. & R. 18; 11 Jur. (N.S.) 952; 13 L. T. (N.S.) 291; 14 W. R. 60. The failure to comply with a condition, subject to which any right is conferred upon the building owner, also renders him liable to a penalty under sect. 200 (5), *post*, p. 286.

Party fence wall.—This is defined by sect. 5 (18), *ante*, p. 21.

'*Month.*'—This means a calendar month; see sect. 3 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63).

Service of notices.—This is provided for by sect. 188, *post*; see subsect. 3 of that section, which enables notices to be addressed to the owner or occupier of the adjoining premises without further name or description.

It would appear not to be necessary to serve a notice under sect. 90, where it is merely intended to remove a building from an adjoining building, without disturbing the party structure. If, however, the building sought to be removed be so constructed that its supports form part of the party structure which separates the two buildings, notice previous to the removal would, no doubt, be necessary, although it were not the intention of the person removing the building to make use of the party structure in the erection of new buildings. See *Major* v. *Park Lane Company*, L. R. 2 Eq. 453; 14 L. T. (N.S.) 543; 30 J. P. 743. It was held under the Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), that the owner of two tenements separated by a party structure, who had let one of the tenements to a tenant, was entitled to enter on the premises so let by him for the purpose of doing work to the party wall dividing the tenements, without having given any party structure notice. It was argued that though the building owner was in this case the adjoining owner also, yet because he had not given—there being no person to whom he could have given—a party structure

57 & 58 Vict. c. ccxiii. s. 90.

notice, he could not be treated as a building owner, and could not therefore enter the premises in the occupation of his tenant without the consent of the tenant. But Crompton, J., in giving his judgment in the Exchequer Chamber, said that the 83rd sect. of the Metropolitan Building Act, 1855, gave a protection to the building owner against the tenant of the adjoining owner in doing the requisite works; and there was, in his opinion, no reason why it should not also protect him against his own tenant. *Wheeler* v. *Gray*, 4 C. B. (N.S.) 584; 27 L. J. C. P. 267; 6 W. R. 676; 22 J. P. 434; S. C. nom. *Weal* v. *Gray*, 31 L. T. (O.S.) 166, affirmed in error, 28 L. J. P. 200, 6 C. B. (N.S.) 606, 7 W. R. 325, 23 J. P. 453.

Sect. 82 of the Act corresponds to sect. 83 of the Metropolitan Building Act, 1855; but it is to be observed that subsect. (1) of sect. 90 makes the consent of the adjoining occupier necessary, and that no provision is made for the case of a building owner who is also the adjoining owner (as in *Wheeler* v. *Gray*) being unable to obtain the consent of the adjoining occupier. Any tenant not a mere lodger would be an adjoining occupier. See sect. 5, subsect. (30), *ante*, p. 32.

The builder or other person causing or directing work to be done to a building or structure is required by sect. 145, *post*, to serve a 'building notice' on the district surveyor. But service of this 'building notice' on the district surveyor is not a condition precedent to the exercise by the building owner of his rights with regard to a party structure. See *Wheeler* v. *Gray*, *supra*.

Protection of adjoining building, &c.—Unless the word 'and' is to be read disjunctively, and as meaning 'or' (as to which *The Metropolitan Board of Works* v. *Stead*, 8 Q. B. D. 445; 51 L. J. M. C. 22; 45 L. T. (N.S.) 611, may be referred to), the requirement that the building owner is to make provision for the protection of the adjoining occupier obviously applies only where the adjoining land or building is occupied. It was no doubt enacted in consequence of its having been held that sect. 85 (3) of the Metropolitan Building Act, 1855, which contained an enactment corresponding to that contained in subsect. 3 of sect. 90 of the present Act, imposing the obligation on the building owner not to exercise his rights so as to cause unnecessary inconvenience to the adjoining owner, did not impose any obligation on him to protect by a hoarding or otherwise rooms in the adjoining premises left exposed to the weather during the time a party wall was being pulled down and rebuilt: see *Thompson* v. *Hill*, L. R. 5 C. P. 564; 39 L. J. C. P. 264; 22 L. T. (N.S.) 820; 18 W. R. 1070. Failure to comply with the condition as to protecting the adjoining premises will render the building owner liable to the penalty imposed by sect. 200 (5), *post*, p. 286. Provision is made by ss. 121 and 124 of 18 & 19 Vict. c. 120, in Appendix I., *post*, for the erection of hoardings, &c., for the protection of the public during building operations; and sect. 32 of 53 & 54 Vict. c.

ccxliii. (see Appendix I. *post*) requires hoardings to be erected before the demolition of any building is commenced. 57 & 58 Vict. c. ccxiii. s. 91.

Unnecessary inconvenience.—The meaning of the enactment that the building owner is not to cause unnecessary inconvenience to the adjoining owner is that the building owner is to take down and put up the party structure without unnecessary delay, see *Thompson* v. *Hill* (*ubi supra*). The Court refused to grant a mandamus requiring the building owner to reinstate internal decorations in the adjoining premises injured by him on the ground that the adjoining owner's remedy was by action, *Reg.* v. *Ponsford*, 1 D. & L. 116; 7 Jur. 767; 12 L. J. Q. B. 313. This was, however, under the Act of 1774, and before the Metropolitan Building Act, 1855, sect. 94 of which rendered a building owner who failed to execute works he was required by the Act to execute liable to a penalty, as does sect. 200 (5), *post*, of the present Act. The Act does not authorise any interference by the building owner with any easement connected with a party wall; see sect. 101, *post*, p. 190.

Penalties.—A building owner who fails to make good any damage he may occasion to the adjoining owner's or adjoining occupier's property, or to fulfil any condition subject to which the rights conferred by this Part of the Act are given to him, is liable to a penalty not exceeding 20*l.*, and to a daily penalty not exceeding the like amount. See sect. 200 (5), *post*, p. 286; and see sect. 166, *post*, p. 254, as to the recovery of such penalties.

Differences.—The mode in which differences arising between building and adjoining owners are to be settled is prescribed by the following section.

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.

57 & 58 Vict. c. ccxiii. s. 91.

(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 fourteen 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.

(3) If either party to the difference make default in appointing a surveyor for ten 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.

(4) The costs incurred in making or obtaining the award shall be paid by such party as the surveyor or surveyors determine.

(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 fifty 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 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.

(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. 57 & 58 Vict. c. ccxiii. s. 91.

(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 seven 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 seven 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.

(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 seven 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

57 & 58 Vict. c. ccxiii. s. 91.

either of the surveyors refuse or for seven 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.

Differences between building and adjoining owners.—Differences which are to be settled in the manner prescribed by this section are those arising—under sect. 87 (6), *ante*, p. 164, as to the amount of compensation to be made by the building owner for damage occasioned by placing the protecting footings of an external wall on the land of the adjoining owner below the level of the lowest floor—under sect. 89 (2), *ante*, p. 172, as to the execution by the building owner of works required by the adjoining owner—under sect. 90 (7), *ante*, p. 174, where either the building or the adjoining owner fails for fourteen days after service on him of a notice in respect to a party structure to express his consent thereto—under sect. 93 (2), where the adjoining owner by counter-notice disputes the necessity of or requires the underpinning or strengthening by the building owner of the foundations of the adjoining buildings—and under sect. 97, *post*, p. 188, where the adjoining owner is dissatisfied with an account of the particulars and expense of any work which the building owner is authorised or required to execute, the expense of which is to be borne in whole or in part by the adjoining owner.

The only case in which the manner of settling differences arising between building and adjoining owners appears to be specially provided for is that of a difference as to the security to be given by either party before any works are executed, in which case the differences are to be settled by the County Court judge under sect. 94, *post*, p. 184. The difference, to be within the provisions of sect. 90, must be a difference as to an act authorised to be done by the statute, and the jurisdiction of the Court of Chancery is not ousted, except as to cases which fall within such provisions. See *Sims* v. *the Estates Company*, 14 L. T. (N.S.) 55; 14 W. R. 419. The Arbitration Act, 1889, 52 & 53 Vict. c. 49, applies by virtue of sect. 24 of that Act to references of differences under sect. 90, except in so far as that Act is inconsistent with the present Act.

Appointment of Surveyor.—Failure on the part of either party to a difference to appoint a surveyor is provided for by subsect. 3, and when two surveyors are appointed failure on their part to appoint a third surveyor is provided for by subsect. 10. The case of a surveyor neglecting or refusing to act is provided for, where he was appointed by both parties by subsect. 8, where he was appointed by one of the parties only by subsect. 12, and where he was appointed by the two surveyors by subsect. 9. The case of the death or incapacity of a surveyor appointed by either party, where each party has appointed a surveyor, is provided for by subsect. 11.

A District Surveyor was held under the corresponding section of the Metropolitan Building Act, 1855, to be a fit person to be appointed to act as umpire in the settlement of a difference between a building and an adjoining owner with respect to a party structure. See *Seawell* v. *Webster*, 29 L. J. Ch. 71 ; 7 W. R. 691. 57 & 58 Vict. c. ccxiii. s. 91.

Commencement of work.—Except by agreement of the parties, the award cannot allow the work as to which the difference has arisen to be commenced within two months from the service of the building owner's notice where the work relates to a party wall or party structure other than a party fence wall, and within a month from such service where the work relates to a party fence wall (see section 90 (1), *ante*, p. 173), and within a month from the service when the notice relates to the placing of footings of an external wall on the adjoining owner's land (see section 87 (6), *ante*, p. 164).

Appeal.—Under section 19 of the Arbitration Act, 1889, the surveyor where one surveyor only is appointed, or the third surveyor or umpire where these are appointed, may, at any stage of the proceedings, and shall if so directed by the High Court of Justice or a judge, state in the form of a special case for the opinion of the Court any question of law arising in the course of the reference. Section 7 (*b*) of the Act of 1889 enables an arbitrator in any reference within that Act to state his award in the form of a special case for the opinion of the High Court. Having regard, however, to the provisions of subsection 2 of section 91 that an award in a reference under the section shall not be questioned except by appeal to the County Court, unless the case comes within subsection 5, it is questionable whether section 7 (*b*) of the Arbitration Act, 1889, does enable the award to be stated in the form of a special case for the opinion of the High Court. See also *Seawell* v. *Webster*, *ubi supra*.

As to the right of appeal from the County Court, see the proviso to section 168, *post*, p. 263, and the notes thereto.

County Court.—This term means and includes any Court held under the County Courts Act, 1888, and the City of London Court ; see 51 & 52 Vict. cap. 43, sect. 186, and sect. 6 of the Interpretation Act, 1889 (52 & 53 Vict. cap. 63). Except as regards the City of London Court, the districts of the London Courts are, for the purpose of commencing an action, practically one district. See 51 & 52 Vict. cap. 43, sect. 84. The term 'County Court' also means and includes the Judge or Registrar of the Court. The jurisdiction of the Registrar is, however, confined, where the claim is disputed, to claims involving an amount not exceeding two pounds, 51 & 52 Vict. cap. 43., sect. 92. By Order LI. Rule 26 of the County Court Rules, 1889, the general practice of the Court prescribed by those rules is applied to all proceedings whatsoever authorised by any existing or future Act to be commenced or taken in any County Court, except and so far as such practice may not be inconsistent with the provisions of any such Act. Proceedings

57 & 58 Vict. c. ccxiii. s. 92.

in the County Court under the present Act will therefore be commenced by the entry of a plaint, 51 & 52 Vict. cap. 43, sect. 73.

The County Court has jurisdiction given to it by section 186, *post*, p. 273, to settle the time and manner of executing any work, or of doing any other thing, and may put the parties upon such terms, as respects the execution of the work, as it thinks fit.

Settlement of Issues.—Application to the High Court for the purpose of settling issues under subsection 6 will be made by motion or summons. See Daniell's Chancery Practice, 716, and Order XXXIII. Rule 1, of the Rules of the Supreme Court, 1883, and the notes thereon in the 'Annual Practice.'

Special Case.—An interlocutory special case may be stated during the reference at any stage of the proceedings, in order to obtain the directions of the Court upon any question of law that may arise; see section 19 of the Arbitration Act, 1889. The manner in which special cases are to be stated for the opinion of the High Court is regulated by Order XXXIV. Rules 1 to 8 of the Rules of the Supreme Court, 1883.

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 purpose 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 fourteen days' notice of his intention so to do to the owner and occupier and in case of emergency shall give such notice as may be reasonably practicable.

Notice of intention to enter.—The notice is to be in writing; see section 187 (1), *post*, p. 273; and may be addressed by the description of the 'owner' or 'occupier' of the premises it is intended to enter, which should be named without further name or description; see section 188 (3). It may be served in the manner prescribed by subsection 1 of the last-mentioned section.

Obstructing entry.—Section 200 (4), *post*, p. 285, makes it an offence against the Act to hinder or obstruct any person empowered to enter and remain on any premises for the purpose of executing any work, or to execute any work authorised by the Act, and renders the person so hindering or obstructing liable to a penalty not exceeding ten pounds. Such penalty is recoverable summarily under section 166, *post*, p. 254.

57 & 58 Vict. c. ccxiii. s. 93.

Building owner to underpin adjoining owner's building.

93. Where a building owner intends to erect within ten feet of a building belonging to an adjoining owner a building or structure any part of which within such ten 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 two 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 fourteen 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.

'*Building owner.*'—This expression is defined by section 5 (31), *ante*, p. 34.

'*Adjoining owner.*'—This expression is defined by section 5 (32), *ante*, p. 34.

Subject as hereinafter provided.—By section 101, *post*, nothing contained in the Act is to authorise any interference with any easement in or relating to a party wall, which term by section 5 (16), *ante*, p. 17, means *inter alia* a wall forming part of a building, and standing to a greater extent than the projection of the footings on lands of different owners. In *Dalton* v.

57 & 58 Vict. c. ccxiii. s. 94.

Angus, 6 App. Cas. 740 ; 50 L. J. Q. B. 689 ; 46 J. P. 132, the House of Lords held that a right to lateral support for a building from adjoining land can be acquired by twenty years' uninterrupted enjoyment.

Under subsect. 6 of sect. 87, the building owner has a right, after notice, to place on the land of the adjoining owner below the level of the lowest floor the projecting footings of any external wall he may build on his own land, and the district surveyor is empowered, where an external wall is built against another external wall, or against a party wall, to allow the footing of the side next such other external or party wall to be omitted. See also the notes to section 101, *post*, p. 190.

Service of notices.—This is provided for by sect. 188, *post*, p. 274.

'*Foundations.*'—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 ; see sect. 5 (9), *ante*, p. 15.

Differences.—The settlement of differences arising under this section is provided for by sect. 91, *ante*, p. 177.

Expenses.—Under sect. 100, *post*, p. 189, the adjoining owner will be liable for all expenses incurred by the building owner upon his requisition. When the adjoining owner does not require the underpinning to be done, the expense of underpinning where necessary will be done by the building owner under sect. 95 (2 *a*), *post* ; and the building owner will be liable to make good all damage and to compensate the adjoining owner and occupier for any inconvenience, loss, or damage occasioned thereby. Under sect. 94, *post*, either party may require the other to give security for payment of any expenses, costs, or compensation for which he is or will be liable in consequence of the exercise of the powers conferred by this section.

'*Occupier.*'—This expression does not include a lodger ; see sect. 5 (30), *ante*, p. 32.

Entry on adjoining premises.—Power to enter premises when necessary for the purpose of executing works in pursuance of this section is given by sect. 92, *ante*, p. 182.

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.

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. 57 & 58 Vict. c. ccxiii. s. 95.

If the adjoining owner do not within one 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.

'*County Court*.'—As to proceedings in the County Court, see note under this heading to sect. 91, *ante*, p. 177.

Expenses.—As to the expenses payable jointly by the building and adjoining owners, see sect. 95 (1); and as to the expenses to be borne by the building owner, subsect. 2 of that section. The adjoining owner is liable under sect. 100, *post*, p. 189, for all expenses incurred by the building owner on his requisition.

Service of notices.—See sect. 100, *post*, as to this.

Month.—This means calendar month: see sect. 3 of the Interpretation Act, 1889.

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;

(*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 owner and a party structure be built instead thereof the expense of building such party structure

57 & 58 Vict. c. ccxiii. s. 95.

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.

(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 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 shall be borne by the building owner;

(*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; 57 & 58 Vict. c. ccxiii. s. 95.

(*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 such 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;

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

57 & 58 Vict. c. ccxiii. ss. 96, 97.

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.

Compensation.—The provisions of this section correspond with those of the Metropolitan Building Act, 1855, sect. 88, now repealed. Under that section it was held that the building owner was not liable to compensate the adjoining owner for damage done to his house in pulling down and rebuilding a defective party structure, since the work was done for the benefit of both. *Bryer* v. *Willis*, 19 W. R. 102; 23 L. T. (N.S.) 403; 35 J. P. 471. But he is not protected from the consequences of doing such work negligently; see the note to sect. 101, *post*. What is the due proportion is to be ascertained in case of difference in the manner provided by sect. 91, *ante*, p. 177.

Party structure.—This expression, as defined by sect. 5, subsect. (20), *ante*, p. 21, includes a timber partition. But the right of the building owner is only '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;' see sect. 88, subsect. (3), *ante*, p. 167.

As to buildings which are to be deemed to be conformable to this Act, see sect. 88, subsect. (11), *ante*, p. 168.

Until the adjoining owner has paid his contribution the structure is to remain the sole property of the building owner 'at whose expense it was built;' see sect. 99, *post*.

Account of expenses to be delivered to adjoining owner.

96. Within one 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 adjoining 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 localities and the market price of materials and labour at the time.

'*Month.*'—This means calendar month; see the Interpretation Act, 1889, sect. 3.

Adjoining owner may object to account.

97. At any time within one 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. 57 & 58 Vict. c. ccxiii. ss. 98–100.

'*Month*'—*i.e.* calendar month; see Interpretation Act, 1889, sect. 3.

'*Differences.*'—The settlement of differences between building and adjoining owners is provided for by sect. 91, *ante*, p. 177.

Building owner may recover if no appeal made.

98. If within the said period of one 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.

Recovery of expenses.—This section enables expenses to which it relates to be recovered as a 'debt.' And by sect. 166, *post*, all expenses under the Act, the recovery of which is not otherwise provided for, may be recovered in manner provided by the Summary Jurisdiction Acts. Presumably, therefore, expenses which do not exceed reasonable amounts under this section may be recovered in the manner provided for the recovery of civil debts by those Acts.

Structure to belong to building owner until contribution paid.

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.

Property in structure.—Some difficulty may arise if the building owner builds on or otherwise makes use of a party structure, in respect of which the adjoining owner has not paid his contribution, to the exclusion of the adjoining owner. The sole ownership of the structure is only to last until the adjoining owner does pay his contribution. That done, it would seem that the adjoining owner again becomes a tenant in common, and it may be that he again has a right to remove whatever prevents him from using his share of the wall.

For the works which the adjoining owner may require, see sects. 89, 90, and 93, *ante*, pp. 172, 173, and 183.

Adjoining owner liable to expenses incurred on his requisition.

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.

57 & 58 Vict. c. ccxiii. s. 101.

Expenses incurred on requisition of adjoining owner.—The works which an adjoining owner is empowered to require the building owner to execute are those specified in sect. 89 (1), *ante*, p. 172, sect. 90 (5), *ante*, p. 173, and sect. 93 (2), *ante*, p. 183.

Recovery of expenses.—Sect. 166, *post*, p. 254, enacts that all expenses under the Act, the recovery of which is not otherwise provided for, may be recovered in manner directed by the Summary Jurisdiction Acts. In addition, therefore, to the procedure for recovery of such expenses by action in the County Court or in the High Court, the procedure provided by the Summary Jurisdiction Acts for the recovery of civil debts will be available.

Saving for lights in party walls, &c.

101. Nothing in this Act shall authorise any interference with an easement of light or other easements in or relating to a party wall or take away abridge or 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 is a declaration of the principle that the Act, speaking generally, does not affect the common law rights of the adjoining owner. This principle is of importance in considering whether an adjoining owner has a remedy against the building owner by action, or can only claim to exercise the rights given him by the Act. The building owner and the adjoining owner are tenants in common of a party wall, and each has at common law the rights of an ordinary owner of property, see *Stedman* v. *Smith*, and *Watson* v. *Gray*, *ante*, p. 170; and *Cubitt* v. *Porter*, and *Wiltshire* v. *Sidford*, *ante*, p. 19; and see note to sect. 5, subsect. (16), *ante*, p. 17. But the Act, by expressly giving to the building owner powers with respect to party walls, has limited the building owner's rights and powers to those so expressly given; for the rule is that where a statute gives to an owner of property with respect to that property powers which he could have exercised without express statutory authority, the powers given must be treated either as superfluous or as implying a prohibition against the more extensive rights which he might have as an owner of property. Per Lindley, L. J., *London Association of Shipowners and Brokers* v. *London and India Docks Joint Committee* (1892), 3 Ch., at p. 251; reported also 67 L. T. (N.S.) 238; 62 L. J. Ch. 294; 7 Asp. M.C. 195.

When, therefore, a person does work to a party structure, and thereby becomes a 'building owner,' as defined by sect. 5, subsect. 31, he loses the rights which he had as tenant in common of the party structure, and acquires instead those given to him by the Act. On the other hand, the 'adjoining owner,' to whom the Act gives rights which he does not possess

as an owner of property, the right given to him by sect. 89 being in addition to his rights at common law, retains his common law right to prevent the building owner from interfering with the property, except so far as he is expressly empowered to do so by the Act, and except so far as he does so in accordance with the regulations of the Act. 57 & 58 Vict. c. ccxiii. s. 101.

In the case of *Crofts* v. *Haldane*, L. R. 2 Q. B. 194 ; 8 B. & S. 194 ; 36 L. J. Q. B. 85 ; 16 L. T. (N.S.) 116, it was contended that the building owner might raise a party structure to any height, and that the adjoining owner's only remedy, if his ancient lights were obstructed by such raising, was by arbitration of surveyors under sect. 85 (7) of that Act. But it was held that the Act did not authorise the raising of a structure so as to obstruct ancient lights in the adjoining owner's premises, because, per Lush, J., there was no intention (by the Act) to interfere with rights, such as easements of adjoining proprietors : the Act was simply to regulate the construction of buildings, and to prescribe the mode in which adjoining owners might proceed when dealing with party structures, and that therefore an action would lie against the building owner.

And in considering the effect of sect. 83 of the Metropolitan Building Act, 1855, Jessel, M.R., said : 'The next section, the eighty-third, has this prefix—"Rights of building and adjoining owners. The building owner shall have the following rights in relation to party structures—that is to say," Does not that mean he is to have no other? Is not that the definition of the rights he is to have, meaning those are all the rights he is to have?' and later on he said, 'Being such a building owner he has these rights, which, in my opinion, are exclusive, and he has no other rights.' *Standard Bank of British South America* v. *Stokes*, 9 Ch. D. at 73 and 74. Reported as *Standard Bank of British South Africa* v. *Stokes*, 47 L. J. Ch. 554 ; 38 L. T. (N.S.) 672 ; 43 J. P. 91. In that case a building owner, relying on the common law right of a tenant in common to do work beneficial to the common property (*Cubitt* v. *Porter*, 8 B. & C. 257), had undermined a party wall, in respect of which he had served a party wall notice, and in respect of which 'a difference had arisen,' before the surveyors appointed by him and the adjoining owner had come to a determination. It was held that he had no right to do anything to the party wall, except such things as were expressly authorised by the Metropolitan Building Act, 1855, and that, having begun before the determination of the surveyors, the adjoining owner was entitled to move for an injunction to restrain him from interfering with the party wall in question.

A building owner who did not comply with the requirements of the Act of 1855 was held to have lost the protection given him by the Act, and to be liable in an action. *Williams* v. *Golding*, L. R. 1 C. P. 69 ; 35 L. J. C. P. 1 ; 1 H. & R. 18 ; 11 Jur. (N.S.) 952 ; 13 L. T. (N.S.) 291 ; 14 W. R. 60. In that case a builder employed by the building owner to do

57 & 58 Vict. c. ccxiii. s. 102.

work was held to be liable to the adjoining owner for the consequences of negligently underpinning a party wall. And North, J., besides making an order for partition, granted in an action damages in respect of a trespass by a building owner on the land of an adjoining owner. *Mayfair Property Company* v. *Johnston*, *ante*, p. 165.

The building owner may not deprive the adjoining owner of any right of support which he may have from the party wall or structure, because if such right is, as according to Lord Selborne it is, an easement, *Dalton* v. *Angus*, 6 App. Ca. 740 ; 50 L. J. Q. B. 689 ; 44 L. T. (N.S.) 844 ; 30 W. R. 191 ; 46 J. P. 132, the section expressly states that such interference is not authorised by the Act ; and if it is not an easement, because of the adjoining owner's right arising from the negative duty imposed by the common law on a man not to use his land so as to injure his neighbour's building. See *Dodd* v. *Holme*, 3 H. & M. 739 ; 1 A. & E. 493. *Bower* v. *Peate*, 1 Q. B. D. 321 ; 40 J. P. 789. *Backhouse* v. *Bonomi*, 9 H. L. C. 503. *Hughes* v. *Percival*, 8 App. Ca. 443 ; 52 L. J. Q B. 719 ; 47 J. P. 772 ; 49 L. T. (N.S.) 189.

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.

'*Structure.*'—The fact that it has been considered necessary for the purposes of this Part of the Act to so define the term 'structure' as to include a building or a wall leads to the inference that where such term is used elsewhere in the Act, except in conjunction with the term 'party,' the expression 'party structure' being defined by sect. 5 (20), *ante*, p. 21, to mean *inter alia* a party wall, it does not include a building or a wall.

Government buildings are excepted from the operation of the Act by sect. 202, *post*, p. 298, and so also are the buildings of the Inns of Court by sect. 204, *post*, p. 299, subject in each case to the provisions of sect. 205.

Dangerous structure.—A structure may be dealt with as a dangerous structure if it is in fact dangerous ; the jurisdiction of a magistrate does not depend upon its being a danger to the public, *London County Council* v. *Herring* (1894), 2 Q. B. 522 ; 10 R. 455 ; 65 L. J. M. C. 230.

Provision is made for the erection of hoardings for the

protection of the public during building operations by section 121 of 18 & 19 Vict. c. 120, in App. I., *post*.

57 & 58 Vict. c. ccxiii. ss. 103, 104.

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.

Survey.—The district surveyor or the surveyor appointed by the Council to make a survey under this section will be entitled to the fees specified in Sch. 3, Part II., *post*, see sect. 113 (1), *post*, p. 202. Fees paid to the district surveyor by the Council will be recovered from the owner of the dangerous structure as expenses incurred by the Council in the matter of such structure, see *ib.* (3). Such expenses are recoverable under sect. 112, *post*, p. 202.

Entry for purposes of survey.—Any person who refuses to permit the district surveyor to enter and survey a structure, or refuses or neglects to afford him all reasonable assistance in such inspection, is liable under sect. 200 (11 *c*), *post*, p. 289, to a penalty not exceeding forty shillings.

Order to survey.—The Standing Orders of January 1, 1895, require that immediately information of a dangerous structure is received by the Council an order to survey is to be sent to the district surveyor in whose district the structure is situate. A district surveyor is not to certify (see sect. 105), unless required to do so, except in cases of imminent danger to life, not admitting of the least delay. See App. III., Pt. I., *post*.

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.

57 & 58 Vict. c. ccxiii. ss. 105, 106.

'*Structure.*'—This expression includes any building or wall and anything affixed to or projecting from any building or wall; see sect. 102, *ante*, p. 192.

'*City.*'—This expression means all parts at the date of the passing of the Act (*i.e.* August 25, 1894) within the jurisdiction of the Commissioners of Sewers; see sect. 5 (43), *ante*, p. 39. As to what district is within such jurisdiction, see the note to sect. 4, under the heading '*London*,' *ante*, p. 4.

'*Commissioners of Sewers.*'—By sect. 5 (46), *ante*, p. 39, this expression means the Commissioners of Sewers for the City of London.

'*Costs and expenses.*'—The costs which will be payable by or to the Commissioners are those provided for by sect. 107 (4), *post*, and the expenses are those mentioned in sect. 109, *post*. Under sect. 113 (1), *post*, p. 202, the fees specified in Part II. of Schedule 3 of the Act are to be paid to the district surveyor in respect of his services in relation to any dangerous structure, and such fees are to be deemed to be expenses incurred by the Commissioners, and recoverable as such, see *ib.* (3).

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.

'*Certificate.*'—The district surveyor is not to certify except in cases of danger to life, not admitting of the least delay. See Standing Orders of Jan. 1, 1895, App. III., Part I. *post*.

Notice to be given to owner in respect of certificate.

106. If the certificate is 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.

'*Structure.*'—As to this term, see sect. 102, *ante*, p. 192.

'*Owner.*'—This expression is defined by sect. 5 (29), *ante*, p. 25.

'*Occupier.*'—A lodger is not included in the meaning of this expression; see sect. 5 (30), *ante*, p. 32.

Protection of passengers.—Where a structure is dangerous, and is situate so near a highway as to be a danger to the passengers thereon, it is a nuisance at common law, and the occupier, being the person by whom such nuisance is continued, is liable to indictment for the nuisance; see *Reg.* v. *Watson*, 2 Ld. Raym. 856; s.c. *Reg.* v. *Watts*, 1 Salk. 356. The erection

of the necessary hoarding and shoring, the reinstatement of the pavement, and the recovery of the expenses, are provided for by the Standing Orders of 1st Jan. 1895; see Appendix III., Part I., *post*. 57 & 58 Vict. c. ccxiii. s. 107.

Provision is also made by sects. 121 and 124 of 18 & 19 Vict. c. 120, in Appendix I., *post*, for the erection of hoardings, &c., for the protection of the public during building operations. Under sect. 32 of 53 & 54 Vict. c. ccxliii., see Appendix I., *post*, hoardings are required to be erected before the demolition of any building is commenced.

Notice.—This must, under sect. 187, *post*, p. 273, be in writing, and will be sufficiently authenticated if signed by the Council's Clerk, *ib.* Compliance with the notice is enforceable under sect. 107, *post*. The notice will be in the terms of the certificate. With the notice a warning is to be sent that any delay in complying with the requirements of the notice will involve the owner in increased expense. If shoring or hoarding is required, the owner is to be afforded an opportunity for executing the work when it can be done without risk of accident. In urgent cases, or on the owner's neglect, the Council will carry out the necessary work. See Standing Orders of 1st of Jan. 1895, App. III., Part I., *post*.

Service of notices.—This is provided for by sect. 188, *post*, p. 274. It will be seen that the present section enables the service of the notice upon either the owner or the occupier, and by subsect. 3 of sect. 188, *post*, the notice will be sufficiently addressed if it is addressed to the 'owner' or 'occupier' of the premises (naming such premises) without further name or description. Where no person is to be found on the premises, the notice may be served by affixing it on some conspicuous part of the structure to which it relates, *ib.* (1)

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:

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

57 & 58 Vict. c. ccxiii. s. 107.

within seven days from the service of the notice upon himself require that the subject shall be referred to arbitration.

(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 seven 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 fourteen days.

(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.

Owner or occupier.—These terms are respectively defined by sect. 5, subsects. 29 and 30, *ante*, pp. 25, 32. Under sect. 200 (11 *g*), *post*, p. 291, any person refusing to admit at a reasonable time any owner, builder, or person, or his servants, workmen, or agents, for the purpose of complying with any notice or order served or made on him in pursuance of this section, or refusing or neglecting to afford them all reasonable assistance in complying with such notice or executing such order, is liable to a penalty not exceeding forty shillings.

Petty Sessional Court.—This expression means a Court of Summary Jurisdiction, consisting of two or more justices when sitting in a petty sessional court-house, and includes the Lord Mayor of the City of London and any alderman of that city, and any metropolitan or borough police magistrate or other stipendiary magistrate when sitting in a court-house or place at which he is authorised by law to do alone any act authorised

to be done by more than one justice of the peace. Interpretation Act, 1889, 52 & 53 Vict. c. 63, sect. 13, subsect. (12). 57 & 58 Vict. c. ccxiii. s. 107.

Complaint.—No time being specially limited by the Act for making the complaint, it must be made within six calendar months from the time when the matter of the complaint arose. See the Summary Jurisdiction Act, 1848, 11 & 12 Vict. cap. 43, sect. 11. The Standing Orders of Jan. 1, 1895, direct that an owner who neglects to comply with a notice is to be summoned within seven days, see App. III., Pt. I., *post*.

District Surveyor.—Any surveyor appointed by the Council to survey a structure reported to be dangerous is a 'District Surveyor' for the purposes of this Part of the Act. See sect. 103, subsect. (2), *ante*, p. 193. At the expiration of the time limited by the order, the district surveyor is again to report to the Council. If the order has not been complied with, the work is to be executed by the Works Department of the Council, under the supervision of an officer of the superintending architect's office. Standing Orders, January 1, 1895, App. III., Part I., *post*.

Expenses.—The expenses of obtaining and carrying out the order are to be paid by the owner of the structure, sect. 109, subsect. (1), *post*, p. 199 ; and if the owner cannot be found, or refuses or neglects to pay, the Council may, after serving him with three months' notice, sell the structure, sect. 109, subsect. (2), and the purchaser may enter and take down and remove the structure, sect. 110 If the proceeds of the sale are insufficient to pay the amount of the expenses incurred by the Council, no part of the land on which it stood may be built upon until the balance is paid, sect. 111, and the Council may recover such balance in a summary manner, sect. 112.

The Council may, instead of selling the structure, recover the expenses in a summary manner, sect. 112, as to which see sect. 166, *post*, p. 254.

If the sum does not exceed 50*l.* the Council may take proceedings for its recovery in the County Court, sect. 168, *post*, p. 263. Rules to be observed with respect to the payment of expenses recoverable from the owner are contained in sect. 173, *post*, p. 266. In the case of the recovery of expenses in a summary manner the time of limitation will run, not from the date when the expenses were incurred, but from the time of the demand and refusal. *Labalmondiere* v. *Addison*, 1 E. & E. 41 ; 48 L. J. M. C. 25 ; 5 Jur. (N.S.) 231.

In proceedings for the recovery of expenses incurred in obtaining and carrying out an order, the magistrate may consider the validity of the original order, and refuse to make the order for the payment of such expenses on the ground of the invalidity of the original order. *Labalmondiere* v. *Frost*, 1 E. & E. 527 ; 28 L. J. M. C. 155 ; 7 W. R. 205 ; 5 Jur. (N.S.) 789 ; 23 J. P. 598.

The order is to be made on the 'last statutable owner.'

57 & 58 Vict. c. ccxiii. s. 107.

So if the person in occupation is an 'owner,' as defined by sect. 5 (29), the order must be made on him, and not on the person from whom he holds, though that person may also be within the definition. *Mourilyan* v. *Labalmondiere*, *ante*. In that case, which turned on the construction to be put upon sect. 3 of the Metropolitan Building Act, 1855, whereby 'owner' was similarly defined, Crompton, J., is reported (in the 'Law Journal' report) to have said: 'Perhaps, in a case where there is a lease and sub-lease, the right thing would be to go back to the person who was clearly liable under sect. 3' (30 L. J. M. C. p. 98). But that statement, made *obiter*, appears to be hardly in accordance with the reasons given by the learned judges in their judgments. In *Hunt* v. *Harris*, 34 L. J. M. C., Byles, J., said that the decision in *Labalmondiere* v. *Mourilyan* was that 'the party who was a tenant for twenty-one years under a covenant to repair was the party liable, and further that he was the only party liable.'

The present Act provides by sect. 173, subsect. (1), *post*, p. 267, that where expenses are to be borne by, or may be recovered from, the owner of any premises, 'the owner immediately entitled in possession to the premises or the occupier thereof shall in the first instance pay the expenses,' with a limitation that the occupier is not to 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. With regard to the 'owner' of a church, &c., see the note to sect. 5 (29), *ante*, p. 29.

The Standing Orders of January 1, 1895, contain directions as to the procedure to be followed in ascertaining the amount of the expenses to be recovered from the owner. See App. III., Part I., *post*.

Arbitration.—The Arbitration Act, 1889, 52 & 53 Vict. cap. 49, applies to every arbitration under this Act so far as it is not inconsistent with it or with any rules or procedure authorised or recognised by it. The Arbitration Act enables an arbitrator (sect. 19) at any stage of the proceeding under a reference, and requires him, if so directed by the Court or a judge, to state in the form of a special case for the opinion of the Court any question of law arising in the course of the reference. The reference to the surveyors or to the arbitrator of 'all questions of fact or matters in dispute,' is not inconsistent with the power so given to the surveyors or the arbitrator, since, should any question of law arise, the surveyors, having taken the opinion of the Court thereon, can then dispose of the matter in dispute. The appointment of the arbitrator is inconsistent with the Arbitration Act. Under that Act arbitrators may appoint an umpire at any time within the period during which they have power to make an award.

Under sect. 19 of the Arbitration Act, 1889, the arbitrators or umpire may state the award in the form of a special case for the opinion of the High Court. See also the note to sect. 91, *ante*, p. 182.

57 & 58 Vict. c. ccxiii. ss. 108, 109.

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.

Petty Sessional Court.—See as to this Court the note to sect. 107, *ante*, p. 195.

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.

(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 three 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.

'*Structure.*'—See, as to this expression, sect. 102, *ante*, p. 192.

'*Owner.*'—For the definition of this expression, see sect. 5 (29), *ante*, p. 25.

Expenses.—Where the materials are not sold under this section, or where the proceeds of sale are insufficient, expenses incurred by the Council in respect of a dangerous structure, or the balance thereof, are by sect. 112, *post*, recoverable in a summary manner, as to which see sect. 166, *post*, p. 254.

Where the materials are sold, and the sale realises an amount more than sufficient to cover the expenses, the balance, if not claimed by any person entitled thereto within one year, is to be paid by the Council into Court ; see sect. 172, *post*, p. 266.

Rules with respect to the payment of expenses which the Act declares are to be borne by or may be recovered from the owner of any premises are contained in sect. 173, *po t.* The owner immediately entitled in possession or the occupier is by subsect. (1) of that section made liable to pay the expenses, with the limitation that the occupier shall not be liable to pay any sum exceeding the amount of rent due, or that will thereafter accrue due from him in respect of the premises during the period of his occupancy. Each 'successive owner' is to be liable to contribute to the expenses in proportion to his interest, subsect. (2), differences as to the amount of contribution being

57 & 58 Vict. c. ccxiii. s. 109.

settled by arbitration, subsect. (3). So that the Council may obtain payment from any person who is an 'owner' as defined by sect. 5, subsect. (29), *ante*, p. 25, while this owner, in the absence of any covenant between himself and a superior landlord, or himself and a tenant, to pay such expenses, is by virtue of the provision contained in subsect. (2) of sect. 173 enabled to recover a proportion of such amount from every person who is also an 'owner' of the premises within the meaning of the definition. In the absence of any covenant on the part of the landlord to repair the premises a tenant for a term of years would, but for this provision, be unable to recover from his landlord money spent in complying with a notice or order under this Part of the Act; since a landlord is not in the absence of an express contract bound to do any repairs to the premises—even if the result of non-repair is that the premises become dangerous. *Gott* v. *Gandy*, 2 E. & B. 845.

A covenant is usually contained in leases that the tenant shall pay all rates, taxes, and assessments, and in cases where similar covenants contained the word 'duties,' the landlord has been held to be entitled to recover from the tenant the amount paid by him under the Metropolis Management Act in respect of private improvement expenses, *Thompson* v. *Lapworth*, L. R. 3 C. P. 149, 17 L. T. (N.S.) 507, and the cost of complying with an order of a local authority to do certain works in order to abate a nuisance, *Budd* v. *Marshall*, 5 C. P. D. 481, 50 L. J. C. P. 24, 42 L. T. (N.S.) 793, 29 W. R. 148, 44 J. P. 584; and where the tenant had covenanted to pay 'outgoings,' it was held that he was bound to refund to the landlord the amount which he had been compelled by the Vestry to pay as his proportion of the cost of paving a new street. *Aldridge* v. *Fearn*, 17 Q. B. D. 212, 55 L. J. Q. B. 587, 34 W. R. 578, followed in the case of *Batchelor* v. *Biggar*, 60 L. T. (N.S.) 416. See also note to 25 & 26 Vict. c. 102, sect. 96, Appendix I., *post*.

As the section, however, enacts that the owner shall pay the expenses without prejudice to his right to recover the same from any person liable to the expenses of repairs, and as by sect. 173, subsect. (2), provision is made for the division of the amount among all the owners, it is evidently the intention of the Act that these expenses shall not be within the covenant to pay rates, &c., but in the absence of an express contract by some person to keep the structure in repair, repairs are to be paid by the lessors and those entitled to the premises in reversion.

The expenses to be paid by the owner are the expenses incurred in relation to the obtaining of any order, and carrying the same into effect. This does not appear to include the expense of shoring and securing the premises and erecting the hoarding or fence provided for by sect. 106, *ante*, p. 194. These expenses are, therefore, general expenses to be paid by the Council, sect. 189, *post*, p. 276 (except the surveyor's fee, as to which see Schedule III., Part II.), which are to be deemed to

be expenses incurred by the Council in the matter of the dangerous structure ; sect. 113, subsect. 3, *post*, p. 202. 57 & 58 Vict. c. ccxiii. ss. 110, 111.

Services of notices.—The language of the section is somewhat paradoxical. But the provision as to service of notice on the owner where he cannot be found is met by the fact that sect. 188, *post*, p. 274, in such cases enables notices under the Act to be served by affixing them to some conspicuous portion of the premises ; and subsect. 3 of that section also makes it sufficient to address the notice to the 'owner' of the premises (naming the premises to which the notice relates), without further name or description.

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.

Sale of materials.—Under sect. 109, *ante*, the Council is empowered to sell a dangerous structure for the purpose of its demolition and the removal of the materials, where the owner either cannot be found or refuses or neglects to pay the expenses incurred by the Council in relation to an order as to such structure ; and under sect. 115 (3), *post*, p. 203, power is given to the Council to sell the materials of a neglected structure within the meaning of that section ordered to be taken down, unless the expenses incurred by the Council in relation thereto are paid within fourteen days.

Any person hindering or obstructing any person empowered by this section to enter upon any land is liable under sect. 200 (4), *post*, p. 285, to a penalty not exceeding ten pounds.

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.

Insufficiency of proceeds of sale.—The provisions of this section are similar to those which were contained in sect. 19 of the Metropolitan Building (Amendment) Act, 1878. Further provision is made by sect. 116, *post*, whereby upon complaint by the Council that expenses incurred by it in respect of a dangerous structure have not been paid, a petty sessional court may fix the amount of such expenses and of the costs of the proceedings before the petty sessional court, and may make an order directing that no part of the land upon which the structure

57 & 58 Vict. c. ccxiii. ss. 112, 113.

stood shall be built on, or that no part of the structure if it has been repaired is to be let for occupation until the amount so fixed has been paid. Expenses due to the Council under this Part of the Act are recoverable in a summary manner by virtue of the next section.

A register is required by sect. 106 (3), *ante*, p. 194, to be kept by the Council of all orders made under that section; and no property is to be affected by any such order until the order is entered on the register, which is to be open to public inspection. The orders are to be registered within ten days after they are made, otherwise they will not affect the property to which they relate: but no provision is made for the registration of lands affected by orders made under the section. It is to be presumed, however, that the register will be so kept as to enable searches to be made to discover whether any particular property has been affected. The Standing Orders of January 1, 1895, require that the register shall be kept in the Comptroller's Department, and also that the Comptroller shall in every case in which a petty sessional court has made an order under sect. 116, give notice to the district surveyor for the district in which the property is situated, and that the district surveyor shall be requested to give immediate notice to the Council when any building is about to be commenced upon the site in question (see App. III., Part I., *post*).

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.

Sale of structure.—The Council is empowered to sell a dangerous structure under sect. 109, *ante*, p. 199, when the owner cannot be found or refuses or neglects to pay expenses incurred by the Council in obtaining and carrying into effect an order under this Part of the Act.

'*Summary manner.*'—This means in the manner directed by the Summary Jurisdiction Acts; see sect. 166, *post*, p. 254, and the notes to that section.

'*Expenses.*'—Expenses incurred under the corresponding Part of the Metropolitan Building Act, 1855, were held to be a charge upon the property in respect of which they had been incurred. See *In re Hammond Davis's Estate, In re The Crystal Palace and West End Railway Company*, 4 Jur. (N.S.) 1029; 3 De G. & J. 144; 6 W. R. 844.

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.

57 & 58 Vict. c. ccxiii. ss. 114, 115.

(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.

(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.

Fees.—In addition to the fees payable to the district surveyor under this section, the fees specified in Part IV. of the 3rd Schedule of the Act are payable to the County Council under sect. 117, *post*, p. 206.

'*Expenses incurred by Council.*'—These are to be paid by the owner of the structure without prejudice to his right to recover them from any person liable to the expenses of repairs, see sect. 109 (1), *ante*, p. 199. A lessor will therefore be able to recover from his lessee under a repairing lease the amount of any fees paid by him under the section, in addition to any other expenses he may be entitled to recover. The persons who come within the meaning of the term 'owner' are defined by sect. 5 (29), *ante*, p. 25. See also the note under the heading '*Expenses*' to sect. 109, *ante*, p. 199. And see also Standing Orders, January 1, 1895, Appendix III., Part I., *post*.

'*Recovery of expenses.*'—See as to this sect. 112, *ante*, p. 202.

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.

Certificate of district surveyor.—The district surveyor is empowered to survey structures for the purposes of this Part of the Act under sect. 103, *ante*, p. 189, and upon the completion of the survey is to certify to the County Council his opinion as to the state of the structure under sect. 105, *ante*, p. 194.

'*Petty Sessional Court.*'—See as to this Court the note to sect. 107, *ante*, p. 195.

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

57 & 58 Vict. c. ccxiii. s. 115.

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 fourteen 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.

'*Neglected structures.*'—This section is a re-enactment of sect. 17 of the Metropolitan Building (Amendment) Act, 1882.

The expression 'structure' in this section includes any building, wall, or other structure, and anything affixed to or projecting from any building, wall, or structure; see sect. 102, *ante*, p. 192.

The Act makes no provision for the entry and survey of structures for the purposes of this section, such as is made by sect. 103, *ante*, with respect to dangerous structures, and it is to be observed that where a district surveyor has made a survey in pursuance of that section, and under sect. 105 certified his opinion as to the state of the structure, sect. 106 enacts that if his certificate is to the effect that the structure is not in a dangerous state, no further proceedings shall be had

in respect thereof. Where, however, the certificate is to the effect that the structure is in a dangerous state, it is presumed that proceedings may be taken under this section either in addition to or instead of proceedings under sect. 107, *ante*. The Standing Orders of January 1, 1895, however, provide that upon receipt of information that a structure is in a dilapidated or neglected condition, an inspection is to be made by an officer responsible to the Superintending Architect, and the result of the inspection reported to the committee (see Appendix III., Part I., *post*) ; such report is to be referred to the Medical Officer. If any person hinders or obstructs the owner in carrying out an order under this section, he will be liable to a penalty under sect. 200 (4), *post*, p. 285. But that enactment only applies where the owner is empowered by the Act to enter and remain on premises for the purpose of executing work directed to be done under the Act ; and where, owing to the premises in question being subject to a lease granted by the owner upon whom an order under this section is made, his safe course will be, unless he has clearly power under the lease to enter for the purpose of obeying the order, to allow the Council to do what is required. 57 & 58 Vict. c. ccxiii. s. 115.

'*Petty Sessional Court.*'—See as to this Court the note to sect. 107, *ante*, p. 195. If an order is made by the Petty Sessional Court, the Superintending Architect is, at the expiration of the period allowed by the order, to report to the Building Acts Committee. See Standing Orders, January 1, 1895, Appendix III., Part I., *post*.

'*Owner.*'—For the definition of this expression see sect. 5 (29), *ante*, p. 25. The Standing Orders of January 1, 1895, require that a period of fourteen days is to be given to the owner, if known, within which to commence works of repair or removal. Should such works not be commenced within that period, a summons is to be applied for. See Appendix III., Part I., *post*.

Sale of materials.—Under sect. 200 (6), *post*, p. 287, the refusal to admit the purchaser of any materials sold under the Act, his servants, or agents upon the land on which such materials are, or the impeding him or them in removing the materials, will render the person refusing or impeding liable to a penalty. Whether, however, the materials, when a structure or any part of it is taken down in pursuance of this section, may be removed to another part of the land, if that is a convenient place, is not clear. If no demand is made by any person entitled to the surplus of the proceeds of the sale beyond the expenses within one year of the receipt of the proceeds by the Council, such surplus is to be paid into Court under sect. 172, *post*, p. 266.

'*Expenses.*'—As to the recovery of expenses incurred under this section, see sect. 166, *post*, p. 254. With regard to the right of the owner to recover any expenses paid by him in pursuance of this section from other persons, see sect. 173, *post*, p. 266, and the note to sect. 109, *ante*, p. 199.

57 & 58 Vict. c. ccxiii. ss. 116, 117.

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 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 ten 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.

Recovery of expenses.—See also with regard to the recovery of expenses incurred in respect of dangerous structures, sect. 111, *ante*, p. 201.

'*County Hall.*'—This means apparently the offices of the County Council in Spring Gardens.

Register of orders.—See as to this the note to sect. 111, *ante*, p. 201. The Register is to be kept in the Comptroller's Department. See Standing Orders, January 1, 1895, Appendix III., Part. I., *post.*

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.

Fees payable to Council.—The section does not say that these fees are to be deemed to be expenses incurred by the Council in the matter of the structure in respect of which they are to

be paid, as in the case of fees payable to the district surveyor in respect of dangerous structures under sect. 113, *ante*, p. 202, nor does the section say by whom the fees are to be paid. Assuming, however, that such fees are expenses incurred by the Council in relation to the structure, they will presumably be recoverable in the manner provided in respect to such expenses; see sects. 109 and 115, *ante*, pp. 199 and 203. 57 & 58 Vict. c. ccxiii. s. 118.

'*Summary way.*'—Under sect. 166, *post*, p. 254, 'expenses directed to be recovered in a summary manner' may be recovered in the manner directed by the Summary Jurisdiction Acts.

PART X.

Dangerous and Noxious Businesses.

Regulations for building near dangerous business.

118. (1) No person shall erect any building nearer than fifty 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 fifty 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 forty feet from any public way or than fifty 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 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.

'*Buildings.*'—Public gasworks and premises used for distilling or rectifying spirits, under the survey of the Commissioners of Inland Revenue or their officers, are not buildings to which this Part of the Act applies; see sect. 121, *post*, p. 213.

'*Dangerous business.*'—By the Regulations of 1st Jan. 1895, all communications respecting dangerous and noxious businesses are to be forthwith referred to the Medical Officer; see App. III., Part II., *post*. With regard to manufactures which

57 & 58 Vict. c. ccxiii. s. 119.

are dangerous on account of the liability of the materials or substances employed to cause fire or explosion, other than those enumerated in subsect. 4 of sect. 118, it may be mentioned that the corresponding provision of the Metropolitan Building Act, 1844, which is repealed by this Act, included among those businesses which it specified as being dangerous the manufacture of gunpowder, detonating powder, vitriol, fireworks, and painted table-covers, as well as those specified in the present section. The manufacture of 'explosives,' in which term are included gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or other metals, coloured fires, and every other substance, whether similar to those above mentioned or not, used or manufactured with a view to produce a practical effect by explosion or pyrotechnic effect; and also fog-signals, fireworks, fuses, rockets, percussion-caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation as above defined, is regulated by the Explosives Act, 1875 (38 & 39 Vict. cap. 17), and can only be carried on at a factory licensed under that Act. See also the Instructional Letter of the 11th October, 1864, to District Surveyors relative to dangerous businesses, in Appendix IV., Part II., *post*.

'*Distance*.'—This is to be measured in a straight line on a horizontal plane; see the Interpretation Act, 1889 (52 & 53 Vict. cap. 63, sect. 34).

'*Penalty*.'—The infringement of the provisions of this section is an offence against the Act, and every person committing such offence is liable to a penalty not exceeding 50*l*., and to a daily penalty of a like amount for every day during which a building erected in contravention of the section is allowed to remain near to the dangerous business, sect. 200 (7), or, in the case of the establishment or carrying on of a dangerous business at a less distance than 40 ft. from a public way, or 50 ft. from the adjoining building or ground, during which the dangerous business is carried on. The penalty is recoverable summarily under sect. 166, *post*, p. 254. See also the note to sect. 170, *post*, p. 264, as to the meaning of conviction. As to the power of the Council to demolish buildings, as well as to recover penalties, see the note to sect. 200, *post*, p. 281.

Regulations for building near noxious business.

119. (1) No person shall erect any dwelling-house nearer than fifty 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 fifty 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 forty feet from any public way or than fifty feet from any dwelling-house. 57 & 58 Vict. c. ccxiii. s. 119.

(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.

'*Dwelling-house.*'—The expression is defined by sect. 5 (25), *ante*, p. 23.

'*Noxious business.*'—Sect. 119 re-enacts sect. 55 of the Building Act, 1844 (7 & 8 Vict. cap. 84), the provisions of which applied to the businesses of blood boiler, bone boiler, fellmonger, slaughterer of cattle, sheep, or horses, soap boiler, tallow melter, and tripe boiler, and prohibited the carrying on of any of such businesses within 40 ft. of a public way or within 50 ft. of a dwelling-house, and all such businesses carried on within the prescribed distances at the passing of that Act were to cease to be carried on at the expiration of thirty years from that date. The establishment anew of the businesses of blood boiler, bone boiler, manure manufacturer, soap boiler, tallow melter, or knacker, and the establishment anew without the sanction of the Council (or in the City without the sanction of the Commissioners of Sewers) of the businesses of fellmonger, tripe boiler, slaughterer of cattle or horses, or any other business which the Council (or the Commissioners) may declare, by order confirmed by the Local Government Board in the 'London Gazette,' to be an offensive business, is prohibited by sect. 19 of the Public Health (London) Act, 1891. Steaming bones in dry steam within hermetically sealed cylinders is not 'bone boiling;' see *Cardiff Manure Company* v. *Cardiff Union*, 54 J. P. 661.

The prohibition contained in sect. 112 of the Public Health Act, 1875, which prohibits the establishment within urban districts of similar businesses to those specified in the present section, and 'any other noxious or offensive trade, business, or manufacture,' was held not to apply to a hospital for the reception of small-pox patients, the establishment of such hospital not being the establishment of any 'other noxious or offensive trade, business, or manufacture' within the section, *Withington District Local Board of Health* v. *the Corporation of Manchester* (1893), 2 Ch. 19; 62 L. J. Ch. 393; 68 L. T. (N.S.) 330; 41 W. R. 306; 57 J. P. 340; 2 R. 367.

The businesses meant by 'other noxious or offensive busi-

57 & 58 Vict. c. ccxiii. s. 120.

ness' being businesses of a like nature to those enumerated in the section; see also *Wanstead Local Board of Health* v. *Hill*, 13 C. B. (N.S.) 479; 32 L. J. M. C. 155; 7 L. T. (N.S.) 744; 9 Jur. (N.S.) 972; 11 W. R. 368, where it was held that brick-making was not of necessity a business of a noxious or analogous nature to those specified in the section. In another case the Court held that the business of a rag and bone merchant might be a noxious business within sect. 112 of the Public Health Act, 1875; see *Passey* v. *Oxford Local Board*, 43 J. P. 622.

Under the Metropolitan Building Act, 1844, sections 61 and 62, it was possible to obtain an Order in Council directing the removal of an offensive, noxious, or dangerous business carried on within the Metropolis, the carrying on of which was not prohibited by the Act. Where an order was made, compensation was payable to the owner. No such provision is contained in the present Act, which it will be seen prohibits not only the establishment of a noxious business to which the section applies, but also the carrying on of such a business. The prohibition is, however, subject to the provisoes contained in the following section, which exempt businesses existing before August 9, 1844, under certain circumstances, from its operation.

Penalties.—Every person who erects a dwelling-house nearer than 50 ft. to a building used for any noxious business is liable to a penalty not exceeding 50*l.*, and to a daily penalty of a like amount during the time such dwelling-house is allowed to remain; see section 200 (7), *post*, p. 287; and every person who establishes or carries on a noxious business in contravention of this section is liable to a similar penalty; see section 200 (8), *post*. Penalties imposed by the Act are recoverable summarily; see section 166, *post*, p. 254.

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 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: 57 & 58 Vict. c. ccxiii. s. 120.

(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 recognizance 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 herein-before 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

57 & 58 Vict. c. ccxiii s. 120.

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.

'*Old noxious business.*'—The Act by sect. 119 (3) prohibits the establishment or carrying on of any noxious business within the distance of public ways or dwelling-houses therein prescribed, whether such businesses are new or old, and the effect of the present section is merely to provide a defence where proceedings are taken to recover the penalties imposed by sect. 200 (8), *post*, p. 288, in respect of any such business which existed before August 9, 1844. The Act does not expressly limit the application of sect. 120 to businesses which have been carried on without interruption since that date, but it will in every case be a question of fact whether the particular business is the same business which existed before August 9, 1844; and in the case of businesses existing before that date, but which may have ceased at any time to be carried on, it is presumed that it will be a question in proceedings in respect of the carrying on of any similar business upon the same premises, whether such business is merely a revival of the old business, or is practically a new business to which the defence afforded by sect. 120 is inapplicable. The determination of this question will no doubt depend to a great extent upon the length of time that may have elapsed between the cessation and recommencement of business upon the particular premises.

It will not be sufficient under the present section merely to prove that the business in question existed previously to August 9, 1844, but it will be necessary for the defendant to prove either that he has adopted 'all the best means available for' mitigating so far as possible the effects of his business, or that he has 'made due endeavours to carry on the same with a view to mitigate so far as possible the effects.' Where, therefore, the system on which a business is been carried on is that which has previously been adopted, and nothing has been done to aggravate the injurious or noxious effects of such business, it will nevertheless be necessary for the defendant in any proceedings under the Act to establish one or other of the above-mentioned defences. For a case to some extent parallel, but arising under the Rivers Pollution Prevention Act, 1876, see *Yorkshire* (*West Riding*) *County Council* v. *Holmfirth Urban Sanitary Authority* (1894), 2 Q.B. 842; 9 R. 462; 63 L. J. Q. B. 485; 71 L. T. (N.S.) 217.

'*Petty Sessional Court.*'—See as to this Court the note under the same heading to sect. 107, *ante*, p. 196.

'*Penalty.*'—The penalty for establishing or carrying on a noxious business contrary to the Act is a sum not exceeding 50*l.*, and a daily penalty of a like amount, see sect. 200 (8), *post*, p. 288.

57 & 58 Vict. c. ccxiii. ss. 121, 122.

'*Prosecutor.*'—Any person may commence proceedings by making a complaint to the Petty Sessional Court, 11 & 12 Vict. cap. 43, sect. 1.

'*Any person dissatisfied.*'—The Council, being a body corporate, is a person; see the Interpretation Act, 1889, 52 & 53 Vict. cap. 63, set. 19. But it is doubtful whether subsect. 2 gives the Council a right to appeal as a person dissatisfied, where it was not a party to the proceedings in which the decision of the Petty Sessional Court was given. For it has been held that the Legislature, in giving a right of appeal to the party 'aggrieved' (55 Geo. III. cap. 68, sect. 3), intended to 'confer that privilege upon those persons alone who have sustained some special and peculiar injury.' Per Abbott, C. J., *Rex* v. *Justices of Essex*, 5 B. & C. p. 433. And it was held that the right to appeal to Quarter Sessions given by 9 Geo. IV. cap. 61, sect. 27, to 'any person who shall think himself aggrieved by any act of the justices,' gave a right of appeal to persons immediately aggrieved by the act done, and not to persons only consequentially damaged, *Rex* v. *Justices of Middlesex*, 3 B. & A. 938. So, also, it was recently held that a person is not 'aggrieved' by an order of a Court of Summary Jurisdiction, so as to be in a position to apply to the Court to state a case (under 42 & 43 Vict. cap. 34, sect. 33), unless his legal rights are affected by the decision, *Drapers' Company* v. *Hadden*, 57 J. P. 200. For the practice in appeals to Quarter Sessions, see note to sect. 166, *post*, p. 254. The decision of a Court of Summary Jurisdiction on a point of law may be questioned by means of a case stated for the opinion of the High Court, as to which see note to sect. 166, *post*.

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.

'*Gasworks.*'—In addition to this exemption, all rights, &c., conferred on a gas company by any Act of Parliament are expressly preserved by sect. 205, *post*.

PART XI.

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

57 & 58 Vict. c. ccxiii. s. 122.

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 herein-after 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 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 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.

'*Buildings on low-lying lands.*'—The erection of dwelling-houses, and the adaptation of buildings to be used as dwelling-houses, on land situate below the level of Trinity high-water

mark, and so situate as not to admit of being drained by gravitation into the existing sewerage system, was first dealt with by the London County Council (General Powers) Act, 1893 (56 & 57 Vict. cap. ccxxi.), sects. 5 to 9. Part XI. is a re-enactment of these provisions, except so far as they dealt with the constitution of the Tribunal of Appeal. Under the Act of 1893 one member of the Tribunal was appointed by the Council, but no member or officer of the Council might be a member of the Tribunal. The Tribunal is now that constituted under the provisions of sect. 175, *post*. See sect. 5, subsect. (47), *ante*, p. 39. 57 & 58 Vict. c. ccxiii. s. 122.

'*Existing sewers*.'—With regard to what sewers were vested in the Council at the commencement of the Act, see 18 & 19 Vict. c. 120, sects. 68, 135, and 148.

'*Person*.'—This term includes any body of persons, whether corporate or incorporate, see the Interpretation Act (52 & 53 Vict. cap. 63), sect. 19.

'*Trinity high-water mark*.'—The Corporation of the Trinity House having made observations as to the tides in the River Thames (probably in accordance with 39 & 40 Geo. III. cap. xlvii., sect. 55, which required low-water mark in the river to be ascertained by 'two of the Elder Brothers'), in the year 1853 the Thames Navigation and Port of London Committee fixed plates of iron, on which were marked the high-water line as ascertained by the Elder Brethren. This high-water mark is stated to be 12·50 feet above the ordnance datum line, which is that of mean water at Liverpool.

'*Regulations*.'—The Council by the Standing Orders of January 1, 1895, has decided that 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 must 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. See Appendix III., Part I., *post*.

Regulations made by the Council under this section will be binding on the Council, see *Baxter* v. *Mayor of Bedford*, *ante*, p. 50. The Building Acts Committee has made regulations with regard to the proceedings consequent on applications under this Part of the Act. These regulations will be found in Appendix III., Part II., *post*.

'*Penalty*.'—The penalty for breach of the provisions of sect. 122 is that imposed by sect. 200, subsect. (9), *post*, and is the same as the penalty imposed by the Act of 1893.

'*Dwelling-house*.'—This expression means 'a building used or constructed or adapted to be used wholly or principally for human habitation;' see sect. 5 (25), *ante*, p. 23, and the notes thereto.

'*Owner*.'—This expression is defined by sect. 5 (29), *ante*, p. 25. See with regard thereto the notes to that subsection.

'*Appeal*.'—Under the following section the Council is em-

57 & 58 Vict. c. ccxiii. ss. 123, 124.

powered to make regulations prescribing the procedure to be followed where applications are made under this Part of the Act. And by sect. 184, the Tribunal of Appeal has power from time to time, subject as therein mentioned, to make regulations as to the procedure to be followed in appeals to it, and as to the time and notice of appeal, and the fees to be paid.

An appeal under this section is to be lodged at the offices of the Tribunal within fourteen days after notice of the refusal of the Council, or of the decision of the engineer or of any requirement or condition as the case may be; and notice of the appeal is to be given within such period to the Council, and where the original applicant is not the appellant to such applicant. Notice is also to be given to the Council's engineer and to the local authority, which expression is defined by sect. 5 (42), *ante*, p. 39; see the Regulations of the Tribunal of the 21st February, 1895, in Appendix III., Part II., *post*.

'*Licence to erect.*'—The context 'such erection or adaptation' shows that the words 'or adapt' have been accidentally omitted. The section is a re-enactment of sect. 5 of the London County Council (General Powers) Act, 1893, in which the same omission occurred. With regard to the conversion of buildings into dwelling-houses, see also sect. 211, *post*, p. 300.

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.

'*Regulations.*'—The applications to be regulated under this section are applications to the Council—not applications by way of appeal to the Tribunal of Appeal; the procedure in appeals to that tribunal being subject to regulations to be made by the Tribunal pursuant to sect. 184, *post*.

The following section deals with the publication and obtaining of copies of regulations made by the Council. The Council has power to make byelaws with respect to the forms of notice and other documents to be used for the purposes of the Act under sect. 164, *post*.

Regulations prescribing the procedure to be followed by applicants for permission to erect buildings to which this Part of the Act applies, have been made by the Council, and will be found in Appendix III., Part II., *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. 57 & 58 Vict. c. ccxiii. s. 125.

(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.

Note.—Publication of any regulations made by the Council under this Part of the Act in the daily newspapers and in the local newspaper does not appear to be a condition precedent to the validity of the regulations. And it may be a matter of some difficulty to determine whether or not a newspaper is a 'local newspaper circulating in the parish or district.'

The Act of 1893 required the publication in the 'London Gazette' of any regulations altered by the Council.

PART XII.

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 any other contrivance securely fixed to or on the top of the wall or parapet of any building on the cornice or 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

57 & 58 Vict. c. ccxiii. s. 125.

and not open work and do not extend in height more than three 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.

'*Sky signs.*'—This Part of the Act in effect re-enacts the London Sky Signs Act, 1891 (54 & 55 Vict. cap. lxxviii.), as such Act was amended by sect. 17 of the London Council (General Powers) Act, 1893 (56 & 57 Vict. cap. ccxxi.). The definition of the term 'sky sign' in the present Act is identical with the definition of that term which was contained in sect. 17 of the Act of 1893, except that in the present definition, the word 'house,' which occurred in the earlier Act before the word 'building' where first used in the definition, has been omitted ; and except that the exemption contained in subsect. iii. of sect. 125 of the present Act is extended to the words &c. relating to the business of a railway company placed upon or over the railway, and any premises belonging to the company. With regard to the exemption contained in such subsection it is to be noticed that it is not an absolute exemption, and that it only applies where the things specified in the subsection are so placed that they cannot fall into any street or public place. As to what comes within the meaning of the term 'street,' see the definition of that expression in sect. 5 (1), *ante*, p. 6.

Under the earlier enactments, which are repealed by the present Act, it was held that a structure used for the purpose of exhibiting an advertisement might be a 'sky sign' within the meaning of such enactments, although it was constructed to be, and was, used mainly for purposes other than that of advertisement. Accordingly a windmill fifty feet high, erected upon the top of a building, which drove two pairs of millstones, and was used for grinding wheat and also for hoisting and lowering wheat from one floor of the building to another, and which was also used for driving a dynamo for supplying electricity to the building, was held to be a sky sign within the meaning of those Acts, because upon the tail or rudder of the windmill was painted an advertisement, and halfway up the tower of the mill was a gallery with a railing, the supports of which consisted of wooden letters, 3 feet 6 inches in height, exhibiting the name of the firm carrying on business in the building, *The*

London County Council v. *Carwardine & Co.*, 68 L. T. (N.S.) 61 ; 62 L. J. M. C. 40 ; 57 J. P. 181 ; 5 R. 170. 57 & 58 Vict. c. ccxiii. s. 126.

It is not every structure, however, which exhibits an advertisement against the sky, which is a sky sign within the meaning of the Act. For instance, upon the top of a building 56 feet in height were two pillars, between which was fixed an iron trellis, bearing wooden letters 3 feet high and 2 feet 6 inches in breadth, exhibiting the name of the proprietors of the building. Behind the trellis on the roof of the building and rising considerably above the trellis were five glass domes, but in proceedings taken against the owner of the building and structure for maintaining the structure without the licence of the London County Council, the magistrate before whom the proceedings were taken found that the sky could be seen through the letters from two streets, and accordingly convicted the owner. The magistrate having stated a case for the opinion of the Queen's Bench Division, which case contained no finding that the structure was 'wholly or in part over the house or building,' and such fact being (per Pollock, B.) the most important part of the definition, the court quashed the conviction upon the ground that there was no evidence stated upon which the magistrate could have found that the structure was a 'sky sign' within the meaning of the Acts. *Tussaud* v. *The London County Council*, 57 J. P. 184.

By a regulation of the Building Act Committee of 1st Jan. 1895 : 'As far as regards signs existing at the time of the passing of the London County Council (General Powers) Act, 1893, an advertising board of height varying in different parts is to be regarded as of less than three feet in height if its average height be less than three feet.'

'*Blocking course.*'—This term is defined as 'a course of stones placed on the top of a cornice, and forming the crown of a wall,' in Gwilt's *Encyclopædia*.

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. **District surveyor to act for purposes of this Part of Act.**

The expression 'the surveyor' in this Part of this Act means the district surveyor so acting within his district.

'*District surveyor.*'—This expression is defined by sect. 5, subsect. (35), *ante*, p. 36.

The Council may direct any other district surveyor to assist the surveyor of a district under sect. 143, *post*, and a district surveyor who is prevented by illness, infirmity, or other unavoidable circumstance from attending to the duties of his office may appoint a deputy under sect. 142, *post*.

'*Inspection.*'—Any person who refuses to permit the district surveyor at a reasonable time to enter, survey, or inspect any

57 & 58 Vict. c. ccxiii. ss. 127, 128.

building, work, or premises, which such surveyor is authorised by the Act to enter and inspect, or refuses or neglects to afford him all reasonable assistance in such inspection, commits an offence against the Act, and is liable to a penalty not exceeding forty shillings, and to a daily penalty not exceeding the like amount under sect. 200 (11 *c*), *post*. Whether an application for permission to enter and survey a structure was made at a reasonable time will be a question of fact to be decided in connection with all the surrounding circumstances of the case; see *Tennant* v. *Bell*, *ante*, p. 75.

Prohibition of future sky signs.

127. From and after the commencement of this Act it shall be unlawful to erect any sky sign as defined in this Act.

'*Commencement of the Act*'—*i.e.* January 1, 1895; see sect. 3, *ante*, p. 3.

'*Sky sign*.'—For what is a sky sign within the meaning of this section, see sect. 125, *ante*, p. 217.

'*Penalty*.'—The placing, erecting, or retaining, or suffering or permitting to be placed, erected, or retained, any sky sign contrary to the provisions of this Act, is an offence against the Act, see sect. 200 (11 *a*), *post*. And the Council (or in the City the Commissioners of Sewers, sect. 135) may take proceedings for the removal of a sky sign erected or retained contrary to the provisions of this Act, as if it were a structure certified to be in a dangerous state; sect. 134, *post*.

As to these proceedings see sects. 106 and 107, *ante*, pp. 194 and 195, and see the note to sect. 134, *post*.

With regard to the retention of sky signs, erected or retained before January 1, 1893, with the licence of the Council, see, however, sect. 128 *et seq.*, *post*. The present section makes it unlawful to erect any new sky sign, and the following sections place a limit upon the time during which any such signs erected or retained previously to January 1, 1893, with the licence of the Council, may be retained.

Regulation of existing sky signs.

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 Acts 1891 as amended by section 17 of the London County Council (General Powers) Act 1893 or renewed after the passing of this Act as herein-after provided.

'*Commencement of this Act*'—*i.e.* January 1, 1895; see sect. 3, *ante*, p. 3.

Retention of sky signs.—The structures which are included in the meaning of the term 'sky sign' are those specified in sect. 125, *ante*, p. 217. The erection of any such structure is now prohibited by the preceding section, and the present section renders it lawful to retain only those structures of a like kind for the erection or retention of which a licence was obtained from the Council or from the Commissioners of Sewers (see sect. 135, *post*) before the passing of the present Act. Such licences were granted under sect. 7 of the London Sky Signs Act, 1891 (54 & 55 Vict. cap. lxxviii.), to applicants who produced a certificate from the surveyor for the district in which the sky sign in respect of which the application was made was situate, that such sky sign was so placed, constructed, and supported as not to be likely to involve danger to the public. These licences were granted only for a period of two years, and were renewable at the expiration of such period for a further period of two years, and on the expiration of that period for one other period of two years, but the whole term so made up, including the original term of the licence, might not exceed six years. By sect. 129 of the present Act it is provided, however, that licences renewed under the London Sky Signs Act, 1891, may be renewed for one further period of two years, but no longer. 57 & 58 Vict. c. ccxiii. s. 128.

The time during which sky signs coming within the exception to the prohibition contained in sect. 128 may be retained is limited by sect. 129, *post*, where the licence for such sign was granted after August 24, 1893, to the period of two years from the date when the licence was issued; and in any other case where the period for which the retention of the sign may have been licensed had not expired on January 1, 1895, to four years from the expiration of such period, provided that the extended term of the licence when added to the period for which the sign was originally licensed will not exceed six years in all. The retention of the sign in any case is subject to the renewal of the original licence in accordance with sect. 129. Inasmuch, then, as no licence granted under the Act of 1891 can have been renewed before August 24, 1893, for a period extending beyond August 24, 1895, and no such licence can therefore be renewed under this Act for a period extending beyond August 24, 1897, while no licence granted after August 24, 1893, can in any case be renewed under this Act for a period extending beyond August 24, 1899, it follows that from the last-mentioned date the existence of all signs coming within the meaning of the term 'sky signs' in sect. 125 will be absolutely prohibited.

Forfeiture of licence.—In certain cases specified in sect. 133, *post*, a licence to retain a sky sign will become void.

'*Penalty.*'—See the note under this heading to section 127, *ante*, p. 220. Where a sky sign is erected or retained contrary to the provisions of the Act, or where the licence for its maintenance or retention shall have become void under

57 & 58 Vict. c. ccxiii. s. 129.

sect. 133, *post*, proceedings may be taken by the Council for its removal under sect. 134, *post*.

Renewal of licence.

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 two years but not longer.

(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 two years from the date of issue of such licence for a further period of two years and on the expiration of that period for one other period of two years making with the original term of the licence six 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 herein-after provided and any person who shall have obtained a certificate from the surveyor after any such inspection and survey in accordance with the provisions herein-after contained may at any time within fourteen 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 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 two 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 two 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 :— 57 & 58 Vict. c. ccxiii. s. 129.

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 two 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.

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.

'*Renewal of licences.*'—See the note under the heading '*Retention of sky signs*' to sect. 128, *ante*, p. 221.

District surveyor's fees.—The present section requires any application made to him to inspect and survey a sign for the purposes of the section to be accompanied by a fee. Where, however, a district surveyor is paid by means of a salary in lieu of fees, sect. 158, *post*, would seem to require the fees payable under this section to be paid to the Council, inasmuch as it enacts that where a district surveyor is paid a salary the fees which

57 & 58 Vict. c. ccxiii. ss. 130–132.

would have been payable to such district surveyor in pursuance of this Act shall be paid to the Council. It can scarcely have been intended, however, that before an application is made to a district surveyor under this section the fact of whether or not he is in receipt of a salary is to be ascertained, and it is presumed that all that is meant is that salaried surveyors are to hand over to the Council any fees received by them under the section.

Refusal of certificate.—Where an application under sect. 129 for a certificate is refused, the applicant, after executing such works as he can lawfully do to meet the objections stated by the surveyor as his grounds for the refusal, may under sect. 130 (1), *post*, make a further application to the surveyor to inspect and survey the sky sign in question. The surveyor is required by section 131, *post*, when he refuses to grant a certificate under this section, to forward a copy of his refusal to the Council. Sect. 132, *post*, gives an appeal against the refusal of such a certificate.

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 fourteen days after the date of such refusal to make application to the tribunal of appeal by way of

appeal against such refusal and such appeal shall be accompanied by a copy of the form of refusal by the surveyor. 57 & 58 Vict. c. ccxiii. s. 133.

'*Tribunal of Appeal*.'—The Tribunal is empowered by sect. 184, *post*, to make, subject to the approval of the Lord Chancellor, rules as to the procedure upon the hearing of appeals to it. The time within which the application or notice of appeal must be given is, however, regulated by sect. 132 itself, which requires an application under it to be given within fourteen days from the refusal of the certificate. That is to say, the application must reach the Tribunal not later than the fourteenth day after the date of the refusal. See per Chitty, J., in *In re the Railway Sleepers Supply Company*, 29 Ch. D. at p. 207. In computing such days, Sundays will have to be included, and when the fourteenth day happens to be a Sunday, it will be advisable that the application should reach the Tribunal on the preceding Saturday (see *Ex parte the Churchwardens and Overseers of Ashford*, 16 J. P. 759; and *Re the Inhabitants of Asprell* v. *the Justices of Lancashire*, 16 Jur. 1067), in order that the service may not be void under 29 Car. II. c. 7. It is not certain, however, that the service would be void under that statute, having regard to the dictum of Cockburn, C. J., that no document is 'process' which does not issue from a Court. See *Reg.* v. *Inhabitants of Leominster*, 2 B. & S. 391; 31 L. J. M. C. 95; 8 Jur. (N.S.) 793; 6 L. T. 216; and see also *Rawlins* v. *the Overseers of West Derby*, 2 C. B. 72; 15 L. J. C. P. 70, where service of a notice of claim to be put on the Parliamentary register of voters was held not to be a service of process within that statute.

An application under this section is to be lodged at the offices of the Tribunal of Appeal within the time limited by the section; and notice of the application is to be given to the Council within such period and also to the District Surveyor; see the Regulations of 21st February, 1895, in Appendix III., Part II., *post*.

133. In any of the following cases a licence under this Act shall become void viz:— Forfeiture licence (*sic*).

(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

57 & 58 Vict. c. ccxiii. s. 134.

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.

Proceedings for taking down and removing sky signs.—The first step in such proceedings will be the service by the Council or, if the sign is in the City, by the Commissioners of Sewers, see sect. 135, *post*, on the occupier of the premises to which the sign is attached, if there be one, or on the owner, as to whom see sect. 5 (29), *ante*, p. 25, if the premises are unoccupied, requiring him to take down or remove the sign; see sect. 106, *ante*, p. 194. Should the notice not be complied with, the Council or the Commissioners, as the case may be, may then make complaint to a Petty Sessional Court, and that

Court may order the defendant to take down the sign within a time to be fixed by its order, see sect. 107, *ante*, p. 195 ; and, upon the expiration of the time so fixed, the Council or the Commissioners will, under sect. 134, be at liberty to enter the premises and remove the sign, and execute any works necessary for that purpose, and for leaving the premises in a condition of safety. 57 & 58 Vict. c. ccxiii. s. 134.

The express power given by the section to the Council to enter the land, buildings, or premises on or over which an unlawful sky sign is erected, and to take down &c. such sign, is taken from sect. 14 of the London Sky Signs Act, 1891. It enables the Council to enter and remove the sign in cases where no person has been convicted of erecting or retaining the sign, see sect. 170, *post*, and obviates any difficulty that might arise if the only express power given had been to proceed as if under sect. 107, in which case it might have been contended that the Council had only power to remove the sign and had no power of entry.

Any person hindering or obstructing the persons employed by the Council or Commissioners to remove the sign will be liable under sect. 200 (4), *post*, to a penalty not exceeding 10*l.*

In the case of *The Attorney-General* v. *Hooper* (1893), 3 Ch. 483 ; 63 L. J. Ch. 18 ; 69 L. T. (N.S.) 340 ; 57 J. P. 564, an injunction was granted by Stirling, J., restraining the owner of a signboard which projected from his premises over the public footway from preventing its removal by certain Improvement Commissioners, who were entitled under a local Act to remove all signboards and other projections from premises within their district which were a nuisance or dangerous to passengers using the highways in such district.

Recovery of expenses.—Expenses incurred by the Council or the Commissioners of Sewers under this section are not to be recovered in the same way as expenses incurred in respect of a structure certified to be dangerous under Part IX.—that is, from the owner of the building under sect. 112, first deducting therefrom the proceeds, if any, of the sale of the materials. But they are to be recovered as though they were a penalty imposed by the Act—that is to say, in the manner directed by the Summary Jurisdiction Acts, see sect. 166, *post*, from the occupier of the premises, if there be one, and from the owner if the premises are unoccupied.

'*Occupier.*'—This expression does not include a lodger, see sect. 5 (30), *ante*, p. 32 ; and as to when a person is to be considered a lodger and not an occupier, see the notes to that subsection.

'*Owner.*'—Where the premises are unoccupied, the expenses are to be recovered from the person who 'would' be the owner thereof. It is presumed that it is intended by the use of the word 'would' to mean the person who would be the owner thereof if the premises were occupied—that is to say, every person who would in such case be in possession or receipt

57 & 58 Vict. c. ccxiii. ss. 135, 136.

either of the whole or of any part of the rents or profits of the premises ; see sect. 5 (29), *ante*, p. 25. The manner in which expenses payable by an owner under the Act are to be borne where more persons than one come within the definition of owner of the particular premises is provided for by sect. 173, *post*, p. 266.

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.

'*City*.'—This expression means all parts at the date of the passing of the Act—*i.e.* 25th August, 1894—within the jurisdiction of the Commissioners of Sewers ; see sect. 5 (43), *ante*, p. 39. The parts within such jurisdiction are specified in the note to sect. 4, *ante*, p. 4.

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.

(4) There shall be paid to the superintending architects and clerks such salaries as the Council may direct.

(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.

'*Superintending architect, &c.*'—The superintending architect of metropolitan buildings appointed under this section is

referred to throughout the Act by the expression 'the superintending architect;' see sect. 5 (34), *ante*, p. 35. The duties which the Act specifically requires him to perform are those of—the ascertaining or defining, where necessary for the purposes of the Act, what is the centre of a roadway, see sect. 5 (4), *ante*, p. 9; —the determining, in the event of a disagreement occurring between any person and the district surveyor, of what is the 'level of the ground' for the purposes of the Act in any particular case, see sect. 5 (8), *ante*, p. 15; —the defining, where required to do so, the general line of buildings in any street or part of a street, place, or row of houses under sect. 22, *ante*, p. 77, and the giving of notice under sect. 24, *ante*, p. 84, after issuing any certificate defining such line; —the determining for the purposes of Part III. of the Act, where required to do so in any case by the Council or local authority, or a person interested, in what street or streets a building or structure is situate, see sect. 29, *ante*, p. 87; —the determining under sect. 73 (6 *e*) any disagreement between a district surveyor and any person intending to erect a building in a street of a width not less than 40 ft., or in which the front wall of the building will not be at less distance from the opposite boundary of the street, as to the construction of oriel window or turrets projecting from such building; —the reporting to the Council under sect. 76, *ante*, p. 147, as to the necessity for cubical extent additional to that permitted by sect. 75 of the Act in the case of a building to be used for any trade or manufacture; —the examination, where no other officer is appointed for that purpose, of the monthly returns which the district surveyors are required to make under sect. 160 of the Act, and the reporting to the Council thereon, see sect. 162, *post*; —the signifying in writing under his hand the approval of the Council of any plans or particulars requiring the approval of the Council for the purposes of the Act; see sect. 195, *post*.

57 & 58 Vict. c. ccxiii. s. 136.

Subject to any rules that may be made by the Council, the superintending architect may consent under sect. 54, *ante*, p. 117, to the requirements of that section as to recesses and openings in walls being modified or relaxed. Under sect. 82 (4), *ante*, p. 155, expenses incurred in and about the obtaining the approval of the Council to the erection of special and temporary buildings and wooden structures, to which Part VII. of the Act relates, are to be paid to the superintending architect if no other person is appointed by the Council to receive them. Any expenses incurred in supporting any decision of the superintending architect before the Tribunal of Appeal may be defrayed by the Council under sect. 181, *post*.

The Council, by the regulations of January 1, 1895, has required that all applications for its sanction or consent are to be made to the superintending architect. Such applications must be made in accordance with the provisions of those regulations, which will be found in App. III., Part II., *post*.

The office of 'Superintending Architect of Metropolitan

57 & 58 Vict. c. ccxiii. ss. 137, 138.

Buildings' was created by the Metropolitan Building Act, 1855, sect. 62 (18 & 19 Vict. cap. 122). At first that officer acted in a semi-judicial capacity only while discharging the important duty of certifying the general line of buildings in a street, his certificate in such case being final and conclusive; see *Spackman* v. *the Plumstead District Board of Works*, *ante*, p. 79. By the London Council (General Powers) Act, 1890, however, an appeal on this point was given to the tribunal constituted by that Act, and the present Act, while adding to the number of cases in which the superintending architect is required to discharge semi-judicial functions, has greatly increased the instances in which an appeal will lie from his decision to the Tribunal of Appeal. See the note to sect. 175, *post*.

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.

Buildings to be supervised by district surveyors.

138. Subject to the provisions of this Act and to the exemptions of 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.

'*District surveyors*.'—These are the officers either continued in office or appointed under the following section. By sect. 141, *post*, each of them is required to have and maintain at his own expense an office in such part of his district as the Council may approve. The duties of a district surveyor are upon the receipt of a building notice under sect. 145, *post*, or upon any work being observed by or made known to him which is affected by the Act, or by any byelaws made thereunder, and also from time to time during the progress of any work affected by the Act or by such byelaws, to survey the work or building placed by sect. 138 under his supervision, see sect. 146, *post*, and to serve notice of objection under sect. 150, *post*, or notice of irregularity under sect. 141, *post*, as the circumstances of the case may require. If he notices or receives information of any actual or probable contravention of the Act in relation to any matter or thing with which he cannot deal, he is forthwith to notify the same to the Council; see sect. 163, *post*. As to the returns which he is to make to the Council every month, see sects. 160 and 161, *post*. As to his duties with regard to dangerous structures, see sects. 103 and

105, *ante*, pp. 193 and 194. With regard to his duties as to the granting and refusing of certificates of renewal for sky signs, see sects. 129, 130, and 131, *ante*, pp. 222 and 224. He is to see that a building to which the general provisions of Part VI. do not apply, and the erection of which in accordance with plans approved by the Council has been sanctioned by the Council, is erected in accordance with such plans, see sect. 82, *ante*, p. 155, and if reasonably satisfied with the accuracy of plans showing the extent of old buildings, he is to certify such fact; see sect. 13 (5), *ante*, p. 62, and sect. 43 (1), *ante*, p. 105. 57 & 58 Vict. c. ccxiii. s. 138.

The district surveyor may require additional support to be given to bressummers under sect. 56, *ante*, p. 119. He may prescribe the thickness of arches of a span greater than 15 ft. made under a public way; see sect. 72, *ante*, p. 140. Where any projections from a building are permitted, such projections are to be constructed to his satisfaction, subject to an appeal to the superintending architect, see sect. 73 (6 *e*), *ante*, p. 143; and under sect. 65 (3 and 4), *ante*, p. 130, the caps and foundations of furnace chimney shafts are to be made to his satisfaction. The construction of every public building is to be approved by him, subject to an appeal to the Tribunal of Appeal, see sects. 78 and 79, *ante*, pp. 150 and 152; and under sect. 64 (19), *ante*, p. 128, no chimney breast or shaft built with or in any party wall may be cut away unless he certifies that it can be done without injuriously affecting the stability of the building. He may allow an external wall built against another external wall to be built without footings on the side next such external wall under sect. 87, *ante*, p. 163. Except in cases of emergency, see sect. 149, *post*, no building, structure, or work may be commenced, or resumed after suspension, unless notice thereof is given to the district surveyor, and if the builder employed on any work is changed, a new builder is not to be employed on the work unless two days' notice is given to the district surveyor, see sect. 145, *post*; and if a building be erected or work done without due notice having been given to the district surveyor, he may, under sect. 193, *post*, at any time within one 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 the Act have been complied with. The district surveyor has power to enter and inspect at all reasonable times during the progress, and during fourteen days next after its completion, any building, structure, or work which is affected by the Act or by any byelaws made thereunder, and also to enter and inspect any building except those exempt from the operation of Parts VI. and VII. But he can only exercise the latter power after giving notice of his intention to do so; see sect. 148, *post*.

A district surveyor is empowered by sect. 167, *post*, to continue any proceedings which may have been commenced by his predecessor in office.

57 & 58 Vict. c. ccxiii. s. 139.

As to the remuneration of the district surveyor see sects. 154 to 158, *post*.

An appeal from the district surveyor to the Tribunal of Appeal is given in certain cases, see sect. 175 and notes thereto.

For the requirements of the Act with respect to the construction of buildings, see Part VI., *ante*, p. 115 ; with respect to the width of streets, see Part II., *ante*, p. 39 ; with respect to the general line of buildings in streets, see Part III., *ante*, p. 77 ; with respect to the provision of open spaces about buildings, see Part V., sects. 40, 41, 42, 44, 45, and 52, *ante*, pp. 95 to 115 ; and with respect to the height of buildings, see sects. 47–49, *ante*, pp. 110 to 113.

Where a district surveyor, either professionally or on his own account, executes or does any work to, in, or upon any building or structure which is placed by the Act under his supervision, he is prohibited by sect. 144, *post*, from surveying such building or structure for the purposes of the Act, or from acting in any way as district surveyor in connection with such building or structure. In such case he is required to give notice to the Council in order that another district surveyor may be appointed by the Council to act as district surveyor in his stead. Every person, however, appointed a district surveyor after January 1, 1895, is required to undertake to devote the whole of his time to the duties of his office. See Standing Orders of January 1, 1895, Appendix III., Part. I., *post*.

Assistant surveyor.—The Council is empowered by sect. 143, *post*, where owing to pressure of business or otherwise a district surveyor is unable to discharge his duties promptly and efficiently, either to direct some other district surveyor to assist him or to appoint an assistant surveyor.

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 ;

57 & 58 Vict. c. ccxiii. ss. 140, 141.

(*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.

(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.

'*District surveyors.*'—A list of the district surveyors holding office at the date of the publication of this work, with their respective offices and districts, will be found in Appendix VI., *post.*

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.

Candidates.—Candidates for the office of district surveyor must not be less than twenty-eight nor more than fifty years of age, and are required to make the declaration provided for by the Standing Order of Jan. 1, 1895. See App. III., Pt. I., *post.*

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.

Offices of district surveyors.—A list of these offices will be found in Appendix VI., *post.*

'*Local authority.*'—The authorities meant by this expression are those specified in sect. 5 (42), *ante*, p. 39.

57 & 58 Vict. c. ccxiii. ss. 142-145

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.

'*Deputy surveyor.*'—Under sect. 167, *post*, any proceedings taken by a district surveyor may be continued by his deputy appointed under this section.

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.

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.

Fees.—The Act does not, as in the case of an assistant surveyor appointed under sect. 143, make any specific provision as to who is to be entitled to the fees payable in respect of anything done by a district surveyor appointed under this section to act instead of another district surveyor. Presumably, however, as the surveyor appointed under this section is 'to act in respect of the matter' in relation to which he is appointed, he will be the district surveyor entitled to receive any fees payable under the Act in respect of such matter.

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 two 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 three months then two clear days before it is resumed ; and 57 & 58 Vict. c. ccxiii. s. 145.

(*c*) Where during the progress of a building or structure or work the builder employed thereon is changed then two 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.

'*Two clear days.*'—This means that two days at least must intervene between the service of the notice and the commencement of the work, see *In re the Railway Sleepers Supply Company*, *ante*, p. 225. If any person who ought to serve a notice under subsect. 1 begins to execute the work respecting which such notice should have been served without serving the notice or before the expiration of two clear days, he will be liable to a penalty under sect. 200 (11, *b*), *post*. In case of any emergency, however, work may be commenced, notwithstanding that the notice has not been served, subject to notice being given to the district surveyor within twenty-four hours after such commencement. See sect. 149, *post*.

'*Building or structure or work.*'—The provisions of sect. 38 of the Metropolitan Building Act, 1855, which are superseded by the provisions of the present section, required notice to be given 'before any building, or any work to, in, or upon any building' was commenced. The present enactment, it will be seen, has a much wider application.

In the case of the demolition of a building, notice is required to be given also to the Vestry or District Board of Works, see 53 & 54 Vict. cap. ccxliii. sect. 32, in Appendix I., *post*.

'*Months.*'—Calendar months are meant ; see the Interpretation Act, 1889, 52 & 53 Vict. cap. 63, sect. 3.

'*Builder.*'—This expression is defined by sect. 5 (33), *ante*, p. 35.

Notices.—Notices under the Act are to be in writing ; see sect. 187, *post*, and the note thereto. And every notice served under this section will be deemed to be *primâ facie* evidence against the builder of the nature of the building, structure, or

57 & 58 Vict. c. ccxiii. s. 146.

work proposed to be built or done; see sect. 147, *post*. In addition to the notices which this Act requires to be served before building operations are commenced, the notices required by sect. 32 of the General Powers Act, 1890 (53 & 54 Vict. c. ccxliii.), Appendix I., *post*, must be served. See also the requirements of sect. 76 of the Metropolis Management Act, 1885, Appendix I., *post*, as to notices, and sects. 47 and 48 of 25 & 26 Vict. c. 102, Appendix I., *post*, with regard to the deposit of plans &c. before private drains or sewers can be connected with any public sewer.

Service of Notices.—The service of notices is provided for by sect. 188, *post*, subsect. 4 of which provides for the service by post of notices required to be served on the district surveyor. A list of the district surveyors at the date of the publication of this work, with their respective offices, will be found in Appendix VI., *post*. Where a notice is served by post in pursuance of sect. 188, it will be deemed to have been served on the day upon which it should in the ordinary course of the post be delivered at its destination. A notice under this section, it is presumed, may be served on Sunday; for though that day is a *dies non*, such a notice would not be process within 29 Car. II. c. 7. See the note to sect. 132, *ante*, p. 225.

It seems that the fact that no notice has been served under this section does not afford valid ground for objecting to the execution of works in exercise of any of the rights conferred by Part VIII. of the Act; see *Wheeler* v. *Gray*, *ante*, p. 35. Such fact would, however, afford no defence in proceedings to recover the penalties imposed by sect. 200 (11 *b*), *post*.

'*Particulars.*'—Where the particulars contained in a building notice served under this section have been materially deviated from in executing the works, the person causing or directing the work to be executed will be liable to be proceeded against as if no notice had been served in accordance with the section. See *James* v. *Masters* (1893), 1 Q. B. 355; 5 R. 112; 41 W. R. 174; 67 L. T. (N.S.) 855; 57 J. P. 167, which was a case under the Public Health Act, 1875, in which plans deposited and approved in accordance with that statute had been so deviated from in the erection of a new building as to make the plans actually followed new plans as compared with the approved plans, and it was held that the person erecting the building had been rightly convicted of erecting a building without depositing plans.

Surveyor to 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. 57 & 58 Vict. c. ccxiii. ss. 147, 148.

'*Notice as aforesaid*.'—That is to say, upon receipt of a building notice under the preceding section.

'*Byelaws*.'—The Council is empowered to make byelaws under sect. 164, *post*, with respect to the matters specified in that section. The byelaws which were in existence at the commencement of the Act on January 1, 1895, are continued in force, so far as applicable for the purposes of the Act, by sect. 216, *post*. Such byelaws, unless revoked, altered, or varied by byelaws made under this Act, are to be of the same validity and effect as if they had been made under this Act, *ib*. The byelaws which are in force at the present time will be found in App. III., Pt. II., *post*. The City is exempted from the operation of any byelaw in respect of a matter from which it is exempted by this Act or by any Act hereby repealed; see sect. 165, *post*.

'*Survey*.'—Power of entry to inspect any buildings, structure, or work is conferred on the district surveyor by sect. 148, *post*. A penalty is imposed by sect. 200 (11 *c*), *post*, for refusing to permit the district surveyor to survey any building, work, or premises, or to afford him assistance in his inspection.

'*Enforcement of Act*.'—The time within which the district surveyor may take proceedings, or do anything authorised or required by the Act to be done by him in respect of any building or work with regard to which no building notice has been given, is limited by sect. 193, *post*, to one month after discovery that such building has been erected or work done. Under sect. 159, *post*, the Council may undertake any proceedings on behalf of the district surveyor, or may pay the costs incurred by him in any proceedings he may have taken under the Act.

Where in any case it is not competent for the district surveyor to deal with the matter or thing of which notice or information has been given to him, or which he has discovered, he is required by sect. 163, *post*, to notify the matter to the Council.

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 *primâ facie* evidence as against the builder of the nature of the building structure or work proposed to be built or done.

Power of entry to inspect buildings.

148. (1) The district surveyor of any district at all reasonable times during the progress and during fourteen days next after the completion of any building structure or work in such district affected by any of the provisions

57 & 58 Vict. c. ccxiii. s. 148.

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.

(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.

'*District surveyor.*'—This expression includes any deputy or assistant surveyor appointed under the Act; see sect. 5 (35), *ante*, p. 36. A deputy may be appointed in certain cases by the district surveyor himself under sect. 142, *ante*, p. 234; and the Council may, under sect. 139, *ante*, p. 232, during the suspension of a district surveyor, or in case of a vacancy occurring in his office, appoint a temporary substitute. It may also appoint an assistant surveyor under sect. 143, *ante*, p. 234.

'*Reasonable times.*'—See as to this the note to sect. 18, *ante*, p. 75.

'*Inspection of buildings, &c.*'—Any person refusing to permit a district surveyor to enter, survey, or inspect any building, work, or premises which he is authorised by the Act to enter and inspect, or refusing or neglecting to afford him reasonable assistance in his inspection, is liable to a penalty under sect. 200 (11 *c*), *post*.

Exceptions.—Under sect. 201, *post*, certain buildings and works are exempted from the operation of Parts VI. and VII. of the Act; and under sect. 203, *post*, buildings of a local authority or company used for generating or supplying electricity are exempt from the general provisions of Parts V., VI., and VII. and schedules 1 and 2 of the Act. Sect. 202, *post*, exempts from the provisions of the Act relating to buildings and structures the Crown and public buildings, structures, and works therein specified; and sect. 204 exempts the four Inns of Court from the operation of the Act, except buildings, structures, or land of any of such Inns abutting on a street, public place, or public way, which are to be subject to the provisions as to lines of building frontage contained in Part III. of the Act. The powers, rights, and privileges of gas companies are also specially saved by sect. 205, *post*, and see also sect. 121 as to the exemption of public gasworks and premises used as distilleries from Part X. of the Act.

The exemptions conferred by the Act are, however, to endure only so long as the building, structure, or work is used

for the purpose, or retains the character by reason whereof the exemption is conferred. 57 & 58 Vict. c. ccxiii. ss. 149-151.

See also, with regard to buildings erected by the School Board for London, sect. 21, *ante*, p. 77, and as to railway companies' premises sects. 20, 31, 81, and 86, and the notes to sect. 20, *ante*, p. 76.

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 twenty-four hours after it has been begun notice thereof is served on the district surveyor.

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 fourteen 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.

'*Building notice.*'—With regard to this notice see sect. 145, *ante*, p. 234, and as to the form, signature, and service of notices see sects. 187 and 188, *post*. See also the Instructional Letter of 15th December, 1894, in App. IV., Pt. II., *post*.

Alteration of existing buildings.—The Act prohibits the alteration of a building, so that by reason of such alteration the building ceases to be in conformity with the Act; see sect. 207, *post*.

'*Petty Sessional Court.*'—This expression is defined by the Interpretation Act, 1889, sect. 13 (12); see the note to sect. 107, *ante*, p. 196.

The application to the Petty Sessional Court will be properly made by complaint, since the Court is given jurisdiction to make an order with reference to the subject-matter of the complaint; see the Summary Jurisdiction Act, 1848 (11 & 12 Vict. cap. 43), sect. 1, and see the note to sect. 166, *post*, p. 254.

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

57 & 58 Vict. c. ccxiii. s. 151.

(*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 forty-eight 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.

'*Notice of irregularity*.'—This section supersedes sect. 45 of the Metropolitan Building Act, 1855 (18 & 19 Vict. cap. 122), the provisions of which were the same. Like that section, therefore, it applies only to cases in which buildings are in the course of erection. See *Parsons* v. *Timewell*, 44 J. P. 296. In that case the defendant, having obtained permission from the Metropolitan Board of Works to erect as a temporary building an iron structure upon condition that he would remove it within a period of two years, refused to remove it at the expiration of that period; it was held that, inasmuch as sect. 45 applied only to buildings in course of erection, proceedings for its removal as a building erected in contravention of the Act could not be taken. This decision was followed in a more recent case, where it was held that a builder could not be served with notice under sect. 45 in respect of a building which had been completed before the service of the notice, since he was not a 'builder engaged in erecting such building,' and that consequently no order to comply with the requirements of the Act could be obtained against him. See *Smith* v. *Legg*, *ante*, p. 35. The last-mentioned case was in its turn followed in a later case, where it was further held that, although a builder was actually engaged in erecting a building at the time when a notice of irregularity was served on him under sect. 45 of the Act of 1855, an order requiring him to bring the building into conformity with the Act could not be made upon him, inasmuch as he had ceased to be engaged in erecting the building. *Wallen* v. *Lister*, *ante*, p. 35.

By sect. 152 (1 *b*), *post*, however, the case of a completed

building is now provided for, and the district surveyor is empowered in such case to serve a notice of irregularity upon the owner or occupier of the building or structure, or upon the person who caused or directed the work, instead of upon the builders. 57 & 58 Vict. c. ccxiii. s. 152.

For the consequences of not complying with a notice of irregularity see sect. 153, *post*, and with regard to the form and service of notices see sects. 187 and 188, *post*.

'*Builder*.'—This expression is defined by sect. 5 (33), *ante*, p. 35. Where a builder is not allowed by the owner to comply with a notice of irregularity, he may serve notice to that effect on the district surveyor under subsect. 2 of sect. 152, *post*, and the owner will apparently be liable to a penalty under sect. 200 (11 *g*), *post*. But whether the builder will be liable to any penalty under subsect. (11 *j*) of that section is doubtful, assuming him to have served a notice on the district surveyor under sect. 152 (2), *post*.

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 fourteen 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 twenty-one 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

57 & 58 Vict. c. ccxiii. s. 152.

effect a notice of irregularity may at any time within fourteen 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.

'*Notice of irregularity*.'—This is the notice prescribed by sect. 151, as to which see the note to that section.

Service of notices.—This is provided for by sect. 188, *post*.

'*Builder*.'—Though this expression is defined by sect. 5 (33), *ante*, p. 35, as meaning, where no person is employed to build, the owner of the building or structure, it is obvious that the expression means, whenever it is used in the present section, the person employed to build or to execute the work.

'*Owner or occupier*.'—These expressions are defined by subsects. 29 (*ante*, p. 25) and 30 (*ante*, p. 32) of sect. 5.

Compliance with requisitions of notice.—The provisions of subsect. 2 would appear to be general, though at first sight they seem to be limited to cases where buildings or structures have ceased to be in charge of or under the control of the builder, inasmuch as the first clause of subsect. 1 is merely explanatory of the reasons for the enactments in that subsection, and it is presumed is not intended to limit the operation of the rest of the section in any way to the cases therein mentioned.

The Act is silent as to the cost of complying with a notice of irregularity in a case where the owner allows the builder to comply with such order, and the irregularity is not caused by the fault of the builder. In such case the builder, if he did not comply with the order, would be liable for the expenses incurred by the Council in bringing the work into conformity with the Act, sect. 153 (2), *post*, and would therefore be justified in doing the work, and entitled to recover the cost as money paid on account of the owner at the owner's implied request, on the principle that the builder had done something which it was the owner's duty to do. See *Ambrose* v. *Kerrison*, 10 C. B. 776, and *Bradshaw* v. *Beard*, 12 C. B. (N.S.) 344. But if the act of irregularity was committed by the builder without the privity of the owner, or if the original contract between the builder and the owner was a contract to build in contravention of the Act, the builder will be unable to recover; see *Capp* v. *Topham*, 6 East, 391.

Consequences of notice of irregularity.—These are that the district surveyor may, under the following section, upon complaint to a Petty Sessional Court, obtain an order requiring compliance with the notice, and that if the order be not complied with the Council may, after seven days' notice, enter and do the works necessary to comply with the notice, and to bring the building or work into conformity with the Act. Penalties may also be imposed under sect. 200 (11 *f*, *g*, and *j*), *post*. 57 & 58 Vict. c. ccxiii. s. 153.

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.

(2) If the order be not complied with the Council may if they think fit after giving seven 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.

'*Person on whom notice is served.*'—See as to this sections 151 and 152, *ante*.

'*Period named therein.*'—The period to be named in the notice of irregularity is forty-eight hours from the date of the notice, see sect. 151, *ante*, p. 240. That within which the works may be required by the order of the Petty Sessional Court to be executed is, however, such time as may be fixed by that Court, which Court will have jurisdiction to consider whether any of the works named in the notice of irregularity are works which are authorised by the Act. The jurisdiction of the Petty Sessional Court under this section would appear to be limited, so far as the works to be ordered by it to be executed are concerned, to considering whether or not such works are works which the Act authorises the district surveyor to require to be executed.

Non-compliance with order of Petty Sessional Court.—Should the person upon whom the order is made fail to comply with the order of the Petty Sessional Court, the Council is em-

57 & 58 Vict. c. ccxiii. s. 154.

powered to enter upon the premises and to do all such things as may be necessary for enforcing 'the requisitions of *the notice*,' notwithstanding the fact that some of such requisitions may have been disallowed by the Petty Sessional Court. It is submitted that this must mean the requisitions of the notice authorised by the Act; and that if any of the requisitions of a notice of irregularity have been disallowed by the Petty Sessional Court, the notice is to be taken to have been amended by the order of that Court.

Expenses.—Under sects. 151 and 152, *ante*, a notice of irregularity may be served upon an occupier, see sect. 152 (2); and therefore an order under this section may also be made upon an occupier. But although the amount of any expenses incurred by the Council may under sect. 173 (1), *post*, be recovered up to the amount of any rent due or which may accrue due from the occupier, the expenses will ultimately have to be paid by the owner, since the occupier will, under sect. 173 (5), *post*, be entitled to deduct from his rent the amount of any expenses paid by him. See, however, the note to sect. 173, *post*. A lodger is not included in the expression 'occupier;' see sect. 5 (30), *ante*, p. 32.

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 therein 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.

'*Builder*.'—This expression is defined by sect. 5 (33), *ante*, p. 35, to mean '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.' But having regard to the context of the present section the expression here means apparently the person employed to build or to execute work on a building or structure, inasmuch as the liability of the owner or occupier arises upon default being made by the builder, who is made primarily liable for the payment of the district surveyor's fees.

'*Owner*.'—This expression is defined by sect. 5 (29), *ante*, p. 25. Under sect. 173 (1), *post*, the owner immediately in possession of the premises in respect of which the expenses recoverable from him under the Act are payable is in the first

instance to pay such expenses. And where there are successive owners each of them is liable under subsect. 2 of that section to contribute to the expenses in proportion to his interest. And where an owner pays more than his due proportion he may deduct the amount overpaid from any rate payable by him to any other owner of the premises, *ib.* (5). 57 & 58 Vict. c. ccxiii. ss. 155-157.

'*Occupier.*'—A lodger is not included in this expression ; see sect. 5 (30), *ante*, p. 32. Where an occupier pays any expenses which under the Act are recoverable from the owner of any premises, the expenses so paid may be deducted by the occupier from any rent which may be payable by him to the owner of the premises ; see sect. 173 (5), *post.*

Fees payable to district surveyor.—When a district surveyor is paid by fixed salary in lieu of fees, the fees which would have been payable to him under this section are to be paid to the Council, and carried to the credit of the county fund ; see sect. 158 (1), *post.* Presumably, however, the fees payable under this section will still be payable in the first instance to the district surveyor, by whom they will be paid to the Council.

The term 'district surveyor' includes, by virtue of the definition contained in section 5 (35), *ante*, p. 36, any deputy surveyor appointed under sect. 142, *ante*, p. 234, and any assistant surveyor appointed under sect. 143, *ante*, p. 234. See, as to any disputes that may arise between district surveyors of adjoining districts with regard to fees, the Instructional Letter of May 25, 1881, in Appendix IV., Pt. II., *post.*

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.

Fees payable to district surveyor.—The fees payable under this section have been determined by the regulations made by the Council on January 1, 1895, which will be found in Appendix III., Part II., *post.*

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.

Periods when surveyors entitled to fees.

157. (1) At the expiration of the following periods (that is to say) :—

(*a*) Of fourteen days after the roof of any building surveyed by a district surveyor under this Act has been covered in ; and

57 & 58 Vict. c. ccxiii. s. 157.

(*b*) Of fourteen days after the completion of any work by this Act placed under the supervision of a district surveyor; and

(*c*) Of fourteen 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.

District surveyor's fees.—The fees due to the district surveyor are those specified in Parts I. and III. of the third schedule to the Act, *post*, see sect. 154, *ante*, p. 244, and the note thereto. Where the surveyor is paid by a fixed salary, the fees will be payable to the Council under sect. 158, *post*.

Under schedule 2, Part I., of the Metropolitan Building Act, 1855, the fee of 10*s*. was payable to the district surveyor 'for inspecting the arches or stone floors over or under public ways; and where a builder was employed to construct a series of arches for use as cellars under a public street which surrounded a vacant piece of land let for building, it was held that the surveyor was entitled to such fee in respect of each distinct building for use in connection with which any number of such arches was intended; and that it was a question of fact to be determined by the magistrate before whom it was sought to recover the fees, in respect of how many buildings the fee was payable, see *Power* v. *Wigmore*, L. R. 7 C. P. 386; 27 L. T. (N.S.) 148; 36 J. P. 694. By Part I. of the third schedule of the present Act a similar fee is payable to district surveyors 'for inspecting the arches or fire-resisting floors over or under public ways.' In a more recent case it was held by the Court of Appeal that the fees payable under the Act of 1855 to the district surveyor upon the erection of a building comprising a number of sets of chambers or flats, were not due in respect of each separate set of chambers or flats, but only one set of fees was payable in respect of the building, see *Moir* v. *Williams*

(1892), 1 Q. B. 264, 61 L. J. M. C. 33; 66 L. T. (N.S.) 215; 40 W. R. 69; 56 J. P. 197. 57 & 58 Vict. c. ccxiii. ss. 158, 159.

With regard to buildings divided into separate sets of chambers or tenements by party structures, and also with regard to public buildings and buildings constructed of concrete, it will be seen that by the proviso to Part I. of the third schedule to the present Act the district surveyor is entitled to have the fees which would have otherwise been payable to him increased by one-half.

As to the power of the Council where unauthorised fees have been charged by a district surveyor, see sect. 162, *post*.

'*Summary manner*.'—This means in the manner directed by the Summary Jurisdiction Acts, see sect. 166, *post*. In *Power* v. *Wigmore*, *ubi supra*, it was held that in proceedings to recover fees payable to a district surveyor under the provisions of the Metropolitan Building Act, 1855, which corresponded to the provisions of the present section, the decision of the magistrate was the subject of appeal under 20 & 21 Vict. cap. 43.

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 seven 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.

District surveyor's fees.—It would seem that not only are the fees paid by builders, owners, or occupiers (see sect. 154, *ante*, p. 244) to be taken into account in calculating the average for seven years, but also the fees paid by the Council under sect. 155, *ante*, p. 245, for services in relation to the formation or laying out of streets, &c., and under sect. 156, *ante*, p. 245, in relation to the preparation and giving of evidence before the Tribunal of Appeal, and also such fees as may have been paid to him under sect. 113, *ante*, p. 202, for services rendered under Part IX. of the Act in respect of 'dangerous and neglected structures.'

Council may proceed on

159. The Council may in any case where they shall think fit so to do undertake on behalf of a district sur-

57 & 58 Vict. c. ccxiii. ss. 160–163.

behalf of district surveyor.

veyor 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 seven days after the first day of every month make a return to the Council in such manner as they may appoint of all 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.

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.

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.

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.

57 & 58 Vict. c. ccxiii. s. 164.

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) :—

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 ;

The forms of notice and other documents to be used for the purposes of this Act and other like matters of procedure ;

Foundations and sites of buildings and other erections ;

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 ;

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 ;

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 ;

The description and quality of the substances of which plastering may be made ;

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 three feet shall be filled up ;

The regulation of lamps signs or other structures overhanging the public way not being within the City ;

Provided that any such byelaws as to the regulation of lamps signs and other overhanging structures shall be administered by the local authority ;

57 & 58 Vict. c. ccxiii. s. 164.

The means of escape from fire in buildings exceeding sixty feet in height;

The duties of district surveyors in relation to any byelaws made in pursuance of this section;

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;

The imposition for every offence committed against any byelaws made under this Act of a penalty not exceeding five pounds and a daily penalty not exceeding two pounds for every day during which such offence continues after conviction. Such penalties to be recovered by summary proceedings.

(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) 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 two 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 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 one 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.

(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 two 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. 57 & 58 Vict. c. ccxiii. s. 164.

'*Byelaws*.'—Where a statute confers certain powers on a body, and in order to enable that body to enforce those powers confers also on it a power to make byelaws, that additional power is purely ancillary to the exercise of the general powers given by the statute, and cannot be exercised by the body on whom it is conferred, so as to obtain still greater powers. Thus the Municipal Corporations Act, 1882 (45 & 46 Vict. cap. 50), sect. 23, confers on municipal corporations a power to make byelaws for the prevention and suppression of nuisances within their boroughs ; and a byelaw imposing a penalty on all persons sounding or playing musical instruments, or singing or making any noise whatsoever, in any street or near any house within the borough, after having been required by any householder resident in such street or house, or by any police constable, to desist from making such sounds or noises, either on account of any illness of any inmate of such house or for any reasonable cause, was held to be valid, *Reg.* v. *Powell*, 51 L. T. (N.S.) 92, 48 J. P. 740, but a byelaw that no person not being a member of Her Majesty's army or auxiliary forces acting under the orders of his commanding officer, shall sound or play upon any musical instrument in any of the streets in the borough on Sunday, was held to be invalid, *Johnson* v. *the Mayor &c. of Croydon*, 16 Q. B. D. 708 ; 55 L. J. M. C. 117 ; 54 L. T. (N.S.) 295 ; 50 J. P. 487 ; see also *Munro* v. *Watson*, 57 L. T. (N.S.) 366 ; 51 J. P. 660, and *Macdonald* v. *Lochrane*, 51 J. P. 180. Again, a byelaw made under the power given to local boards of health by the Public Health Act, 1848 (11 & 12 Vict. cap. 63), sect. 55, to make byelaws with respect to removal by the occupiers of houses of filth from the streets, which required the occupiers to remove 'snow or other obstruction,' was held invalid, *Reg.* v. *Wood*, 5 E. & B. 49 ; s.c. nom. *Reg.* v. *Rose*, 24 L. J. M. C. 130 ; 1 Jur. (N.S.) 802 ; and a power given to the proprietors of a canal to make byelaws for the good government of the company and for the good and orderly using the navigation, was held not to enable the proprietors to make a byelaw

57 & 58 Vict. c. ccxiii. s. 164.

prohibiting navigation on their canal on Sundays, *The Calder and Hebble Navigation Co.* v. *Pilling*, 3 Railw. Ca. 735; 14 M. & W. 76; 14 L. J. Ex. 223; 9 Jur. 377. See also *Brown* v. *Holyhead Local Board*, 1 H. & C. 601; 32 L. J. Ex. 25; 7 L. T. (N.S.) 332; 27 J. P. 184; and *Waite* v. *Garston Board of Health*, L. R. 3 Q. B. 5; 37 L. J. M. C. 19; 17 L. T. (N.S.) 201; 16 W. R. 78.

It is essential to the validity of a byelaw that it should be reasonable and just, *Elwood* v. *Bullock*, 13 L. J. Q. B. 330; 6 Q. B. 383; 8 Jur. 1044; *Fielding* v. *Rhyl Improvement Commissioners* and *Heap* v. *Burnley Union*, 12 Q. B. D. 617; 53 L. J. M. C. 76; 32 W. R. 728; 48 J. P. 359; but in considering whether or no a byelaw is reasonable, a Court will not lightly supersede the judgment of the local authority by whom it was framed, nor will it be rejected because it does not contain qualifications which commend themselves to the mind of the Court; and the fact, therefore, that a byelaw operates to take away private property without compensation is not, if the statute under which it was made shows an intention to override private rights, a sufficient ground for holding it to be *ultra vires*. *Slattery* v. *Naylor*, 13 App. Ca. 446; 57 L. J. P. C. 73; 59 L. T. (N.S.) 41; 36 W. R. 897, and see the remarks of North, J., in *Hendon Local Board* v. *Pounce*, *ante*, p. 52. A byelaw may be divisible, invalid because unreasonable as to part, but valid as to the rest if the parts are entire and distinct from one another: see *Reg.* v. *Lundie*, 31 L. J. M. C. 157; 5 L. T. (N.S.) 830; 10 W. R. 267; 8 Jur. (N.S.) 640, *Rex* v. *Faversham*, 8 T. R. 352.

A byelaw which has been made *ultra vires*, or is otherwise invalid, does not become valid by being approved by the authority whose confirmation is essential to the validity of byelaws; see *Reg.* v. *Wood*, and the cases referred to *sup.*

Expressions used in the byelaws are to have the same meanings as they have respectively in the Act; see the Interpretation Act (52 & 53 Vict. cap. 63), sect. 31.

In addition to the power to make byelaws as to the foundations of buildings, provisions are contained in sect. 76 of 18 & 19 Vict. cap. 120, Appendix I., *post*, regulating the level at which they are to be laid for the purpose of drainage, and requiring seven days' notice to be given to the local authority before they are begun to be laid or dug.

See also the powers to make byelaws contained in sect. 202 of 18 & 19 Vict. c. 120, and in sect. 83 of 25 & 26 Vict. c. 102, in Appendix I., *post.*

Amendment, &c., of byelaws.—The power to make byelaws is to be construed as including a power exercisable in the like manner, and subject to the like consent and conditions to rescind, revoke, amend, or vary the byelaws; see the Interpretation Act (52 & 53 Vict. cap. 63), sect. 32 (3).

'*Local authority.*'—This is defined by sect. 5 (42), *ante*, p. 39.

'*Summary proceedings.*'—See sect. 166 and the note thereto, *post*; and see the Instructional Letters of November 23, 1880, July 6 and December 15, 1894, in Appendix IV., *post.* 57 & 58 Vict. c. ccxiii. s. 165.

Byelaws under repealed Acts.—Byelaws made under the Acts repealed by this Act are, so far as applicable for the purposes of the Act, to remain in force until varied or altered by byelaws duly made under the provisions of the Act; see sect. 216, *post.* The bye-laws of the Metropolitan Board of Works of December 1889 will be found in the Appendix, *post.* These byelaws, besides dealing with matters of procedure, provide for the regulation of the formation of new streets, the foundations and sites of buildings, the description and quality of the substance of walls, the duties of district surveyors, the fees to be paid to district surveyors, the deposit of plans and sections, the penalties for the breach of the provisions of the byelaws, and the dispensation with the observance of the provisions of the byelaws.

'*Regulations.*'—The Council has made regulations concerning applications for its sanction and consent, the matters to be observed in making plans and sections where such are required to be delivered, as well as requiring plans, sections, and elevations to be delivered in certain cases, the naming and numbering of streets, and the information to be afforded the Council by applicants for its permission to erect buildings on low-lying land. See the Regulations of January 1, 1895, in Appendix III., Part II., *post.*

Regulations by the Building Acts Committee, dated January 1, 1895, containing directions to the officers of the Council, will also be found in Appendix III., Part II., *post.*

'*Standing Orders.*'—The Standing Orders of the Council, dated January 1, 1895, relative to matters under the Act, will be found in Appendix III., Part I., *post.* These orders deal with—conditional sanctions by the Council—requirements by the Council with regard to applications to it in respect of the formation and widening of streets, and in respect of building in advance of the general line of buildings—matters as to the naming and numbering of streets—applications as to projections—temporary buildings—the requirements of the Council in respect of hoardings on vacant lands—the procedure to be adopted in the case of dangerous and neglected structures—the requirements of the Council as to buildings to be erected on low-lying lands—and the appointment of district surveyors and the amount of their fees.

'*County Hall.*'—By County Hall are meant the offices of the Council in Spring Gardens, S.W. See the Regulations of January 1, 1895, in Appendix III., Part II., *post.*

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. Saving for the City of London.

57 & 58 Vict. c. ccxiii. s. 166.

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.

'*Summary Jurisdiction Acts.*'—These Acts are the Summary Jurisdiction Act, 1848 (11 & 12 Vict. cap. 43), and the Summary Jurisdiction Act, 1879 (42 & 43 Vict. cap. 40), and any Act past or future amending those Acts or either of them; see the Summary Jurisdiction Act, 1879, sect. 50, and the Interpretation Act, 1889 (52 & 53 Vict. cap. 63), sect. 13. See also with regard to the application of the Summary Jurisdiction Acts to proceedings under this section, sect. 51 of the Summary Jurisdiction Act, 1879.

'*Summary proceedings.*'—The manner in which proceedings are commenced in a Court of Summary Jurisdiction is by the laying of an information before a justice of the peace in cases where the person proceeded against is alleged to have committed an offence or act for which he is liable by law upon summary conviction to be imprisoned or fined or otherwise punished, and by making a complaint to a justice of the peace in cases where a person is alleged to be liable by law to have made on him by justices an order to pay money or to do some act which he has refused or neglected to do; see the Summary Jurisdiction Act, 1848 (11 & 12 Vict. cap. 43), sect. 1. Sect. 8 of that Act provides that a complaint need not be in writing, and as the Summary Jurisdiction Acts contain no such provision with regard to informations, it is considered that an information must be in writing. Neither information nor complaint need be laid or made upon oath, but a justice cannot issue a warrant to apprehend an offender except upon information substantiated by the oath of the informant or some witness or witnesses on his behalf. An information or a complaint must be made in respect of one offence or one matter of complaint only, *ib.* sect. 2. An information having been laid or complaint made before a justice of the peace, he issues a summons directed to the alleged offender, stating shortly the matter of such information or complaint, and requiring him to appear at a certain time or place to answer to the information or complaint, *ib.* sect. 1. The summons is served by a constable or other peace officer, or 'other person to whom the same shall be delivered,' upon the person to whom it is directed by delivering the same to the party personally, or by leaving the same with some person for him at his last or

most usual place of abode. In the case of *Reg.* v. *Mead* (1894), 2 Q. B. 124 ; 70 L. T. (N.S.) 766, the Queen's Bench Division held that a summons to answer a complaint made by a sanitary authority under the Public Health (London) Act, 1891, was a 'notice, order, or other document required or authorised to be served' under that Act, and might therefore be addressed to the 'owner' of the premises without naming any person. But the Public Health (London) Act, 1891, sect. 138, provides that 'any notice, order, or other document required or authorised to be served' under this Act, may be served in the manner therein directed, whereas sect. 188, *post*, of the present Act provides only for the service of notices, orders, or other documents, 'the service of which is not provided for by the Summary Jurisdiction Acts, the Lands Clauses Acts, or the Companies' Clauses Consolidation Act, 1845.' A summons to appear before a Court of Summary Jurisdiction is therefore to be served in the manner provided for by the Summary Jurisdiction Acts. A summons may be served on a company incorporated under the Companies Acts by leaving the same, or sending it through the post in a prepaid letter addressed to the company at their registered office (Companies Act, 1862, 25 & 26 Vict. cap. 89, sect. 62), and any document to be served by post on a company must be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof ; and in proving service of such document it is sufficient to prove that the document was properly directed, and that it was put as a prepaid letter into the post-office, *ib.* sect. 63.

57 & 58 Vict. c. ccxiii. s. 166.

Service on a company not incorporated under the Companies Acts is provided for by the Companies Clauses Consolidation Act, 1845, sect. 135 ; see note to sect. 188, *post*, p. 274.

There may be some difficulty in dealing with companies whose registered office is in Scotland. A summons under the Summary Jurisdiction Acts, if not served personally on a defendant, is served by leaving it with some person for him at his last or most usual place of abode. As a corporation cannot 'dwell' personally anywhere, it must be taken to 'dwell' at the place where it carries on its business. See *Brown* v. *London and North Western Railway Company*, 4 B. & S. 326. And it has been held that a company 'dwells' at the place at which it carries on business, and not only at its registered office, *Keynham Blue Lias Company* v. *Barker*, 2 H. & C. 729, and at the place where the substantial business of the company is transacted, which place may or may not be its registered office ; *Aberystwith Promenade Pier Company* v. *Cooper*, 12 Jur. (N.S.) 995. On the other hand, it has been held that a company having branch offices in England, but whose registered office is in Scotland, is not 'ordinarily resident' within the jurisdiction of the English Courts. See

57 & 58 Vict. c. ccxiii. s. 166.

Jones v. *the Scottish Accident Insurance Company*, 17 Q. B. D. 421 ; 55 L. J. Q. B. 415 ; 55 L. T. (N.S.) 218 ; *Watkins* v. *the Scottish Imperial Assurance Company*, 23 Q. B. D. 285 ; 58 L. J. Q. B. 495 ; 60 L. T. (N.S.) 639 ; 37 W. R. 670 ; *Wood* v. *Anderston Foundry Company*, 36 W. R. 918. Service in Scotland of process issued by a Court of Summary Jurisdiction in England is provided for by the Summary Jurisdiction (Process) Act, 1881 (44 & 45 Vict. cap. 24). It is, however, expressly provided by sect. 5 (4) of that Act that the Act is not to apply to process requiring the appearance of a person to answer a complaint if issued by an English Court of Summary Jurisdiction for the recovery of a sum of money which is a civil debt within the meaning of the Summary Jurisdiction Act, 1879.

Limitation of time for summary proceedings.—No time being prescribed by the Act, except in the cases provided for by sect. 193, *post*, within which proceedings instituted under it must be commenced, the limitation imposed by sect. 11 of the Summary Jurisdiction Act, 1848 (11 & 12 Vict. cap. 43), which Act is commonly known as Jervis's Act, applies to summary proceedings instituted under this Act ; see the *London County Council* v. *Cross*, 61 L. J. M. C. 160 ; 66 L. T. (N.S.) 731 ; *Morant* v. *Taylor*, 1 Ex. D. 188 ; 45 L. J. M. C. 73. By sect. 11 of the Act of 1848 it is enacted 'that in all cases where no time is already or shall hereafter be specially limited for making any such complaint or laying any such information' (*i.e.* any complaint upon which a justice or justices of the peace is or are or shall be authorised by law to make an order, and every information for any offence or act punishable upon summary conviction, *ib.* sect. 10) 'in the Act or Acts of Parliament relating to each particular case, such complaint shall be made and such information shall be laid within six calendar months from the time when the matter of such complaint or information respectively arose.' Unless, then, the present Act in imposing a penalty for the doing of a thing or the commission of an act makes the retention of the thing or the continuance of the act in respect of which the penalty is imposed a continuing offence, summary proceedings in respect of such thing or act will be barred after the expiration of six months from its being done or committed ; see *Coggins* v. *Bennett*, 2 C. P. D. 568. The exact time when the matter of a complaint or information arose is in some cases a question of difficulty. In the case of *The London County Council* v. *Cross*, *ubi supra*, the Court of Appeal held, reversing the decision of the Queen's Bench Division, when complaint was made that a defendant had erected a building beyond the general line of buildings without the consent of the Council, that the matter of the complaint arose as soon as the defendant had begun to erect his buildings beyond the general line of buildings, and that therefore the six months limited by Jervis's Act began to run as soon as the building was so far erected as to show that it would,

when completed, project beyond the general line of buildings. In cases where a penalty is imposed for the continuance of the offence proceedings may, however, be commenced at any time; see the *Metropolitan Board of Works* v. *Anthony*, 54 L. J. M. C. 39; and even against a person who did not commit the offence in the first instance, provided that proceedings were taken in respect of the original offence within the six months. See the *London County Council* v. *Worley* (1894), 2 Q. B. 826; 10 R. 510; 63 L. J. M. C. 218; 43 W. R. 11. 57 & 58 Vict. c. ccxiii. s. 166.

From the report of the last-mentioned case in the *Law Reports* (1894), 2 Q. B. 826, it would appear to be an authority that proceedings in respect of a continuing offence can never be statute-barred. Such a proposition was not, however, contended for, and it was not necessary for the decision of the case that the Court should have so held, while from the report of the judgment of Matthew, J. (with which Kennedy, J., concurred), in the 'Law Times,' vol. 71 (N.S.), 487, all that the Court would appear to have decided, and all that it was necessary, in order to support the conviction, to decide, was that the defendant was rightly convicted, inasmuch as he had continued an offence in respect of which complaint had in fact been made within the period of limitation. It is submitted therefore that it is still open to question whether proceedings can be commenced in respect of continuing an offence, the matter of which arose more than six months previously, where no proceedings at all have been taken in respect of the original offence within the six months. Where the matter of complaint consists not merely of a continuance of the original offence, but is an enlargement, so to speak, of the original offence, it amounts to the commission of a fresh offence in respect of which proceedings can be instituted more than six months after the commission of the original offence, but within six months of the commission of the fresh offence. For instance, in the case of an encroachment upon a highway it was held that although summary proceedings could not be instituted in respect of an encroachment which had existed more than six months, proceedings could be instituted after the expiration of such six months against a person who had added to the building which encroached upon the highway, and had thereby committed a further encroachment; see *Hyde* v. *Entwistle*, 52 L. T. (N.S.) 760. So also where a building had been erected to the first floor in advance of the general line of buildings, and had been left unfinished for several years, and the erection of such building had then been completed by a person other than the person by whom the building had been commenced, it was held that an order was rightly made under sect. 75 of the Metropolis Management Act, 1862, for the demolition of so much of the building as was erected in advance of the general line of buildings by the person who completed the building, the proceedings to obtain such order having

57 & 58 Vict. c. ccxiii. s. 166.

been commenced within six months of the latter person having commenced to complete the building. See *Nathan* v. *the Metropolitan Board of Works* (1894), 1 Q. B. 230 note; and see also *Wendon* v. *the London County Council* (1894), 1 Q. B. 227; 63 L. J. M. C. 55; 70 L. T. (N.S.) 94. Affirmed on appeal upon other grounds (1894), 1 Q. B. 812; 63 L. J. M. C. 117; 70 L. T. (N.S.) 440; 42 W. R. 370. With regard to the latter case, see the 'Law Times' newspaper, vol. 96, p. 505, where the decision of the Court of Appeal is discussed.

Costs in Court of Summary Jurisdiction.—A Court of Summary Jurisdiction is given power by the Summary Jurisdiction Act, 1848 (11 & 12 Vict. cap. 43), sect. 18, to grant costs, to be paid by the defendant to the prosecutor or complainant if the defendant is convicted or an order made on him, and to be paid by the prosecutor or complainant to the defendant if the information or complaint is dismissed. Costs so granted are recoverable in the same manner and under the same warrants as any penalty or sum of money adjudged to be paid in and by the conviction or order. If the information or complaint is dismissed the costs are recoverable by distress, and in default of distress compliance with the order to pay is enforceable by imprisonment. Where the fine adjudged by a conviction does not exceed 5*s*., the Court will not have power to award any costs; see sect. 8 of the Summary Jurisdiction Act, 1879.

The payment of any costs ordered to be paid by the complainant or defendant in proceedings for the recovery of expenses under the Act will be enforced in the same manner as the payment of such expenses is enforceable; see sect. 6 of the Summary Jurisdiction Act, 1879 As to the enforcement of the payment of expenses, see *infra*.

Appeal from Court of Summary Jurisdiction.—Either party to the proceedings, if dissatisfied with the determination of the Petty Sessional Court as being erroneous in point of law, and any person aggrieved who desires to question a conviction order or determination of such Court on the ground that it is erroneous in point of law or in excess of jurisdiction, may apply to the Court to state a case for the opinion of the High Court; see 20 & 21 Vict. cap. 43, sect. 2, and 42 & 43 Vict. cap. 49, sect. 33. 'An application to a Court of Summary Jurisdiction under sect. 33 of the Summary Jurisdiction Act, 1879, to state a special case, shall be made in writing, and a copy left with the Clerk of the Court, and may be made at any time within seven clear days from the date of the proceeding to be questioned, and the case shall be stated within three calendar months after the date of the application and after the recognisance shall have been entered into;' see rule 18 of the Summary Jurisdiction Rules, 1886. This rule is peremptory and not merely directory. An oral application to the Court to state a case will therefore be insufficient; see *South*

Staffordshire Waterworks Company v. *Stone*, 19 Q. B. D. 168 ; 56 L. J. M. C. 122 ; 57 L. T. (N.S.) 368 ; 36 W. R. 76 ; 51 J. P. 662 ; 16 Cox C. C. 300. The application in writing must be served upon the justices as well as upon their clerk ; see *Lockhart* v. *Mayor, &c., of St. Albans*, 21 Q. B. D. 188. 57 & 58 Vict. c. ccxiii. s. 166.

An applicant to a Court of Summary Jurisdiction to state a case must, at the time of making such application and before the case is stated and delivered to him, enter into a recognisance to prosecute his appeal without delay, and to submit to the judgment of the Superior Court, and to pay such costs as may be awarded. The applicant is not entitled to have the case delivered to him until he has paid the clerk to the justices his fees in respect of the case and recognisances (20 & 21 Vict. cap. 43, sect. 3). It has been held that an applicant who entered into recognisances within the time limited for the application for a case, but after he had applied for a case, was within time ; *Chapman* v. *Robinson*, 1 E. & E. 25 ; 28 L. J. M. C. 39 ; 32 L. T. 89 ; 23 J. P. 228.

The recognisances must be entered into within three months after the service of the written application ; *Walker* v. *Delacombe*, 29 L. J. notes, 81.

Where any matter under sect. 120 comes before any Superior Court, whether upon a case stated by the Petty Sessional Court for the opinion of the Superior Court or by the Quarter Sessions upon an appeal to it from the Petty Sessional Court, the Superior Court, it will be seen, is empowered to exercise such power of mitigating or remitting the penalty imposed by the inferior Court, or of suspending the execution of any judgment order or determination in the matter, or to make such order touching the carrying on of the business in question, as to the Court shall seem fit. The decision of the Queen's Bench Division upon a case stated by a petty sessional court in proceedings under this Act will be final, and no appeal will lie to the Court of Appeal ; see *Payne* v. *Wright* (2), 61 L. J. M. C. 714 ; 66 L. T. (N.S.) 148 ; 56 J. P. 564 ; 17 Cox C. C. 460 ; 8 Times L. R. 288.

Upon an appeal to Quarter Sessions it will be necessary for the respondent to appear in support of his case ; otherwise, even if the appeal relates only to the amount of the penalty imposed by the Petty Sessional Court, the Court of Quarter Sessions will have power, upon the appellant proving the notice of appeal, to quash the conviction. See *Reg.* v. *Surrey JJ.* (1892), 2 Q. B. 719 ; 61 L. J. M. C. 200 ; 67 L. T. (N.S.) 266 ; 41 W. R. 79 ; 56 J. P. 742.

Procedure on appeal.—The following are the regulations of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. cap. 49), sect. 31 (as amended by 47 & 48 Vict. cap. 43, sect. 4), which are applied to all appeals to Quarter Sessions (47 & 48 Vict. cap. 43, sect. 8). Where any person is authorised to appeal from the conviction or order of a Court of Summary Jurisdiction to a Court of General or Quarter Sessions, he may

57 & 58 Vict. c. ccxiii. s. 166.

appeal to such Court, subject to the conditions and regulations following :

(1) The appeal shall be made to the prescribed Court of general or quarter sessions, or, if no Court is prescribed, to the next practicable Court of general or quarter sessions having jurisdiction in the county, borough, or place for which the said Court of Summary Jurisdiction acted, and holden not less than fifteen days after the day on which the decision was given upon which the conviction or order was founded ; and

(2) The appellant shall, within the prescribed time, or, if no time is prescribed, within seven days after the day on which the said decision of the Court was given, give notice of appeal by serving on the other party and on the Clerk of the said Court of Summary Jurisdiction notice in writing of his intention to appeal, and of the general grounds of such appeal ; and

(3) The appellant shall, within the prescribed time, or, if no time is prescribed, within three days after the day on which he gave notice of appeal, enter into a recognisance before a Court of Summary Jurisdiction, with or without a surety or sureties, as the Court may direct, conditioned to appear at the said sessions and to try such appeal, and to abide the judgment of the Court of Appeal thereon, and to pay such costs as may be awarded by the Court of Appeal, or the appellant may, if the Court of Summary Jurisdiction before whom the appellant appears to enter into a recognisance think it expedient, instead of entering into a recognisance, give such other security by deposit of money with the Clerk of the Court of Summary Jurisdiction, or otherwise as the Court deem sufficient ; and

(4) Where the appellant is in custody, the Court of Summary Jurisdiction before whom the appellant appears to enter into a recognisance may, if the Court think fit, on the appellant entering into such recognisance or giving such other security as aforesaid, release him from custody ; and

(5) The Court of Appeal may adjourn the hearing of the appeal, and upon the hearing thereof may confirm, reverse, or modify the decision of the Court of Summary Jurisdiction, or remit the matter, with the opinion of the Court of Appeal thereon, to a Court of Summary Jurisdiction acting for the same county, borough, or place as the Court by whom the conviction or order appealed against was made, or may make such other order in the matter as the Court of Appeal may think just, and may by such order exercise any power which the Court of Summary Jurisdiction might have exercised, and such order shall have the same effect, and may be enforced in the same manner, as if it had been made by the Court of Summary Jurisdiction. The Court of Appeal may also make such order as to costs to be paid by either party as the Court may think just ; and

(6) Whenever a decision is not confirmed by the Court of Appeal, the Clerk of the Peace shall send to the Clerk of the Court of Summary Jurisdiction, from whose decision the

appeal was made, for entry in his register, and also endorse on the conviction or order appealed against, a memorandum of the decision of the Court of Appeal, and, whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence of the said decision in every case where such copy or certificate would be sufficient evidence of such conviction or order ; and 57 & 58 Vict. c. ccxiii. s. 166.

(7) Every notice in writing required by this section to be given by an appellant shall be in writing signed by him, or by his agent on his behalf, and may be transmitted as a registered letter by the post in the ordinary way, and shall be deemed to have been served at the time when it would be delivered in the ordinary course of the post.

By Baines's Act (12 & 13 Vict. cap. 45. sect. 1) fourteen clear days' notice of appeal must be given, and the grounds of appeal must be specified in such notice.

'Fourteen clear days' means that the time is to be computed exclusively of the day of giving notice and of the first day of the sessions, *Reg.* v. *Middlesex JJ.*, 2 N. S. C. 73.

Sessions are in law supposed to be held only on one day ; consequently, a notice too late for the first day is too late for the sessions. *Reg.* v. *Surrey JJ.*, 1 M. & S. 479. For the application of penalties, see sect. 169, *post.*

Evidence of defendant.—Whether the defendant is competent to give evidence is often a matter of some doubt. Until the passing of the Evidence Amendment Act, 1851 (14 & 15 Vict. cap. 99), by which all parties in an action were made competent witnesses, no party to the record could give evidence on his own behalf. The Act, while removing that disability, however, enacts (sect. 3) that 'nothing herein contained shall render any person, who in any criminal proceedings is charged with the commission of any indictable offence, or any offence punishable on summary conviction, competent or compellable to give evidence for or against himself or herself ;' or shall render any person compellable to answer any question tending to criminate himself or herself, or shall in any criminal proceeding render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband. The Public Health (London) Act, 1891, provides by sect. 118 that any person charged with an offence under that Act, and the wife or husband of such person, may, if such person think fit, be called, sworn, examined, and cross-examined as an ordinary witness in the case. A clause identical in language with sect. 118 of the Public Health (London) Act, 1891, was inserted in the Bill, but was struck out in Committee. It will therefore be necessary to consider, in every case in which proceedings are taken under the Act, whether the object of the proceeding is the punishment of the defendant, or the recovery from him of a sum of money as if it were a debt, for

57 & 58 Vict. c. ccxiii. s. 166.

in the first case he will not, and in the second case he will, be a competent witness. See *Cattell* v. *Ireson*, 27 L. J. M. C. 167 ; 4 Jur. 560 ; 22 J. P. 672.

By sect. 200, *post*, a person who does any of the acts therein specified is to be deemed to have committed an offence against the Act, and from the fact that the section provides (see p. 292) that while the liability to these penalties is to be without prejudice to any other proceedings, no person is to be 'punished' twice, it is evident that the intention of the Act is that proceedings for the recovery of penalties under that section are to be in the nature of criminal proceedings. In such cases, therefore, the defendant will be unable to give evidence.

It is obvious that in many cases the Court will be unable to avail itself of the only evidence which can enable it to decide rightly.

Removal of roof.—Although from the definition of 'new building' the inference is that a structure cannot be a building unless it has a roof (see sect. 5 (subsect. 6), *ante*, p. 11, and the note thereto), proceedings with respect to a building are not affected by the removal or falling in of the roof during the course of such proceedings (sect. 198, *post*).

Expenses.—Under sect. 35 of the Summary Jurisdiction Act, 1879, a Court of Summary Jurisdiction has power to make an order, on complaint made to it, pursuant to the Summary Jurisdiction Act, of the non-payment of any sum of money declared by any Act passed after January 1, 1880, to be recoverable summarily. Provided that a warrant shall not be issued for apprehending any person for failing to appear to answer any such complaint. That an order for the payment of any such sum or of any instalment thereof, or for the payment of any costs in the matter of such complaint, whether ordered to be paid by the complainant or defendant, shall not, in default of distress or otherwise, be enforced by imprisonment, unless it is proved to the satisfaction of such Court, or of any other Court of Summary Jurisdiction for the same county or place, that the person making default in payment of such sum, instalment, or costs, either has, or has had since the date of the order, the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same ; and in any such case the Court shall have the same power of imprisonment as a County Court would, for the time being, have under the Debtors Act, 1869, for default of payment if such debt had been recovered in that Court, but shall not have any greater power. Proof of the means of the person making default may be given in such manner as the Court to whom application is made for the commitment to prison thinks just, and for the purpose of such proof the person making default and any witnesses may be summoned and examined on oath according to the rules for the time being in force under this Act in relation to the summoning and examination of witnesses. Rule 20 of the

Summary Jurisdiction Rules, 1886, provides that an order of commitment under sect. 35 is not to be made unless a summons to appear and be examined on oath has been served on the judgment debtor. This summons is called a 'judgment summons,' and must, whenever it is practicable, be served personally on the judgment debtor, but the Court may make an order for substituted service (rule 21). A judgment summons may issue, although no distress warrant has been applied for, and service of such summons may be proved by affidavit (rule 22), it must be served two clear days before the day on which the judgment debtor is required to appear (rule 23), the hearing may be adjourned from time to time (rule 24), and any witness to prove the means of the debtor may be summoned in same manner as witnesses are summoned to give evidence on the hearing of a complaint (rule 25). 57 & 58 Vict. c. ccxiii. ss. 167, 168.

All costs incurred by the plaintiff in endeavouring to enforce an order are, unless the Court otherwise orders, deemed to be due in pursuance of the order as if it was made under sect. 5 of the Debtors Act, 1869.

Under sect. 7 of the Summary Jurisdiction Act, 1879, the Court by whose order any sum is adjudged to be paid may allow time for the payment thereof, may direct payment of it to be made by instalments, and may direct that the person liable to pay the sum shall be at liberty to give to the satisfaction of the Court, or of such other Court of Summary Jurisdiction, or such person as it may specify, security with or without a surety or sureties for the payment of the sum or of any instalment thereof, which security may be given and conferred in the manner provided by sect. 9 of the Act.

167. Any proceedings taken by a district surveyor may be continued by his duly appointed deputy or successor in the office. Proceedings by surveyor.

'*Deputy*.'—As to the appointment of a deputy by a district surveyor, see sect. 142, *ante*, p. 234.

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: Powers of and appeal from county court.

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.

'*County Court*.'—Jurisdiction is given to the County Court by sect. 94 to settle the security to be given by a building owner before commencing any work which he is authorised by Part

57 & 58 Vict. c. ccxiii. ss. 169, 170.

VIII. to do, and by sect. 91, subsect. 1, to entertain an appeal from the surveyors appointed by the building and adjoining owners to settle a difference between them. An appeal from the County Court to the High Court is given by the County Courts Act, 1888 (51 & 52 Vict. cap. 43), sect. 120, which enacts that 'if any party in any action or matter shall be dissatisfied with the determination or direction of the judge in point of law or equity, or upon the admission or rejection of any evidence, the party aggrieved by the judgment, direction, decision, or order of the judge may appeal from the same to the High Court, in such manner and subject to such conditions as may be for the time being provided by the rules of the Supreme Court regulating the procedure on appeals from inferior courts to the High Court.'

By the same section it is provided that there shall be no appeal, except by leave of the judge, in certain cases where the subject-matter of an action is of less value than 20*l.*, but that limitation does not appear to apply to the determination of the judge in matters referred to him under this Act.

An appeal to the High Court is made by notice of motion. The notice, which must state the grounds of the appeal and whether all or part only of the judgment or finding is complained of, is an eight-day notice, and must be served within twenty-one days from the date of the judgment, order, or finding complained of: such period to be calculated from the time at which the judgment or order is signed, entered, or otherwise perfected, or from the time at which the finding or any refusal is made or given. See Rules of the Supreme Court, Order LIX.

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.

Forfeiture or penalty.—The Council is also entitled, in cases in which it is a 'party aggrieved,' to any forfeiture or penalty payable to a 'party aggrieved.' Interpretation Act, 1889 (52 & 53 Vict. cap. 63), sect. 2 (2).

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 fourteen 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 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.

57 & 58 Vict. c. ccxiii. s. 170.

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.

Entry by Council.—To hinder or obstruct any person empowered by the Act to enter any premises for the purpose of doing any work is made an offence against the Act by sect. 200 (4), *post.* See also as to the removal of a building where bad mortar is used, the Instructional Letters of 23rd November, 1880, and the 6th July and 15th December, 1894, in Appendix IV., *post.*

'*Petty Sessional Court.*'—See the note under this heading to sect. 107, *ante*, p. 195.

Recovery of expenses.—These will be recoverable in the manner provided by sect. 166, *ante*, p. 254.

Surplus to be restored to owner.—The expression 'owner' is defined by sect. 5 (29), *ante*, p. 25. Where no demand is made by an owner entitled to the surplus of the proceeds of the sale of any building, structure, or materials for the space

57 & 58 Vict. c. ccxiii. ss. 171–173.

of a year, such surplus is to be dealt with in the manner specified in sect. 172, *infra*. See also the note under the heading 'Expenses' to sect. 109, *ante*, p. 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.

'*General line of buildings*.'—The powers conferred by this Part of the Act upon the Council with respect to buildings, &c., erected, extended, or raised beyond the general line of buildings, are contained in sect. 170, *ante*, which provides for the demolition of buildings erected contrary to the Act. Inasmuch, however, as such powers are only conferred where a person has been convicted of an offence against the Act, the present section does not appear to enable a local authority to take proceedings to recover the penalty imposed by sect. 200 (3), *post*, for the contravention of any of the provisions of Part III., which relates to lines of building frontage. At the same time the Act nowhere specifies the persons by whom proceedings for the recovery of penalties may be taken, and presumably, therefore, it is open to any person to make a complaint that an offence against the Act has in any case been committed.

'*Local authority*.'—The authorities meant by this expression are specified in sect. 5 (42), *ante*, p. 39.

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' 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.

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 :— 57 & 58 Vict. c. ccxiii. s. 173.

(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 ;

(2) If there are successive owners each of them shall be liable to contribute to the expenses in proportion to his interest ;

(3) Any difference arising as to the amount of contribution shall be decided by arbitration ;

(4) If some of the owners liable to contribution cannot be found the deficiency so arising shall be divided amongst the owners who can be found ;

(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 ;

(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.

'*Owner*.'—This expression is by sect. 5 (29), *ante*, p. 25, applied 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. With regard to what persons come within such definition, see the notes to that subsection. The expression 'building owner' is defined by sect. 5 (31), *ante*, p. 34, and 'adjoining owner' by sect. 5 (32), *ante*, p. 34.

Expenses to be borne by owner.—These are—Expenses in-

57 & 58 Vict. c. ccxiii. s. 174.

curred by the Council under sect. 36, *ante*, p. 92, in numbering the houses in any street where the local authority makes default in so doing.—Expenses incurred under sect. 82 (4), *ante*, p. 155, in and about the obtaining the Council's approval to the erection of any special or temporary building or wooden structure to which Part VII. of the Act applies, where no builder is employed, see sect. 5 (33), *ante*, p. 35.—Expenses of and incidental to the determination of a difference as to a dangerous structure, where the determination proves adverse to the contention of the owner, see sect. 107 (4), *ante*, p. 196. —Expenses incurred by the Council in relation to the obtaining an order as to a dangerous structure, and carrying such order into effect, see sect. 112, *ante*, p. 202.—Fees payable to a district surveyor under sect. 113, *ante*, p. 202, in relation to a dangerous structure, such fees being deemed to be expenses incurred by the Council and recoverable from the owner.—Expenses incurred by the Council under sect. 115, *ante*, p. 203, in respect of neglected structures.—Expenses incurred by the Council in respect of any sky sign erected or retained contrary to the Act, except where the premises to which the sign is attached are occupied, in which case the occupier is made liable by sect. 134, *ante*, p. 226.—Expenses incurred by the Council in enforcing the requisitions of a notice of irregularity, and in bringing any building or work into conformity with the Act.—Expenses incurred by the Council in demolishing or altering any building or structure constructed, erected, adapted, extended, raised, altered, or united to or separated from any other building or structure contrary to the Act, or any byelaws made thereunder.—And lastly, expenses incurred by the Council in removing any addition to any building or structure under sect. 201, *post*.

Liability of occupier.—The section enables the Council to recover the expenses from the occupier if it thinks fit so to do, leaving him to recover such expenses from the owner, or to deduct them from his rent. It will be seen, too, that instead of the power of recovery from the occupier being limited in the usual way to the amount of rent that may be due at the time from the occupier to his landlord, the limitation is only that the amount to be recovered from the occupier is not to exceed the rent thereafter to accrue due from him during the remainder of his term. The expression 'occupier' does not include a lodger ; see sect. 5 (30), *ante*, p. 32.

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 twenty-eight days. 57 & 58 Vict. c. ccxiii. s. 175.

Tribunal of Appeal.

175. For the purposes of this Act a tribunal of appeal shall be constituted as follows :— Constitution of tribunal of appeal.

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.

'*Tribunal of Appeal.*'—In this tribunal is now vested the appellate jurisdiction which was exercised by the Tribunal of Appeal created by the London Council (General Powers) Act, 1890, and the Tribunal of Appeal created by the London County Council (General Powers) Act, 1893. Its members are under sect. 176, *post*, to hold office for the period of five years, and they may be removed from their offices by the Lord Chancellor under sect. 177, *post*, for any of the reasons specified in that section. The members of the tribunal are to receive such remuneration as a Secretary of State may fix, see sect. 179, *post*, and under sect. 183, *post*, the tribunal is given power to make rules governing its proceedings, to administer oaths, to require the production of books or documents, and to deal with the costs of any proceedings brought before it. The rules which have been made by the tribunal regulating the procedure upon appeals to it will be found in the Appendix, *post*.

The Tribunal of Appeal holds its sittings at the Surveyors' Institution, Great George Street, Westminster. In exercising its functions it will be governed by the same principles that govern judicial bodies in the exercise of their powers, and though no misconduct may be alleged on the part of any of its members, yet if the circumstances of the case in any appeal heard by it raise any probability of the existence of bias in favour of either of the parties, the proceedings of the tribunal will be nullified thereby. For instance, under the London Council (General Powers) Act, 1890, the tribunal consisted of the Vice-President of and member appointed by the Royal Institute of British Architects ; the President of and member appointed by the Surveyors' Institution ; and the Chairman of the Building Act Committee of the London County Council, the member appointed by that Council. The tribunal so constituted having adjudicated upon an appeal to it from the decision of the superintending architect as to the general line of buildings in a street, the decision of the tribunal was

57 & 58 Vict. c. ccxiii. s. 175.

quashed by the Queen's Bench Division upon *certiorari*, on the ground that, although no misconduct was alleged or proved on the part of the member appointed by the Council, inasmuch as he was the Chairman of the Building Act Committee, whose province it was to consider whether or no proceedings should be instituted in any case in respect of alleged infringements of general lines of buildings, there was such a probability of bias as rendered him incapable of acting judicially in the matter of the appeal; *Reg.* v. *the Members of the Appellate Tribunal under the London County Council*, 'Times' newspaper, October 27, 1893. Under the present Act no member of the Council may be appointed as a member of the Tribunal of Appeal.

'*For the purposes of this Act.*'—The Tribunal of Appeal is constituted for the purpose of hearing and determining appeals from :—

Decisions of the Council.—Determining under sect. 13 (3), *ante*, p. 62, that 'the prescribed distance' in any case to which that section applies shall be a distance from the centre of the roadway in a street greater than 20 ft.—Permitting under sect. 13 (4), *ante*, p. 62, the erection of a building within 'the prescribed distance.'—Refusing under sect. 19, *ante*, p. 75, to sanction, or sanctioning subject to conditions, the formation or laying out of a street.—Prescribing under sect. 41 (iii. *g*; iv. *b*; vi. 2), *ante*, pp. 97 and 98, the open spaces to be provided in the rear of a domestic building.—Refusing under sect. 43 (ii.), *ante*, p. 106, to permit deviation from the plans of buildings which previously existed upon a building site.—Refusing to relax under sect. 44, *ante*, p. 108, the conditions imposed by the Act upon the formation or laying out of new streets in the case of streets proposed to be formed or laid upon a cleared area.—Refusing under sect. 48, *ante*, p. 112, to consent to the erection of a building to a height greater than that prescribed by the Act :—

Decisions of the Superintending Architect.—Defining in any case what is the 'level of the ground' for the purposes of the Act; see sect. 5 (8), *ante*, p. 15.—Determining under sect. 22, *ante*, p. 77, what is the general line of buildings in any street or part of a street, place, or row of houses; see sect. 25, *ante*, p. 84.—Determining under sect. 29, *ante*, p. 87, in what street or streets a building or structure is situate.—Determining when necessary which is the front and which is the rear of a building; see sect. 46, *ante*, p. 110 :—

Decisions of the Chief Engineer with reference to applications under sect. 122, *ante*, p. 213, for licences to erect buildings upon low-lying land :—

Decisions of a District Surveyor.—Refusing under sects. 13 (5) and 43 to certify as accurate plans of previously existing buildings; see sects. 19, *ante*, p. 75, and 43 (iii.), *ante*, p. 106.—Disapproving of the construction of a public building under sect. 78, *ante*, p. 150.—Disapproving plans for the conversion

of buildings into public buildings ; see sect. 79, *ante*, p. 152.— Refusing to certify under sect. 129, *ante*, p. 222, that a sky sign is not a danger to the public ; see sect. 132, *ante*, p. 224.

Under sect. 123, *ante*, p. 216, the concurrence of the Tribunal of Appeal is required to any regulations the Council may make as to applications to it for sanction to the erection of buildings upon low-lying lands, to which Part XI. of the Act applies. Regulations have been made with which the tribunal concurred on April 8, 1895, which will be found in App. III., Part II., *post*.

Duration of office.

176. Members of the tribunal of appeal shall be appointed for a term of five 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.

Remuneration of members.—This will be defrayed out of the county fund ; see sect. 186, *post*.

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.

'*Clerk to the Tribunal.*'—A report of the Building Act Committee recommending the payment of a salary of 250*l.* a year to the person appointed as clerk to the tribunal was adopted by the Council on February 26, 1895.

57 & 58 Vict. c. ccxiii. ss. 181–183.

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 order 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.

'*Case for opinion of High Court.*'—In the absence of any special rules, it is presumed that cases stated under this section will be stated in accordance with order 34 of the Rules of the Supreme Court, 1883, which order is applied by rule 7 of the order itself to every special case stated in any cause or matter ; and the term 'matter' includes, by virtue of sect. 100 of the Judicature Act, 1873, every proceeding in the Court not in a cause.

'*Summary manner.*'—Presumably an application under this section will be made in the first instance upon a summons issued in chambers in the High Court of Justice.

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.

57 & 58 Vict. c. ccxiii. ss. 184–187.

Hearing of appeals.—The Council on February 26, 1895, approved of the Tribunal of Appeal arranging for office accommodation at the Surveyors' Institute, Great George Street, Westminster, at which Institute the Tribunal holds its sittings.

'*Rules of procedure.*'—The tribunal is empowered to make regulations as to procedure in appeals to it by sect. 184, *post.*

Production of documents.—Under sect. 185, *post*, any order of the tribunal may be enforced by the High Court as if it had been an order of that Court. Where, therefore, an order of the tribunal for the production of any document is disobeyed, such order will be enforceable in the High Court by attachment; see order 31, rule 21, of the Rules of the Supreme Court, 1883.

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.

Regulations.—The tribunal on February 21, 1895, made regulations under this section which were approved by the Lord Chancellor on March 1, 1895. The regulations so approved will be found in Appendix III., Part II., *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.

'*Writing.*'—Although the Act uses the word 'writing,' notices &c. under it need not be written by hand, inasmuch as sect. 20 of the Interpretation Act, 1889 (52 & 53 Vict. cap. 63),

57 & 58 Vict. c. ccxiii. s. 188.

enacts that 'in every other Act, whether passed before or after the commencement of that Act, expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form.'

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.

Documents the service of which is otherwise provided for.—The service of a summons to appear before a Court of Summary Jurisdiction is provided for by the Summary Jurisdiction Acts. See note to sect. 166, *ante*, p. 254.

Sect. 134 of the Lands Clauses Consolidation Act, 1845, 8 Vict. cap. 18, provides as follows: 'That any summons or notice or writ or other proceeding at law or in equity, requiring to be served upon the promoters of the undertaking,

may be served by the same being left at or transmitted through the post directed to the principal office of the promoters of the undertaking, or one of the principal offices where there shall be more than one, or being given to or transmitted through the post directed to the secretary, or, in case there be no secretary, the solicitor of the said promoters.' 57 & 58 Vict. c. ccxiii. s. 188.

Sect. 135 of the Companies Clauses Consolidation Act, 1845, is as follows: 'Any summons or notice or any writ or other proceeding at law or in equity requiring to be served upon the company, may be served by the same being left at or transmitted through the post directed to the principal office of the company, or one of their principal offices, where there shall be more than one, or being given personally to the secretary, or, in case there be no secretary, then by being given to any one director of the company.'

Service on companies incorporated under the Companies Acts of documents other than documents the service of which is provided for by the Summary Jurisdiction Acts or the Lands Clauses Acts, may be effected in the manner provided by this section.

Sending by post.—The Interpretation Act, 1889 (52 & 53 Vict. cap. 63), sect. 26, provides that this expression, when used in an Act passed after the commencement of that Act, shall mean, unless the contrary intention appears, that the service shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Principal office of railway company.—That is, the place at which the business of the company is controlled or managed, not merely an important office. See *Garton* v. *Great Western Railway Company*, E. B. & E. 837, and *Brown* v. *London and North Western Railway Company*, 4 B. & S. 326, and *Palmer* v. *Caledonian Railway Company* (1892), 1 Q. B. 823; 61 L. J. Q. B. 552; 66 L. T. (N.S.) 771; 40 W. R. 562.

Notice addressed to 'owner' or 'occupier.'—It will be observed that the subsection speaks of 'notice,' not 'notice, order, or other document' as in the previous subsection. From this the presumption is that it is not intended that a document, such as a summons, shall be addressed to the 'owner' or 'occupier.' As to this see *Reg.* v. *Mead*, *ante*, p. 255.

District surveyor's office.—The situation of the office can be ascertained by inquiry of the local authority. A list of these authorities will be found on p. 5, *ante*; and a list of the district surveyors at the date of the publication of this work with the addresses of their respective offices will be found in Appendix VI., *post*.

57 & 58 Vict. c. ccxiii. ss. 189, 190.

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.

Expenses.—General expenses incurred by the Council are, under sect. 40 (9) of the Local Government Act, 1888 (51 & 52 Vict. cap. 68), to be defrayed out of the county fund. As to the composition of that fund and the mode in which any deficiency therein is to be supplied, see sect. 68 of the Act of 1888.

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.

'*Conditions.*'—The Council's power to impose conditions is not a power which can be used arbitrarily, and if in any case the Council were to impose unreasonable conditions, such fact would no doubt be treated by a court of law as amounting to a refusal on the part of the Council to exercise the discretion conferred upon it in the matter properly; so that the Council in giving its sanction cannot impose conditions which would have the effect of preventing something being done which the Act does not prohibit; *Reg.* v. *the Mayor and Corporation of Newcastle-upon-Tyne*, *ante*, p. 50.

'*Owner.*'—Since the expression 'owner' includes, by virtue of the definition in sect. 5 (29), *ante*, p. 25, more than one person having an interest in the building, structure, or ground,

it would appear that a term or condition accepted by any person coming within the meaning of the definition will be binding upon all other persons defined as owners of the building, structure, or ground to which the sanction, consent, or allowance relates. Whether, however, any person other than the person who actually accepted the term or condition can be an owner or occupier in default, so as to be liable to a penalty under the section, may be open to question. 57 & 58 Vict. c. ccxiii. ss. 191–193.

Penalty.—Under sect. 200 (10), *post*, every person not complying with any term or condition imposed under this section is liable to a penalty not exceeding ten pounds. Penalties under the Act are recoverable under sect. 166, *ante*, p. 254.

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 seven 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 connexion therewith.

'*Occupier.*'—This expression does not, by virtue of sect. 5 (30), *ante*, p. 32, include a lodger.

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 one 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.

57 & 58 Vict. c. ccxiii. ss. 194–197.

Inspection by district surveyor.—If the district surveyor, in his inspection of buildings or work to which this section applies, finds that the work is so far advanced that he cannot ascertain whether the Act has been complied with or no, he may serve a notice of irregularity in respect thereof; see sect. 151 (*b*), *ante*, p. 240.

The provision that the time during which the district surveyor may take proceedings &c. in respect of any contravention of the Act which compliance by the builder with the notice of irregularity has enabled the district surveyor to discover, is to begin to run from the date of his discovering that such building has been erected or work done, is presumably intended to mean, and will probably be construed as meaning, that the time runs not from the date when the district surveyor discovers that the building has been erected or work done without notice, but from the date when he discovers that the Act has been in other respects contravened.

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.

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 be required to be served.

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 57 & 58 Vict. c. ccxiii. s. 197.

(*b*) Where there is a distance of not less than ten feet between the furnace and the pile stack or store of timber lathwood firewood casks or barrels.

(3) No pile stack or store of timber lathwood firewood casks or barrels shall exceed sixty 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 two 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 seven 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 stacking or storing timber lathwood firewood casks or barrels in or on any such yard or premises.

'*General line of buildings.*'—See note under this heading on p. 79, *ante*.

'*Pile, stack, or store of timber.*'—The provisions of the Act with regard to wooden structures do not apply to piles of timber not affixed or fastened to the ground; see sect. 85, *ante*, p. 162, and the note thereto.

'*Fire-resisting materials.*'—This expression is defined by sect. 5 (36), *ante*, p. 36.

'*Height.*'—The definition of height in sect. 5 (21) is confined to buildings, and is not applicable to the case of a pile of timber.

'*Level of the ground.*'—This expression is defined by sect. 5, (8), *ante*, p. 15.

Exemption of lands occupied by railway, canal, and docks companies.—As to this exemption see the note to sect. 31, *ante*, p. 88, and the cases referred to therein.

57 & 58 Vict. c. ccxiii. ss. 198, 199.

Penalty.—A person who contravenes any of the provisions of the Act relating to the storing of wood and timber is liable to a penalty not exceeding forty shillings, and to a daily penalty not exceeding the like amount; see sect. 200 (11 *b*) *post.*

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 building.

'*Removal of roof.*'—It is doubtful whether a structure without a roof can be a 'building' within the meaning of the Act, as to which see the note under the heading '*Building*' on p. 11; this provision, however, prevents proceedings which may have been instituted in respect of some building being rendered abortive owing to the structure in question having ceased by reason of the removal of the roof to be a building to which the term 'building' in its ordinary acceptation would be applicable.

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 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.

The Council may at the expiration of two 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.

'*Street.*'—The expression is defined by sect. 5 (1), *ante*, p. 6; see also the notes to that section. It will be observed that the prohibition does not apply to the case of an obstruction in a 'way' which is not a street.

The provision of sect. 9, enabling the Council to refuse to sanction the plans of any street which will not be open at both ends from the ground upwards, prevents any street being laid out with barriers across it; see *Daw & Sons* v. *the London County Council*, *ante*, p. 52.

'*Penalty.*'—Under the following section every person who unlawfully erects or places any obstruction or encroachment

in, upon, or over any street or way is liable to a penalty not exceeding ten pounds, and to a daily penalty not exceeding forty shillings. 57 & 58 Vict. c. ccxiii. s. 200.

'*City*.'—For the definition of this term see sect. 5 (43), *ante*, p. 39, and the note to sect. 4, *ante*, p. 4.

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 connexion with such offence and to a further penalty not exceeding the amount hereafter stated as the daily penalty in connexion 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

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'*Summary manner*.'—As to meaning of this expression see sect. 166, *ante*, p. 254. For the procedure in a Court of Summary Jurisdiction see the notes to that section.

'*Offences*.'—Inasmuch as this section imposes penalties in respect of the offences enumerated therein, such offences are so far rendered criminal in their character as to render evidence of a defendant in proceedings to recover any of the penalties inadmissible; see the note to sect. 166, under the heading '*Evidence of Defendant*,' *ante*, p. 261.

Continuing offence.—See with reference to this the note to sect. 166, *ante*, p. 256.

Penalties.—The application of penalties is provided for by sect. 169, *ante*, p. 264.

Note to subsect. (1 *a*).—The commencing to form or lay out a street, for carriage or foot traffic, without the sanction of the Council, is prohibited by sect. 7, *ante*, p. 44; and sect. 8, *ante*, p. 48, prescribes what shall be evidence of the commencement to form or lay out a street for the purposes of such prohibition.

57 & 58 Vict. c. ccxiii. s. 200 (1).

(*b*) unlawfully erects or places in upon or over any street or way any post fence bar obstruction or encroachment; or

(*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

(*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;

shall be liable to a penalty not exceeding ten pounds for every such offence and to a daily penalty not exceeding forty shillings:

The adaptation of any street or way for purposes other than those for which it was previously used, without such sanction, is prohibited by sect. 10 (1), *ante*, p. 55, subsect. 3 of which section specifies when a person shall be deemed to execute a work within the meaning of such section. The provision enabling appeals to be made to the Tribunal of Appeal from the refusal or conditional grant of the sanction of the Council is contained in sect. 19, *ante*, p. 75. By sect. 6, *ante*, p. 39, the Act is not to affect the powers of any local authority to widen, alter, or improve any street; and sect. 20, *ante*, p. 76, excepts private roads laid out by railway companies as approaches to stations, or lands used for railway purposes.

The distance prescribed for the width of street formed or laid out for carriage traffic is forty feet, see sect. 9 (1), *ante*, p. 48, or such greater width as may be required by the Council under sect. 12, *ante*, p. 60; and the distance prescribed for the width of streets formed or laid out for foot traffic only is twenty feet; see sect. 9, (2), *ante*, p. 49.

Note to subsect. (1 *b*).—The erection or placing of obstructions or encroachments in, upon, over, or under streets, is prohibited by sect. 199, *ante*, p. 280; and by sect. 9 (3), *ante*, p. 49, the Council is empowered to refuse to sanction, or to sanction subject to conditions, the forming or laying out of streets exceeding sixty feet in length, or not exceeding that length when the length is greater than the width, unless such streets are formed or laid out open at both ends from the ground upwards. A similar prohibition contained in sect. 98 of the Metropolis Management Amendment Act, 1862, was held to prohibit the erection of gates at the ends of a street for the purpose of excluding the public therefrom, see *Daw* v. *the London County Council*, *ante*, p. 52; and the present enactment, which is practically a re-enactment of portion of sect. 6 of the Metropolitan Building (Amendment) Act, 1882, pro-

(2) Every person who neglects or refuses for twenty-eight 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 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 forty shillings and not more than five pounds and to a daily penalty of not less than ten shillings and not more than forty shillings. Provided always that this

57 & 58 Vict. c. ccxiii. s. 200 (2).

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hibits the unlawful erection of any obstruction upon any part of a street. The use of the word 'unlawfully' in this and the two following sections would appear to mean 'without the sanction of the Council.'

Note to subsect. (2).—The Council is, by sect. 9, *ante*, p. 48, to give notice to an applicant for its sanction to the formation or laying out of a street of any order made with regard to such application under that section. Under sect. 10 (2), *ante*, p. 56, the Council is to give notice of its disapproval of any application to adapt as a street or way for carriage traffic, any street or way not previously so adapted, or to adapt as a street for foot traffic only, or as a public footway, any way not previously so adapted. Notice is also to be given by the Council under sect. 11, *ante*, p. 59, of any order made by it under that section, refusing to sanction, or sanctioning subject to conditions, the adaptation of any street or way for carriage or foot traffic. Under sect. 14, *ante*, p. 69, the Council may serve notice upon the owner or occupier of a building or structure, or upon the builder, requiring him to cause any building or structure erected contrary to sect. 13, *ante*, p. 61, to be set back. Under sect. 16 (ii), *ante*, p. 72, the Council may serve a notice upon the owner of a building, structure, forecourt, or space, the external wall, fence, or boundary of which is erected at less than the prescribed distance from the centre of a 'way not a highway,' to set back the same or any part thereof, *i.e.* of the building, structure, forecourt, or space, so that every part of any external wall of the building or structure, or of the external fence or boundary of the forecourt or space, shall be at least the prescribed distance from the centre of the roadway. It is doubtful, however, whether the penalty imposed by sect. 200 (2) attaches to non-compliance with a notice served under sect. 16; see the note thereto under the heading '*Penalty*,' *ante*, p. 73. The effect of the proviso is at all events to extend the time within which the person on whom the notice is served must comply with its requirements in the case of a building or structure in a street intended to be, but not yet dedicated as, a highway, until such time as the owner of the soil, who possibly may

57 & 58 Vict. c. ccxiii. s. 200 (3).

sub-section 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:

(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

(*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

(*c*) fails to comply with any of the provisions of Part VI. of this Act; or

(*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

(*e*) sets up erects or adapts any building or structure to which Part VII. of this Act applies without having obtained any licence required by that Part of this Act or makes default in observing any of the conditions contained in such licence;

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not be the person upon whom the notice was served, has dedicated the street to the use of the public, or until, in the case of a way, the provisions of sect. 16 have been complied with by all the owners of buildings in that way.

Note to subsect. (3 *a*).—Part III. of the Act prohibits the erection without the sanction of the Council of any building or structure beyond the general line of buildings in any street or part of a street, place, or row of houses, see sect. 22, *ante*, p. 77; and sect. 26, *ante*, p. 85, enables the Council in giving its consent to attach conditions thereto.

Note to subsect. (3 *c*).—Part VI. of the Act regulates the construction of buildings. See also the Instructional Letters of November 23, 1880, and July 6 and December 15, 1894, in Appendix IV., Pt. II., *post*.

Note to subsect. (3 *d*).—The Council is empowered by sect. 83, *ante*, p. 158, to serve a notice on the occupier or owner of any iron or other building or structure of a temporary character, to which the general provisions of Part VI. relating to the construction of buildings are inapplicable, which building or structure has been erected or continued contrary to the conditions imposed by the Council in sanctioning its erection, requiring him to remove the building or structure within a specified time.

shall be liable to a penalty not exceeding twenty 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 : 57 & 58 Vict. c. ccxiii. s. 200 (4).

(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 ten pounds ;

Note to subsect. (3 *e*).—Buildings or structures to which Part VII. applies are iron buildings or structures, and any other buildings or structures to which the general provisions of Part VI. with regard to the construction of buildings 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. Part VI. does not, however, apply to piles, stacks, or stores of timber, not being structures affixed or fastened to the ground ; see sect. 85, *ante*, p. 162.

Note to subsect. (4).—A penalty is also imposed by subsect. 11 (*g*), *post*, upon any person who refuses to admit, or refuses or neglects to afford assistance to, any owner, builder, or person, or his servants, workmen, or agents into any house, building, or structure, in order that they may comply with a notice or order served in pursuance of the Act. The term ' owner ' is defined by sect. 5 (29), *ante*, p. 25.

The County Council has power under sect. 37, *ante*, p. 93, upon default of a local authority to carry out an order of the Council with reference to the numbering of houses and buildings in any street or way, to do whatever may be necessary to carry out its order. Under sect. 83, *ante*, p. 158, the Council is empowered to enter upon land upon which is any iron or other building or structure of a temporary character, to which the general provisions of Part VI. are inapplicable, and the removal of which has been required by the Council for the purpose of carrying out an order of a petty sessional court authorising its removal. Under sect. 92, *ante*, p. 182, a building owner is authorised, himself, his servants, agents, and workmen, to enter and remain on any premises for the purpose of executing any work in connection with a party structure which he is entitled, under sect. 88, *ante*, p. 167, and sect. 93, *ante*, p. 183, to execute, or which he is required by the adjoining owner, under sect. 89, *ante*, p. 172, to execute. Under sect. 103, *ante*, p. 193, the district surveyor, or any surveyor appointed by the Council for that purpose, is authorised

57 & 58 Vict. c. ccxiii. s. 200 (5).

(5) Every person who being a building owner liable under Part VIII. of this Act to make good any

to make a survey of any structure that is in a dangerous state ; and the Council may, under sect. 106, *ante*, p. 194, cause such structure to be shored up or otherwise secured and fenced in. Should the dangerous structure not be taken down or secured pursuant to an order of a petty sessional court requiring it to be taken down or secured, the Council has power, under sect. 107, *ante*, p. 195, to cause all, or so much of it as is in a dangerous condition, to be taken down, repaired, or otherwise secured, and provision is made by sect. 114, *ante*, p. 203, for the removal from any such structure by a police-constable or other peace officer of any inmates. The Council may also enter upon any structure which is ruinous or so far dilapidated as to have become and be unfit for use or occupation, or which is from neglect or otherwise in a structural condition prejudicial to the property in, or the inhabitants of, the neighbourhood, where an order of a petty sessional court has been made requiring such structure to be taken down, repaired, or rebuilt, and execute such order. Under section 126, *ante*, p. 219, district surveyors are to inspect and survey sky signs in their districts, and the Council, or any officer, servant, or workman appointed by it for the purpose, is empowered by sect. 134, *ante*, p. 226, after obtaining the order of a petty sessional court for that purpose, to enter upon any land, buildings, or premises on or over which any sky sign is erected or retained contrary to Part XII. of the Act. A general power of supervision is given by sect. 138, *ante*, p. 230, to every district surveyor over all buildings, structures, and works, and all matters relating to the width and direction of streets, the general line of buildings, the provision of open spaces about buildings, and the height of buildings within his district ; and under sect. 146, *ante*, p. 236, he is required from time to time during the progress of any work affected by the provisions of the Act, or any byelaws made thereunder, to survey any building or work placed under his supervision in order to secure the due observance of such provisions or byelaws, power of entry for that purpose being given to him by sect. 148, *ante*, p. 237. Where a notice of irregularity has been served upon any person under sect. 151, *ante*, p 239, and, it not having been complied with, an order of a petty sessional court has been made requiring compliance with it, which order has not been obeyed, the Council is empowered by sect. 154 (2), *ante*, p. 244, to enter with a sufficient number of workmen upon the premises, and to do whatever may be necessary to comply with the notice. Lastly, power is conferred by sect. 192, *ante*, p. 277, upon any owner, builder, or other person, and his servants, workmen, and agents, to enter upon any building, structure, room, or place, and do all work and things necessary to, or in connection with, the complying

damage which he may occasion to the adjoining owners' or adjoining occupiers' 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 twenty pounds and to a daily penalty not exceeding the like amount : 57 & 58 Vict. c. ccxiii. s. 200 (6, 7).

(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 ten pounds and to a daily penalty of (*sic*) not exceeding five pounds :

(7) Every person who erects a building nearer than fifty feet to a building used for any dangerous business or a dwelling-house nearer than fifty feet to a building used for any noxious business shall be liable to a penalty not exceeding fifty pounds and to a daily penalty not exceeding the like amount for every day during which such first-mentioned building or such dwelling-

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with any notice or order served or made on him in pursuance of the Act.

The Council may also, under the powers given to it by sect. 201, *post*, on the owner or occupier of a building or structure of the character specified in subsections (10) (11) (12) of that section making default in complying with a notice served by the Council under that section, remove any addition to such building or structure which causes the building or structure to cease to be exempt from Parts VI. and VII. of the Act.

Note to subsect. (5).—As to when the building owner is required to make good damage to the adjoining premises, see sect. 87 (6), *ante*, p. 160, sect. 88 (6) (10), *ante*, pp. 167 and 168, sect. 93 (3), *ante*, p. 183 ; and sect. 95 (2), *ante*, p. 186.

Note to subsect. (6).—Materials may be sold under the Act when the Council removes any iron or other building or structure of a temporary character under the power conferred upon it by sect. 83, *ante*, p. 158 ; when the owner of a dangerous structure cannot be found, or refuses or neglects to pay any

57 & 58 Vict. c. ccxiii. s. 200 (8–10).

house shall be allowed to so remain near to such dangerous or noxious business:

(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 fifty pounds and to a daily penalty not exceeding the like amount:

(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 one hundred pounds and to a daily penalty not exceeding fifty 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:

(10) Every person not complying with any term or

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expenses incurred by the Council in relation to the obtaining any order as to such structure, and the carrying the same into effect, see sect. 109, *ante*, p. 199; when expenses incurred by the Council, under sect. 115, *ante*, p. 203, in relation to a neglected structure are not paid; and when the Council, under sect. 170, *ante*, p. 264, demolishes any building or structure for the construction, erection, adaptation, extension, raising, alteration, uniting, or separation of which, or of any part thereof, in contravention of the Act, any person has been convicted.

Note to subsect. (7).—The prohibitions against erecting buildings near buildings used for dangerous businesses will be found in sect. 118, *ante*, p. 207; and those against the erection of dwelling-houses near buildings used for noxious businesses will be found in sect. 119, *ante*, p. 208.

Note to subsect. (8).—The establishment or carrying on of dangerous businesses is regulated by sect. 118 (3), *ante*, p. 207; and the establishment and carrying on of noxious businesses by sect. 119 (3), *ante*, p. 208.

Note to subsect. (9).—Part XI. of the Act deals with and regulates the erection of dwelling-houses, or the adaptation of buildings for use as dwelling-houses, upon land the surface of which 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; see sect. 122, *ante*, p. 213.

Note to subsect. (10).—The section here referred to is sect. 190,

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 ten pounds: 57 & 58 Vict. c. ccxiii. s. 200 (11).

(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

(*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 two clear days after the notice has ceased to operate; or

(*c*) Refuses to permit any district surveyor at a reasonable time to enter survey or inspect any

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ante, p. 276, by which any term or condition imposed by the Council in respect of a building, structure, or ground, is made binding upon the owner or occupier of the building, structure, or ground. The liability to the penalty imposed by this section is, however, limited by the section to the owner or occupier in default.

Note to subsect. (11 *a*).—The erection of any new sky sign within the meaning of sect. 125, *ante*, p. 217, is prohibited by sect. 127, *ante*, p. 220, and the retention of any such sign which was erected when the Act came into force on January 1, 1895, is regulated by sects. 128 and 129, *ante*, pp. 220 and 222, and sect. 133, *ante*, p. 225.

Note to subsect. (11 *b*).—Building notices are required to be served when it is proposed to begin a building, structure, or work, or to resume any building, structure, or work which has been suspended for more than three months, and where the builder employed on any building, structure, or work is changed during the progress thereof; see sect. 145, *ante*, p. 234. Such notices are to be served by the builder or other person causing or directing the work to be executed on the district surveyor, two clear days before the building, structure, or work is begun or resumed, or a new builder enters upon the continuance thereof. The building notice only is required in respect of works which are in progress at the same time to, in, or on the same building or structure. District surveyors are required by sect. 141, *ante*, p. 233, to have an office in his district, and notices may be served on them either by post in a registered letter addressed to them at their offices, or by being left at their offices; see sect. 188 (4), *ante*, p. 274.

Note to subsect. (11 *c*).—Under sect. 103, *ante*, p. 193, a dis-

57 & 58 Vict. c. ccxiii. s. 200 (11).

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

(*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

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trict surveyor is authorised to make a survey of any structure that is in a dangerous state, and under sect. 126, *ante*, p. 215, he is to inspect and survey sky signs in his district. Sect. 138, *ante*, p. 230, gives him a general power of supervision over all buildings, structures, and works within his district; and sect. 146, *ante*, p. 236, requires him from time to time during the progress of any work affected by the Act, or any byelaw made thereunder, to survey any building or work placed under his supervision in order to secure the due observance of such provisions or byelaws, a power of entry for that purpose being given to him by sect. 148, *ante*, p. 237; see also subsection 4 of sect. 200, *ante*, p. 285, and the notes thereto.

Where a district surveyor is prevented from attending to his duties, and a deputy is appointed by the Council under sect. 142, *ante*, p. 234, or an assistant surveyor is appointed under sect. 143, *ante*, p. 234, or the district surveyor of another district is appointed under sect. 144, to perform such duties, the penalty imposed by this subsection will apply to the refusal to permit such deputy, assistant, or other district surveyor to enter, survey, or inspect any buildings, works, or premises, inasmuch as by sect. 5 (35) the expression 'district surveyor' includes any deputy or assistant surveyor appointed under the Act.

Note to subsect. (11 *d*).—The County Court is enabled by sect. 168, *ante*, p. 263, to settle the time and manner of executing any work, or of doing any other thing where jurisdiction is given to it by the Act; and by sect. 91, *ante*, p. 177, jurisdiction is given to the County Court upon an appeal to it thereunder from an award given in a difference relative to the rights or the exercise of the rights of building and adjoining owners with regard to party structures, to rescind the award or modify it in such manner as it thinks just; and by sect. 94, *ante*, p. 184, the security to be given by a building or an adjoining owner before the exercise of any rights in respect of a party structure, is to be settled by the judge of the County Court. But it is questionable whether any such order made by a judge would be an order for failure to comply with which a penalty is imposed by this subsection.

Note to subsect. (11 *e*).—The County Court has power in cases where jurisdiction is given to it to settle the time and manner of executing any work, or doing any other thing; see sect. 168, *ante*, p. 263. It is presumed that any time fixed by the County

(*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 57 & 58 Vict. c. ccxiii. s. 200 (11).

(*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

(*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

(*h*) Acts in any manner in contravention of any of the provisions of this Act relating to the storing of wood and timber; or

(*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;

Court will be considered to be reasonable, and in any case the person against whom the order is made would not, it is submitted, be allowed to set up as a defence that the time named in an order against which he had not appealed, was unreasonable. Whether any particular time is reasonable is, however, a question of fact; see *Tennant* v. *Bell*, *ante*, p. 75.

The expression 'builder' is defined by sect. 5 (33), *ante*, p. 35, to mean '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.'

This provision is in addition to the general provision of subsect. (*j*), *post*, by which any person who does anything prohibited by the Act is subjected to a penalty. It is apparently open to any person to lay a complaint. See also the Instructional Letters of November 23, 1880, and July 6 and December 15, 1894, in App. IV., Pt. II., *post*.

Note to subsect. (11 *g*).—See also subsection 4, *ante*, p. 285, and the note thereto, and see also the note to subsection (11 *e*), *ante*, p. 290.

Note to subsect. (11 *h*).—The provisions of the Act relating to the storing of wood and timber are contained in sect. 971, *ante*, p. 278.

57 & 58 Vict. c. ccxiii. s. 201.

shall be liable to a penalty not exceeding forty 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 ten 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.

The liability to these penalties shall be without prejudice to any further 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.

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:—

Note to subsect. (12).—The section referred to is sect. 211, *post.*

Note to sect. 201.—*Exempted buildings.*—See the diagrams in App. V., Plates IX. and X., *post.* From the fact that this section exempts the buildings specified therein from the operation of Parts VI. and VII. only, the inference would be that such buildings are not exempt from the other provisions of the Act. But this is not necessarily so, inasmuch as where bnildings or works are erected or executed in pursuance of any enactment conferring special, or executed under special, statutory authority, such buildings can be erected, or such works executed, notwithstanding the fact that their erection or execution may contravene any of the provisions of the Act; see the notes to sects. 20 and 21, *ante*, pp. 76 and 77.

Whether a building notice must be served in accordance with sect. 145, *ante*, p. 234, in respect of buildings exempt from the operation of Parts VI. and VII., is not altogether clear, since the wording of sect. 145 is quite general. Buildings of the classes specified in this section were, by sect. 6 of the Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), exempted from the operation of Part I. of that Act, which part contained the provisions corresponding with those of sect. 145 of this Act, and requiring the service upon the district surveyor of a building notice. These provisions are, however, contained in Part XIII. of this Act, from which part there is

(1) Bridges piers jetties embankment walls retaining walls and wharf or quay walls: 57 & 58 Vict. c. ccxiii. s. 201 (1-7).

(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:

(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:

(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

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no positive exemption. But it is evidently intended that some buildings shall be exempted from the operation of Part XIII., for sect. 138 provides that the power of supervision conferred upon the district surveyor by it is subject to the exemptions mentioned in the Act, and sect. 148, *ante*, p. 237, which confers upon him power of entry to inspect buildings, &c., provides that he may, for the purpose of ascertaining whether any buildings are in such a situation, or possess such characteristics as are required in order to exempt them from the operation of Part XIII., enter any premises except buildings exempt from the operation of Parts VI. and VII. From this provision, it is submitted, an implied exemption from the operation of Part XIII. may reasonably be presumed in the case of all buildings which, being exempt from the operation of Parts VI. and VII., are not, so far as their construction is concerned, under the control of the Council. It is obvious also, that the delivery to the district surveyor of a building notice in respect of buildings and works which he cannot survey, and over which he has no control, can serve no useful purpose.

57 & 58 Vict. c. ccxiii. s. 201 (8).

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 :

(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 :

Any building or structure situate upon the railway or within the railway or station premises and used for the purposes of or in connexion with the traffic of a railway company :

Any building or part of a building belonging to a gas company and used exclusively for gas-works ;

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 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 ;

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 :

Note to subsect. (8).—With regard to this subsection see the notes to sects. 20 and 21, *ante*, pp. 76 and 77.

Canal works.—The buildings belonging to a canal company, and used for the purposes of *the company*, were exempt from the provisions of Part I. of the Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122, s. 6). It will be observed that the exemption is now confined to buildings used for the purposes of *canal works*, from which limitation it may be inferred that buildings used for such purposes as canal traffic only will in future be subject to the provisions of Parts VI. and VII. of the Act. Buildings erected or constructed before the commencement of the Act, however, to which no objection could have been taken under any law then

(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; 57 & 58 Vict. c. ccxiii. s. 201 (9, 10).

(10) Buildings not exceeding in area thirty square feet and not exceeding in height five 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 five feet from any other building and from any street and not having therein any stove flue fireplace hot air pipe hot water

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in force, are to be deemed to be erected or constructed in compliance with the provisions of the Act (see sect. 210, *post*). Buildings of a canal company, therefore, which were exempt from the operation of Part I. of the Metropolitan Building Act, 1855, will also be exempt from the operation of Parts VI. and VII. of the present Act. It may be that by the provisions of sect. 6 of the Metropolitan Building Act, 1855, a right or privilege of exemption was acquired by the company itself in respect of buildings belonging to it and used for its purposes, in which case all future buildings of a company which was in existence at the commencement of this Act, and which had, therefore, acquired such right or privilege, will, while used for the company's purposes, be exempt from the provisions of the present Act, inasmuch as by sect. 215 (2 *b*), *post*, the repeal of the Metropolitan Building Act, 1855, is not to affect any rights or privileges acquired under that Act. A building let by a canal company to a tenant, and used by him for the purposes of his business, is not 'used for the purposes of' the company, even though the tenant's business brings traffic to the canal; see *Cook* v. *Lovegrove*, *ante*, p. 89.

Railway buildings.—Buildings belonging to a railway company, and used as dwelling-houses for the servants of the company, are not, because so used, 'buildings which are used for the purposes of the company;' see the *Manchester, Sheffield, and Lincolnshire Railway Co.* v. *the Guardians of Barnsley Union*, *ante*, p. 88. Such buildings, when situate within station premises, are specifically exempted by subs. (8).

As to structures and erections erected or set up upon railway premises, and used for the purposes of, or in connection with, the traffic of the company, see the exemption from Part VII. contained in sect. 86, *ante*, p. 163.

Note to subsect. (9).—*Buildings belonging to dock companies.*—The exemption contained in sect. 6 of the Act of 1855 extended only to buildings used for the purposes of the dock company to which they belonged.

Note to subsects. (10, 11, & 12).—'*Building.*'—With regard to structures which have been held to be buildings, see the note under the heading '*Building*' on p. 11 *et seq.*

57 & 58 Vict. c. ccxiii. s. 201 (11–13).

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 thirty feet as measured from the footings of the walls and not exceeding in extent one hundred and twenty-five thousand cubic feet and not being public buildings) wholly in one occupation and distant at the least eight feet from the nearest street or way and at the least thirty 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 thirty feet of another detached building constructed as stables or offices to be used in connexion with such dwelling-house:

(12) All buildings not exceeding in extent two hundred and fifty thousand cubic feet and not being public buildings and distant at the least thirty feet from the nearest street or way and at the least sixty 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 sixty feet of another detached building constructed as stables or offices to be used in connexion with such dwelling-house:

(13) All party fence walls not exceeding in height seven feet measured from the top of the footings of the walls:

Illustrations of buildings which will comply with these conditions will be found on Plates VII. & VIII. in Appendix V., *post.*

'*Eaves.*'—The lowest edges of the inclined sides of a roof which project beyond the face of the walls (see Gwilt).

'*Roof plate.*'—This is the horizontal timber placed on the walls to receive the timbering of the roof.

'*Apparatus for ventilating.*'—This cannot be taken as meaning a mere ventilator, but something *ejusdem generis*, as the flue, hot-air pipe, &c., mentioned in the subsection.

Note to subsect. (13).—A party fence wall is defined by sect. 5 (18), *ante*, p. 21, to be 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

57 & 58 Vict. c. ccxiii. s. 201 (14–17).

(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 twelve 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 forty square inches if such valves are not nearer than twelve inches to any timber or other combustible material.

If any addition be made to any building or structure specified in sub-sections (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 sub-section 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 fourteen 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

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of a building. The term does not, however, include a wall constructed on the land of one owner, the footings only of which project into the lands of another owner.

Note to subsect. (14).—A conservatory constructed of wood and glass and erected over the portico of a house was held, under the previous Acts, to be a building or structure within the meaning of those Acts, and therefore its erection in advance of the general line of buildings in a street was held to be prohibited by sect. 75 of the Metropolis Management and Building Amendment Act, 1862. See *Brutton* v. *the Vestry of St. George's, Hanover Square*, L. R. 13 Eq. 339; 41 L. J. Ch. 134; 25 L. T. (N.S.) 552; 20 W. R. 84. The inference from the exemptions contained in this and the two following sub-sections is that such an erection will be subject to the provisions of the present Act, unless it comes within the exemptions contained in one or other of these subsections.

57 & 58 Vict. c. ccxiii. ss. 202, 203.

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.

Buildings in the occupation of the Crown.—Buildings which are in the occupation of servants of the Crown, for the purposes of the Crown, are in the occupation of the Crown. A building used as the armoury and headquarters of a militia regiment was therefore held to be 'employed for Her Majesty's use or service,' and exempt from the operation of the Metropolitan Building Act, 1855; *Reg.* v. *Jay*, 8 E. & B. 469; s.c. sub nom. *Jay* v. *Hammon*, 27 L. J. M. C. 25; sub nom. *Jay* v. *Hammond*, 30 L. T. (o.s.) 133; 6 W. R. 41; 22 J. P. 527. The effect of the Volunteer Act, 1863 (26 & 27 Vict. c. 65), being to make volunteers servants of the Crown, buildings occupied by them and used for volunteer purposes will also be within the exemption, see *Pearson* v. *the Assessment Committee of the Holborn Union* (1893), 1 Q. B. 389; 5 R. 270; 62 L. J. M. C. 77; 68 L. T. (N.S.) 351; 57 J. P. 167.

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 two hundred and fifty thousand cubic feet and in other re-

spects to exempt such buildings from any of the provisions of this Act if they think fit. 57 & 58 Vict. c. ccxiii. ss. 204–208.

Special buildings.—This exemption will only endure so long as the buildings retain the character which causes them to be exempt; see sect. 206, *post*.

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).

Saving existing rights of gas companies.

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.

Duration of exemption.

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 retains the character by reason whereof it is so exempt or privileged.

'*Building, &c.*'—See as to this and the following sections the definition of 'new building' in sect. 5 (6), *ante*, p. 11; and the Instructional Letter of the 15th December, 1894, in Appendix IV., Pt. II., *post*.

Buildings not to be altered so as not to conform to Act.

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.

'*Building.*'—See the note to sect. 206, *supra*.

When remainder of party wall &c. to be taken down.

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.

57 & 58 Vict. c. ccxiii. ss. 209–211.

'*Party wall.*'—This expression is defined by sect. 5 (16), *ante*, p. 17. It was held by one of the Metropolitan Magistrates sitting at the Thames Police Court on the 12th February, 1895, that when a building upon one side of a party wall had been pulled down to an extent which made its re-erection the erection of a new building under sect. 5 (6), *ante*, p. 11, but the party wall, although it was not in conformity with the Act, was pulled down to an extent less than one-half of its superficial area, the party wall might be reinstated in its former condition. *Watkins* v. *Crow*, 'The Builder,' vol. 68, p. 171. This decision was subsequently followed by another of the Metropolitan Magistrates in proceedings with respect to the same wall, who held that sect. 5 (6), *ante*, p. 11, was prevented from applying to a party or external wall by sect. 208. *Redhouse* v. *Crow*, 'The Builder,' vol. 68, p. 247.

'*External wall.*'—This expression is defined by sect. 5 (15), *ante*, p. 17.

Additions to and alterations of buildings.

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 other work be subject to the provisions of this Act and of byelaws thereunder relating to new buildings.

'*Additions, &c.*'—An addition or alteration to a building itself exempt from the operation of the Act, is not subject to the provisions of the Act; see *The North Kent Railway Company* v. *Badger*, *ante*, p. 155. It has been held that taking out an old door-frame in an external wall, substituting a new door-frame, and reinstating decayed brickwork round the doorway, but without enlarging the doorway, is not doing work affecting the construction of an external wall; *Badger* v. *Denn*, 22 J. P. 129. See also the note to sect. 206, *ante*.

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.

'*Building, &c.*'—See the note to sect. 206, *ante*.

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; 57 & 58 Vict. c. ccxiii. s. 212.

(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.

'*Building, &c.*'—See the note to sect. 206, *ante*.

'*Penalty.*'—The penalty for breach of the provisions of this section is that prescribed by sect. 200 (12), *ante*, p. 292.

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 previous to the passing of this Act.

'*Building, &c.*'—See the note to sect. 206, *ante*. The commencement of a building within sect. 212 includes any work which it is the duty of the district surveyor to survey, and which shall have been commenced pursuant to notice duly given under sect. 38 of the Act of 1855. See the Instructional Letter of 15th December, 1894, in App. IV., Pt. II., *post*.

'*Contract.*'—The Building Act Committee have been advised that a distinction is to be drawn under this section

57 & 58 Vict. c. ccxiii. ss. 213–215.

between a 'building contract' and a 'building agreement;' see the Instructional Letter of December 15, 1894, in App. IV., Pt. II., *post*.

'*Commencement of the Act*'—*i.e.* January 1, 1895, see sect. 3, *ante*, p. 3.

Time of the passing of the Act—*i.e.* August 25, 1894. The section does not require that a building erected in pursuance of a contract made before August 25, 1894, shall also have been commenced before the commencement of the Act.

Saving powers to 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.

'*Local authority*.'—This expression is defined by sect. 5 (42), *ante*, p. 39. The sections of the Metropolis Management Acts conferring and regulating the powers of the local authorities with regard to new streets, will be found in Appendix I., *post*.

Repeal.

Repeal of section 50 of Metropolitan Railway Act 1866.

214. Section 50 of the Metropolitan Railway (Additional Powers) Act 1866 is hereby repealed.

'*Metropolitan Railway Act*, 1866' (29 & 30 Vict. c. clx.). The section was as follows:—'Any exemption contained in the Metropolitan Building Acts from the operation of such Acts in relation to railways and railway stations, shall extend to buildings over stations and works of the company.'

Buildings belonging to a railway company, and used for the purposes of the company, were exempt from the operation of the Metropolitan Building Act, 1855, Part I., which dealt with the regulation and supervision of buildings. The effect of the provision repealed by this section was to exempt the buildings therein mentioned from the operation of the Act, whether such buildings were used for the purposes of the company or not.

The foundations and walls of buildings belonging to any 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, are exempted from the operation of Parts VI. and VII. by sect. 201 (8), *ante*, p. 294. As to the exemption of buildings of railway companies in general, see sect. 201 (8), and the note to that section under the heading '*Railway Buildings*,' *ante*, p. 295.

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 appeal shall not affect—

57 & 58 Vict c. ccxiii. ss. 216, 217.

(*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.

Repeal.—The repeal of the Acts set out in the schedule does not revive anything not in force or existing at the time at which the repeal takes effect. Interpretation Act, 1889 (52 & 53 Vict. c. 63, s. 38). With the addition of the word 'power' in subs. 2 (*d*), the provisions of subs. 2 (*a*) (*b*) (*c*) (*d*) are the same as those of the Interpretation Act, 1889, sect. 38, subs. 2.

'*Commissioners of Sewers.*'—This expression is defined by sect. 5 (46), *ante*, p. 39.

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.

'*Byelaws.*'—The Council has not made any fresh byelaws under the present Act or in any way superseded the byelaws in operation when the Act passed. These will be found in Appendix III., Part II., *post*. See also with regard thereto the Instructional Letter of December 15, 1894, in App. IV., Pt. II., *post*.

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.

57 & 58 Vict. c. ccxiii. s. 218.

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 eight and a half inches long or of stone or other blocks of hard and incombustible substance the beds or courses being horizontal. 57 & 58 Vict. Sch. I. Prel. rr. 1, 2.

In Appendix V., Plates XI. to XVII., *post*, will be found diagrams illustrating the minimum thicknesses required by the Act. In the following notes those portions which are either new or different from the rules of the Schedule to the Metropolitan Building Act, 1855, which related to the construction &c. of walls, have been printed in italics.

Subject to any byelaws that may be made by the Council, walls of buildings are required by sect. 53, *ante*, p. 115, to be constructed of the substances and in the manner and of not less than the thickness prescribed by the Act or mentioned in this schedule.

1. Every building *unless otherwise sanctioned in accordance with this Act* shall be inclosed 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 sixteen feet in height and not exceeding four squares in area may be constructed of any substances and in any manner approved by the district surveyor.* Structure of buildings.

Incombustible substance.—The second schedule, *post*, defines what shall be deemed to be fire-resisting materials for the purposes of the Act. See also sect. 5 (36), *ante*, p. 36, and the note thereto.

Structure of buildings.—With regard to what is a building, see the note under the heading '*Building*' to sect. 5 (6), *ante*, p. 11. The rule for which the present rule is substituted contained no exception in favour of buildings the construction of the walls of which otherwise than in the manner here prescribed is sanctioned by the Act or in favour of open sheds. But otherwise it was identical with the present rule, save that the word 'foundations' was used instead of the word 'footings.' A 'square' is a space of 100 superficial feet, see sect. 5 (23), *ante*, p. 22.

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 six inches and provided that the projection be well and solidly* Construction of walls of brick stone &c.

57 & 58 Vict. Sch. I. Prel. rr. 3-6.

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.

Construction of walls.—Under the Act of 1855 no portion of a wall was allowed to be constructed so as to overhang any part underneath it. It will be seen that the present rule permits of projections to the extent of six inches. With regard to projections from buildings, see sect. 73 and the note thereto, *ante*, p. 140 *et seq.* For the meaning of the expression 'corbel,' see the note under that heading to sect. 56, *ante*, p. 120. See also as to building brickwork and adding to the thickness of walls the Instructional Letter of December 15, 1866, in App. IV., Pt. II., *post*, and as to mortar the letters of November 23, 1880, and July 6 and December 15, 1894, in the same Appendix. A return wall is one which is at an angle to the front main walls. According to Gwilt's 'Encyclopædia' it is the side or part which falls away from a straight front.

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.*

Extra thickness of certain walls.—The rule in the Act of 1855 which corresponded to this rule was confined to 'stone walls in which the beds of masonry were laid horizontally.' The present rule, however, relates to walls not built of stone &c. laid in horizontal beds or courses.

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.*

Thickness of walls.—The previous rule was merely that 'the thickness of every wall as hereinafter determined shall be the minimum thickness.'

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.*

Hollow walls.—This rule is new.

Height of storey.

6. *The height 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.*

Height of storey.—This rule is practically the same as the rule for which it is substituted, except that it requires the height of the topmost storey to be measured from the underside of the floor joists, instead of

from the level of the floor; and except that the former rule required the height of every other than the topmost storey to be the clear height of such storey exclusive of the thickness of the floor. With regard to the height of habitable rooms, see sect. 70, *ante*, p. 134. The expression 'topmost storey' is defined by sect. 5 (14), *ante*, p. 16, and what are the ground storey, the basement storey, and the first storey by subsects. 11, 12, and 13 of the same section respectively, see *ante*, pp. 16 and 17. The 'tie' of a roof is the beam which connects the ends of the rafters and prevents them from thrusting out the walls. 57 & 58 Vict. Sch. I. Prel. rr. 7–9.

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.* Height of external and party walls.

Height of external and party walls.—What are external and what are party walls is defined by subsects. 15 and 16 of sect. 5, *ante*, p. 17, respectively. The expression 'height' in relation to a building is defined by subsect. 21 of the same section, *ante*, p. 22; and the expression 'base' as applied to a wall is defined by subsect. 10 of that section, *ante*, p. 15.

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. Length of walls.

Length of walls.—This rule is the same as the corresponding rule in the Act of 1855, except that it necessarily refers to the thicknesses required by the present schedule. As to return walls, see the note under the heading '*Construction of walls*,' *ante*, p. 306. The expression 'cross wall' is defined by sect. 5 (17), *ante*, p. 20.

9. *Unless with the consent of the Council every wall other than a wall carried on a bressummer shall have footings:*— Footings of wall.

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.

Footings of walls.—There was no express provision in the Act of 1855, requiring any walls to have footings. The present rule is otherwise the same as the corresponding rule under that Act, except that it allows of a wall being built without footings on the side where an adjoining wall interferes with it having footings on that side. This exception has reference to the power given to the district surveyor to allow the footings of an external wall built against another external wall to be omitted on the side next to such other external wall, see sect. 87, *ante*, p. 163. The present rule, it will be seen, requires the height from the bottom of the footing to the base of the wall to be equal to at least two-thirds of the thickness of the wall at its base instead of one-half of such thickness as

57 & 58 Vict. Sch. I. Prel. rr. 10, 11. Pt. I. r. 1.

was required by the former rule. What is the base of a wall is defined by sect. 5 (10), *ante*, p. 15.

Under the corresponding rule in the Act of 1855, a District Surveyor required the builder of a new church to make the footings double the width of the proposed walls, and for omitting to do so laid an information against him, and a magistrate made an order under sect. 46 of that Act, the corresponding enactment to sect. 153, *ante*, p. 243, of the present Act, requiring the builder to comply with the requisition:—Held that the order was bad, as a church was a public building, and exempted by sect. 30 (see sect. 78, *ante*, p. 150) from the operation of the rules of construction in schedule 1 of that Act; *Reg.* v. *Carruthers*, 33 L. J. M. C. 107; 9 L. T. (N.S.) 825; 10 Jur. (N.S.) 767; 12 W. R. 372; 4 B. & S. 804.

Underpinning.

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.*

Underpinning.—This rule is new.

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.*

Thickening of walls.—This rule is also new.

PART I.

BUILDING NOT PUBLIC AND NOT OF THE WAREHOUSE CLASS.

External and party walls shall be of not less thickness than the thickness herein-after specified in each case viz:—

Note.—These rules correspond with the rules under the Metropolitan Building Act, 1855, for the walls of dwelling-houses, which have now been made directly applicable to all buildings not of the warehouse class, instead of, as in the former Act, such buildings being made, as respects the thickness of their walls, subject to the rules given for dwelling-houses. Buildings of the warehouse class are dealt with in Part II., *post*. Where the present rules differ from the former rules they have been printed in italics, and the difference explained in the notes to the rules. In addition to such notes the diagrams on Plates XI. to XVII., in Appendix V., *post*, will be found to illustrate the different thicknesses of walls required by the following rules. All the rules are subject to the general observation that a distinction is now made between walls comprising not more than and walls comprising more than two storeys. Presumably this means walls of buildings comprising either not more than or more than two storeys.

1. When the wall does not exceed twenty-five feet in height its thickness shall be as follows:—

If the wall does not exceed thirty feet in length *and does not comprise more than two storeys* it shall be eight and a half inches thick *for its whole height*;

If the wall exceeds thirty feet in length *or comprises more*

than two storeys it shall be thirteen inches thick below the topmost storey and eight and a half inches thick for the rest of its height. 57 & 58 Vict. Sch. I., Pt. I. rr. 2–4.

Note.—The previous rule was practically the same as the present rule. See as to the present rule Diagram I. on Plate XI., Appendix V., *post.*

2. Where the wall exceeds twenty-five feet but does not exceed forty feet in height its thickness shall be as follows:—

If the wall does not exceed thirty-five feet in length it shall be thirteen inches thick below the topmost storey and eight and a half inches thick for the rest of its height;

If the wall exceeds thirty-five feet in length it shall be *seventeen and a half inches thick for the height of one storey then* thirteen inches thick for the rest of its height below the topmost storey and eight and a half inches thick for the rest of its height.

Note.—Under the previous Act a difference was made between walls not exceeding 30 feet in height and walls not exceeding 40 feet in height; the present rule, it will be seen, treats both classes of walls alike. See Diagram II., Plate XI., Appendix V., *post.*

3. When the wall *exceeds forty* feet but does not exceed fifty feet in height its thickness shall be as follows:—

If the wall does not exceed thirty feet in length it shall be *seventeen and a half inches thick for the height of one storey then* thirteen inches thick for the rest of its height below the topmost storey and eight and a half inches thick for the rest of its height;

If the wall exceeds thirty feet but does not exceed forty-five feet in length it shall be seventeen and a half inches thick for the height *of two storeys then* thirteen inches thick *for the rest of its height*;

If the wall exceeds forty-five feet in length it shall be twenty-one inches and a half thick for the height of one storey then seventeen and a half inches thick for the height of the next storey and then thirteen inches thick for the rest of its height.

Note.—The present rule differs from the former rule in that it requires in the case of walls not exceeding 30 feet in length, that they shall be 17½ inches thick for the height of one storey, whereas the old rule only required 13 inches in thickness up to the topmost storey; and in the case of walls exceeding 35 feet but not exceeding 45 feet in length, the thickness of 17½ inches is required for the height of two storeys instead of one, and the rest of the wall is required to be 13 inches thick, instead of that thickness being required only below the topmost storey. See Diagram III., Plate XI., Appendix V., *post.*

4. Where the wall exceeds fifty feet but does not exceed sixty feet in height its thickness shall be as follows:—

If the wall does not exceed *forty-five feet* in length it shall be seventeen and a half inches thick for the height of *two storeys* and thirteen inches thick for the rest of its height;

57 & 58 Vict. Sch. I., Pt. I. rr. 5, 6.

If the wall exceeds *forty-five feet* in length it shall be twenty-one inches and a half thick for the height of one storey then seventeen and a half inches thick for the height of the next two storeys and then thirteen inches thick for the rest of its height.

Note.—The present rule divides the classes of walls within it into two classes only, those not exceeding and those exceeding 45 feet in length, whereas the old rule divided such walls into three classes, viz. those not exceeding 30 feet in length, those over 30 feet and not exceeding 50 feet in length, and those over 50 feet in length.

Now it will be seen that all walls not exceeding 45 feet in length are required to be 17½ inches thick for the height of two storeys, whereas this thickness was previously only required for the height of one storey in the case of walls not exceeding 30 feet in length. See Diagram IV., Plate XI., Appendix V., *post*.

5. Where the wall exceeds sixty feet but does not exceed seventy feet in height its thickness shall be as follows :—

If the wall does not exceed forty-*five* feet in length it shall be *twenty-one inches and a half thick for the height of one storey* then seventeen and a half inches thick for the height of the next *two storeys* and then thirteen inches thick for the rest of its height ;

If the wall *exceeds forty-five feet* in length it *shall be increased in thickness in each of the storeys below the uppermost two storeys by four inches and a half* (*subject to the provision in this Schedule respecting distribution in piers*).

Note.—The previous rule divided the classes of walls coming within it into those up to 40 feet in length, those up to 55 feet in length, and those over 55 feet in length. The present rule divides them into walls up to 45 feet in length and walls over that length, and requires a greater thickness for the height of three storeys than that previously prescribed.

It is to be presumed that the increase required in the case of walls exceeding 45 feet in length is an increase upon the thickness required in the case of walls not exceeding 45 feet in length and coming within the present rule. The provisions respecting the distribution of the thickness of a wall in piers referred to are contained in Rule 3 of the part of this schedule headed 'Miscellaneous,' *post*. See Diagram V., Plate XII., Appendix V., *post*.

6. Where the wall exceeds seventy feet but does not exceed eighty feet in height its thickness shall be as follows :—

If the wall does not exceed forty-*five* feet in length it shall be twenty-one inches and a half thick for the height of one storey then seventeen and a half inches thick for the height of the next *three* storeys and thirteen inches thick for the rest of its height ;

If the wall exceeds *forty-five feet in length it shall be increased in thickness in each of the storeys below the uppermost two storeys by four inches and a half* (*subject to the provision in this Schedule respecting distribution in piers*).

Note.—Walls coming within this rule were under the old rule divided into those which did not exceed 40 feet in length, those which did not

exceed 60 feet in length, and those which exceeded 60 feet in length. The present rule applies to the provisions of the old rule regulating the width of walls not exceeding 40 feet in length to walls not exceeding 45 feet in length, with this alteration, that such walls are now required to be 17½ inches thick for three storeys, instead of two storeys above the first storey as previously required. With regard to walls exceeding 45 feet in length, the present rule requires a greater thickness. The provisions respecting distribution of thickness of walls in piers are contained in Rule 3 of the rules headed 'Miscellaneous,' *post*. See Diagram VI., Plate XII., Appendix VII., *post*. 57 & 58 Vict. Sch. I., Pt. I. rr. 7, 8.

7. Where the wall exceeds eighty feet but does not exceed ninety feet in height its thickness shall be as follows:—

If the wall does not exceed forty-five feet in length it shall be *twenty-six inches thick for the height of one storey then* twenty-one inches and a half thick for the height of *the next storey* then seventeen and a half inches thick for the height of the next *three* storeys and then thirteen inches thick for the rest of its height;

If the wall exceeds forty-five feet in length it shall be increased in thickness in each of the storeys below the uppermost two storeys by four inches and a half (subject to the provision in this Schedule respecting distribution in piers).

Note.—Walls within this class are divided into those up to 45 feet in length and those over that length, whereas the previous division was into walls the length of which did not exceed 45 feet, those which did not exceed 70 feet, and those which exceeded 70 feet. Walls not exceeding 45 feet in length are required by the present rule to be 26 inches thick for the height of one storey, 21½ inches thick for the next storey, and 17½ inches for the next three storeys, instead of 21½ inches thick for the first two storeys, 17½ inches thick for the next two storeys, and 13 inches thick for the remainder of the wall.

For the provisions respecting the distribution of the thickness of walls in piers, see Rule 3 of the Miscellaneous Rules, *post*. See also with regard to this rule, Diagram VII., Plate XII., Appendix V., *post*.

8. Where the wall exceeds ninety feet but does not exceed one hundred feet in height its thickness shall be as follows:—

If the wall does not exceed forty-five feet in length it shall be *twenty-six inches thick for the height of one storey then* twenty-one inches and a half thick for the height of the next *two* storeys then seventeen and a half inches thick for the height of the next *three* storeys and then thirteen inches thick for the rest of its height;

If the wall exceeds forty-five feet in length it shall be increased in thickness in each of the storeys below the uppermost two storeys by four inches and a half (subject to the provision in this Schedule respecting distribution in piers).

Note.—Under the corresponding rule in the former Act walls within this class were divided into walls of a length up to 45 feet, walls of a length up to 80 feet, and walls of a greater length than 80 feet. Now there are only two divisions, those up to 45 feet and those over that length. In the first division walls are now required to be 26 inches thick for the

57 & 58 Vict. Sch. I., Pt. I. rr. 9–11.

height of one storey, 26½ inches thick for the height of the next storey, 17½ inches thick for the next three storeys, and 13 inches for the rest of the height of the wall, instead of 21½ inches for the first two storeys, 17½ inches for the next three storeys, and 13 inches for the remainder. The provisions as to the distribution of the thickness of walls in piers will be found in Rule 3 of the Miscellaneous Rules, *post*, p. 310. For an illustration of this rule, see Diagram VIII., Pl. XIII., Appendix V., *post*.

9. *Where the wall exceeds one hundred feet but does not exceed one hundred and twenty feet in height its thickness shall be as follows :—*

If the wall does not exceed forty-five feet in length it shall be thirty inches thick for the height of one storey then twenty-six inches thick for the height of the next two storeys then twenty-one inches and a half thick for the height of the next two storeys then seventeen and a half inches thick for the height of the next three storeys and then thirteen inches thick for the rest of its height ;

If the wall exceeds forty-five feet in length it shall be increased in thickness in each of the storeys below the uppermost two storeys by four inches and a half (subject to the provision in this Schedule respecting distribution in piers).

Note.—This rule is new, as no provision was made by the Metropolitan Building Act, 1855, in respect of walls exceeding one hundred feet in height. The distribution of the thickness of walls in piers is provided for by Rule 3 of the Miscellaneous Rules, *post*. For an illustration of this rule, see Diagram IX., Pl. XIII., Appendix V., *post*.

Condition in respect of storeys exceeding certain height.

10. If any storey exceeds in height sixteen 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.

Note.—This rule is the same as the corresponding rules in Part I. of the Schedule to the Metropolitan Building Act, 1855, except that the words printed in italics have been introduced here for the first time. With regard to the distribution of the thickness of walls in piers, see also Rule 3 of the Miscellaneous Rules, *post*.

Restriction in case of certain storeys.

11. No storey enclosed with walls less than thirteen inches in thickness shall be more than ten feet in height *between the floor and the ceiling thereof or between the floor and the tie of the roof*.

Note.—The words printed in italics have been added to the rule 6 in Part I. of the Schedule to the Metropolitan Building Act, 1855, with which the present rule is otherwise identical. The tie of the roof is a beam or rod by which the ends of the rafters are connected so as to prevent them from thrusting out the walls of the building.

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*.

57 & 58 Vict Sch. I., Pt. II. rr. 1–3.

Rule as to buildings not being public buildings or buildings of the warehouse class.

Note.—This rule is the same as the corresponding rule 8 in Part I. of the Schedule to the Metropolitan Building Act, 1855, except that reference to the provisions of the present Act has been substituted for the reference to the Act of 1855 in the former rule.

PART II.

Buildings of the Warehouse Class.

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 :—

Thickness at base.

Buildings of the warehouse class.—This expression is defined by sect. 5 (28), *ante*, p. 25, as meaning warehouses, factories, manufactories, breweries, or distilleries, and any other buildings exceeding in cubical extent one hundred and fifty thousand cubic feet, which are neither public buildings [as to which, see sect. 5 (27), *ante*, p. 24] nor domestic buildings [as to which, see sect. 5 (26), *ante*, p. 24].

External and party walls.—These expressions are respectively defined by subsects. 15 and 16 of sect. 5, *ante*, p. 17.

1. Where the wall does not exceed twenty-five feet in height (whatever is its length) it shall be thirteen inches thick at its base.

Note.—This rule is the same as the rule in the Act of 1855, which regulated the thickness of the walls of buildings of the warehouse class which did not exceed 25 feet in height. See Diagram I., Pl. XIV., Appendix V., *post*.

2. Where the wall exceeds twenty-five feet but does not exceed thirty feet in height it shall be at its base of the thickness following :—

If the wall does not exceed forty-five feet in length it shall be thirteen inches thick at its base ;

If the wall exceeds forty-five feet in length it shall be seventeen and a half inches thick at its base.

Note.—The rule also is the same as the corresponding rule in the Act of 1855. For an illustration of the rule, see Diagram II., Pl. XIV., Appendix V., *post*.

3. Where the wall exceeds thirty feet but does not exceed forty feet in height it shall be at its base of the thickness following :—

If the wall does not exceed *thirty-five* feet in length it shall be thirteen inches thick at its base ;

If the wall exceeds *thirty-five* feet but does not exceed *forty-five* feet in length it shall be seventeen and a half inches thick at its base ;

57 & 58 Vict. Sch. I., Pt. II. rr. 4–6.

If the wall exceeds *forty-five* feet in length it shall be twenty-one inches and a half thick at its base.

Note.—In the corresponding rule of the Act of 1855, the three divisions were walls not exceeding 30 feet in length, walls exceeding 30 feet and not exceeding 60 feet, and walls exceeding 60 feet. Otherwise the requirements of the rule remain unaltered. The present rule is illustrated in Diagram III., Pl. XIV., Appendix V., *post*.

4. Where the wall exceeds forty feet but does not exceed fifty feet in height it shall be at its base of the thickness following :—

If the wall does not exceed *thirty* feet in length it shall be seventeen and a half inches thick at its base ;

If the wall exceeds thirty feet but does not exceed *forty-five* feet in length it shall be twenty-one inches and a half thick at its base ;

If the wall exceeds *forty-five* feet in length it shall be twenty-six inches thick at its base.

Note.—The classes into which walls within the corresponding rule of the Act of 1855 were divided, were walls not exceeding in length 40 feet, walls not exceeding in length 70 feet, and walls exceeding in length 70 feet ; otherwise the rule has not been altered. This rule is illustrated in Diagram IV., Pl. XIV., Appendix V., *post*.

5. Where the wall exceeds fifty feet but does not exceed sixty feet in height it shall be at its base of the thickness following :—

If the wall does not exceed *forty-five* feet in length it shall be *twenty-one inches and a half* thick at its base ;

If the wall exceeds *forty-five* feet in length it shall be twenty-six inches thick at its base.

Note.—The corresponding rule of the Act of 1855 contained three divisions instead of the two in the present rule, viz. :—Walls not exceeding 35 feet in length, which had to be 17½ inches at their base, walls exceeding 35 feet in length but not exceeding 50 feet, which were required to be 21½ inches at the base, and walls exceeding 50 feet in length, the bases of which were required to be 26 inches thick. An illustration of the present rule will be found in Diagram V., Pl. XV., Appendix V., *post*.

6. Where the wall exceeds sixty feet but does not exceed seventy feet in height it shall be at its base of the thickness following :—

If the wall does not exceed *forty-five* feet in length it shall be *twenty-one inches and a half* thick at its base ;

If the wall exceeds forty-five feet in length it shall be increased in thickness from the base up to within sixteen feet from the top of the wall by four inches and a half (subject to the provision in this Schedule respecting distribution in piers).

Note.—The corresponding rule of the Act of 1855 contained three divisions, viz. :—Walls not exceeding 30 feet in length, the bases of which were required to be 17½ inches thick, walls exceeding 30 feet and not ex-

ceeding 45 feet in length, of which the bases were required to be 21½ inches, and walls exceeding 45 feet in length, the bases of which were to be 26 inches in thickness. For the provision respecting the distribution of the thickness of walls in piers, see Rule 3 of the Miscellaneous Rules, *post*. For an illustration of the present rule, see Diagram VI., Pl. XV., Appendix V, *post*. 57 & 58 Vict. Sch. I., Pt. II. rr. 7-9.

7. Where the wall exceeds seventy feet but does not exceed eighty feet in height it shall be at its base of the thickness following:—

If the wall does not exceed forty-five feet in length it shall be twenty-one inches and a half thick at its base;

If the wall exceeds forty-five feet in length it shall be increased in thickness from the base up to within sixteen feet from the top of the wall by four inches and a half (subject to the provision in this Schedule respecting distribution in piers).

Note.—The three divisions into which the corresponding rule of the Act of 1855 was divided were walls not exceeding 45 feet in length, the bases of which were required as in the present rule to be 21½ inches thick. Walls exceeding 45 feet in length and not exceeding 60 feet with bases 26 inches in thickness; and walls exceeding in length 60 feet, of which the bases were to be 30 inches thick. The provisions respecting the distribution of the thickness of walls in piers are contained in Rule 3 of the Miscellaneous Rules, *post*. An illustration of the present rule will be found in Diagram VII., Pl. XV., Appendix V., *post*.

8. Where the wall exceeds eighty feet but does not exceed ninety feet in height it shall be at its base of the thickness following:—

If the wall does not exceed *forty-five* feet in length it shall be twenty-six inches thick at its base;

If the wall exceeds forty-five feet in length it shall be increased in thickness from the base up to within sixteen feet from the top of the wall by four inches and a half (subject to the provision in this Schedule respecting distribution in piers).

Note.—The corresponding rule of the Act of 1855 was divided into walls the length of which did not exceed 60 feet with bases 26 inches thick; walls exceeding 60 feet and not exceeding 70 feet in length, of which the bases were 30 inches in thickness; and walls exceeding 70 feet in length, of which the bases were required to be 34 inches thick. The distribution of the thickness of walls in piers is provided for by Rule 3 of the Miscellaneous Rules, *post*. The present rule is illustrated in Diagram VIII., Pl. XV., Appendix V., *post*.

9. Where the wall exceeds ninety feet but does not exceed one hundred feet in height it shall be at its base of the thickness following:—

If the wall does not exceed *forty-five* feet in length it shall be twenty-six inches thick at its base;

If the wall exceeds forty-five feet in length it shall be increased in thickness from the base up to within sixteen feet from the top of the wall by four inches and a half (subject to the provision in this Schedule respecting distribution in piers).

57 & 58 Vict. Sch. I., Pt. II. rr. 10–12.

Note.—Walls of the height specified in this rule were divided in the corresponding rule of the Act of 1855 into those which did not exceed 55 feet in length, the bases of which were required to be 26 inches thick; walls exceeding that length but not exceeding 70 feet in length, of which the bases had to be 30 inches thick; and walls exceeding 70 feet in length, the bases of which were required to be 34 inches in thickness. See Rule 3 of the Miscellaneous Rules, *post*, for the provisions as to the distribution of the thickness of walls in piers. In Diagram IX., Pl. XVI., Appendix V., *post*, will be found an illustration of the present rule.

10. *Where the wall exceeds one hundred feet but does not exceed one hundred and twenty feet in height it shall be at its base of the thickness following:—*

If the wall does not exceed forty-five feet in length it shall be thirty-one inches thick at its base;

If the wall exceeds forty-five feet in length it shall be increased in thickness from the base up to within sixteen feet from the top of the wall by four inches and a half (subject to the provision in this Schedule respecting distribution in piers).

Note.—Under the Act of 1855 no provision was made for walls exceeding 100 feet in height, and this present rule is therefore new. The distribution of the thickness of walls in piers is provided for by Rule 3 of the Miscellaneous Rules, *post*. The present rule is illustrated in Diagram X., Pl. XVI., Appendix V., *post*.

11. The thickness of the wall at the top and for sixteen feet below the top shall be thirteen inches *and a half* and the intermediate parts of the wall between the base and sixteen feet below 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 sixteen feet below the top:

Nevertheless in walls not exceeding thirty feet in height the walls of the topmost storey may be *nine* inches thick *provided the height of that storey does not exceed ten feet.*

Note.—The present rule is the same as the corresponding rule in the Act of 1855, except that the words printed in italics are new; and that in the case of walls not exceeding 30 feet in height the walls of the topmost storey, which might previously have been $8\frac{1}{2}$ inches thick, are now to be 9 inches thick, and that provided the height of the topmost 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.

Note.—The words printed in italics in this rule are new, otherwise the rule is the same as the corresponding rule in the Act of 1855. See also with regard to the distribution of the thickness of walls in piers, Rule 3 of the Miscellaneous Rules, *post*. 57 & 58 Vict. Sch. I., Pt. II. r. 13, Misc.

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.

Note.—The corresponding rule of the Act of 1855 was subject to an exception that in the case of walls built of stone in which the beds of the masonry were not laid horizontally no diminution should be allowed in the thickness required for such walls. This has, however, been omitted from the present rule, but otherwise the rule is the same as the previous rule.

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 eight and a half 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 face or elevation of the wall. Cross-walls

Note.—The words printed in italics are new, otherwise the rule is identical with the corresponding rule in the Act of 1855. The expression 'cross-wall' is defined by sect. 5 (17), *ante*, p. 20. An explanation of this rule will be found in the Diagrams on Plate XVII., Appendix V., *post*.

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.

Note.—This rule is new.

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 sixty feet in height and forty-five feet in length or in case of a storey exceeding in height sixteen times or fourteen 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.

Note.—This rule also is new.

57 & 58 Vict. Schs. II. & III., Pt. I.

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 two inches thick ;

In the case of staircases—

oak or teak or other hard timber with treads strings and risers not less than two 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 under side 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.

THE THIRD SCHEDULE.

Fees Payable to District Surveyors.

PART I.

On New Buildings.

	£	s.	d.
For any building not exceeding thirty square feet in area and not exceeding ten feet in height	0	10	0

57 & 58 Vict. Sch. III., Pt. I.

	£	s.	d.
For every building not exceeding four hundred square feet in area and not more than two 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 four hundred square feet in area and of one 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.			
For inspecting the arches or fire-resisting floors over or under public ways	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 herein-before specified in this part of this Schedule shall in every case be increased by one-half.

Arches over or under public ways.—If each arch of a series of arches under a public way is intended to be used as a separate building, the district surveyor will be entitled to receive this fee in respect of each arch. Whether the arches are so appropriated is a question of fact to be decided by the magistrate in whose court the fees are sought to be recovered. See *Power* v. *Wigmore*, L. R. 7 C. P. 386, 27 L. T. (N.S.) 148, 36 J. P. 694.

Separate sets of chambers.—This provision was probably inserted in consequence of the decision in the case of *Moir* v. *Williams*, *ante*, p. 246, that a district surveyor is not entitled to charge a fee in respect of each set of chambers into which a building may be divided.

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 seventy-five feet in height	2	0	0
If exceeding seventy-five and not exceeding one hundred feet in height	2	10	0
For every additional ten feet or portion of ten feet in height	0	10	0

57 & 58 Vict. Sch. III., Pt. II.

	£	s.	d.
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.

For examining and certifying plans of an old building	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.

Attending at Court.

	£	s.	d.
For attending at a Court when an order is made for complying with notice of irregularity	0	10	0

PART II.

On Dangerous Structures.

On each dangerous structure—

Where there are not more than four adjoining or nearly contiguous structures in the same ownership—

1. For making a survey of the structure reported as dangerous and certifying opinion thereon—			
If the structure do not exceed four squares in area and two storeys in height	0	7	6
If exceeding four squares	0	10	0
For every additional storey above two	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 one structure only	0	10	0
If more than one structure (for each structure)	0	5	0

57 & 58 Vict. Sch. III., Pt. III.

	£	s	d.
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 one structure only	0	10	0
If more than one 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
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 four 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 :—

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
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
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
For services relating to the erection of buildings on low lying lands per building . . .	0	5	0

57 & 58 Vict. Sch. III., Pt. IV.

PART IV.

Fees Payable to Council.

On Dangerous Structures.

	£	s.	d.
For general services—			
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 two 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 ten structures shall be the maximum fees.			

On Dilapidated and Neglected Buildings or Structures.

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 the 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 two or more adjoining or nearly contiguous structures in the same ownership—			
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 ten 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 twelve 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 twelve inches.

5. In calculating the area of every new building for the purposes of this Schedule the area of all out buildings not exceeding thirty 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 one hundred and forty-two and in section two hundred and two the words 'the plans level width surface inclination and' 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 seventy-four seventy-five seventy-six eighty-five eighty-seven ninety-eight and ninety-nine.
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.

57 & 58 Vict. Sch. IV.

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 four six seven eight nine ten fourteen fifteen sixteen seventeen eighteen nineteen twenty twenty-one from 'and the district surveyor' to 'such house building erection or work' and the words 'or surveyor' section twenty-two so far as it relates to any notice or order served or made under any provision repealed by this Act section twenty-three from 'and every penalty imposed by Part II.' to 'Acts amending the same' section twenty-five in section twenty-six the words 'or in any byelaw of the board thereunder' and in section twenty-seven 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. ccxliii.	The London Council (General Powers) Act 1890.	Sections twenty-seven to thirty-one and sections thirty-three to thirty-seven.
54 & 55 Vict. c. lxxviii.	The London Sky Signs Act 1891.	The whole Act.
56 & 57 Vict. c. ccxxi.	The London County Council (General Powers) Act 1893.	Sections five to nine and section seventeen.

APPENDIX I.

THE GENERAL PAVING (METROPOLIS) ACT, 1817 [1].

57 Geo. III., c. 29.

An Act for better paving, improving, and regulating the streets of the Metropolis, and removing and preventing nuisances and obstructions.

. . . . . .

Entrances to cellars and coal holes, bars over areas, &c., to be covered and secured.

Sect. 70.—Be it further enacted that if at any time or times hereafter the owner or owners, occupier or occupiers, of any house, building, or premises in any parochial or other district within the jurisdiction of this Act, having any iron or wooden rails or bars over the areas or openings to any kitchens or cellars, or other part or parts of his or their house, building, or premises, beneath the surface of the foot pavements of any streets or public places in any such parochial or other district, or having any doorway or entrance into the basement or cellar storey thereof, shall not either keep the same, or the walls of such kitchens or cellars, in sufficient and good repair, or safely and securely guard and constantly keep the same securely guarded by a rail or rails, or cover the same over with a strong flap or trap door, according to the nature of the case, and to the satisfaction of the commissioners or trustees, or other persons having the control of the pavements in such parochial or other district, or of the surveyor or surveyors of the pavements in any such parochial or other district for the time being, or of any inspectors or other officers or persons appointed by the said commissioners, trustees, or other persons as aforesaid, or some of them, and so as to prevent danger to persons passing and repassing: or if such occupier or occupiers do and shall leave open,

Owner or occupier leaving the same open, &c.

[1] This Act is commonly called Michael Angelo Taylor's Act. So much of it as is not inconsistent with the Metropolis Management Acts is extended to the metropolis by sect. 73 of the Act of 1862, *post*, p. 367.

57 Geo. III. c. 29. s. 70.

or not sufficiently and substantially cover and keep covered and secured to such satisfaction as aforesaid, any coal or other hole, funnel, trap door, or cellar flap, belonging to, or connected with his, her, or their respective houses, buildings, or premises (save and except only during such reasonable time as any coals, wood, casks, or other things shall be putting down or taking out of any such vault or basement, storey, or during such reasonable time as the flap, trap door, or covering thereof shall be altering, repairing, or amending); or if such owner or owners, occupier or occupiers, shall not repair, and from time to time keep in good and substantial repair, to the satisfaction of the said commissioners, or trustees, or other persons, or of the said surveyor or surveyors, inspectors, or other persons appointed by the said commissioners, or trustees, or other persons as aforesaid, all and every, or any such iron or wooden rails, guard rails, flaps, trap doors, and other covering; then, and in every such case, the person or persons neglecting so to do, shall for every or any such offence, forfeit and pay any sum, not being less than forty shillings, nor exceeding five pounds, to be recovered in such and the same manner in which other penalties are hereafter directed to be recovered by virtue of this Act; and that in any or either of such cases of neglect, it shall and may be also lawful to, and for any two or more of the said commissioners, or trustees, or other persons as aforesaid, and without the authority of any public or general meeting, or for their surveyor or surveyors of the pavements for the time being, or for their inspectors, or for any other person, by such commissioners, or trustees, or other persons appointed as aforesaid, to cause all and every such doorways, entrances, holes, and funnels to be well and securely covered over and guarded, and all iron or wooden rails, or guard rails, flaps, trap doors, or coverings, to be well and substantially repaired or renewed by such person or persons as they shall think proper to employ, and with such materials and in such manner as they may, or he may direct; and that all the costs, charges, and expenses attending the same be ascertained and certified by the surveyor or surveyors of the pavements in any such parochial or other district, and shall be borne and paid by the owner or owners, occupier or occupiers, or other person or persons so neglecting to repair and make good the same in manner aforesaid;

Exemption.

Or not repairing, &c.

Penalty.

Commissioners, &c. may cause such coal holes, &c. to be secured.

Charges to be paid by the owner or occupier.

and that if such costs, charges, and expenses shall not be so paid by such person or persons to the said surveyor or surveyors, or to such other person or persons as he or they shall or may appoint to receive the same, within twenty-four hours after such an account of the costs, charges, and expenses so ascertained and certified shall have been given to or left for such person or persons at or on such houses, buildings, or premises, then double the amount of the sum so certified shall become due and payable from such person or persons, over and above the other penalties imposed, and shall and may be recovered and levied in such and the same manner in which any other penalties are hereinafter directed to be recovered, or in which any moneys may be recovered from any water or gas and light companies, or any other persons, for or on account of any costs and charges of relaying any pavements, by virtue of any local Act or Acts of Parliament relating to such parochial or other district, or of this Act.

57 Geo. III. c. 29. s. 71.

And, if not paid,

Double the amount certified to be paid above the penalties.

Sect. 71.—Be it further enacted that if at any time or times hereafter any person or persons shall dig or make, or cause to be dug or made, any hole, or leave or cause to be left any hole before any vacant ground, or before, or behind, or on the side of any house, or other tenement or building erected, or being erected, or about to be erected in and adjoining to any street or public place formed, or to be formed, or forming in any parochial or other district within the jurisdiction of this Act, for the purposes of making any vault or vaults, or the foundation or foundations to such houses or other buildings, or for any other purpose whatsoever, and shall not forthwith inclose the same in a good and sufficient manner, to the satisfaction of the surveyor or surveyors of the pavements for the time being to the commissioners, or trustees, or other persons having the control of the pavements, in such parochial or other district, or shall keep up or cause to be kept up and continued any such inclosure for any time which shall be longer than shall be absolutely necessary in the opinion of the said commissioners, or trustees, or other persons as aforesaid, or of their surveyor or surveyors of pavements for the time being, or shall not, when thereunto required by such surveyor or surveyors, or either of them, well and sufficiently fence or inclose any such hole or holes, or area or areas, or space or spaces, opened or left open, and intended for an area or areas, foundation or founda-

Holes made for vaults to be inclosed.

57 Geo. III. c. 29. s. 75.

tions, or for any other purpose whatsoever, in the front of, or behind, or on the side of such vacant ground, house, or other tenement or building in and adjoining to any such street or public place formed, or to be formed, or forming within six hours after he or they shall be required so to do by the said surveyor or surveyors of pavements, and in the manner and with such materials as he or they shall direct, and to his or their satisfaction, then and in every or any such case he or they so offending shall forfeit and pay for every such offence, and for every such refusal or neglect, any sum not being less than forty shillings nor exceeding five pounds, to be recovered in the same manner in which other penalties are hereinafter directed to be recovered by virtue of this Act.

Penalty.

. . . . . .

Hoards to be erected, but not without licence of surveyor.

Sect. 75.—Be it further enacted, that no person or persons whomsoever shall erect, place, set up or build, in any street or other public place in any parochial or other district within the jurisdiction of this Act at any time or times hereafter, any hoarding or scaffolding, or place or erect any posts, bars, rails, boards or other thing, by way of inclosure, for the purpose of making mortar or of depositing or sifting, screening, or stacking any brick, stone, lime, sand, or any other materials for building or repairing any house or other tenement or erection, or for other works, or for any other purpose, without leave or licence first had or obtained under the hand or hands of the surveyor or surveyors for the time being of the pavements of such parochial or other district, who is and are hereby required to grant the same forthwith for the purpose of making mortar, and depositing or sifting, screening or stacking any bricks, stone, lime, sand, or any other materials for building or repairing any house or other tenement or erection, specifying therein the length of time for which the same when so erected or set up may be continued, and giving such other directions respecting the same as he or they may think necessary, on being paid by every person so applying for such licence the sum of two shillings and sixpence; and that if any person or persons shall erect, place, set up or build, or cause or permit to be erected, placed, set up or built any such hoard or scaffolding, or any inclosure, posts, bars or rails, or any other matter or thing for the purposes aforesaid, or for any other purpose, without the leave or licence, signed as aforesaid, of the said surveyor or surveyors of the pave-

What is to be specified in licence.

Fee.

Erecting hoards, &c. without licence.

ments so had and obtained, or shall erect, set up, or build the same, or cause or permit the same to be set up or erected in any other manner, or to be continued for any longer time than shall be allowed or expressed in such licence, then and in either of the said cases such person or persons or the person or persons by whom he or they shall or may be employed shall forfeit and pay the sum of ten shillings for every day that the same shall have been and shall be set up and continued; and also that it shall and may be lawful for the said commissioners or trustees or other persons having the control of the pavements of such parochial or other district, or for the said surveyor or surveyors of the pavements for the time being, to cause the same to be pulled down and removed, and the same and all the materials thereof, and of every part thereof, to be kept and detained until such person or persons shall and do pay to the said surveyor or surveyors of the pavements, or to the person or persons in whose custody the same shall be, all the penalties incurred by such person or persons, together with the charges of pulling down, removing and keeping the same, to be ascertained and determined by the said surveyor or surveyors; and in case the same shall not be claimed, and the said penalties and charges aforesaid shall not be paid, within the space of five days next after the pulling down and removal thereof, then it shall and may be lawful to and for the said commissioners or trustees or other persons as aforesaid, or for their surveyor or surveyors of the pavements, to order or cause the same to be appraised and sold; and the money arising therefrom, after deducting all the said charges, shall be paid to the treasurer or treasurers of the said commissioners or trustees or other persons as aforesaid, or to such other person or persons as they from time to time shall or may direct or appoint.

57 Geo. III. c. 29. s. 80.

Or unduly continuing.

Penalty.

Commissioners may cause hoard, &c. to be removed.

Proceedings thereon.

Note.—Compare with this section sects. 121 and 122 of the Met. Man. Act, 1855, 18 & 19 Vict. c. 120, *post*, pp. 346 and 347, and the notes thereto.

. . . . . .

Sect. 80.—[The first portion of this section will be found set out in the note to section 6 of the Act of 1894, *ante*, p. 40.] . . . and all such new parts of such streets or public places; and the owner and occupiers of houses and buildings, messuages, and other hereditaments therein and adjoining thereto, shall be subject and liable to all

Streets may be widened and improved by Commissioners.

57 Geo. III. c. 29. s. 80.

And owners, &c. of houses, &c. liable to rates.

the rates, assessments, powers, provisions, orders, clauses, and things to be made by virtue of or contained in any local Act or Acts of Parliament relating to such parochial or other district, or by virtue of or contained in this Act, in the same manner as the present streets and public places included in any such local Act or Acts, or within the jurisdiction of this Act; and the owners and occupiers of houses or buildings and messuages or other hereditaments therein and adjoining thereto.

THE

METROPOLIS MANAGEMENT ACT, 1855.

18 & 19 Vict. cap. 120.

An Act for the better local management of the metropolis.[1]

[14th August, 1855.]

Whereas it is expedient that provision should be made for the better local management of the metropolis in respect of the sewerage and drainage, and the paving, cleansing, lighting, and improvements thereof: 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.

. . . . . .

Vestries and district boards to repair, &c. all sewers vested in them, and from time to time to construct new ones, &c.

69. The vestry of every parish mentioned in Schedule (A.) to this Act, and the Board of Works for every district mentioned in Schedule (B.) to this Act, shall (subject to the powers by this Act vested in the Metropolitan Board of Works) from time to time repair and maintain the sewers under this Act vested in them, or such of them as shall not be discontinued, closed up, or destroyed under the powers herein contained, and shall cause to be made, repaired, and maintained such sewers and works, or such diversions or alterations of sewers and works, as may be necessary for effectually draining their parish or district, and shall cause all banks, wharves, docks, or defences abutting on or adjoining any river, stream, canal, pond, or watercourse in such parish or district, to be raised, strengthened, or altered or repaired, where it may be necessary so to do, for effectually draining, or protecting from floods or inundation such parish or district; and it shall be lawful for any such vestry or district board to carry any such sewers

[1] So much only of this Act is set out as relates to works of building and drainage.

18 & 19 Vict. c. 120. s. 69.

or works through, across, or under any turnpike road, or any street or place laid out as or intended for a street, or through or under any cellar or vault which may be under the pavement or carriageway of any street, and into, through, or under any lands whatsoever, making compensation for any damage done thereby as hereinafter provided; and it shall be lawful for any such vestry or district board from time to time to enlarge, contract, raise, lower, arch over, or otherwise improve or alter all or any of the sewers, watercourses, and works which shall be from time to time vested in them or subject to their order and control, and to discontinue, close up, or destroy such of them as they may deem to have become unnecessary: provided always, that no new sewer shall be made without the previous approval of the Metropolitan Board of Works: provided also, that the discontinuance, closing up, destruction, or alteration of any sewer as aforesaid shall be so done as not to create a nuisance; and if by reason thereof any person shall be deprived of the lawful use of any covered sewer, it shall be the duty of the vestry or district board to provide some other sewer or a drain as effectual for his use as the sewer of which he is so deprived; provided also, that where the vestry or district board alter any sewer, or provide a new sewer in substitution for a sewer discontinued, closed up, or destroyed, they may contract or otherwise alter the private drains communicating with the sewer so altered, or with the sewer so discontinued, closed up, or destroyed, or may close up or destroy such private drains, and provide new drains in lieu thereof, as the circumstances of the sewerage may appear to them to require, but so that in every case the altered or substituted drain shall be as effectual for the use of the person entitled thereto as the drain previously used.

Note.—Under 25 & 26 Vict. c. 182, sect. 44, *post*, owners of land may construct sewers for the drainage thereof, and vestries and district boards are empowered to contribute towards the cost of such sewers out of the rates. See also sect. 52 of that Act and the following sections as to the power of such authorities to construct sewers at the cost either wholly or partly of the owners of lands. The terms 'sewer' and 'street' are defined by sect. 250 of 18 & 19 Vict. c. 120, *post*. Provision is also made by sect. 135, *post*, for the carrying of sewers through private property. The payment of compensation for damage caused by the exercise of the powers given by the Act is provided for by sect. 225, *post*.

Where a local authority in laying down a new scheme of drainage requires the drains of premises connected with the previous scheme to be disconnected and new drains made connected with the new scheme, it is required by sect. 69 to bear the cost of such disconnection and of the new drains; and cannot, by purporting to act under sect. 73, *post*, compel the owner of the premises to bear the cost, see *Vestry of St. Marylebone* v. *Viret*, 34 L. J. M. C. 214. So where the local authority take up a sewer and lay down another, it must bear the cost of so doing; see *Fulham District Board of Works* v. *Goodwin*, 1 Ex. D. 400. 18 & 19 Vict. c. 120. ss. 71–73.

. . . . . .

Gullyholes, &c. to be trapped.

71. Every district board and vestry shall, by providing proper traps or other coverings, or by ventilation, or by such other ways and means as shall be practicable for that purpose, prevent the effluvia of sewers from exhaling through gullyholes, gratings, or other openings of sewers in any of the streets or other places within their district or parish.

Note.—See sect. 27 of 25 & 26 Vict. c. 102, *post*, as to the notice to be given before any gully or ventilating shaft connected with a sewer is trapped, covered, or closed up.

Vestries and district boards to cause sewers to be cleansed, &c.

72. Every vestry and district board shall cause the sewers vested in them to be constructed, covered, and kept so as not to be a nuisance or injurious to health, and to be properly cleared, cleansed, and emptied, and for the purpose of clearing, cleansing, and emptying the same they may construct and place, either above or under ground, such reservoirs, sluices, engines, and other works as may be necessary.

Vestry or district board in certain cases may compel owners, &c. of houses to construct drains into the common sewer.

73. If any house or building, whether built before or after the commencement of this Act, situate within any such parish or district, be found not to be drained by a sufficient drain communicating with some sewer, and emptying itself into the same, to the satisfaction of the vestry or board of such parish or district, and if a sewer of sufficient size be within one hundred feet of any part of such house or building, on a lower level than such house or building, it shall be lawful for the vestry or board, at their discretion, by notice in writing, to require the owner of such house or building forthwith, or within such reasonable time as may be appointed by the vestry or board, to construct and make from such house or building into any such sewer a covered drain, and such branches thereto, of such materials, of such size, at such level, and with such fall

18 & 19 Vict. c. 120. s. 73.

as shall be adequate for the drainage of such house or building, and its several floors or stories, and also of its areas, waterclosets, privies, and offices (if any), and for conveying the soil, drainage, and wash therefrom into the said sewer, and to provide fit and proper paved or impermeable sloped surfaces for conveying surface water thereto, and fit and proper sinks, and fit and proper syphoned or otherwise trapped inlets and outlets for hindering stench therefrom, and fit and proper water supply and water supplying pipes, cisterns, and apparatus for scouring the same, and for causing the same to convey away the soil, and fit and proper sand traps, expanding inlets, and other apparatus for hindering the entry of improper substances therein, and all other such fit and proper works and arrangements as may appear to the vestry or board, or to their officers, requisite to secure the safe and proper working of the said drain, and to prevent the same from obstructing or otherwise injuring or impeding the action of the sewer to which it leads; and it shall be lawful for the said vestry or board to cause the said works to be inspected while in progress, and from time to time during their execution to order such reasonable alterations therein, additions thereto, and abandonment of part or parts thereof, as may to the vestry or board or their officers appear, on the fuller knowledge afforded by the opening of the ground, requisite to secure the complete and perfect working of such works; and if the owner of such house or building neglect or refuse, during twenty-eight days after the said notice has been delivered to such owner, or left at such house or building, to begin to construct such drain and other works aforesaid, or any of them, or thereafter fail to carry them on and complete them with all reasonable despatch, it shall be lawful for the vestry or board to cause the same to be constructed and made, and to recover the expenses to be incurred thereby from such owner in the manner hereinafter provided.

Penalty on owner, &c. for neglect.

Note.—Definitions of the terms 'drain' and 'sewer' will be found in sect. 250 of this Act, *post*, see also sect. 112 of 25 & 26 Vict. c. 102, *post*.

A notice which merely referred to the surveyor's office for particulars of the works required to be done under this section was held to be sufficient in *Bailey* v. *Wilkinson*, 33 L. J. M. C. 161.

The vestry or district board has a discretion as to the materials required under this section, see *Austin* v. *St. Mary*,

Lambeth, 27 L. J. Ch. 677, and also as to the works necessary to abate a nuisance. See *Hargreaves* v. *Taylor*, 32 L. J. M. C. 111, 3 B. & S. 413. 18 & 19 Vict. c. 120. ss. 74, 75.

The vestry or district board cannot, by purporting to act under this section, escape its liability to construct the drains of premises rendered necessary by the carrying out of a new scheme of drainage imposed by sect. 69, *ante*, see *The Vestry of St. Marylebone* v. *Viret* in the note to that section. See also sect. 48 of 54 & 55 Vict. c. 76 as to the power of the vestry or local board to require provision to be made for a proper supply of water.

By sect. 64 of 25 & 26 Vict. c. 102, *post*, the vestry or district board is empowered to recover penalties for failure to execute works required under this section, in lieu of executing the works and recovering the expenses of so doing.

The recovery of expenses incurred under this section is provided for by sects. 225 and 226 of this Act.

The expenses recoverable under sect. 73 of the present Act include the costs of preparing and posting notices, and also a reasonable sum for the clerk's time in serving the notices, but not general office expenses; see *The Metropolitan Board of Works* v. *Flight*, 29 L. T. (N.S.) 608.

A resolution of the vestry or district board, or of a committee thereof, is necessary to support a notice by an officer of the board purporting to require works to be executed pursuant to this section. In the absence of such resolution expenses incurred by the vestry or board in carrying out the notice will not be recoverable; see *Vestry of St. Leonard's, Shoreditch*, v. *Holmes*, 50 J. P. 132.

Provision for combined drainage of blocks of houses.

74. If it appear to the vestry or board of any parish or district that a group or block of contiguous houses, or of adjacent detached or semi-detached houses, may be drained and improved more economically or advantageously in combination than separately, and a sewer of sufficient size already exist or be about to be constructed within one hundred feet of any part of such group or block of houses, whether contiguous, detached, or semi-detached, it shall be lawful for such board or vestry to order that such group or block of houses be drained and improved, as hereinbefore provided, by a combined operation.

Note.—See as to this section the definition of the term 'sewer' in sect. 250, *post*, and sect. 112 of 25 & 26 Vict. c. 102, *post*, and see also sect. 64 of the latter Act, *post*.

No house to be built without drains constructed

75. It shall not be lawful to erect any house or other building in any parish mentioned in Schedule (A.) to this Act, or in any district mentioned in Schedule (B.)

18 & 19 Vict. c. 120. s. 76.

to the satisfaction of the vestry or district board.

to this Act, or to rebuild any house or building within any such parish or district which has been pulled down to or below the floor commonly called the ground floor, or to occupy any house or building so newly built or rebuilt, unless a drain and such branches thereto and other connected works and apparatus and water supply as hereinbefore mentioned be constructed and provided to the satisfaction of the surveyor of the vestry of such parish or board of works for such district, of such materials, of such size, at such level, and with such fall as they may direct, so that the same shall be available for the drainage of the lowest floor of such house or building, and of its several floors or stories, and also of its areas, waterclosets, privies, and offices (if any), which drain shall lead from such house or building, or the intended site of such house or building, to such sewer, already made or intended to be constructed near thereto, as the vestry or board shall direct and appoint, or if there be no such sewer existing or intended to be constructed within one hundred feet of any part of the intended site of such house or building, then to such covered cesspool or other place, not being under any dwelling house, as the vestry or board shall direct; and whenever any house or building is rebuilt as aforesaid, the level of the lowest floor of such house or building shall be raised sufficiently to allow of the construction of such a drain and such branches thereto and other works and apparatus as are hereinbefore required, and for that purpose the levels shall be taken and determined under the direction of the vestry or district board.

Note.—Provision is made by sect. 66 of 25 & 26 Vict. c. 102, *post*, for the temporary drainage of premises into cesspools, tanks, or other suitable receptacles, where there is not a proper sewer within 200 feet of the house or building.

Notice of buildings to be given to the vestry or district board before commencing the same.

76. Before beginning to lay or dig out the foundation of any new house or building within any such parish or district, or to rebuild any house or building therein, and also before making any drain for the purpose of draining directly or indirectly into any sewer under the jurisdiction of the vestry or board of or for any such parish or district, seven days' notice in writing shall be given to the vestry or board by the person intending to build or rebuild such house or building or to make such drain; and every such foundation shall be laid at such level as will permit the drainage of such

house or building in compliance with this Act, and as the vestry or board shall order, and every such drain shall be made in such direction, manner, and form, and of such materials and workmanship, and with such branches thereto and other connected works and apparatus and water supply as hereinbefore mentioned, and as the vestry or board shall order, and the making of every such drain shall be under the survey and control of the vestry or board; and the vestry or district board shall make their order in relation to the matters aforesaid, and cause the same to be notified to the person from whom such notice was received within seven days after the receipt of such notice, and in default of such notice, or if such house, building, or drain, or branches thereto or other connected works and apparatus and water supply, be begun, erected, made, or provided in any respect contrary to any order of the vestry or board made and notified as aforesaid, or the provisions of this Act, it shall be lawful for the vestry or board to cause such house or building to be demolished or altered, and to cause such drain or branches thereto and other connected works and apparatus and water supply to be relaid, amended, or re-made, or, in the event of omission, added, as the case may require, and to recover the expenses thereof from the owner thereof in the manner hereinafter provided.

18 & 19 Vict. c. 120. s. 76.

Note.—Under sect. 145 of the London Building Act, 1894, *ante*, p. 230, notices are required to be given before the commencement of any building, structure, or work. The notice required to be given by the present section will be necessary even where a building is proposed to be erected upon foundations placed upon the surface without any digging out, see *The Poplar District Board of Works* v. *Knight*, 28 L. J. M. C. 37.

But see sect. 145 of the Act of 1894, which empowers the Council to make byelaws as to the foundations of buildings, and the byelaws in Appendix III., Part II., *post*.

A penalty is imposed by sect. 88 of 25 & 26 Vict. c. 102, *post*, upon any person omitting to give a notice required by sect. 76 of the present Act.

The vestry or district board has a discretion under this section as to the kind of pipes it may require to be used in the construction of drains, see *Austin* v. *the Vestry of St. Mary, Lambeth*, 27 L. J. Ch. 677.

The period of seven days limited by this section is extended to fifteen days by 25 & 26 Vict. c. 102, sect. 63, *post*.

With regard to the exercise by a local authority of statutory powers enabling it to demolish a building, see the cases in the note under the heading '*Non-compliance with notice*' to sect. 83, *ante*, p. 159.

18 & 19 Vict. c. 120. ss. 78–80.

. . . . . .

Power to Metropolitan Board or vestry or district board to branch private drains into sewers, at the expense of the party to whom they belong.

78. Whenever it is necessary to open any part of the pavement or any street or public place, for the purpose of making or branching any private drain into any of the sewers or drains vested in the Metropolitan Board of Works, or any vestry or district board under this Act, or authorised to be made by them under this Act, it shall be lawful for the vestry or board, in case they think fit so to do, to make so much and such part of such private drain, and also to construct so much and such part of the work necessary for branching the same into the public sewers as shall be under or in any street, and to recover the expenses incurred thereby from the owner of the house, building, or ground to which such private drain belongs, in the manner hereinafter provided.

Note.—The recovery of expenses incurred in carrying out this section is provided for by sects. 225 and 226 of this Act.

Vestry or district board may agree to make house drains at the expense of owners or occupiers.

79. It shall be lawful for any such vestry or board to contract and agree with the owners or occupiers of any houses, buildings, or ground that any drains required to be made, altered, or enlarged by such owners shall be constructed, made, altered, and enlarged by the vestry or board; and the cost price of making, altering, or enlarging such drains, as certified by the surveyor of the vestry or board, shall be repaid by the owner or occupier so agreeing to the vestry or board, and in default of payment the same may be recovered in the manner hereinafter provided.

Vestry or district board may order a contribution towards construction of sewers in certain cases.

80. Where any sewer in any of the parishes mentioned in either of the Schedules (A.) and (B.) to this Act, into which any drain shall be made or branched, has been built since the third day of September one thousand eight hundred and thirteen, and before the commencement of this Act, at the expense of any person or body other than any commissioners of sewers, the vestry or district board in whom such sewer is vested may order such sum as they may deem just to be paid and contributed by the owner of the house to which such drain belongs towards the expense of the construction of such sewer, which sum shall, on the receipt thereof by such vestry or board, be paid over to the person or body aforesaid, and such vestry or board may, if they see fit, order and accept payment of such sum, with interest after a rate not exceeding

five pounds for the hundred by the year, by instalments within any period not exceeding twenty years. 18 & 19 Vict. c. 120. ss. 82, 83.

Note.—With regard to the parishes referred to in this section, see the note to sect. 4, *ante*, p. 4. The provisions of this section are extended by sect. 59 of 25 & 26 Vict. c. 102, *post*, to main sewers and to sewers constructed since January 1, 1856.

. . . . . .

Power for vestries and district boards to authorise inspection of drains, privies, and cesspools.

82. It shall be lawful for any such vestry or board, or for their surveyor or inspector, or such other person as they appoint, to inspect any drain, watercloset, privy, cesspool, or water supply apparatus, or sinks, traps, syphons, pipes, or other works or apparatus connected therewith, within the parish or district of such vestry or board, and for that purpose, at all reasonable times in the daytime, after twenty-four hours' notice in writing has been given to the occupier of the premises to which such drain, watercloset, privy, cesspool, or water supply apparatus, or other connected works or apparatus as aforesaid, is attached, or left upon the premises, or in case of emergency without notice, to enter, by themselves or their surveyor or inspector and workmen, upon any premises, and cause the ground to be opened in any place they think fit, doing as little damage as may be.

Note.—This section is repealed, except so far as it relates to a drain, sewer, way, work, or apparatus connected therewith, by 54 & 55 Vict. c. 76, sect. 142. With regard to the other matters provided for by sect. 82, see sects. 2, 10, and 40 of the Act of 1891.

Penalty on persons improperly making or altering drains.

83. In case any drain, watercloset, privy, cesspool, or water supply, or water supply apparatus, or other connected works or apparatus, hereinbefore mentioned, be found, on inspection, not to have been made or provided according to the directions or regulations of the vestry or district board, or contrary to the provisions of this Act, or in case any person, without the consent of the vestry or district board, construct, rebuild, or unstop any sewer, drain, watercloset, privy, or cesspool which may have been ordered by them not to be made, or to be demolished or stopped up, or in case any person discontinue any water supply, or destroy any connected works or apparatus as aforesaid, or in case any person, without the consent of the vestry or district board, break into any sewer vested in such vestry or board, every person so offending shall forfeit and pay any

18 & 19 Vict. c. 120. s. 84

sum not exceeding ten pounds; and in case the person so making any sewer, drain, watercloset, privy, cesspool, or other works or apparatns as aforesaid, contrary to the directions or regulations of the vestry or board, or contrary to the provisions of this Act, or, without such consent as aforesaid, constructing, rebuilding, or unstopping any sewer, drain, watercloset, privy, or cesspool which may have been ordered to be demolished or stopped up, or discontinuing any water supply or destroying any connected works or apparatus as aforesaid, or breaking into any such sewer as aforesaid, do not, within fourteen days after notice in writing by the vestry or board, cause such sewer, drain, watercloset, privy, or cesspool to be altered or reinstated in conformity with the directions of the vestry or board, or, as the case may be, to be demolished or stopped up, or such water supply to be renewed, or such connected works or apparatus to be restored, then and in every such case the vestry or board may cause the work to be done, and the expenses thereof shall be paid by the person who has so offended.

Note.—This section, except so far as it relates to a drain, sewer, or any work or apparatus connected therewith, is repealed by 54 & 55 Vict. c. 76, sect. 142. For the substituted provisions see sects. 41 and 42 of that Act.

Penalties are imposed for encroaching upon or wrongfully interfering with sewers by sects. 68 and 69 of 25 & 26 Vict. c. 102, *post*. By sect. 65 of the latter Act, *post*, the penalties imposed by this section are extended to persons causing the commission of the offence.

Where no default found expenses to be paid by vestry or board.

84. If such drain, watercloset, privy, cesspool, or water supply, or water supply apparatus, or other connected works and apparatus, be found on inspection as aforesaid to be made to the satisfaction of the vestry or board, and in proper order and condition, they shall cause the same to be reinstated and made good as soon as may be, and the expenses of examination, reinstating, and making good such drain, watercloset, privy, cesspool, or other works or apparatus as aforesaid, shall be defrayed by the vestry or board, and full compensation shall be made by them for all damages or injuries done or occasioned by the examination of any such drain, watercloset, privy, cesspool, or other works or apparatus as aforesaid.

Note.—Except so far as this section relates to a drain, sewer, or any work or apparatus connected therewith, it has been repealed by 54 & 55 Vict. c. 76, sect. 142. See now sect. 40 of that Act.

Note.—The recovery of compensation under this section is provided for by 25 & 26 Vict. c. 102, sects. 225 and 226.

18 & 19 Vict. c. 120. ss. 85, 98

Vestry or district board to cause drains, &c. to be put into proper condition, &c. where necessary.

85. If, upon such inspection as aforesaid, any drain, watercloset, privy, or cesspool appear to be in bad order and condition, or to require cleansing, alteration, or amendment, or to be filled up, the vestry or board shall cause notice in writing to be given to the owner or occupier of the premises upon or in respect of which the inspection was made, requiring him forthwith, or within such reasonable time as shall be specified in such notice, to do the necessary works; and if such notice be not complied with by the person to whom it is given the vestry and board may, if they think fit, execute such works, and the expenses incurred by them in so doing shall be paid to them by the owner or occupier of the premises.

Note.—Except so far as this section relates to a drain or sewer or any work or apparatus connected therewith, it is repealed by 54 & 55 Vict. c. 76, sect. 142. The provisions which now govern the matters to which the repealed portions of the section related are contained in sects. 40 and 41 of that Act. Under sect. 64 of 25 & 26 Vict. c. 102, the vestry or district board is empowered to recover penalties for failure to execute works required by it under this section, in lieu of executing the works itself and recovering the expenses. The recovery of expenses incurred under the present section is provided for by 25 & 26 Vict. c. 102, sects. 225 and 226; see *The Vestry of St. Leonard's, Shoreditch*, v. *Holmes* in the note to sect. 73, *ante*, p. 335.

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Vestry or district board to cause streets to be paved.

98. It shall be lawful for every vestry and district board from time to time to cause all or any of the streets within their parish or district, or any part thereof respectively, to be paved or repaired when and as often and in such form and manner and with such materials as such vestry or board think fit, and to cause the ground or soil thereof to be raised or lowered, and the course of the channels running in, into, or through the same to be turned or altered in such manner as they think proper, and to alter the position of any mains or pipes in or under such street, such alteration to be made subject to the approval of the engineer of the company to which such mains or pipes belong.

Note.—The term 'streets' in this Act is defined by sect. 250, *post*. By sect. 112 of 25 & 26 Vict. c. 102, *post*, the term 'pave' included the formation of the roadway or footway of a street.

It is doubtful whether sect. 68 of the Lands Clauses Act, by which compensation is given for lands 'injuriously affected,' is incorporated in this Act. Consequently it is doubtful whether a vestry or district board which lowers or raises a street under

18 & 19 Vict. c. 120. ss. 99, 100

the powers given by this section is liable to compensate a person whose property is injured by such action. See *Baker* v. *the Vestry of St. Marylebone*, 35 L. T. (N.S.) 129 ; 24 W. R. 848. And see also *Ferrar* v. *the Commissioners of Sewers of London*, L. R. 4 Ex. 227 ; 38 L. J. Ex. 102 ; 21 L. T. (N.S.) 295 ; 17 W. R. 709 ; *Flight* v. *Vestry of St. Luke, Chelsea*, 40 L. J. Ex. 102.

The powers given by this section do not enable a local authority to lay a tramway in a street, see *Reg.* v. *Train*, 31 L. J. M. C. 169.

Owners possessing freehold of courts, &c. to pave the same.

99. Provided always, that whenever the freehold of any court, passage, or public place, not being a thoroughfare, is vested in the owner of any adjoining house, the paving of such court, passage, or public place shall be done by such owner, if deemed expedient or necessary by the vestry or district board.

Note.—With reference to the paving of new streets, see the provisions of 25 & 26 Vict. c. 102, sect. 77, *post* ; of footways, 53 & 54 Vict. c. 54, *post* ; of roads or ways which are not streets, 53 & 54 Vict. c. 66, sect. 3, *post*.

Owner of courts to drain them, and keep the pavement, &c. in repair.

100. The owner of any such court, passage, or public place, not being a thoroughfare, shall, if required by the vestry or district board of the parish or district in which the same is situate, to the satisfaction of such vestry or district board sufficiently pave, cover the surface of, or repair the same, and lay, at a proper level, through, over, under, or along such part thereof as such vestry or board may require, a drain, channel, or gutter, and keep such pavement or covering, and drain, channel, or gutter, in good repair, to the satisfaction of such vestry or board ; and if any such owner of any court, passage, or public place, not being a thoroughfare, do not sufficiently pave or cover the same as aforesaid, or do not lay down therein such drain, channel, or gutter, or do not repair the same respectively, to the satisfaction of such vestry or board, within fourteen days after notice in writing requiring him so to do has been given to him by such vestry or board, every such person so offending shall forfeit and pay any sum not exceeding five pounds.

Penalty on owners for neglect.

Note.—The vestry or district board may, instead of enforcing the penalty, recover the amount of the expenses. See 25 & 26 Vict. cap. 102, sect. 81.

Vaults and cellars under streets not to be made without the

101. No vault, arch, or cellar shall be made under any street without the consent of the vestry or district board of the parish or district in which the same is situate ; and all such vaults, arches, and cellars hereafter to be

made within any parish or district mentioned in either of the Schedules (A.) and (B.) to this Act shall be substantially made, and so as not to interfere or communicate with any drain or sewer under the control of any vestry or district board, or of the Metropolitan Board of Works, without their consents respectively first obtained; and if any vault, arch, or cellar be made contrary to this provision, it shall be lawful for the vestry or district board, or for the Metropolitan Board of Works, to fill up or alter the same, and the expenses incurred thereby shall be paid by the owner of such vault, arch, or cellar.

18 & 19 Vict. c. 120. ss. 101, 102, 105.

consent of the vestry or board.

Note.—An appeal is given by sect. 211, *post*, to the Council against any proceedings of a vestry or district board under this section.

102. All vaults, arches, and cellars made either before or after the commencement of this Act under any street in any parish or district mentioned in either of the Schedules (A.) and (B.) to this Act, and all openings into the same in any such street, shall be repaired and kept in proper order by the owners or occupiers of the houses or buildings to which the same respectively belong; and in case any such vault, arch, or cellar be at any time out of repair, it shall be lawful for the vestry or district board of such parish or district to cause the same to be repaired and put into good order, and to recover the expenses thereof from such owner in the manner hereinafter provided.

Vaults, &c. under streets to be repaired by owners or occupiers.

Note.—This provision does not absolve the vestry or district board from its duty to keep the streets in proper repair, so that where the only roof which a cellar had consisted of the flags which formed the pavement over which the public passed, it was held that the Vestry could not compel the owner of the cellar to repair these flags when worn out on the ground that they were part of the cellar. See *Hamilton* v. *the Vestry of the Parish of St. George, Hanover Square*, L. R. 9 Q. B. 42; 43 L. J. M. C. 428; 29 L. T. (N.S.) 428.

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105. In case the owners of the houses forming the greater part of any new street laid out or made or hereafter to be laid out or made, which is not paved to the satisfaction of the vestry or district board of the parish or district in which such street is situate, be desirous of having the same paved, as hereinafter mentioned, or if such vestry or board deem it necessary or expedient that the same should be so paved, then and in either of such cases such vestry or board shall well and sufficiently

Provisions for paving new streets

18 & 19 Vict. c. 120. s. 106.

pave the same, either throughout the whole breadth of the carriageway and footpaths thereof, or any part of such breadth, and from time to time keep such pavement in good and sufficient repair: and the owners of the houses forming such street shall, on demand, pay to such vestry or board the amount of the estimated expenses of providing and laying such pavement (such amount to be determined by the surveyor for the time being of the vestry or board); and in case such estimated expenses exceed the actual expenses of such paving, then the difference between such estimated expenses and such actual expenses shall be repaid by the said vestry or board to the owners of houses by whom the said sum of money has been paid; and in case the said estimated expenses be less than the actual expenses of such paving, then the owners of the said houses shall, on demand, pay to the said vestry or board such further sum of money as, together with the sum already paid, amounts to such actual expenses.

Note.—Under sect. 77 of 25 & 26 Vict. cap. 102, *post*, the owners of land can be made to contribute towards expenses incurred under this section. See also the note to that section.

As to the application of the term 'new street' after the passing of the Metropolis Management Act, 1862 (25 & 26 Vict. cap. 102), see sect. 112 of that Act, *post*. Ancient highways may become new streets within the meaning of this section, as to which see *The Vestry of St. Giles's, Camberwell*, v. *Crystal Palace Co.* (1892), 2 Q. B. 33; 61 L. J. Q. B. 802; 66 L. T. (N.S.) 840; 40 W. R. 648; 57 J. P. 5; and see also the note to sect. 5 (1) of the Act of 1894, *ante*, p. 8.

The powers of the vestry or district board cannot be exercised more than once (see *The Vestry of St. Giles's, Camberwell*, v. *Hunt*, 56 L. J. M. C. 65); for once paved by the vestry or district board the street ceases to be a new street within the meaning of the section (see per Matthew, J.) But laying down a temporary pavement is not paving within the meaning of the section. See *Wilson* v. *the Vestry of St. Giles's, Camberwell* (1892), 1 Q. B. 1; 65 L. T. (N.S.) 790; 61 L. J. M. C. 3; 40 W. R. 1; 56 J. P. 167.

Vestry or board may declare their intention of repairing any street not being a highway.

106. The vestry or district board of any parish or district may if they think fit, by notice in writing put up in any part of any street in their parish or district, not being a highway, declare their intention of repairing the same under this Act, and thereupon the same shall be from time to time repaired by them under the authority of this Act . . .

18 & 19 Vict. c. 120. ss. 108, 119.

Note.—The section contained a proviso which is now repealed by the Amending Act of 1862, 25 & 26 Vict. cap. 102, sect. 80 of which enacts that :—

'The proviso of the one hundred and sixth section of the firstly recited Act is hereby repealed ; and in lieu thereof be it enacted, that no street not being a highway shall be repaired as in the said section mentioned, unless notice be given to the owners and rated occupiers of the houses in such street respectively ; and service of any such notice may be effected by leaving the same at the several houses in such street, or, where any of the said houses shall be unoccupied, by affixing the same upon the outer door or some conspicuous part of such houses ; and provided further, that no such street shall be repaired as in the said section mentioned if within one month after notice has been given as aforesaid written notice of objection to such repair, signed by at least two-thirds of the owners or rated occupiers of houses in the said street, shall be given to the vestry or district board.'

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Vestries and district boards may place fences, &c. to footways.

108. It shall be lawful for every vestry and district board from time to time to place any posts, fences, and rails on the sides of any footways or carriageways in their parish or district, for the purposes of safety, and to prevent any carriage or cattle from going on the same, and also to place any posts or other erections in any carriageways so as to make the crossings thereof less dangerous for foot passengers, and also from time to time to repair and renew any such posts, rails, or fences, or to remove the same, or any other obstruction or encroachment on any carriageway or footway.

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Owners, &c. to remove future projections, on notice from vestry or district board.

119. If any porch, shed, projecting window, step, cellar door or window, or steps leading into any cellar or otherwise, lamp, lamp post, lamp iron, sign, sign post, sign iron, showboard, window shutter, wall, gate, fence, or opening, or any other projection or obstruction placed or made against or in front of any house or building after the commencement of this Act, shall be an annoyance, in consequence of the same projecting into or being made in or endangering or rendering less commodious the passage along any street in their parish or district, it shall be lawful for the vestry or district board to give notice in writing to the owner or occupier of such house or building to remove such projection or obstruction, or to alter the same, in such manner as the vestry or board think fit : and such owner or occupier shall within fourteen days after the service of such notice upon him remove such projection or obstruction,

18 & 19 Vict. c. 120. ss. 120, 121.

Penalty for neglect.

or alter the same in the manner directed by the vestry or board; and if the owner or occupier of any such house or building neglect or refuse, within fourteen days after such notice, to remove such projection or obstruction, or to alter the same, in the manner directed by the vestry or board, he shall forfeit any sum not exceeding five pounds, and a further sum not exceeding forty shillings for every day during which such projection or obstruction continues after the expiration of such fourteen days from the time when he may be convicted of any offence contrary to the provisions hereof.

Note.—With reference to this section, see the note to sect. 73 of the Act of 1894 on p. 143, *ante*. The section does not repeal sect. 65 of Michael Angelo Taylor's Act (57 Geo. III. cap. 29). See *Wyatt* v. *Gems* (1893), 2 Q. B. 225; 69 L. T. (N.S.) 456. It had, however, previously been held to repeal sect. 72 of that Act, see *Fortescue* v. *the Vestry of St. Matthew, Bethnal Green* (1891), 2 Q. B. 170; 60 L. J. M. C. 172; 65 L. T. (N.S.) 256.

Vestry or district board may remove projections and make compensation for the same.

120. [This section will be found set out in the note to sect. 6 of the Act of 1894, *ante*, p. 42.]

Hoards to be erected during repairs.

121. Every person who shall build or begin to build, or to take down or begin to take down, any house, building, or wall, or alter or repair, or begin to alter or repair, the outward part of any house, building, or wall, shall, in all cases in which the footway is thereby obstructed or rendered inconvenient, cause to be put up a proper and sufficient hoard or fence, with a convenient platform and handrail, if there be room enough for the same, to serve as a footway for passengers outside of such hoard or fence, and shall continue such hoard or fences, in such cases as aforesaid, with such platform and handrail, standing and in good condition, to the satisfaction of the vestry or district board of the parish or district in which such house, building, or wall is situate, during such time as may be necessary for the public safety or convenience, and shall, in all cases in which the same is necessary to prevent accidents, cause such hoard or fence to be well lighted during the night; and every such person who fails to put up such hoard or fence and such platform, with such handrail as aforesaid, or who does not, whilst the said hoard or fence is standing, keep the same well lighted during the night, shall for every such offence forfeit a sum not exceeding five pounds, and a further sum not exceeding forty shillings for every day during the continuance of such default.

Penalty on not erecting hoards.

Note.—Hoardings are required to be erected before the commencement of the demolition of any property by 53 & 54 Vict. cap. ccxliii. sect. 32, *post*. A licence is required before the erection of the hoarding by sect. 122, *post*. 18 & 19 Vict. c. 120. ss. 122, 123.

Under sect. 90 (2), *ante*, p. 173, building owners are required, when exercising any of the rights conferred upon them by Part VIII. of the Act, to maintain a proper hoarding and shoring or temporary construction, for protection of the adjoining land, and under sect. 106 the Council may cause any structure certified to be in a dangerous state to be shored up or otherwise secured, and a proper hoard or fence to be put up for the protection of passengers.

No hoard to be erected without licence from vestry or district board.

122. It shall not be lawful for any person to erect or set up in any street any hoard or fence or scaffold for any purpose whatever, or any posts, bars, rails, boards, or other things by way of inclosure, for the purpose of making mortar, or of depositing bricks, lime, rubbish, or other materials, without a licence in writing first had and obtained from the clerk or surveyor of the vestry or district board of the parish or district in which such street is situate; and every such licence shall state the place where and the purpose for which such hoard or fence, scaffold or inclosure, is to be set up or made, and the size thereof, and the time for which it is to be permitted to continue.

Note.—Compare with this sect. 75 of 57 Geo. III. cap. 29. Under the corresponding provision in sect. 162 of the City of London Sewers Act, 1848, *post*, it was held that there was no power to annex to a licence granted under that section a condition that no placards should be placed on the hoardings, that four licences were not required in respect of a hoarding which extended into four streets, and that there was no power under the section to limit the duration of the licence.

If hoard be erected or materials be deposited in any manner otherwise than to the satisfaction of the vestry or district board, the same may be removed.

123. If any person erect or set up in any street any hoard or fence or scaffold for any purpose whatever, or any posts, bars, rails, board, or other things by way of inclosure, for the purpose of making mortar, or of depositing bricks, lime, rubbish, or other materials, without a licence from the vestry or district board, or do any such Act as aforesaid in any other manner than as permitted by such licence, or continue the same beyond the time stated in such licence, or fail to keep any hoard, fence, platform, or handrail in good repair, he shall for every such offence forfeit a sum not exceeding five pounds, and a further sum not exceeding forty shillings for every day during the continuance of

18 & 19 Vict. c. 120. ss. 124, 135.

such offence; and it shall be lawful for the vestry or board to cause such hoard, fence, scaffold, or inclosure to be pulled down, and the materials thereof, and also all the bricks, mortar, lime, or other building materials, or other matters or things contained within any such inclosure, to be removed, and deposited in such place as the vestry or board may think fit, and to be kept until the charges of pulling down and removing the same be paid to the vestry or board: and in case the same be not claimed and the said charges paid within the space of eight days next after such seizure thereof, it shall be lawful for the vestry or board to order the same to be sold, and by and out of the proceeds of such sale to pay such charges, rendering any surplus to the owner or other person by law entitled thereto; and in case the proceeds of such sale be insufficient to cover such charges, and the charges of selling and disposing of such materials, matters, and things, the deficiency shall be repaid by the owner of such materials, matters, and things to the vestry or district board, on demand.

Note.—The recovery of penalties is provided for by sect. 227 of this Act.

Providing against accidents in laying out new streets, &c.

124. Every person laying out or opening any new street, or building therein, shall, during the operations necessary for forming such new street, or for building therein, take all such precautions for guarding against injury to the passengers along such street as may be directed by the vestry or district board of the parish or district within which such operations are being carried on; and if any person fail to comply with the directions of such vestry or district board, within such time as may be limited by them, such vestry or district board may do whatever may be necessary for carrying the same into effect, and the expenses thereby incurred shall be repaid to such vestry or district board by the person laying out or opening such new street, or building therein, as aforesaid, and shall be recoverable by them from such person in manner provided by this Act.

Note.—See further with regard to the precautions to be taken for the protection of the public, sect. 121, *ante*, p. 346, and the note thereto.

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Main sewers vested in the Metropolitan Board of Works, and

135. The sewers mentioned in Schedule (D.) to this Act, being the main sewers now vested in the Commissioners of Sewers of the City of London and in the Metropolitan Commissioners of Sewers respectively, with

the walls, defences, banks, outlets, sluices, flaps, penstocks, gullies, grates, works, and things thereunto belonging, and the materials thereof, with all rights of way and passage used and enjoyed by such commissioners respectively over and to such sewers, works, and things, and all other rights concerning or incident to such sewers, works, and things, shall be vested in the Metropolitan Board of Works, and such Board shall make such sewers and works as they may think necessary for preventing all or any part of the sewage within the metropolis from flowing or passing into the river Thames in or near the metropolis, and shall cause such sewers and works to be completed on or before the thirty-first day of December one thousand eight hundred and sixty, and shall also make all such other sewers and works, and such diversions or alterations of any existing sewers or works vested in them under this Act, as they may from time to time think necessary for the effectual sewerage and drainage of the metropolis, and shall discontinue, close up, or destroy such sewers for the time being vested in them under this Act as they may deem unnecessary, and such Board shall from time to time repair and maintain the sewers so vested in them, or such of them as may not be discontinued, closed up, or destroyed as aforesaid; and for the purposes aforesaid such Board shall have full power and authority to carry any such sewers or works through, across, or under any turnpike road, or any street or place laid out as or intended for a street, as well beyond as within the limits of the metropolis, or through or under any cellar or vault under the carriageway or pavement of any street, and into, through, or under any lands whatsoever within or beyond the said limits, making compensation for any damage done thereby as hereinafter provided, and all sewers and works from time to time made by the said board shall vest in them; and the said Board shall cause the sewers vested in them to be constructed, covered, and kept so as not to be a nuisance or injurious to health, and to be properly cleared, cleansed, and emptied, and for the purpose of clearing, cleansing, and emptying the same they may construct and place, either above or under ground, such reservoirs, sluices, engines, and other works as may be necessary, and may cause the sewage and refuse from such sewers to be sold or disposed of as they may see fit, but so as not to create a nuisance, and the money arising thereby shall be applied towards defraying the expenses of such Board.

18 & 19 Vict. c. 120. s. 135.

power to such Board to make sewers.

18 & 19 Vict. c. 120. s. 140.

Note.—The London County Council is to be read for the Metropolitan Board of Works, see sect. 40 of the Local Government Act, 1888 (51 & 52 Vict. cap. 41). Plans of the sewers belonging to the Council and to the Commissioners of Sewers respectively can be seen at the offices of those bodies.

By sect. 68 of this Act sewers, which at the commencement of this Act were vested in the Metropolitan Commissioners of Sewers, and situate in any parish mentioned in Schedule (A) to this Act, except such sewers as are mentioned in Schedule (D), were vested in the vestry of such parish; and sewers situate within any district mentioned in Schedule (B) were vested in the Board of Works for such district; and all sewers made or to be made within any such parish or district, except sewers or works vested or to be vested in the Metropolitan Board of Works, were vested in such vestry and Board respectively. And by sect. 148 all sewers except those transferred to vestries or district boards, and sewers not within the limits of the parishes or places mentioned in the schedules, were vested in the Metropolitan Board of Works. The Council has now succeeded to the Metropolitan Board of Works.

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Or may place a street in different parishes under the management of one vestry, or part of a parish under the management of vestry of adjoining parish.

140. It shall be lawful for the Metropolitan Board of Works, where it appears to them that any street or line of street, being in more than one parish or district, should be placed under the exclusive management of one vestry or district board for the purposes of paving, lighting, watering, and cleansing, or any of them, or for the purposes of sewerage and drainage, or for all the purposes of this Act, to order that the same shall be under the management of such vestry or board accordingly; and it shall also be lawful for the said Metropolitan Board, where it appears to them that any part of any parish or district is so detached or situate that it would be convenient for the purposes of sewerage or drainage that the same should be placed under the management of the vestry or district board of any adjoining parish or district, to order that such part shall, for such purposes, be under the management of such vestry or district board.

Note.—See with regard to the manner in which expenses incurred by a vestry or district board in respect of streets placed under their management in pursuance of this section are to be defrayed, sect. 160 of this Act. Further, with regard to the placing of roadways and footpaths in different parishes under the same management, sect. 86 of 25 & 26 Vict. cap. 102, *post.*

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18 & 19 Vict. c. 120. ss. 144, 202.

Power to Metropolitan Board to make improvements.

144. The Metropolitan Board of Works shall have power to make, widen, or improve any streets, roads, or ways, for facilitating the passage and traffic between different parts of the metropolis, or to contribute and join with any persons in any such improvements as aforesaid, and to take, by agreement or by gift, any land, rights in land, or property, for the purposes aforesaid (or otherwise) for the improvement of the metropolis, on such terms and conditions as they may think fit; and such Board, where it appears to them that further powers are required for the purpose of any work for the improvement of the metropolis or public benefit of the inhabitants thereof, may make applications to Parliament for that purpose, and the expenses of such application may be defrayed as other expenses of the said Board.

Note.—Provisions regulating the widening of streets are contained in Part II. of the Act of 1894, *ante*, p. 39 *et seq.* The provisions of the present section are extended by 19 & 20 Vict. cap. 112, sect. 10; and see also 25 & 26 Vict. cap. 102, sect. 72, *ante*, p. 42, and sect. 73 of the same Act, *post*. The proviso to the section which required the sanction of the Commissioners of Her Majesty's Works and Public Buildings before any works could be carried into effect under the sanction, and which also required the previous sanction of Parliament where the estimated expense of the work would exceed 100,000*l.*, is repealed by 21 & 22 Vict. cap. 104, sect. 25.

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Byelaws

Power to Metropolitan Board of Works to make byelaws.

202. The Metropolitan Board of Works and every district board and vestry respectively may from time to time make, alter, and repeal byelaws for all or any of the purposes following; (that is to say), for regulating the business and proceedings at their meetings and of committees appointed by them, the appointment and removal of their officers and servants, and the duties, conduct, and remuneration of such officers and servants; and the said Metropolitan Board may also from time to time make, alter, and repeal byelaws for regulating the plans, level, width, surface inclination, and the material of the pavement and roadway of new streets and roads, and the plans and level of sites for building, and for regulating the dimensions, form, and mode of construction, and the keeping, cleansing, and repairing of the pipes, drains, and other means of communicating with sewers, and the traps and apparatus connected

18 & 19 Vict. c. 120. s. 203.

therewith; for the emptying, cleansing, closing, and filling up of cesspools and privies; and for other works of cleansing, and of removing and disposing of refuse, and for regulating the form of appeal and mode of proceeding thereon; and generally for carrying into effect the purposes of this Act; and every such board and vestry may thereby impose such reasonable penalties as they think fit, not exceeding forty shillings, for each breach of such byelaws, and in case of a continuing offence a further penalty not exceeding twenty shillings for each day after notice of the offence from the board or vestry: provided always, that under every such byelaw it shall be lawful for the justices before whom any penalty imposed thereby is sought to be recovered to order the whole or part only of such penalty to be paid, or to remit the whole penalty: provided also, that no byelaws shall be repugnant to the laws of England or to the provisions of this Act; and that no byelaw shall be of any force or effect unless and until the same be submitted to and confirmed at a subsequent meeting of the board or vestry: provided also, that no penalty shall be imposed by any such byelaw unless the same be approved by one of Her Majesty's principal Secretaries of State.

Penalty for breach of byelaws.

Power to justices to remit penalties.

Note.—This section, so far as it enabled byelaws to be made for the emptying, cleansing, closing, and filling up of cesspools and privies, and for other works of cleansing and of removing and disposing of refuse, is repealed as from the coming into operation of any byelaw for the like object by 54 & 55 Vict. cap. 76, sect. 142. Byelaws for a like object were made by the Council on June 22, 1893, under sect. 39 (1), *post*, of that Act. Such byelaws will be found in Appendix III., Part II., *post*. A further power to make byelaws regulating the construction of sewers is contained in sect. 83 of 25 & 26 Vict. cap. 102, *post*. See also the power to make byelaws with reference to the matters specified therein, sect. 164 of the Act of 1894, *ante*, p. 249.

Byelaws made under this section will be found in Appendix III., Part II., *post*, such byelaws being continued in force, so far as they relate to matters dealt with by the Act of 1894, by sect. 216 of that Act, *ante*, p. 303, see the note to sect. 164, on p. 251, *ante*.

The recovery of penalties imposed by any byelaw made under this section is provided for by sect. 227 of the present Act.

Publication of byelaws.

203. All byelaws made and confirmed as aforesaid in pursuance of this Act shall be printed, and hung up in the principal office of the board or vestry, 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 twopence, as the board or vestry shall direct; and such byelaws, when so published, shall be binding upon and be observed by all parties, and shall be sufficient to justify all parties acting under the same; and the production of a printed copy of such byelaws, authenticated by the seal of the board or vestry, shall be evidence of the existence, and of the due making, confirmation, and publication of such byelaws, in all prosecutions under the same, without adducing proof of such seal or of the fact of such confirmation or publication of such byelaws.

18 & 19 Vict. c. 120. ss. 204, 211.

Evidence of byelaws.

204. No building shall be erected in, over, or under any sewer vested in the Metropolitan Board of Works, or in any vestry or district board, without their consent first obtained in writing, and if any building be erected contrary to this provision the board or vestry in whom such sewer is vested may demolish the same, and the expenses incurred thereby shall be paid by the person erecting such building.

Buildings not to be made over sewers without consent.

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211. Any person who deems himself aggrieved by any order of any vestry or district board in relation to the level of any building, or any order or act of any vestry or district board in relation to the construction, repair, alteration, stopping or filling up, or demolition of any building, sewer, drain, *watercloset*, *privy*, *ashpit*, *or cesspool*, may, within seven days after notice of any such order to the occupier of the premises affected thereby, or after such Act, appeal to the Metropolitan Board of Works against the same; and all such appeals shall stand referred to the committee appointed by such board for hearing appeals as herein provided; and such committee shall hear and determine all such appeals, and may order any costs of such appeals to be paid to or by the vestry or district board by or to the party appealing, and may, where they see fit, award any compensation in respect of any act done by any such vestry or district board in relation to the matters aforesaid; provided that no such compensation shall be awarded in respect of any such act which may have been done under any of the provisions of this Act on any default to comply with any such order as aforesaid, unless the appeal be lodged within seven days after notice of such order has been given to the occupier of the premises to which the same relates.

Power to appeal against orders and acts of vestries and district boards in relation to construction of works.

18 & 19 Vict. c. 120. s. 250.

Note.—The words printed in italics have been repealed by the Public Health (London) Act, 1891 (54 & 55 Vict. cap. 76, sect. 142), by sect. 126 of which Act it is provided that appeals to the County Council against a notice or act of a sanitary authority are to be conducted in the manner provided by this section.

The validity of an order against which there has been no appeal to the Council cannot be questioned in proceedings in a court of law. See *Vestry of St. James and St. John Clerkenwell*, v. *Feary*, 24 Q. B. D. 703. But the section doe not oust the jurisdiction of the Court of Chancery to grant an injunction. *Tinkler* v. *Wandsworth District Board of Works*, 2 De G. and J. 261; 27 L. J. (Ch.) 342; 30 L. T. (o.s.) 146; 22 J. P. 223.

The Council is substituted for the Metropolitan Board of Works by sect. 40 of the Local Government Act, 1888, 51 & 52 Vict. c. 41.

. . . . . .

Interpretation of terms: 'the Metropolis;' 'the City of London.

'Parish.'

'Owner.'

'Street.'

'Drain.'

250. In the construction of this Act 'the Metropolis' shall be deemed to include the City of London, and the parishes and places mentioned in the Schedules (A.), (B.), and (C.), to this Act; 'the City of London' shall be deemed to include all parts now within the jurisdiction of the Commissioners of Sewers for the City of London; and the word 'parish' shall include any place mentioned in Schedule (A.) to this Act, and any place or combination of places mentioned in Schedule (B.) to this Act, for which one or more member or members is or are to be elected to any district board . . . the word 'owner' shall . . . mean the person for the time being receiving the rackrent of the lands or premises in connection with which the said 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 rackrent; the word 'street' shall apply to and include any highway (except the carriageway of any turnpike road), and any road, bridge (not being a county bridge), lane, footway, square, court, alley, passage, whether a thoroughfare or not, and a part of any such highway, road, bridge, lane, footway, square, court, alley, or passage; the word 'drain' shall mean and include any drain of and used for the drainage of one building only, or premises within the same curtilage, and made merely for the purpose of communicating with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings

or premises occupied by different persons is conveyed, and shall also include any drain for draining any group or block of houses by a combined operation under the order of any vestry or district board; and the word 'sewer' shall mean and include sewers and drains of every description, except drains to which the word 'drain,' interpreted as aforesaid, applies. 18 & 19 Vict. c. 120. s. 250. 'Sewer.'

Note.—For the parishes and places included within the meaning of the term 'the Metropolis,' see the note under the heading '*London*' to sect. 4 of the Act of 1894, *ante*, p. 4; and as to the parts within the jurisdiction of the Commissioners of Sewers for the City of London, see the same note. As to the term 'owner' see the note to sect. 5 (29) of the Act of 1894, *ante*, p. 26 *et seq.* See also as to the term 'street' the notes to sect. 5 (1) of the Act of 1894, *ante*, p. 6. The meaning of the term 'drain' is extended by sect. 112 of 25 & 26 Vict. c. 102, *post*.

As to the meaning of the word 'curtilage' see the note under that heading on p. 67 *et seq.* In the similar definition contained in the Public Health Act, 1875 (38 & 39 Vict. c. 55, sect. 4), it was held that a drain used for the drainage of more than one building was a 'sewer,' and as such vested in the local authority, although it was laid wholly in private land. See *Travis* v. *Uttley* (1894), 1 Q. B. 233; 70 L. T. (N.S.) 242; and see also *Hair* v. *Hill*, W. N. (1895) 70; 98 L. T. 570.

THE METROPOLIS MANAGEMENT AMENDMENT ACT, 1862

25 & 26 Vict. cap. 102.

An Act to amend the Metropolis Local Management Acts.
[7th August, 1862.]

18 & 19 Vict. c. 120.

19 & 20 Vict. c. 112.

21 & 22 Vict. c. 104.

Whereas an Act was passed in the session of Parliament holden in the eighteenth and nineteenth years of the reign of her present Majesty Queen *Victoria*, intituled *An Act for the better Local Management of the Metropolis:* and whereas the said Act was amended by a certain other Act passed in the session holden in the nineteenth and twentieth years of the reign of her present Majesty, chapter one hundred and twelve, and was further amended, and certain further and other provisions were made, by another Act passed in the session holden in the twenty-first and twenty-second years of the reign of her present Majesty, chapter one hundred and four: and whereas it is expedient further to amend the said first-mentioned Act: be it therefore 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:

. . . . . .

As to trapping of gullies connected with main sewers.

27. No gully or ventilating shaft immediately connected with or appertaining to, or which hereafter may be immediately connected with or appertain to, any sewer vested in the Metropolitan Board of Works, shall be trapped, covered, or closed up without previous notice in writing being given to the said board, nor if the said board or their engineer within one week after the giving of such notice shall express in writing their or his objection to the same.

Note.—It is the duty of the vestry or district board to trap &c. gullies and ventilating shafts of sewers in their districts. See 18 & 19 Vict. c. 120, sect. 71, *ante*, p. 333.

. . . . . 25 & 26 Vict. c. 102. ss. 29, 44,

29. Under the provisions of the two hundred and eleventh and two hundred and twelfth sections of the firstly-recited Act, empowering the committee of appeal of the Metropolitan Board of Works to hear and determine an appeal against any order or act of any vestry or district board, the said committee may allow or dismiss the appeal, or quash or confirm or vary the order appealed against.

Orders to be made by committee on appeals against acts of vestries and district boards.

Note.—The first of the sections referred to will be found on p. 353, *ante*.

. . . . . .

44. It shall be lawful for the owners or occupiers of any land or premises in any parish, district, or part within the limits of the metropolis as defined by the firstly recited Act, with the consent and subject to the regulations and conditions hereinafter mentioned, to construct sewers at their own expense for the purpose of draining such land or premises; and it shall be lawful for any vestry or district board in whom the sewers in any parish, district, or part are vested, if they shall deem it just and proper so to do, to contribute out of the rates under their control applicable to the execution of works of sewerage to the cost of any sewers constructed for the purpose aforesaid.

Owners and occupiers of land may execute works of drainage at their own expense.

Note.—The limits of the metropolis are defined by sect. 250 of the Act of 1855. See the note to sect. 4 of the Act of 1894, *ante*, p. 4.

Before a private person commences to make a sewer, he must lay a plan and sections thereof before, and obtain the sanction of, the vestry or district board. See sect. 47, *infra*. The vestry or district board cannot give such sanction until it has submitted the plan and section of the proposed sewer to, and obtained the sanction of, the Council. See sect. 48, *infra*. See also 53 & 54 Vict. c. 66, sect. 4, *post*.

45. Any vestry or district board intending to construct any sewer shall, before commencing any works for that purpose, submit to the Metropolitan Board of Works a plan of the street or place in which it is proposed to construct such sewer, drawn to such a convenient scale or scales as the said Metropolitan Board shall direct, and there shall be shown on such plan the position, course, and dimensions of the proposed sewer, with a section or sections thereof, and such other particulars in relation thereto as the said Metropolitan Board shall deem necessary and require, and no such

Vestries, &c. to submit plans of new sewers to Metropolitan Board.

25 & 26 Vict. c. 102. ss. 46–48.

sewer or works shall be proceeded with without the approval in writing or contrary to the directions of the said board.

Communications with main sewers.

46. Three clear days' notice in writing shall be given to the Metropolitan Board of Works by any vestry or district board previously to the connection of any sewer or drain with a main sewer; and the necessary junction or communication for that purpose shall be made by such vestry or district board to the satisfaction of the said Metropolitan Board.

Private parties before branching sewers into main or district sewers to apply for sanction of vestries, &c.

47. Every person other than a vestry or district board intending to make or branch a sewer, either into a sewer vested in the Metropolitan Board of Works, or into a sewer vested in any vestry or district board, shall in the first instance lay the plan and section thereof before, and apply for the sanction of, the vestry or district board of the parish, district, or part in which such last-mentioned sewers shall be situate; and no sewer shall be begun to be made by such person until the sanction in writing of such vestry or district board shall have been obtained.

Note.—A vestry cannot refuse under this section to sanction the making of a sewer merely because the Council may have refused to sanction the making of the roads in which it is intended to lay such sewers. See *Reg.* v. *Wandsworth District Board of Works, ex parte Major Childs*, 49 J. P. 806. For the consequences of making or branching a sewer or drain without the consent of the Council into a sewer belonging to the Council, see 53 & 54 Vict. c. 66, sect. 4, *post*, and without the consent of the vestry or district board into a sewer belonging to such vestry or district board, *ibid.* sect. 5.

Vestries, &c. before sanctioning sewers, to apply for approval of Metropolitan Board.

48. Before any vestry or district board shall sanction the construction of any such sewer they shall submit the plan and section thereof to the Metropolitan Board of Works for their approval, in the same manner as if such sewer were proposed to be constructed by such vestry or district board; and no vestry or district board shall sanction the construction of any such sewer without the approval in writing of the said Metropolitan Board first had and obtained.

Note.—In *Reg.* v. *Wandsworth District Board of Works* (*ubi supra*) a mandamus was granted by the Queen's Bench Division commanding the district board to submit plans and sections of sewers to the Metropolitan Board of Works under this section, the only ground upon which the district board refused to submit the plans being that the Metropolitan Board of

Works had refused to sanction the making of the roads in which it was intended to lay the sewers.

25 & 26 Vict. c. 102. ss. 49–51.

Seven days' notice must be given before drains can be branched into main sewers.

49. All persons intending to make or branch any drain into a sewer vested in the Metropolitan Board of Works shall, seven clear days before commencing any works for that purpose, make written application to the vestry or board of the parish, district, or part in which such sewer shall be situate, accompanied by a plan showing such particulars as may be required by any bye-law or resolution of the said Metropolitan Board; and no such work shall be commenced until the sanction in writing of the said vestry or district board shall have been given.

Note.—See also the provisions of sect. 61, *post*, p. 362, where a penalty of 50*l.* is imposed for connecting drains without the sanction of the vestry or district board, and the vestry or board is authorised to cut off any connection improperly made.

Regulations as to abandonment, alteration, &c. of designs for sewers previously approved.

50. When it shall be desired to abandon either wholly or in part, or to extend, contract, or alter, any design for a sewer previously submitted to and approved by the Metropolitan Board of Works, notice in writing of such desire shall be given by the vestry or district board by whom such approval shall have been obtained to the said Metropolitan Board, accompanied by plans and sections showing the nature of the abandonment, extension, contraction, or alteration desired; and no such abandonment, extension, contraction, or alteration shall be made without the previous approval in writing of the said Metropolitan Board; and no person other than a vestry or district board shall abandon wholly or in part, or extend, contract, or alter in construction, any sewer approved or sanctioned by the Metropolitan Board of Works, without the previous sanction in writing of the vestry or district board in whose parish or district the works were intended to be executed, to be applied for and given in the same manner as hereinbefore directed with respect to new sewers.

In case sewer be not constructed within 12 months, fresh application to be made.

51. In case any sewers sanctioned and approved by the Metropolitan Board of Works as hereinbefore provided shall not be constructed or executed within twelve calendar months from the date of such sanction or approval, the works for the construction of such sewer shall not be executed without a fresh permission by the Metropolitan Board, and their written sanction that

25 & 26 Vict. c. 102. ss. 52, 54, 55.

the necessary works for the construction of such sewer may proceed, to be applied for and obtained in manner hereinbefore provided with respect to the original permission for the construction of such sewer.

Expense of constructing sewers in new streets and streets laid out since Jan. 1, 1856.

52. Where any sewer shall, after the passing of this Act, be constructed by any vestry or district board in or for the drainage of any new street, or of any house or houses erected since the first day of January one thousand eight hundred and fifty-six, the expense of constructing such sewer and the works appertaining thereto, including the cost of gullies, side entrances, lengths of sewer at the intersection of streets, and other incidental charges and expenses, shall be borne and defrayed by the owners of such street or houses, and of the land bounding or abutting on such street respectively, and the said expenses shall be apportioned by the vestry or district board in such proportions as they may deem just, and the amount charged upon or payable in respect of each house or premises shall be payable before the works shall be commenced, during their progress, or after their completion, as the vestry or district board shall in each case determine, either in one sum or by instalments, within such period, not exceeding twenty years, as the vestry or district board shall direct; and any such sum or instalments shall be recoverable from the present or any future owner of the said house or premises either by action at law or in a summary manner before a justice of the peace, at the option of the vestry or board.

Note.—The expression 'new street' is defined by sect. 112, *post*, p. 375, and the term 'owner' by sect. 250 of the Act of 1855, 18 & 19 Vict. c. 120, *ante*, p. 354.

Land may be charged in a less proportion than house property.

54. In apportioning the cost of constructing sewers under the provisions contained in the two last preceding sections of this Act relating to the construction of sewers wholly or partly at the cost of private parties, it shall be lawful for any vestry or district board to charge the owners of land bounding or abutting on any street in a less proportion than the owners of house property, should they, under the circumstances of the case, deem it just and expedient so to do.

Where estimated expenses exceed actual

55. In any case in which the estimated expenses shall exceed the actual cost of constructing sewers under the provisions contained in the said two preceding sections of this Act relating to the construction of sewers wholly

or partly at the cost of private parties, then the difference between such estimated expenses and the actual cost shall be repaid by the vestry or board to the owners of the houses or premises by whom the amount of any such estimated expenses may have been paid; and in any case in which the estimated expenses shall be less than the actual cost of constructing any sewer or sewers under the provisions aforesaid, then the owners of the said houses or premises shall, on demand, pay to the said vestry or board such further sum of money as, together with any sums already paid, will make up the amount of the actual cost; and the vestry or district board shall have all the same remedies for the recovery of such further sum as are hereinbefore given for recovering any expenses apportioned by vestries or district boards under the said enactments.

25 & 26 Vict. c. 102. ss. 56, 57, 59. costs, difference to be refunded by, and where less to be paid to, vestry, &c.

56. It shall be lawful for the vestry or district board, should they deem it reasonable and just so to do, at their discretion to defray, out of the sewers rates to be levied in their parish or district, any portion of the expenses of and incident to the construction of sewers under the provisions contained in the said two sections of this Act relating to the construction of sewers wholly or partly at the cost of private parties.

Vestry or district board may defray part of expense out of sewer rates.

57. Any person who may deem himself aggrieved by any order or resolution of any vestry or district board in relation to the expenses of constructing works under the said two sections of this Act relating to the construction of sewers wholly or partly at the cost of private parties, or the apportionment of such expenses, may appeal to the Metropolitan Board of Works against such order or resolution, subject in all respects to the directions and provisions contained in the two hundred and eleventh section of the firstly-recited Act, and the section of this Act relative to the form of order to be made by the committee of appeal of the Metropolitan Board of Works against orders or acts of vestries or district boards.

Appeal against orders of vestries, &c. as to amount or apportionment of expenses.

Note.—As to appeals under this section, see sect. 211 of the Act of 1855, *ante*, p. 353.

59. The provisions contained in the eightieth section of the firstly-recited Act, empowering vestries and district boards to order, at their discretion, under the circumstances therein mentioned, such sums as they shall deem just to be paid and contributed by the owners of

Contribution to cost of main sewers and sewers built since January 1, 1856, or

25 & 26 Vict. c. 102. s. 61. hereafter to be built.

houses towards the expense of the construction of sewers into which drains from such houses shall be made or branched, shall be extended, and the same are hereby extended and made applicable to the Metropolitan Board of Works with respect to houses draining into main sewers constructed at the expense of any person or body other than any commissioners of sewers, and which are vested in the Metropolitan Board; and the same provisions are hereby extended and made applicable to all sewers within the limits of the metropolis as defined by the firstly-recited Act, built since the first day of January one thousand eight hundred and fifty-six, or which may hereafter be built at the expense of any person or body other than the Metropolitan Board of Works, or any vestry, district board, or other body having control over sewers within the metropolis, into which house drains may be made or branched; and the said Metropolitan Board, vestry, district board, or other body, as the case may be, may at their discretion accept payment of contribution from the owners of houses draining into such sewers respectively, either in one sum or by instalments within any period not exceeding twenty years, with interest after a rate not exceeding five pounds by the hundred by the year, as the said board, vestry, or other body shall in each case determine, and shall on receipt of any such contribution or instalment pay over the same to the person or body entitled thereto; and every sum payable to the said board, vestry, or other body by way of contribution to the construction of sewers shall be recoverable from the present or any future owner of the said premises either by action at law or before a justice of the peace in a summary manner, at the option of the board or vestry: provided that nothing herein contained shall prejudice or affect the right of vestries and district boards to demand and recover from the owners of houses and land the sums charged upon them by such vestry and district boards respectively under the provisions contained in this Act.

Regulations respecting openings into sewers.

61. The seventy-seventh section of the firstly-recited Act is hereby repealed; and in lieu thereof be it enacted, that no person shall make or branch any sewer or drain, or make any opening into any sewer vested in the Metropolitan Board of Works, or in any vestry or district board, without the previous consent in writing of such board or vestry: provided that it shall be lawful for any person, with such consent, at his own expense, to make or branch

any drain into any sewer vested in such board or vestry, or authorized to be made by them or either of them under the firstly-recited Act or this Act, such drain being of such size, materials, and other conditions, and branched into such sewer in such manner and form of communication in all respects, as the board or vestry shall direct or appoint: provided also, that where any contribution to the cost of a sewer is payable in respect of drainage into the same, it shall not be lawful for any person to make or branch any drain into such sewer, except in conformity with the directions of the board or vestry in whom the same shall be vested with respect to payment of contribution under the provisions contained in the firstly-recited Act and this Act in that behalf; and in case any person, without the consent of the said Metropolitan Board, district board, or vestry as aforesaid, make or branch, or cause to be made or branched, any sewer or drain, or make any opening into any of the sewers vested in any such board or vestry, or authorized to be made by them as aforesaid, or if any person make or branch, or cause to be made or branched, any drain of a different construction, size, material, or other conditions, or in another manner or form of communication than shall be directed or appointed by such board or vestry, every person so offending shall for every such offence forfeit a sum not exceeding fifty pounds; and the board or vestry may cut off the connexion between such drain and their sewer, or if they shall see fit execute the necessary works for making the said drain conformable to their regulations or directions at the expense of the person making such drain or causing the same to be made, such expenses to be recovered either by action at law or in a summary manner before a justice of the peace, at the option of the board or vestry.

25 & 26 Vict. c. 102. s. 63.

Extension of time under sect. 76 of 18 & 19 Vict. c. 120, for making orders by vestries and district boards.

63. Whereas by the seventy-sixth section of the firstly-recited Act it is provided that the vestry or district board shall make their order in relation to the matters therein referred to, and cause the same to be notified to the person from whom the notice mentioned in the said section was received within seven days after the receipt of such notice, and it is expedient that the time for making such order should be extended: be it therefore enacted, that where any notice shall have been given to any vestry or district board pursuant to the said section, it shall be lawful for the surveyor of such vestry or board, if he shall deem it necessary and

25 & 26 Vict. c. 102. s. 64.

proper so to do, within three days after the receipt of such notice by the vestry or district board, by writing under his hand directed to and served upon the person giving such notice, to require that the building or works referred to therein shall not be proceeded with until after the then next meeting of the said vestry or district board, and until their directions in reference thereto shall have been notified to such person, provided that the order of the said vestry or district board shall be made and notified to the said person at the latest within fifteen days after the receipt of such notice by the vestry or district board; and in case any person shall proceed with any building or works contrary to this enactment he shall forfeit and pay to the vestry or district board a sum not exceeding five pounds, and also a further sum of forty shillings for every day during which such offence shall continue, to be recovered by action at law or in a summary manner at the option of the vestry or board.

Where parties neglect to carry out works pursuant to order of vestry, the vestry may recover penalty or do the works.

64. Whereas by the seventy-third, seventy-fourth, seventy-sixth, *eighty-first*, eighty-fifth, and *eighty-sixth* sections of the firstly-recited Act, certain works, matters, and things are required to be constructed, made, or executed on the requisition of vestries and district boards by the owners or occupiers of the premises therein referred to; and in case any such owner or occupier refuse or neglect to commence, proceed with, or complete the same, as the case may be, the vestry or district board are authorized to perform and execute such works, matters, and things, and recover the costs incurred thereby in manner therein provided: be it enacted, that in case of any such neglect or default by any person or persons to comply with the order of any vestry or district board to execute any works, matters, or things under any of the said provisions, the person or persons so offending shall forfeit and pay to the vestry or district board a sum not exceeding five pounds, and also a further sum not exceeding forty shillings for every day during which such offence shall continue, to be recovered by action at law or before a justice of the peace in a summary manner, at the option of the vestry or district board; and the vestry or district board may at their discretion either execute or perform any such works, matters, or things, and recover the costs and expenses thereof from the owner of the property as aforesaid, or proceed for and recover the said penalty or penalties; but nothing herein contained shall render any

person or persons liable to be proceeded against for the penalty as well as for the costs and expenses of the works. 25 & 26 Vict. c. 102. ss. 65, 66.

Note.—Sect. 81 of 18 & 19 Vict. c. 102 is wholly, and sect. 86 is, except as to the proviso saving the rights of mill owners, repealed by the Public Health London Act, 1891. The same Act repeals the references in this section to those sections. With regard to summary proceedings, see the note to sect. 166 of the Act of 1894, *ante*, p. 254.

Penalties in 18 & 19 Vict. c. 120 extended to persons causing offences.

65. The penalties declared by the firstly-recited Act in the case of persons committing the offences mentioned therein are hereby extended and made applicable to all persons causing the commission of any such offences, or by whose order or direction any such offences shall have been committed.

Temporary provision for drainage of property where no proper sewer within 200 feet.

66. Whereas certain property within the limits of the metropolis is so situate as to render it impracticable, or practicable only at undue expense, to connect such property with covered sewers, and it is expedient that some temporary provision should be made for draining such property and abating the nuisances existing thereon or caused thereby: be it therefore enacted, that in any case in which any house or other building, whether erected before or after the passing of this Act, is without sufficient drainage, and there is no proper sewer within two hundred feet of any part of such house or building, it shall be lawful for the vestry or district board of the parish or district in which such house or building is situate by notice in writing to require the owner of such house or building to construct and lay from such house or building a covered drain to lead therefrom into a covered water-tight cesspool or tank or other suitable receptacle, not being under a house or within such distance from a house as the vestry or board shall direct, and to construct such cesspool, tank, or receptacle; and the several provisions in the firstly-recited Act with respect to the laying of house drains at the expense of the owners of property, and the recovery of such expenses of and the penalties for any omission in respect to the performance of any such works pursuant to the orders of vestries or district boards in accordance with the directions of the said Act, shall be extended to and apply to the making of such cesspools, tanks, receptacles, and drains, and the orders of vestries and district boards in relation thereto and the expenses thereof.

25 & 26 Vict. c. 102. s. 68.

Penalty on persons placing buildings or encroachments on sewers.

68. Every person who shall knowingly erect or place any building, wall, bridge, fence, obstruction, annoyance, or encroachment in, upon, over, or under any sewer under the jurisdiction of the Metropolitan Board of Works, or of any vestry or district board, and every person obstructing, filling in, or diverting any sewer or drain under the jurisdiction, survey, or control of the Metropolitan Board, or of any vestry or district board, without the previous consent in writing of the board or vestry in whom the same may be vested, shall, in addition to any other proceeding to which he may be liable therefor, forfeit and pay to such respective board or vestry a sum not exceeding twenty pounds for every such offence; and the board or vestry may demolish and remove any such building, wall, bridge, fence, obstruction, annoyance, or encroachment, and perform any works necessary for restoring or reinstating the sewer or other work or thing damaged; and the party erecting such building, wall, bridge, fence, or causing such obstruction, annoyance, or encroachment, shall also pay the expense of removing and abating them respectively, and of re-opening, restoring, repairing, or reinstating any sewer or drain obstructed, filled in, closed up, or diverted; and in case of a continuing offence in any of the cases aforesaid the offender shall be liable to a further penalty, not exceeding five pounds, for each day after notice thereof from the Metropolitan Board of Works, or from the vestry or district board, to be recovered by action at law or before any justice of the peace by a summary proceeding, at the option of the board or vestry: provided always, that nothing herein contained shall extend to prevent or impede the maintenance, repair, or renewal of any buildings or works under which a sewer or drain has been constructed, but so, nevertheless, that such buildings or works shall not injure or obstruct the said sewer or drain.

Note.—The terms 'sewer' and 'drain' are defined by section 250 of the Act of 1855, *ante*, p. 354.

Although a person may not have committed the offence in the first instance, he may apparently be convicted of continuing it: see *The London County Council* v. *Worley*, *ante*, p. 257, and see also the note on that page *et seq.* with regard to the limitation of time for the commencement of proceedings in respect of a continuing offence. For the practice in courts of summary jurisdiction, see the note to sect. 166 of the Act of 1894, *ante*, p. 254.

With regard to the exercise by a local authority of a statutory power to remove a building, see the note under the heading '*Non-compliance with notice*' to sect. 83, *ante*, p. 159. 25 & 26 Vict. c. 102. ss. 69, 72, 73.

Penalty on persons interfering with sewers.

69. Any person who shall take up, remove, demolish, or otherwise interfere with any sewer or part of a sewer vested in the Metropolitan Board of Works, or in any vestry or district board, without the previous permission in writing of such board or vestry, or who shall wilfully damage any sewer, bank, defence, wall, penstock, grating, gulley, side entrance, tide valve, flap, work, or thing vested in the Metropolitan Board or any vestry or district board, or do any act by which the drainage of the metropolis or any part thereof may be obstructed or injured, shall for every such offence forfeit and pay to the said Metropolitan Board of Works, or to the vestry or district board aggrieved by any such Act, for every such offence a sum not exceeding twenty pounds, and shall also pay to such board or vestry all the expenses of repairing, restoring, reinstating, or amending any sewer or other work or thing so taken up, removed, demolished, damaged, or interfered with, to be recovered by action at law or before a justice of the peace by a summary proceeding, at the option of the board or vestry.

Note.—See the note to the preceding section.

Vestries and district boards may, with consent of Metropolitan Board, effect improvements within their parish or district.

72. [This sect. will be found set out in the note to sect. 6 of the Act of 1894, *ante*, p. 42. As to the vestries mentioned in Schedule A. to the Act of 1855, see the note to sect. 4 of the Act of 1894, *ante*, p. 5.]

Note.—See also with regard to sect. 72 of the present Act sect. 144 of the Act of 1855, *ante*, p. 351. With regard to the proviso to the section, see the note to section 6 of the Act of 1894, on p. 43, *ante*.

Act as to paving and improving parts of Metropolis to extend to Metropolis as defined by this Act.

73. The powers of improving and regulating streets, and for the suppression of nuisances contained in the Act of the fifty-seventh year of the reign of His Majesty King George the Third, chapter twenty-nine, local and personal, intituled 'An Act for better paving, improving, and regulating the streets of the Metropolis, and removing and preventing nuisances and obstructions therein,' shall, so far as the same is in force and is not inconsistent with the provisions of the recited Acts and this Act extend and apply to the Metropolis as defined in the firstly-recited Act and in this Act including any un-

25 & 26 Vict. c. 102. s. 77.

paved streets, and notwithstanding any exceptions therein contained.

Note.—The Act referred to in this section will be found set out *ante*, p. 325 *et seq.*

Expenses of paving new streets.

77. Where any vestry or district board shall, under the powers given by the one hundred and fifth section of the firstly-recited Act, have paved or be about to pave any new street, the owners of the land bounding or abutting on such street shall be liable to contribute to the expenses or estimated expenses of paving the same, as well as the owners of houses therein, provided that it shall be lawful for the vestry or district board to charge the owners of land in a less proportion than the owners of house property, should they deem it just and expedient so to do; and any such costs or expenses, including the cost of paving at the points of intersection of streets, and all other incidental costs and charges, shall be apportioned by the vestry or board, and shall be recoverable either before the work shall be commenced, or during its progress, or after its completion; and it shall be lawful for the vestry or district board at their discretion to accept payment of the amount apportioned or charged in respect of each house or premises by instalments spread over a period not exceeding twenty years, and any such amount shall be recoverable from the present or any future owner of the premises either by action at law or in a summary manner before a justice of the peace, at the option of the vestry or board.

Note.—See further with regard to the flagging of footpaths, 53 & 54 Vict. c. 54, sect. 1, *post*, p. 390; and as to the repair of a road or way not a street, 53 & 54 Vict. c. 66, sect. 3, *post*, p. 393. Paving includes the formation of the roadway or footway of any street, see sect. 112, *post*, p. 374. The expression 'new street' is defined by sect. 112, *post*; and 'owner' by sect. 250 of the Act of 1855, 18 & 19 Vict. c. 120, *ante*, p. 354, which is to be construed together with this Act.

The person to whom lands bounding or abutting on a new street belong, if he satisfies the definition of 'owner,' is liable to contribute under this section even though his land may be valueless, see *Williams* v. *Wandsworth District Board of Works*, 13 Q. B. D. 211; 53 L. J. M. C. 187; 48 J. P. 439; 32 W. R. 908; or though he may have no access to the new street, see *The Vestry of Paddington* v. *Bramwell*, 44 J.P. 815. A railway company over whose line passes a bridge carrying a highway, admitted to be a 'new street,' is not the owner of 'lands bounding or abutting on' the highway, although the parapets of the bridge rest on walls whose foundations are on the company's

land. See *The Great Eastern Railway Co.* v. *the Hackney District Board of Works*, 8 App. Cas. 687; 52 L. J. M. C. 105; 49 L. T. (N.S.) 509. See also the note to 18 & 19 Vict. c. 120, sect. 105, *ante*, p. 344. The costs of plans are 'incidental expenses,' see *Poplar District Board* v. *Love*, 8 Cox Mag. Ca. 399, 29 L. T. (N.S.) 915; 38 J. P. 246. The principle on which the apportionment has been made cannot be questioned before the magistrate in proceedings to enforce payment of the amount. See *Stotesbury* v. *the Vestry of St. Giles's, Camberwell*, 57 L. J. M. C. 114; 59 L. T. (N.S.) 473; 53 J. P. 5. Neither can the necessity for doing the works, this being a matter solely for the vestry or district board of works, *Stroud* v. *Wandsworth District Board of Works* (1894), 2 Q. B. 1; 70 L. T. (N.S.) 190; 29 L. J. *notes*, p. 98. But as the magistrate has no jurisdiction to make an order except for an amount expended or to be expended in paving, he must be satisfied that the works in respect of which the expenses have been apportioned are works of paving; see *Reg.* v. *Marsham* (1892), 1 Q. B. 371. 25 & 26 Vict. c. 102. ss. 81, 83.

If the vestry or district board permit the amount to be paid in instalments, the period of six months limited by sect. 11 of Jervis's Act (11 & 12 Vict. c. 43) for the commencement of summary proceedings (see *ante*, p. 252) will run in respect of each instalment when its payment was demanded; see *Wortley* v. *the Vestry of St. Mary, Islington*, 51 J. P. 166, and that even if proceedings for the recovery of the whole amount are statute-barred, *Prescott* v. *Nicholson*, 60 L. T. (N.S.) 563. The amount of expenses for which an owner is liable may be recovered from the occupier, who may deduct the amount so recovered from his rent. But no amount may be demanded of the occupier exceeding the amount of rent due or which becomes due after the demand of the amount of the expenses from the occupier and notice to him not to pay his rent, see sect. 96, *post*.

The section does not make these expenses a charge on the premises, see *Egg* v. *Blayney*; 59 L. T. (N.S.) 65; 21 Q. B. D. 107.

81. In any case of default by the owner of any court, passage, or public place, not being a thoroughfare, to comply with the requisition of any vestry or district board to perform works of paving or draining of the nature described in the one hundredth section of the firstly-recited Act, it shall be lawful for the vestry or board, should they see fit, in lieu of enforcing the penalty therein mentioned to execute and perform such works, and recover the expenses thereof from the owner either by action at law or in a summary manner before a justice, at the option of the vestry or board. Where owners of courts, &c. omit to drain and pave, vestry or district board may perform the works charging expenses to owner.

83. The Metropolitan Board of Works may, in order to secure the efficient maintenance of the main and Metropolitan Board may

25 & 26 Vict. c. 102. s. 86. make bye-laws for guidance of vestries, &c. in construction of sewers.

general sewerage of the metropolis, from time to time make, alter, and repeal byelaws for the guidance, direction, and control of the vestries of parishes in Schedule A. to the firstly-recited Act, district boards, and all other persons, in relation to the levels, dimensions, construction, maintenance, ventilation, and cleansing of sewers in their respective parishes, districts, or parts, and for the other objects enumerated in the one hundred and thirty-eighth section of the firstly-recited Act, subject in all respects to the several provisions relating to byelaws contained in the two hundred and second section of the said Act; but this provision shall only extend to the city of London and the liberties thereof, so far as regards the main drainage of the metropolis.

Note.—The byelaws now in force will be found in App. III., Pt. II., *post*. This power includes a power to impose a penalty for breach of the provisions of any byelaw; see 18 & 19 Vict. c. 120, sect. 202, *ante*, p. 351.

Sect. 138 of 18 & 19 Vict. c. 120 enabled the Council to make a general or special order for the purposes enumerated in this section. As to byelaws in general see the note under this heading on p. 251, *ante*.

Metropolitan Board may place roadway, footpaths, &c. in different parishes or districts under management of one vestry or district board.

86. Where in any street the roadway and footpaths or either of them are or is situate in more than one parish or district or where the whole of the roadway and footpaths of any street are situate in one parish or district, and the whole or any part of the houses and buildings abutting on such roadway or footpaths are situate in another parish or district, in either of the said cases it shall be lawful for the Metropolitan Board of Works, should they deem it convenient and proper so to do, to order that any such roadway and footpaths shall, for the purposes of sewerage, drainage, paving, and lighting, or any of them, be under the exclusive management of the vestry or district board of one of the said parishes or districts, and to order and direct in what proportions the costs of constructing and maintaining any new sewer or drain in such street, or of the reconstruction, reparation, or maintenance of any existing sewer or drain therein, or of the paving or making up or lighting of the roadway or footpaths thereof, and the repair and maintenance of such roadway or footpaths, shall be borne and defrayed by the vestry or board of each parish or district, and the decision of the said Metropolitan Board thereon shall be final and conclusive; and in case of default by any vestry or board liable under

any such order to any such payment, the vestry or district board entitled thereto may sue for and recover the amount thereof from the vestry or board so making default by action at law.

25 & 26 Vict. c. 102. ss. 88, 96.

Note.—18 & 19 Vict. c. 120, sect. 140, only enabled the Council to place a 'street or line of streets' under the exclusive management of one vestry or district board.

Persons omitting to give notice required by sect. 76 of 18 & 19 Vict. c. 120 liable to penalty.

88. If any person shall, without having given the notice directed by the seventy-sixth section of the firstly-recited Act, begin to lay the foundation of any new house or building within any parish mentioned in Schedule A. of the said Act, or any district in Schedule B. of the said Act, or to make any drain for the purpose of draining either directly or indirectly into any sewer under the jurisdiction of the vestry or board of such parish or district, he shall become liable to a penalty for every such offence not exceeding five pounds, and to a continuing penalty of forty shillings for each and every day during which he shall omit to give the notice directed by the said Act.

Vestry or district board may require payment of costs or expenses from owner or occupier, and occupier paying to deduct from rent.

96. The two hundred and seventeenth, two hundred and eighteenth, and two hundred and nineteenth sections of the firstly-recited Act are hereby repealed; and in lieu thereof be it enacted, that it shall be lawful for any vestry or district board, at their discretion, to require the payment of any costs or expenses which the owner of any premises may be liable to pay under the said recited Act or this Act either from the owner or from any person who then or at any time thereafter occupies such premises, and such owner or occupier shall be liable to pay the same, and the same shall be recovered in manner authorised by the recited Act and this Act; and the owner shall allow such occupier to deduct the sums of money which he so pays out of the rent from time to time becoming due in respect of the said premises as if the same had been actually paid to such owner as part of such rent: provided always, that no such occupier shall be required to pay any further sum than the amount of rent for the time being due from him, or which, after such demand of such costs or expenses from such occupier, and after notice not to pay his landlord any rent without first deducting the amount of such costs or expenses, becomes payable by such occupier, unless he refuse, on application being made to him for that purpose by or on behalf of the vestry or district

25 & 26 Vict. c. 102. s. 97.

board, truly to disclose the amount of his rent, and the name and address of the person to whom such rent is payable, but the burden of proof that the sum demanded from any such occupier is greater than the rent due by him at the time of such notice, or which has since accrued, shall lie upon such occupier; provided also, that nothing herein contained shall be taken to affect any contract made or to be made between any owner and occupier of any house, building, or other property whereof it is or may be agreed that the occupier shall pay and discharge all rates, dues, and sums of money payable in respect of such house, building, or other property, or to affect any contract whatsoever between landlord and tenant.

Agreements between landlord and tenant not to be affected.

Note.—The provision enabling the occupier to deduct from his rent the amount which he may have paid under this section does not alter the contract of tenancy upon the terms of which the ultimate liability of landlord or tenant to bear the expenses must in every case depend. Lessees have therefore been held liable to repay to their lessors the cost of drainage works where the usual covenant to pay rates &c. has contained the word 'outgoings,' *Crosse* v. *Raw*, L. R. 9 Ex. 209, and paving expenses, *Aldridge* v. *Fearn*, *ante*, p. 200, followed in *Batchelor* v. *Biggar*, *ante*, p. 200, drainage works where the covenant contained the word 'duties,' *Budd* v. *Marshall*, 5 C. P. D. 481, paving expenses, where the covenant was to pay 'charges,' *Hartley* v. *Hudson*, 4 C. P. D. 367, or duties, *Thompson* v. *Lapworth*, *ante*, p. 200; and works necessary to abate a nuisance arising from a defective drain where the covenant was to pay 'rates, taxes, assessment charges, or impositions,' *Smith* v. *Robinson* (1893), 2 Q. B. 53. Upon the other hand, where the covenant was to pay 'rates and assessments,' it was held that the lessor could not recover the expense of paving a new street, *Allum* v. *Dickenson*, 9 Q. B. D. 632.

In *Rawlins* v. *Briggs*, 3 C. P. D. 368, it was held that the cost of abating a nuisance arising from bad drainage was not recoverable by the lessor from the lessee under the covenant to pay 'rates, charges, and impositions,' on the ground that the cost of doing the works was incurred in the performance of a duty imposed by statute and not a 'rate, charge, assessment, or imposition,' within the meaning of the covenant.. Having regard to the decision in *Smith* v. *Robinson*, *supra*, however, it may be doubted whether the decision in *Rawlins* v. *Briggs* still holds good. Lastly, in the case of *Tidswell* v. *Whitworth*, L. R. Q. C. P. 326, it was held that the lessor could not recover paving expenses from the lessee where the covenant was to pay 'taxes, rates, assessments, and impositions'

Deduction

97. If the owner or landlord of any premises from

whose rent any amount shall be deducted in respect of any costs, charges, or expenses payable under the firstly-recited Act or this Act shall hold the premises in respect of which the amount of such costs, charges, or expenses shall be paid at a rent not less than the rackrent, he shall be entitled to deduct the whole amount paid by him on account of such costs, charges, or expenses from the rent payable by him to his superior landlord; and if he holds at a rent less than the rackrent, he shall be entitled to deduct from the rent so payable by him a sum bearing the same proportion to the amount so paid by him on account of such costs, charges, or expenses as his rent shall bear to the rackrent; and if the owner or landlord from whose rent any deduction be made under the provision last aforesaid be himself liable to the payment of rent for the premises in respect of which the deduction shall be made, and hold such premises for a term of which less than twenty-one years shall be unexpired, but not otherwise, he may deduct from the rent so payable by him a sum bearing the same proportion to the sum deducted from the rent payable to him as the rent payable by him shall bear to the rent payable to him, and so on in succession with respect to every landlord of the same premises both receiving and liable to pay rent in respect thereof, and holding the same for a term of which less than twenty-one years shall be unexpired as aforesaid; provided always, that nothing herein contained shall be construed to entitle any person to deduct from the rent payable by him more than the whole sum deducted from the rent payable to him: provided also, that nothing herein contained shall be taken to affect any contract made or to be made between any owner or occupier of any house, building, or other property whereof it is or may be agreed that the occupier shall pay and discharge all rates, dues, and sums of money payable in respect of such house, building, or other property, or to affect any contract whatsoever between landlord and tenant.

25 & 26 Vict. c. 102. s. 100.

by owner paying rent, where amount of expenses deducted from rent paid to him.

Note.—See the note to the previous section.

100. It shall be lawful for every vestry and district board mentioned in clause one hundred and eighty-three of the first-recited Act to exercise the power to borrow moneys therein mentioned, with the sanction of the Metropolitan Board of Works granted under their common seal, for the purpose of enabling such vestry or

Power to vestries, &c. to borrow moneys for the improvement of streets.

25 & 26 Vict. c. 102. ss. 102, 107, 110–112.

district board to make, extend, widen, alter, or improve any street, road, or way, for facilitating the passage and traffic within the parish or district for which such vestry or district board is appointed, or for the purpose of contributing to and of joining with the Metropolitan Board or with any other board or persons in any such improvement.

Penalties may be recovered in manner provided by 11 & 12 Vict. c. 43.

102. Every penalty or forfeiture imposed by this Act, and made recoverable by a summary proceeding, may be recovered before any justice of the peace in manner provided by the Act of the session holden in the eleventh and twelfth years of Her Majesty, chapter forty-three.

Note.—For the practice in courts of summary jurisdiction, see the note under the heading '*Summary proceedings*,' *ante*, p. 254.

Penalties to be proceeded for within six months.

107. The two hundred and thirty-third section of the firstly-recited Act is hereby repealed: and in lieu thereof be it enacted, that no person shall be liable for the payment of any penalty or forfeiture under the recited Acts or this Act, or any byelaw made by virtue thereof, for any offence made cognizable before a justice, unless the complaint respecting such offence have been made before such justice within six months next after the commission or discovery of such offence.

Note.—This limitation applies only to proceedings for the recovery of penalties and forfeitures, and not to proceedings, such as those under the repealed sect. 75 of this Act, in which the local authority sought to obtain an order for the demolition of a building, see *The Vestry of Bermondsey* v. *Johnson*, L. R. 8 C. P. 441. And see now sect. 170 of the Act of 1894, *ante*, p. 264. For the limitation which applies to proceedings under the Summary Jurisdiction Act, see *ante*, p. 256.

Acts to be construed as one Act.

110. The said recited Acts and this Act shall be construed together as one Act.

Short titles.

111. The recited Acts may be respectively cited for all purposes as 'The Metropolis Management Act, 1855,' 'The Metropolis Management Amendment Act, 1856;' and 'The Metropolis Management Amendment Act, 1858;' and this Act may be cited for all purposes as 'The Metropolis Management Amendment Act, 1862.'

Interpretation of terms.

112. In the construction of the recited Acts and this Act the term 'Metropolis' shall be deemed to include the City of London and the parishes and places mentioned in the Schedules (A.), (B.), and (C.) to the firstly-recited Act; the word 'drain' shall be deemed to apply to and include the subject matters specified in the two hundred

and fiftieth section of the firstly-recited Act, and also any drain for draining a group or block of houses by a combined operation, laid or constructed before the first day of January one thousand eight hundred and fifty-six; pursuant to the order or direction or with the sanction or approval of the Metropolitan Commissioners of Sewers; the word 'street' shall be deemed to apply to and include the subject matters specified in the two hundred and fiftieth section of the firstly-recited Act, and also any mews and a part thereof; the expression 'new street' shall apply to and include all streets hereafter to be formed or laid out, and a part of any such street, and also all streets, the maintenance of the paving and roadway whereof had not, previously to the passing of this Act, been taken into charge and assumed by the commissioners, trustees, surveyors, or other authorities having control of the pavements or highways, in the parish or place in which such streets are situate, and a part of any such street, and also all streets partly formed or laid out; the word 'pave' shall apply to and include the formation of the roadway or footway of any street.

25 & 26 Vict c. 102. s. 112.

'*Drain.*'—See the note to sect. 250 of 18 & 19 Vict. c. 120, *ante*, p. 355. The effect of this definition is to bring into the same category with those drains made for the drainage of a group of houses by a combined operation under the order of a vestry or district board, drains made for the same purpose, but before the passing of that Act, and therefore without the order of a vestry or district board.

'*Street.*'—See the note under this heading to 18 & 19 Vict. c. 120, sect. 250, and the note to sect. 5 (1) of the Act of 1894 on p. 6, *ante*.

'*New street.*'—The Metropolis Management Amendment Act, 1890 (53 & 54 Vict. c. 66), *post*, p. 393, enables a vestry or district board to repair carriage roads which have been used for more than six months for public traffic, but which are not repairable by them, without prejudice to their right to treat them subsequently as 'new streets.'

'*Pave.*'—With reference to the paving of footways, see the Metropolis Management Act, 1862, Amendment Act, 1890 (53 & 54 Vict. c. 54), *post*, p. 390.

THE METROPOLIS MANAGEMENT AND BUILDING ACTS AMENDMENT ACT, 1878.

41 & 42 Vict. c. 32.

An Act to amend the Metropolis Management Act, 1855, the Metropolitan Building Act, 1855, and the Acts amending the same respectively. [22nd July, 1878.]

Whereas . . . . with a view to protect the public frequenting theatres and music halls within the Metropolis from danger from fire it is expedient that provisions such as are in this Act contained should be made for empowering the Metropolitan Board of Works (in this Act referred to as 'the Board') to cause alterations in existing theatres and music halls to be made in certain cases, and to make regulations with respect to the position and structure of new theatres and certain new music halls . . . .

18 & 19 Vict. c. 120. 18 & 19 Vict. c. 122.

And whereas for the purposes aforesaid it is expedient to amend the Metropolis Management Act, 1855, the Metropolitan Building Act, 1855, and the Acts amending the same respectively:

Be it therefore 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,)

Preliminary.

Short title.

1. This Act may be cited for all purposes as the Metropolis Management and Building Acts Amendment Act, 1878.

Limits of Act. 18 & 19 Vict. c. 120.

2. This Act shall extend and apply to the Metropolis as defined by the Metropolis Management Act, 1855.

Division of Act into three parts.

3. This Act shall consist of three parts.

Note.—Portions of Parts I. and III. of the Act, and the whole of Part II., have been repealed by sect. 215 of the Act of 1894, *ante*, p. 302. So much only of the present Act as is unrepealed is here set out.

PART I.

5. The Metropolis Management Act, 1855, and the Acts amending the same, and this part of this Act shall be construed together as one Act: Provided always, that nothing in this Act shall be held to limit or restrict the powers now vested in the Commissioners of Sewers of the city of London, or in any body or person elsewhere within the metropolis, by an Act passed in the session of Parliament held in the fifty-seventh year of the reign of King George the Third, intituled 'An Act for better paving, improving, and regulating the streets of the metropolis and removing and preventing nuisances and obstructions therein.'

41 & 42 Vict. c. 32. ss. 5, 11.

Metropolis Management Acts and this part of Act to be construed as one Act.

18 & 19 Vict. c. 120.

57 Geo. 3. c. xxix.

Note.—The portions of 57 Geo. III. cap. xxix. which relate to buildings and streets, are set out *ante*, pp. 325 to 330, and the portions of the Metropolis Management Act, 1855, and the Acts amending the same, which also relate to buildings and streets, are set out in this Appendix, see *ante*, pp. 331 to 355.

. . . . . .

11. Whenever it appears to the Board that any house or other place of public resort within the metropolis which was at the time of the passing of this Act authorised to be kept open for the public performance of stage plays, and which is kept open for such purpose, under the authority of letters patent from Her Majesty, her heirs and successors or predecessors, or of a licence granted by the Lord Chamberlain of Her Majesty's household for the time being, or by justices of the peace, or that any house, room, or other place of public resort within the metropolis, containing a superficial area for the accommodation of the public of not less than five hundred square feet, which was at the time of the passing of this Act authorised to be kept open, and which is kept open, for dancing, music, or other public entertainment of the like kind, under the authority of a licence granted by any court of quarter sessions, is so defective in its structure that special danger from fire may result to the public frequenting the same, then and in every such case the Board may, with the consent of the Lord Chamberlain in the case of theatres under his jurisdiction, and of Her Majesty's Principal Secretary of State in all other cases, if in the opinion of the Board such structural defects can be remedied at a moderate expenditure, by notice in writing require the owner of such house, room, or other place kept open for any of

Power to Board in certain cases to require proprietors of theatres and certain music halls in use at the time of the passing of this Act to remedy structural defects.

41 & 42 Vict. c. 32. s. 12.

the purposes aforesaid, under such authority as aforesaid, to make such alterations therein or thereto as may be necessary to remedy such defects, within a reasonable time to be specified in such notice; and in case such owner fails to comply with the requirements of such notice within such reasonable time as aforesaid, he shall be liable to a penalty not exceeding fifty pounds for such default, and to a further penalty of five pounds for every day after the first day after the expiration of such reasonable time as aforesaid during which such default continues: Provided always, that any such owner may, within fourteen days after the receipt of any such notice as aforesaid, serve notice of appeal against the same upon the Board, and thereupon such appeal shall be referred to an arbitrator to be appointed by Her Majesty's First Commissioner of Works at the request of either party, who shall hear and determine the same, and may, on such evidence as he may think satisfactory, either confirm the notice served by the Board, or may confirm the same with such modifications as he may think proper, or refuse to confirm the same, and the decision of such arbitrator with respect to the requirements contained in any such notice, and the reasonableness of the same, and the persons by whom and the proportions in which the costs of such arbitration are to be paid, shall be final and conclusive and binding upon all parties.

In case of an appeal against any such notice, compliance with the requirements of the same may be postponed until after the day upon which such appeal shall be so decided as aforesaid, and the same, if confirmed in whole or in part, shall only take effect as and from such day.

Note.—Theatres and places of public resort are included in the meaning of the term '*public building*' in the Act of 1894, see sect. 5 (27) of that Act, *ante*, p. 24. And the construction of public buildings is regulated by sects. 78–80 of that Act, *ante*, pp. 147 to 149. A power of entry for the purpose of complying with the requirements of any notice or order under this section is given to the owner, builder, or person served with such notice or order by sect. 22, *post*, p. 375.

Power to Board to make regulations with respect to

12. The Board may from time to time make, alter, vary, and amend such regulations as they may think expedient with respect to the requirements for the protection from fire of houses or other places of public

41 & 42 Vict. c. 32. s. 12.

new theatres and certain new music halls for protection from fire.

resort within the metropolis to be kept open for the public performance of stage plays, and of houses, rooms, or other places of public resort within the metropolis containing a superficial area for the accommodation of the public of not less than five hundred square feet, to be kept open for public dancing, music, or other public entertainment of the like kind, under the authority of letters patent from Her Majesty, her heirs or successors, or of licences by the Lord Chamberlain of Her Majesty's household, or by any justices of the peace, or by any court of quarter sessions, which may be granted for the first time after the passing of this Act; and may by such regulations prescribe the requirements as to position and structure of such houses, rooms, or places of public resort which may, in the opinion of the Board, be necessary for the protection of all persons who may frequent the same against dangers from fires which may arise therein or in the neighbourhood thereof; provided that the Board may from time to time in any special case dispense with or modify such regulations, or may annex thereto conditions if they think it necessary or expedient so to do.

The Board shall, after the making, altering, varying, or amending of any such regulations, cause the same to be printed, with the date thereof, and a printed copy thereof shall be kept at the office of the Board, and all persons may at all reasonable times inspect such copy without payment, and the Board shall cause to be delivered a printed copy, authenticated by their seal, of all regulations for the time being in force to every person applying for the same, on payment by such person of any sum not exceeding five shillings for every such copy.

A printed copy of such regulations, dated and authenticated by the seal of the Board, shall be conclusive evidence of the existence and of the due making of the same in all proceedings under the same, without adducing proof of such seal or of the fact of such making.

From and after the making of any such regulations it shall not be lawful for any person to have or keep open any such house, room, or other place of public resort for any of the purposes aforesaid, unless and until the Board grant to such person a certificate in writing under their seal, to the effect that such house, room, or other place was on its completion in accordance with the regu-

41 & 42 Vict. c. 32. s. 13.

lations made by the Board in pursuance of the provisions of this Act for the time being in force, and in so far as the same are applicable to such house or other place, and to the conditions (if any) annexed thereto by the Board.

In case any such house, room, or place of public resort is opened or kept open by any person for any of the purposes aforesaid, contrary to the provisions of this enactment, such person shall be liable to a penalty not exceeding fifty pounds for every day on which such house or place of public resort is so kept open as aforesaid.

Note.—Proceedings can be taken under this section in respect of a building kept open for public music, notwithstanding that such building may not be licensed for music and dancing under 25 Geo. II. cap. 36, or for the performance of stage plays under 6 & 7 Vict. cap. 68. See *Reg.* v. *Hannay* (1891), 2 Q. B. 709; 60 L. J. M. C. 167; 40 W. R. 14; 56 J. P. 151.

Regulations were made by the Council under this section on February 9, 1892, which will be found in App. III., Pt. II., *post*. See also the note to sect. 11, *ante*, and sect. 21, *post*, with regard to the inspection of theatres, &c. Penalties under this part of the Act are recoverable summarily in like manner and subject to the like right of appeal as penalties recoverable by summary proceedings under the Metropolis Management Act. See as to summary proceedings the note to sect. 166 of the Act of 1894, *ante*, p. 254.

Provisional licence for new premises.

13. A person interested in any premises about to be constructed, or in course of construction, which are designed to be licensed and used within the metropolis for the public performance of stage plays, or for public dancing, music, or other public entertainment of the like kind, may apply to the licensing authority for the grant of a provisional licence in respect of such premises. The grant of such provisional licence shall, in respect of the discretion of the licensing authority and procedure, be subject to the same conditions as those applicable to the grant of a like licence which is not provisional. A provisional licence so granted shall not be of any force until it has been confirmed by the licensing authority; but the licensing authority shall confirm the same on the production by the applicant of a certificate by the Board that the construction of the premises has been completed in accordance with the regulations and conditions made by the Board as hereinbefore provided, and on being satisfied that no objection can be made to the character of the holder of such provisional licence.

. . . . . .

PART III.

41 & 42 Vict. c. 32. ss. 21–23.

Power for architect and persons authorised by Board, and district surveyor, to enter and inspect theatres, music halls, buildings, and works.

21. The architect of the Board, and any other person authorised by the Board in writing under their seal, may, at all reasonable times after completion or during construction, enter and inspect any house, room, or other place kept open or intended to be kept open for the public performance of stage plays, or for public dancing, music, or other public entertainment of the like kind affected by any of the provisions of this Act, or of any regulations made in pursuance thereof; . . . and if any person refuses to admit such architect, person . . . or to afford him all reasonable assistance in such inspection, in every such case the person so refusing shall incur for each offence a penalty not exceeding twenty pounds.

Note.—The power to make regulations under the Act is contained in sect. 12, *ante*, p. 378, and regulations made by the Council thereunder will be found in Appendix III., Pt. II., *post*. See sect. 23, *post*, as to the recovery of penalties.

Power to owners, &c. to enter houses, &c. to comply with notices or order.

22. For the purpose of complying with the requirements of any notice or order served or made under the provisions of this Act on any owner, builder, or person in respect of any house, building, or other erection, room, or place, such owner, builder, or person, his servants, workmen, and agents, may, after giving seven days' notice in writing to the occupier of such house, building, or other erection, room, or place, and on production of such notice or order, enter such house, building, or other erection, room, or place, and do all such works, matters, and things therein or thereto, or in connection therewith, as may be necessary; and if any person refuses to admit such owner, builder, or person, or his servants or workmen or agents, or to afford them all reasonable assistance, such person shall incur for each offence a penalty not exceeding twenty pounds.

Note.—This section is repealed by sect. 215 of the London Building Act, 1894, *ante*, p. 302, so far as it relates to any notice or order served or made under any provision repealed by that Act. For the provisions regulating the recovery of penalties, see the following section.

Recovery of penalties. 18 & 19 Vict. c. 120.

23. Every penalty imposed by Part I. and Part III. of this Act may be recovered by summary proceedings before any justice in like manner and subject to the like right of appeal as if the same were a penalty recoverable

41 & 42 Vict. c. 32. ss. 24, 26, 27.

by summary proceeding under the Metropolis Management Act, 1855, and the Acts amending the same . . . . provided always, that in any proceedings against any person for more than one penalty in respect of one or more breach or breaches of any provision of this Act or of any byelaw made in pursuance of this Act, it shall be lawful to include in one summons all such penalties, and the charge for such summons shall not exceed two shillings.

Note.—Penalties recoverable summarily under the Metropolis Management Act, 1855, are by sect. 227 of that Act recoverable before any justice in manner provided by the Summary Jurisdiction Act, 1848 (11 & 12 Vict. cap. 43). And penalties recoverable summarily under the Metropolis Management Act, 1862, are, by sect. 102 of that Act, recoverable in the same manner. A right of appeal to quarter-sessions from the adjudication or determination of such justice is given by sect. 231 of the Act, the procedure in which appeal is now regulated by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. cap. 43), which repeals so much of sect. 231 as prescribed the mode of appealing. See also as to summary proceedings the note to sect. 166 of the Act of 1894, *ante*, p. 254.

Exceptions from Metropolis Management Acts extended to this Act.

18 & 19 Vict. c. 120.

24. Her Majesty's royal palaces, and all buildings, works, and ground excepted from the operation of the Metropolis Management Act, 1855, and the Acts amending the same, or of any of the said Acts, shall be excepted from the operation of the provisions of this Act which are to be construed with such Acts, and all exemptions from the provisions of any of the said Acts shall extend to such of the provisions of this Act as are to be construed as aforesaid with such Acts.

Note.—For the buildings, works, and ground excepted from the operation of the Act of 1855, see sects. 240–246 of that Act.

. . . . . .

Act not to apply to the Inner and Middle Temple, &c.

26. Nothing in this Act . . . . shall apply to the Inner Temple, the Middle Temple, Lincoln's Inn, Gray's Inn, Staple Inn, Furnival's Inn, or the close of the collegiate church of Saint Peter, Westminster.

Saving rights of the Crown and the Duchy of Lancaster.

27. Nothing contained in this Act . . . . shall apply to or shall authorise or empower the Board, or any vestry, district board, or district surveyor, to take, use, or in any manner interfere with any land, soil, tenements, or hereditaments, or any rights of whatsoever nature, belonging to or enjoyed or exercisable by the

Queen's most Excellent Majesty in right of her Crown, or in right of her Duchy of Lancaster, without the consent in writing of the Commissioners for the time being of Her Majesty's woods, forests, and land revenues, or one of them, on behalf of Her Majesty, in right of her Crown, first had and obtained for that purpose (which consent such Commissioners are hereby respectively authorised to give), or without the consent in like manner of the Chancellor of the said Duchy, on behalf of Her Majesty, in right of her said Duchy; neither shall anything contained in this Act, or in any byelaw thereunder made, extend to divest, take away, prejudice, diminish, or alter any estate, right, privilege, power, or authority vested in or enjoyed or exercisable by the Queen's Majesty, her heirs or successors, in right of her Crown, or in right of her said Duchy; and nothing contained in Part I. of this Act shall apply to the extension of Savoy Street or the bridge which the chancellor and council of the said Duchy are by the Metropolitan Board of Works (Various Powers) Act, 1875, empowered to make and construct, or to any house or building within the precinct of the Savoy, or upon the land mentioned in section six of the last-mentioned Act, constructed or extended after the passing of this Act, in or abutting upon any road, passage, or way existing, formed, or laid out at the time of the passing of this Act.

41 & 42 Vict. c. 32. s. 27.

38 & 39 Vict. c. 65.

Note.—The Act under which the Metropolitan Board of Works was empowered to extend Savoy Street, and which was no doubt intended to be referred to in this section, is the 38 & 39 Vict. c. clxxix. which is intituled, 'An Act for authorising improvements in and near the precinct of the Savoy, near Charing Cross, with a view to the opening of better connection with the Victoria Embankment, and for conferring powers on the Metropolitan Board of Works with reference to Tooting Graveney Common, and for other purposes.'

THE
ARBITRATION ACT, 1889.

52 & 53 Vict. c. 49.

An Act for amending and consolidating the enactments relating to arbitration. [26th August, 1889.]

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:

References by Consent out of Court.

Submission to be irrevocable, and to have effect as an order of court.

1. A submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the Court or a judge, and shall have the same effect in all respects as if it had been made an order of Court.

Provisions implied in submissions.

2. A submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in the First Schedule to this Act, so far as they are applicable to the reference under the submission.

. . . . . .

Power to stay proceedings where there is a submission.

4. If any party to a submission, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to that court to stay the proceedings, and that court or a judge thereof if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission, and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

. . . . . .

52 & 53 Vict. c. 49. ss. 7-9, 12, 18-20.

Powers of arbitrator.

7. The arbitrators or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power—

(*a.*) to administer oaths to or take the affirmations of the parties and witnesses appearing; and

(*b.*) to state an award as to the whole or part thereof in the form of a special case for the opinion of the Court; and

(*c.*) to correct in an award any clerical mistake or error arising from any accidental slip or omission.

Witnesses may be summoned by subpœna.

8. Any party to a submission may sue out a writ of subpœna ad testificandum, or a writ of subpœna duces tecum, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action.

Power to enlarge time for making award.

9. The time for making an award may from time to time be enlarged by order of the Court or a judge, whether the time for making the award has expired or not.

. . . . . .

Enforcing award.

12. An award on a submission may, by leave of the Court or a judge, be enforced in the same manner as a judgment or order to the same effect.

. . . . . .

General.

Power to compel attendance of witness in any part of the United Kingdom, and to order habeas corpus to issue.

18. (1.) The Court or a judge may order that a writ of subpœna ad testificandum or of subpœna duces tecum shall issue to compel the attendance before an official or special referee, or before any arbitrator or umpire, of a witness wherever he may be within the United Kingdom.

(2.) The Court or a judge may also order that a writ of habeas corpus ad testificandum shall issue to bring up a prisoner for examination before an official or special referee, or before any arbitrator or umpire.

Statement of case pending arbitration.

19. Any referee, arbitrator, or umpire may at any stage of the proceedings under a reference, and shall, if so directed by the Court or a judge, state in the form of a special case for the opinion of the Court any question of law arising in the course of reference.

Costs.

20. Any order made under this Act may be made on such terms as to costs, or otherwise, as the authority making the order thinks just.

52 & 53 Vict. c. 49. ss. 21–30.

Exercise of powers by masters and other officers.

21. Provision may from time to time be made by Rules of Court for conferring on any master, or other officer of the Supreme Court, all or any of the jurisdiction conferred by this Act on the Court or a judge.

Penalty for perjury.

22. Any person who wilfully and corruptly gives false evidence before any referee, arbitrator, or umpire shall be guilty of perjury, as if the evidence had been given in open court, and may be dealt with, prosecuted, and punished accordingly.

. . . . . .

Application of Act to references under statutory powers.

24. This Act shall apply to every arbitration under any Act passed before or after the commencement of this Act as if the arbitration were pursuant to a submission, except in so far as this Act is inconsistent with the Act regulating the arbitration or with any rules or procedure authorised or recognised by that Act.

. . . . . .

Definitions.

27. In this Act, unless the contrary intention appears—

'Submission' means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.

'Court' means her Majesty's High Court of Justice.

'Judge' means a judge of her Majesty's High Court of Justice.

'Rules of Court' means the rules of the Supreme Court made by the proper authority under the Judicature Acts.

. . . . . .

Short title.

30. This Act may be cited as the Arbitration Act, 1889.

SCHEDULES.

THE FIRST SCHEDULE.

PROVISIONS TO BE IMPLIED IN SUBMISSIONS.

a. If no other mode of reference is provided, the reference shall be to a single arbitrator.

b. If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.

c. The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, or on or before any

later day to which the arbitrators, by any writing signed by them, may from time to time enlarge the time for making the award. 52 & 53 Vict. c. 49 Sch. I.

d. If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission, or to the umpire a notice in writing, stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.

e. The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire by any writing signed by him may from time to time enlarge the time for making his award.

f. The parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrators or umpire, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire, all books, deeds, papers, accounts, writings, and documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrators or umpire may require.

g. The witnesses on the reference shall, if the arbitrators or umpire think fit, be examined on oath or affirmation.

h. The award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively.

i. The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client.

. . . . . .

THE LONDON COUNCIL (GENERAL POWERS) ACT, 1890.

53 & 54 Vict. c. ccxliii.

An Act to confer further powers on the London County Council for the acquisition and maintenance of parks and open spaces and as to local management and procedure and to make various provisions with regard to buildings and streets in the administrative county of London. [18th August, 1890.]

Whereas . . . it is expedient that further provisions should be made with regard to buildings and powers conferred with reference thereto as hereinafter set forth. . . .

And whereas it is also expedient that sundry further powers should be conferred on the council and further provisions made as in this Act provided.

And whereas the objects aforesaid cannot be accomplished 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) :—

Short title.

1. This Act may be cited as the London Council (General Powers) Act 1890.

. . . . . .

Notice to be given to vestry or district board of building or demolishing any house, building, or wall.

32. Every person who shall intend to build or take down any house, building, or wall (not being within the city of London) within ten feet of any public thoroughfare shall give notice of such intention to the vestry or district board of the parish or district in which such house, building, or wall is situate and shall before commencing to build or take down any such house, building, or wall, cause to be put up such hoard or fence with a convenient platform and handrail (if there be room

enough) for the same to serve as a footway for passengers outside of such hoard or fence as the vestry or district board may think to be proper and sufficient, and shall continue such hoard or fence and such platform and handrail standing and in good condition to the satisfaction of the vestry or district board during the building or taking down of any such house, building, or wall, unless the vestry or district board shall give their consent in writing to its previous removal, and shall when required so to do by the vestry or district board cause such hoard or fence and such platform and handrail to be well lighted from sunset to sunrise. 53 & 54 Vict. c. ccxliii. s. 32.

Every person who fails to give such notice to the vestry or district board, or who commences to build or take down any such house, building, or wall without causing to be put up such hoard or fence, with or without such convenient platform and handrail, or who does not continue such hoard or fence with or without such convenient platform and handrail in good condition to the satisfaction of the vestry or district board as aforesaid, or who does not when required so to do cause such hoard or fence with or without such platform and handrail to be well lighted from sunset to sunrise, shall for every such offence be liable to a penalty not exceeding five pounds, and a further penalty not exceeding forty shillings for every day on which such offence shall continue after conviction thereof, such penalties to be recovered by summary proceeding.

Note.—See also sects. 121 and 122 of the Metropolis Management Act, 1855, *ante*, pp. 346 and 347, with regard to the erection of hoards, &c., during building operations. The erection of such hoards in the City of London is regulated by sects. 161–164 of the City of London Sewers Act, 1848, *post*, p. 430 *et seq.* With regard to summary proceedings for the recovery of penalties, see sect. 166 of the Act of 1894, *ante*, p. 254, and the notes to that section.

THE METROPOLIS MANAGEMENT ACT, 1862, AMENDMENT ACT, 1890.

53 & 54 Vict. c. 54.

An Act to amend the seventy-eighth section of the Metropolis Management Amendment Act, 1862.

[18th August, 1890.]

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 :

Repeal of 25 & 26 Vict. c. 102, sect. 78.

Vestries and district boards may flag footpaths and recover expense from owners.

1. Section seventy-eight of the Act passed in the session of Parliament holden in the twenty-fifth and twenty-sixth years of the reign of Her present Majesty, chapter one hundred and two, intituled 'An Act to amend the Metropolis Local Management Acts,' shall be repealed, and in the place thereof there shall be enacted the section following, viz.: In case any footway or any part of a footway laid out at the passing of the Act of the eighteenth and nineteenth years of the reign of Her present Majesty Queen Victoria, chapter one hundred and twenty, intituled 'An Act for the better Local Management of the Metropolis,' shall have been repaired by the vestry or district board of works, or any other public body, but such footway or any part thereof shall not have been flagged or only partially flagged, and the vestry or district board of works shall have deemed it necessary or expedient, or shall deem it necessary or expedient, that the same should be flagged either throughout the whole length and breadth thereof or any part of such length or breadth respectively, and such vestry or district board shall have flagged or be about to flag the same, the owners of the houses and the owners of the land bounding or abutting on the road or street in which such footway or any part thereof is situate, shall on demand pay to such vestry or district board of works

the amount of the expense incurred, or the estimated expense to be incurred, in providing and laying such flagging; and in the case of estimated expense where the same shall exceed the actual expense of such flagging, then the difference between such estimated expense and such actual expense shall be repaid by the vestry or district board to the owners of houses and land by whom the said estimated expense has been paid; and in case the said estimated expense be less than the actual expense of paving, then the owners of the said houses and land shall on demand pay to the vestry or district board such further sum of money as, together with the sum already paid, amounts to the actual expense: Provided that it shall be lawful for the said vestry or district board to charge the owners of land in a less proportion than the owners of house property should they (the said vestry or district board) deem it just and expedient so to do.

53 & 54 Vict. c. 54. s. 2.

Note.—See further as to the paving of new streets, sect. 105 of the Metropolis Management Act, 1855, *ante*, p. 343, and sect. 77 of the Metropolis Management Act, 1862, *ante*, p. 368; and as to roads or ways not streets see sect. 3 of the present Act. The term 'flag' or 'flagging' includes asphalte or other similar paving material, see sect. 4, *post*. The terms 'street' and 'owner' are defined by sect. 250 of the Act of 1855, *ante*, p. 354. The expense of flagging a footway upon one side of a street is subject to the power of the vestry or district board to charge the owners of land in a less proportion than the owners of house property, to be borne by the owners of the houses and the owners of the land upon both sides of the street. See *The Vestry of Paddington* v. *the North Metropolitan Railway and Canal Co.* (1894), 1 Q. B. 633; 58 J. P. 413. The apportionment and recovery of expenses under this section are provided for by the following section. See also the note to sect. 96 of the Metropolis Management Act, 1855.

Apportionment and recovery of expense.

2. The expense aforesaid, whether estimated or actual (including the cost of flagging at the points of intersections of streets, and all other incidental costs and charges), shall be ascertained and apportioned by the vestry or district board amongst the parties liable to pay the same under the preceding section of this Act, and shall be recoverable either before the work shall be commenced, or during its progress, or after its completion, from the owner of the premises, either by action-at-law or in a summary manner before a justice of the peace at the option of the vestry or district board, as

53 & 54 Vict. c. 54. ss. 3–6.

provided for by the two hundred and twenty-fifth section of the said Act of the eighteenth and nineteenth years of the reign of Her present Majesty Queen Victoria.

Note.—With regard to summary proceedings for the recovery of expenses under this section, see the note to sect. 166 of the Act of 1894, *ante*, p. 254. The term 'owner' is defined by sect. 250 of the same Act, *ante*, p. 354, and see the note to sect. 5 (29) of the Act of 1894, *ante*, p. 26 *et seq.*

Vestry or board to keep flagging in repair.

3. After any vestry or district board has flagged any footway under the provisions of this Act, the said vestry or board shall keep the said flagging in good and sufficient repair.

Interpretation of terms.

4. In the construction of this Act all the provisions contained in the two hundred and fiftieth section of the said Act of the eighteenth and nineteenth Victoria, chapter one hundred and twenty, and the one hundred and twelfth section of the said Act of the twenty-fifth and twenty-sixth Victoria, chapter one hundred and two, shall be deemed and taken to apply to and extend to the provisions of this Act, and the term 'flag' or 'flagging' shall include asphalte or other similar paving material, and the term 'paved' shall include asphalted or other similar paved work.

Construction of Act.

5. Except as by this Act expressly amended or varied, the said Act of the session of the eighteenth and nineteenth Victoria, chapter one hundred and twenty, and the several Acts passed for the amendment of the said Act and this Act shall be construed together as one Act.

Short title.

6. This Act may be cited as the Metropolis Management Act, 1862, Amendment Act, 1890.

THE METROPOLIS MANAGEMENT AMENDMENT ACT, 1890.

53 & 54 Vict. c. 66.

An Act to amend the Metropolis Management Acts.

[18th August, 1890.]

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 for all purposes as the Metropolis Management Amendment Act, 1890.

Interpretation. 18 & 19 Vict. c. 20.

2. In this Act—

'The Metropolis Management Acts' includes the Metropolis Management Act, 1855, and any Acts amending the same.

Terms to which meanings are assigned by the Metropolis Management Acts have the same respective meanings.

'The council' means the London County Council.

Power to vestry or district board to repair a road or way not being a street.

3. Any vestry or district board may from time to time execute any necessary works of repair upon any or any part of any carriage road within their parish or district which shall have been used for not less than six months for public traffic and which may not at the time of such repair have become repairable by them, and shall not by undertaking such repair prejudice or affect the powers of such vestry or district board to apportion and recover the expenses of paving such road or way if and when the same shall be paved as a new street under the Metropolis Management Acts.

The expenses of and incident to such repair may in the first instance be paid by the vestry or district board in the same manner as the expenses of repairing other streets repairable by them, and shall as soon as may be thereafter be apportioned upon and recovered from the owners of the houses and land bounding or abutting on

53 & 54 Vict. c. 66. s. 4.

such road or part thereof in the same manner as if such expenses were expenses of paving such road or part thereof as a new street, under the provisions of the Metropolis Management Acts relative thereto, and the amount of the expenses so apportioned may be recovered by the vestry or district board in a court of competent jurisdiction.

Provided that no railway company shall be liable under this section to pay the proportion of the expenses of and incident to such works of repair apportioned upon them in respect of lands abutting on any such road and used solely as part of their line of railway and sidings, and having no direct communication with such road, and the amount apportioned upon any such company in respect thereof shall be paid by the vestry or district board. But in the event of such company making a direct communication with such road before the same is taken over by the vestry or district board, a just share of the said expenses shall be payable by such company to the vestry or district board, and the amount of such share shall, in case of difference between the railway company and the vestry or district board, be fixed in a summary way by any metropolitan police magistrate in whose district such road shall be wholly or partly situate, and shall be payable on demand to the vestry or district board.

Note.—The provisions of the Metropolis Management Acts with regard to the paving of new streets are contained in sect 105 of the Act of 1855, *ante*, p. 343, sect. 77 of the Act of 1862, *ante*, p. 368, and sect. 1 of the Act of 1890, *ante*, p. 390. It is for the vestry or the district board under this section to decide as to the necessity for the execution of the works. It is therefore not necessary for the vestry or district board, in proceedings for the recovery of expenses incurred in executing works under the section, to satisfy the tribunal before which such proceedings are taken of the necessity for the works. See *Stroud* v. *Wandsworth District Board of Works* (1894), 2 Q. B. 1; 63 L. J. M. C. 88; 70 L. T. (N.S.) 190; 58 J. P. 652. This section does not apply to the City of London, see sect. 8, *post*, p. 398.

Penalty for making sewers contrary to plans approved.

4. Any person making any sewer, or branching any sewer or drain into any sewer vested in the council, without the approval in writing of the council first had and obtained, or otherwise than in accordance with a plan and section thereof approved by the council, or causing any such sewer or drain to be so made or branched, shall be liable to a penalty not exceeding fifty pounds.

The council may by notice in writing to the owner or owners of the premises connected with the sewer or drain so improperly made or branched, or (if there are no such premises) of the land in which it is placed, require such owner or owners forthwith to remove such sewer or drain or to reconstruct the same at his or their expense to the approval of the council in accordance with the plan and section approved as aforesaid, and in the event of such owner or owners failing to comply with the terms of such requisition, such owner or owners, as the case may be, shall be severally liable to a penalty not exceeding five pounds for every day during which he or they shall fail to comply therewith. And the council may execute the works required and recover the costs and expenses thereof in a court of summary jurisdiction from the person who shall have made or branched, or caused to be made or branched, the sewer or drain, or from the owner or owners of the premises connected therewith, or (if there are no such premises) of the land in which it is placed. Provided that if the premises of more than one owner are at the time of the commencement of the work by the council connected with any such sewer, the costs and expenses thereof shall be apportioned amongst and recoverable from such owners in proportion to the rateable value of the premises respectively connected therewith. 53 & 54 Vict. c. 66. s. 5.

Provided also that in the event of any such costs and expenses being paid to the council by any such owner or owners, then such owner or owners shall be entitled to recover in a court of summary jurisdiction the amount so paid by them from the person who made or branched or caused such sewer or drain to be made or branched in manner aforesaid.

Penalty in case of connexions with local sewers.

5. Any person making any sewer or branching any sewer or drain into any sewer vested in any vestry or district board without the approval in writing of such vestry or district board first had and obtained or otherwise than in accordance with the plan and section thereof, if any, approved by the council under the provisions of the Metropolis Management Acts relative thereto, or causing any such sewer or drain to be so made or branched, shall be liable to a penalty not exceeding fifty pounds. The vestry or district board concerned may, by notice in writing to the owner or owners of the premises connected with the sewer or drain so improperly made or branched, or (if there are

53 & 54 Vict. c. 66. s. 6.

no such premises) of the land in which it is placed, require such owner or owners forthwith to remove such sewer or drain or to reconstruct the same at his or their expense to the approval of such vestry or district board, and in accordance with the plan and section approved as aforesaid, and in the event of such owner or owners failing to comply with the terms of such requisition, such owner or owners, as the case may be, shall be severally liable to a penalty not exceeding five pounds for every day during which he or they shall fail to comply therewith, and the vestry or district board may execute the works required and recover the costs and expenses thereof in a court of summary jurisdiction from the person who shall have made or branched or caused to be made or branched the sewer or drain, or from the owner or owners of the premises connected therewith, or (if there are no such premises) of the land in which it is placed.

Provided that if the premises of more than one owner are at the time of the commencement of the work by the vestry or district board connected with any such sewer, the costs and expenses thereof shall be apportioned amongst and recoverable from such owners in proportion to the rateable value of the premises respectively connected therewith.

Provided also that in the event of any such costs and expenses being paid to the vestry or district board by any such owner or owners, then such owner or owners shall be entitled to recover in a court of summary jurisdiction the amount so paid by them from the person who made or branched or caused such sewer or drain to be made or branched in manner aforesaid.

Subsoil under a street road passage or way not to be removed without the consent of the vestry or district board or council.

6. Subject to the provisions of this Act, it shall not be lawful after the passing of this Act to form or 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, passage, 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, 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 seven 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 five pounds, and to a further penalty not exceeding twenty shillings for every day after the first during which the offence is 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. 53 & 54 Vict. c. 66. s. 6.

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 right 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

53 & 54 Vict. c. 66. ss. 7–10.

basements in connection with buildings erected on such property.

Note.—The provisions of this section do not apply in the City of London, see sect. 8, *infra*.

Surveyor or other officer to see that conditions are observed.

7. The surveyor of the vestry or district board, or other officer of the vestry or district board, or any officer appointed for that purpose by the council, shall take care that the provisions of the preceding section are complied with, and that any conditions imposed by the vestry or district board or the council in giving their consent in writing thereunder are observed.

Limited application of Act to city of London.

8. Except so far as relates to any sewers vested in the council, none of the provisions contained in this Act shall have any force or effect within the city of London.

Penalties and expenses.

9. Penalties and expenses under this Act may be sued for and recovered either by the council or by the vestry or district board concerned in the same manner as penalties under the Metropolis Management Act, 1855, and the Acts amending the same.

Expenses of Act.

10. Any costs, charges, and expenses incurred by the council of and incidental to the preparing, applying for, and passing of this Act shall be paid by the Council.

THE
PUBLIC HEALTH (LONDON) ACT, 1891.

54 & 55 Vict. c. 76.

An Act to consolidate and amend the laws relating to Public Health in London. [5th August, 1891.]

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 :

Sanitary authority to inspect district for detection of nuisances.

1. It shall be the duty of every sanitary authority to cause to be made from time to time inspection of their district, with a view to ascertain what nuisances exist calling for abatement under the powers of this Act, and to enforce the provisions of this Act for the purpose of abating the same, and otherwise to put in force the powers vested in them relating to public health and local government, so as to secure the proper sanitary condition of all premises within their district.

Note.—This Act extends, unless it is otherwise expressly provided, to London only, provided that so far as it is necessary for giving effect to its provisions in their application to London it extends to places elsewhere. See sect. 132 of the Act. The expression '*London*' means by virtue of sect. 141, *post*, p. 408, the administrative County of London, with regard to which latter expression see the note to sect. 4 of the Act of 1894, *ante*, p. 4.

. . . . . .

Regulations as to Waterclosets, &c.

Obligation to provide waterclosets, &c.

37. (1) It shall not be lawful newly to erect any house or to rebuild any house pulled down to or below the ground floor without a sufficient ashpit furnished with proper doors and coverings, and one or more proper and sufficient waterclosets according as circumstances may require, furnished with suitable water supply and water supply apparatus, and with suitable

54 & 55 Vict. c. 76. s. 37.

trapped soilpan and other suitable works and arrangements, so far as may be necessary to ensure the efficient operation thereof.

(2) If any person offends against the foregoing enactment of this section, he shall be liable to a fine not exceeding twenty pounds.

(3) If at any time it appears to the sanitary authority that any house, whether built before or after the commencement of this Act, is without such ashpit or waterclosets as aforesaid, the sanitary authority shall cause notice to be served on the owner or occupier of the house, requiring him forthwith, or within such reasonable time as is specified in the notice, to provide the same in accordance with the directions in the notice; and, if the notice is not complied with, the said owner or occupier shall be liable to a fine not exceeding five pounds, and a further fine not exceeding forty shillings for each day during which the offence continues; or the sanitary authority, if they think fit, in lieu of proceeding for a fine, may enter on the premises and execute such works as the case may require, and may recover the expenses incurred by them in so doing from the owner of the house.

(4) Provided that—

(*a*) where sewerage or water supply sufficient for a watercloset is not reasonably available, this section shall be complied with by the provision of a privy or earth-closet; and

(*b*) where a watercloset has before the commencement of this Act been and is used in common by the inmates of two or more houses, and in the opinion of the sanitary authority may continue to be properly so used, they need not require a watercloset to be provided for each house.

(5) Any person who thinks himself aggrieved by any notice or act of a sanitary authority under this section may appeal to the County Council, whose decision shall be final.

Note.—The terms '*house*,' '*ashpit*,' and '*owner*' are defined by sect. 141, *post*, p. 409. For the authorities referred to by the expression '*sanitary authority*,' see sect. 99 of the Act in the note to sect. 70 of the Act of 1894, *ante*, p. 138. The authentication and service of notices under the present Act are provided for by sects. 127 and 128 of this Act. By sect. 40, *post*, p. 403, power is conferred upon the sanitary authority to examine premises in order to ascertain if the works prescribed

by this section have been provided, and are in proper order and condition ; see also the note to that section. Under sect. 42, *post*, a fine not exceeding 20*l.* may be imposed in certain cases upon the person who undertook or executed the construction or repair of a water-closet or drain, which is found to have been so constructed or repaired as to be a nuisance or dangerous to health, or upon the agent, servant, or workman of such person. Penalties, fines, and expenses, under the Act are recoverable summarily, see sect. 117, and as to summary proceedings see the note to sect. 166 of the Act of 1894, *ante*, p. 254. Under sect. 118 of the present Act, any person charged with an offence under the Act, and the wife or husband of such person, may, if such person think fit, be called, sworn, and examined and cross-examined as an ordinary witness in the case. Fines recovered under the Act from persons other than the sanitary authority are to be paid to the sanitary authority, to be applied by it in aid of its expenses in the execution of the Act ; see sect. 119 of the Act. 54 & 55 Vict. c. 76. s. 38.

As to the liability of the occupier for the time being of premises to defray in the first instance expenses recoverable under the Act from the owner of such premises, see sect. 121 of the Act. By sect. 126 of the Act, appeals to the County Council against a notice or act of the sanitary authority under the Act are to be conducted in accordance with sects. 211 and 212 of the Metropolitan Management Act, 1855. No appeal lies, however, from the Commissioners of Sewers to the Council. See sect. 133 (*a*) of the Act. Section 211 of the Act of 1855 is set out *ante*, p. 353.

It will be for the sanitary authority to decide, subject to the appeal given by the section to the County Council, as to the sufficiency or insufficiency of the existing works, and as to the nature of the works to be executed where the existing works are in its opinion insufficient; and such decision cannot be questioned in any proceedings to enforce a penalty under the section or to recover expenses incurred by the authority in executing works required by it to be executed. See *The Vestry of Clerkenwell* v. *Fleary* (1890), 24 Q. B. D. 703.

Sanitary conveniences for manufactories, &c.

38. (1) Every factory, workshop, and workplace, whether erected before or after the passing of this Act, shall be provided with sufficient and suitable accommodation in the way of sanitary conveniences, regard being had to the number of persons employed in or in attendance at such building, and also where persons of both sexes are, or are intended to be, employed, or in attendance, with proper separate accommodation for persons of each sex.

(2) Where it appears to a sanitary authority that this section is not complied with in the case of any factory, workshop, or workplace, the sanitary authority

54 & 55 Vict. c. 76. s. 39.

shall, by notice served on the owner or occupier of such factory, workshop, or workplace, require him to make the alterations and additions necessary to secure such compliance, and if the person served with such notice fails to comply therewith he shall be liable to a fine not exceeding twenty pounds, and to a fine not exceeding forty shillings for every day after conviction during which the non-compliance continues.

Note.—The expression '*sanitary convenience*' includes the conveniences mentioned in sect. 141 of the Act, *post*, p. 408. The authentication and service of notices under the Act are provided for by sects. 127 and 128 of the Act. Penalties under the Act are recoverable summarily, see sect. 117, and see as to summary proceedings the note to sect. 166 of the Act of 1894, *ante*, p. 254. In proceedings to recover such penalties, the person charged with the offence is entitled to give evidence, see sect. 118. The decision of the authority as to the sufficiency and suitability of the accommodation to be provided under the section cannot be questioned in proceedings to recover penalties. See *The Vestry of Clerkenwell* v. *Feary* in the note to the preceding section. Under sect. 42, *post*, p. 405, a fine may be imposed upon the person who constructed or repaired a water-closet or drain which is found to have been so constructed or repaired as to be a nuisance or dangerous to health, or upon the agent, servant, or workman of such person.

Byelaws as to water-closets, &c.

39. (1) The County Council shall make byelaws with respect to waterclosets, earth closets, privies, ash-pits, cesspools, and receptacles for dung, and the proper accessories thereof in connection with buildings, whether constructed before or after the passing of this Act.

(2) Every sanitary authority shall make byelaws with respect to the keeping of waterclosets supplied with sufficient water for their effective action.

(3) It shall be the duty of every sanitary authority to observe and enforce the byelaws under this section; and any directions given by the sanitary authority under this Act shall be in accordance with the said byelaws, and so far as they are not so in accordance shall be void.

Note.—By sect. 114 of the Act, byelaws made under the Act are to be made subject and according to the provisions with respect to byelaws contained in sects. 182 to 186 of the Public Health Act, 1875. Provided that the Council in making any byelaws which will have to be observed and enforced by any sanitary authority is to consider any representations made to it by that authority, and not less than two months before applying to the Local Government Board for the confirmation of such byelaws

is to send a copy of the proposed byelaws to the authority. For the byelaws which have been made by the Council under this section see App. III., Pt. II., *post*. Byelaws made by the Council under this Act shall not extend to the City of London, see sect. 133 (*b*) of the Act. With regard to the expression 'City of London,' see the note to sect. 4 of the Act of 1894, *ante*, p. 4. 54 & 55 Vict. c. 76. s. 40.

Power for sanitary authority to authorise examination of water-closets, &c.

40. (1) The sanitary authority may examine any of the following works, that is to say, any watercloset, earth closet, privy, ashpit, or cesspool, and any water supply, sink, trap, siphon, pipe or other works or apparatus connected therewith, upon any premises within their district, and for that purpose, or for the purpose of ascertaining the course of a drain, may at all reasonable times by day, after twenty-four hours' notice has been served on the occupier of the premises, or if they are unoccupied on the owner, or in case of emergency without notice, enter on any premises, and cause the ground to be opened in any place they think fit, doing as little damage as may be.

(2) If any such work as aforesaid is found on examination to be in accordance with this Act and the byelaws of the County Council and sanitary authority and directions of the sanitary authority given in any notice under this Act, and in proper order and condition, the sanitary authority shall cause the same to be reinstated and made good as soon as may be, and shall defray the expenses of examination, reinstating, and making good the same, and pay full compensation for all damages or injuries done or occasioned by the examination; but if on examination any such work is found not to be in proper order or condition, or not to have been made or provided by any person according to the said byelaws and directions, or to be contrary to this Act, the reasonable expenses of the examination shall be repaid to the sanitary authority by the person offending, and may be recovered by that authority in a summary manner.

Note.—The sanitary authorities referred to by the term '*sanitary authority*, are those mentioned in sect. 99 of the Act. The terms '*ashpit*' and '*premises*' and '*owner*' are defined by sect. 141 of the Act, *post*, p. 408. With regard to the authentication and service of notices under the Act, see sects. 127 and 128 of the Act. The byelaws which have been made by the Council under the preceding section will be found in App. III., Pt. II., *post*. Expenses incurred under this section are recoverable summarily. See sect. 117 of the Act; and see as to summary

54 & 55 Vict. c. 76. s. 41.

proceedings the note to sect. 166 of the Act of 1894, *ante*, p. 254. As to the recovery of such expenses from the occupier in the first instance, see sect. 121, *post*. The expression '*day*' is defined by sect. 141, *post*, p. 408. A penalty is imposed by the following section where works required by the Act have not been provided or are not in proper order and condition. See also sect. 42, *post*, p. 405.

A person claiming a right to enter premises for the purposes of this section may be required to produce some written document, properly authenticated on the part of the sanitary authority, showing the right of the person producing the same to enter. A person refusing or failing to admit any person so authorised is liable to a fine not exceeding 5*l*. Where necessary, the section enables a warrant of a justice to be obtained authorising the entry, if need be, by force, and any person obstructing the execution of such warrant will be liable to a fine not exceeding 20*l*. See also sect. 116 of the Act with regard to the penalty for obstructing any person in the execution of the Act.

Penalty on persons improperly making or altering waterclosets, &c.

41. (1) In any of the following cases—

(*a*) if, on such examination as in the preceding section mentioned, any such work as therein mentioned is found not to have been made or provided by any person according to the bye-laws of the County Council and sanitary authority, and the directions of the sanitary authority given in any notice under this Act, or to be contrary to this Act, or

(*b*) if a person, without the consent of the sanitary authority, constructs or rebuilds any water-closet, earth closet, privy, ashpit, or cesspool which has been ordered by them either not to be made, or to be demolished, or

(*c*) if a person discontinues any water supply without lawful authority, or

(*d*) if a person destroys any sink, trap, siphon, pipe, or any connected works or apparatus as aforesaid either without lawful authority or so that the destruction creates a nuisance or is injurious or dangerous to health,

every person so offending shall be liable to a fine not exceeding ten pounds; and if he does not, within fourteen days after notice is served on him by the sanitary authority, or within any further time allowed by that authority or appearing to a petty sessional court necessary for the execution of the works, cause such watercloset, earth closet, privy, ashpit or cesspool to be

altered or reinstated in conformity with the said byelaws and directions, or, as the case may be, to be demolished, or such water supply to be renewed, or such sink, trap, siphon, pipe or other connected works or apparatus to be restored, such person shall be liable to a fine not exceeding twenty shillings for each day during which the offence continues; or the sanitary authority, if they think fit, in lieu of proceeding for a fine, may enter on the premises and cause the work to be done, and the expenses thereof shall be paid by the person who has so offended. 54 & 55 Vict. c. 76. s. 41.

(2) If, on such examination as aforesaid, any water-closet, earth closet, privy, ashpit, or cesspool, or any water supply, sink, trap, siphon, pipe, or any of the connected works or apparatus as aforesaid, appears to be in bad order and condition, or to require cleansing, alteration, or amendment, or to be filled up, the sanitary authority shall cause notice to be served on the owner or occupier of the premises, upon or in respect of which the inspection was made, requiring him forthwith, or within a reasonable time specified in the notice, to do what is necessary to place the work in proper order and condition; and if such notice is not complied with, the said owner or occupier shall be liable to a fine not exceeding five pounds, and to a further fine not exceeding forty shillings for each day during which the offence continues; or the sanitary authority, if they think fit, in lieu of proceeding for a fine, may enter on the premises and execute the works, and the expenses incurred by them in so doing shall be paid to them by the owner or occupier of the premises.

(3) Any person who thinks himself aggrieved by any notice or act of a sanitary authority under this section in relation to any watercloset, earth closet, privy, ashpit, or cesspool, may appeal to the county council, whose decision shall be final.

Note.—The byelaws made by the Council under sect. 39, *ante*, will be found in App. III., Pt. II., *post*. As to the meaning of the term '*sanitary authority*,' see sect. 99 of the Act. The terms '*ashpit*,' '*owner*,' and '*premises*' are defined by sect. 141, *post*, p. 408. Under the following section a fine may be imposed upon a person who undertook or executed the construction or repair of a water-closet or drain which is found to have been so constructed or repaired as to be a nuisance or injurious to health, or upon the agent, servant, or workman of such person. With regard to the authentication and service of notices under

54 & 55 Vict. c. 76. s. 42.

the Act see sects. 127 and 128 of the Act. A penalty is imposed by sect. 116 of the Act for obstructing any person in the execution of the Act. Penalties and expenses are recoverable summarily, see sect. 117. As to summary proceedings see the note to sect. 166 of the Act of 1894, *ante*, p. 254; and see sect. 118 as to the right of the defendant to give evidence in proceedings to recover penalties under the Act; and sect. 119 as to the application of the penalties. Under sect. 121 of the Act, costs and expenses recoverable from the owner of premises are recoverable in the first instance from the occupier of the premises, who is empowered to deduct any costs and expenses he may pay from his rent, unless his contract with the owner obliges him to defray such costs and expenses himself. An appeal is given by sect. 125 of the Act to the Quarter Sessions against any conviction or order of a court of summary jurisdiction on determining any information or complaint under the Act, save as otherwise provided by the Act. See also the note to sect. 166 of the Act of 1894, *ante*, p. 258. The appeal given by the present section to the Council is, by virtue of sect. 126 of the Act, to be conducted in accordance with sects. 211 and 212 of the Metropolis Management Act, 1855, the first of which last-mentioned sections is set out *ante*, p. 353. No appeal lies, however, under the section to the Council from the Commissioners of Sewers, see sect. 133 (*a*) of the Act.

Improper construction or repair of watercloset or drain.

42. If a watercloset or drain is so constructed or repaired as to be a nuisance or injurious or dangerous to health, the person who undertook or executed such construction or repair shall, unless he shows that such construction or repair was not due to any wilful act, neglect, or default, be liable to a fine not exceeding twenty pounds:

Provided that where a person is charged with an offence under this section he shall be entitled, upon information duly laid by him, to have any other person, being his agent, servant, or workman, whom he charges as the actual offender, brought before the court at the time appointed for hearing the charge, and if he proves to the satisfaction of the court that he had used due diligence to prevent the commission of the offence, and that the said other person committed the offence without his knowledge, consent, or connivance, he shall be exempt from any fine, and the said other person may be summarily convicted of the offence.

Note.—Fines under this section are recoverable summarily under sect. 117 of the Act. See as to summary proceedings the note to sect. 166 of the Act of 1894, *ante*, p. 254. Any person aggrieved by a conviction under this section may appeal there-

from to the Quarter Sessions under sect. 125 of the Act. The builder employed by an owner to repair a drain who so repairs it as to be a nuisance and injurious to health may be proceeded against under this section in the first instance, he and not the owner being the person 'who undertook or executed the repairs' within the meaning of the section. See *Young* v. *Fosten*, 69 L. T. (N.S.) 147; 58 J. P. 8. 54 & 55 Vict. c. 76. ss. 96-99.

. . . . . .

Underground Rooms.

Provisions as to the occupation of underground rooms as dwellings.

96. [*Note.*—This section will be found set out in the note to sect. 70 of the Act of 1894, *ante*, p. 135. Fines under this section are recoverable summarily, see sect. 117 of the Act; and as to summary proceedings see the note to sect. 166 of the Act of 1894, *ante*, p. 254.]

Enforcement of provisions as to underground rooms.

97. [*Note.*—This section will be found set out in the note to sect. 70 of the Act of 1894, *ante*, p. 137. A general power of entry is given by sect. 115 of the Act; and a penalty is imposed by sect. 116 of the Act for obstructing any person in the execution of the Act. A person claiming under sect. 115 of the Act a right to enter any premises may be required to produce some written document, properly authenticated on the part of the sanitary authority, showing the right of the person producing the same to enter. A person refusing or failing to admit any person so authorised is liable to a fine not exceeding 5*l.* A warrant of a justice authorising the entry may, where necessary, be obtained under the same section; and a person obstructing the execution of such warrant will be liable to a fine not exceeding 20*l.* The term '*day*' is defined by sect. 141, *post*, p. 408.]

Provision in case of two convictions for occupying underground rooms.

98. [*Note.*—This section will be found set out in the note to sect. 70 of the Act of 1894, *ante*, p. 138. See as to the expression '*Petty sessional court*' the note under this heading to sect. 107 of the Act of 1894, *ante*, p. 196.]

Authorities for Execution of Act.

Definition of sanitary authority.

99. [*Note.*—This section will be found set out in the note to sect. 70 of the Act of 1894, *ante*, p. 138. See also the note to sect. 4 of that Act, *ante*, p. 4. Under sect. 58 of the Metropolis Management Act, 1855, a district board of works and a vestry have each power to appoint a committee or committees for any purposes which, in its discretion, would be better regulated and managed by means of such committee; and at any meeting, to continue, allow, or discontinue, such committee, provided that in the case of a committee appointed by a district board of works or vestry the acts of every such committee shall be submitted to the general body of the board or vestry appointing such committee for its approval: see also sect. 59 of that Act for the powers of any such committee. Under sect. 31 of 25 & 26 Vict. cap. 102, the Council shall be at liberty to give such instructions to any committee appointed by it

54 & 55 Vict. c. 76. ss. 100, 132, 133, 141.

regulating the conduct of any business deputed to such committee, and such committee shall act in conformity therewith, and shall report to the Council all acts done by them in conformity with such instructions. By sect. 123 of the present Act the Council or a sanitary authority may appear before any court or in any legal proceedings by its clerk or by any officer or member authorised generally or in respect of any special proceedings by resolution of such Council or authority; and its clerk or any officer or member so authorised shall be at liberty to institute and carry on any proceedings which the Council or sanitary authority is authorised to institute or carry on under this Act.

Power of County Council to prosecute on default of sanitary authority.

100. [*Note.*—This section will be found set out in the note to sect. 70 of the Act of 1894, *ante*, p. 139.]

Extent of Act.

132. This Act shall (save as otherwise expressly provided) extend only to London:

Provided that this Act shall extend to places elsewhere so far as is necessary for giving effect to any provisions thereof in their application to London and to any places to which such provisions are expressly applied.

City of London.

Application of Act to City.

133. In the application of this Act to the City of London the following modifications shall be made:

(*a.*) There shall be no appeal under this Act from the commissioners of sewers to the county council:

(*b.*) The byelaws made by the county council under this Act shall not extend to the city:

. . . . . .

Interpretation.

Interpretation of terms.

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

The expression 'London' means the administrative county of London:

The expression 'county council' means the London County Council:

. . . . . .

The expression 'street' includes any highway, and any public bridge, and any road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not, and whether or not there are houses in such street:

The expression 'premises' includes messuages, buildings, lands, easements, and hereditaments of any

tenure, whether open or enclosed, whether built on or not, and whether public or private, and whether maintained or not under statutory authority: 54 & 55 Vict. c. 76. s. 144.

The expression 'house' includes schools, also factories and other buildings in which persons are employed:

The expressions 'building' and 'house' respectively include the curtilage of a building or house, and include a building or house wholly or partly erected under statutory authority:

. . . . . .

The expression 'owner' means the person for the time being receiving the rackrent of the premises, in connexion 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 rackrent:

The expression 'rackrent' 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 rentcharge (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 expression 'sanitary convenience' includes urinals, waterclosets, earth closets, privies, and any similar conveniences:

The expression 'day' means the period between six o'clock in the morning and the succeeding nine o'clock in the evening:

The expression 'ashpit' means any ashpit, dust-bin, ash-tub, or other receptacle for the deposit of ashes or refuse matter:

. . . . . .

144. This Act may be cited as the Public Health (London) Act, 1891. Short title.

THE
LONDON OVERHEAD WIRES ACT, 1891.

54 & 55 Vict. Cap. lxxvii.

An Act to provide for the control and regulation of Overhead Wires in the Administrative County of London.

[3rd July, 1891.]

Whereas the number of wires and cables placed overhead within the administrative county of London has increased and is increasing and such wires and cables are subject to no efficient system of control or regulation and it is expedient that provision should be made as in this Act contained for the control and regulation of all such wires under byelaws made as hereinafter provided and for the removal or alteration of such wires and cables in certain cases :

And whereas the objects aforesaid cannot be accomplished 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 and extent of Act.

1. This Act may be cited for all purposes as the London Overhead Wires Act 1891 and shall extend and apply to the Administrative County of London.

Interpretation.

2. In this Act—

The expression 'the Council' means the London County Council ;

The expression 'the county' means the administrative county of London.

Note.—As to this term see the note to sect. 4 of the Act of 1894, *ante*, p. 4.

The expression 'Local Authority' means—

As regards any street road embankment bridge park garden or open space vested in the

Council or under their control and management the Council; 54 & 55 Vict. c. lxxvii. s. 2.

Subject as aforesaid—

As regards the city of London the Commissioners of Sewers of the city of London;

As regards any parish named in Schedule A to the Metropolis Management Act 1855 or any parish which under any subsequent Act is to be dealt with as if named in the said schedule the vestry of that parish as constituted under the said Acts;

As regards any district mentioned in Schedule B of the Metropolis Management Act 1855 and not dissolved by any Act amending the same the district board of such district as constituted under the said Acts;

And as regards any place mentioned in Schedule C of the Metropolis Management Act 1855 the Council.

Note.—See as to the City of London, and as to the parishes here referred to, the note to sect. 4 of the Act of 1894, *ante*, p. 4.

The expression 'the Company' means and includes any company or person having placed or claiming any power to place any wire overhead in the county;

The expression 'street' has the meaning assigned thereto in the Metropolis Management Act 1855 and the Metropolis Management Amendment Act 1862;

Note.—For this definition, see *ante*, pp. 354 and 375.

The expression 'wire' includes any wire conductor or cable and any support or attachment thereto any part of which is placed or shall hereafter be placed over any street or any part of any street and also any wire conductor cable support or attachment placed or intended to be placed on or over any building or land and situate at any point within a distance of fifty feet from any street but shall not include any such wire conductor cable support or attachment which is placed or may be placed wholly upon or over any railway or any land belonging to a railway company and used as a railway station siding or yard

54 & 55 Vict. c. lxxvii. ss. 3, 4.

or any part of any such wire conductor or cable being upon or over any railway or such land;

The expression 'telegraphic line' has the same meaning as in the Telegraph Act 1878

New overhead wires not to be placed except in accordance with byelaws.

3. From and after the passing of this Act the company shall within one month after they shall have placed any wire overhead give notice in writing to the Council and the Local Authority specifying the locality and position in which the wire has been placed and after byelaws in relation to wires shall have been made under the powers of this Act it shall not be lawful to place any wire overhead otherwise than subject to and in accordance with such byelaws.

Note.—Private wires placed by a person over land belonging to him or in his occupation, and not extending over any street, or not so placed as to be, or that its supports may be, liable to fall into a public street, are exempted from the operation of the Act by sect. 18, *post*, p. 416.

Rights over private property not to be acquired except by agreement.

4. The company by carrying a wire over any land or building or supporting such wire thereon or attaching the same thereto shall not otherwise than by agreement with the owner of and persons interested in such land or building acquire any right which shall in any way interfere with any right of such owner or other person and if at any time by reason of any alteration re-building or otherwise it becomes necessary for any such owner or person to require the company to alter or remove any such wire the company shall alter or remove the same accordingly on being required so to do by notice in writing by such owner or person:

And in the event of the company refusing or neglecting for the space of one month after such requisition to alter or remove the same it shall be lawful for any inspector officer or workman duly appointed by the Council with the consent of such owner or person to remove or alter the same and to enter upon the land or building for that purpose and the costs and expenses of and incidental to such removal shall be repaid by the company to the Council on demand and in default of payment may be recovered in a summary way:

As regards the city of London this section shall be read and have effect as if the Commissioners of Sewers were named therein instead of the Council.

Note.—As to summary proceedings, see the note to sect. 166 of the Act of 1894, *ante*, p. 254.

54 & 55 Vict. c. lxxvii. ss. 5–7. Byelaws.

5. Subject to the provision of this Act the Council may from time to time make and vary byelaws with respect to any of the following matters :—

The identification of overhead wires by registration or otherwise ;

The regulation of wires ;

The strength of the materials to be employed in placing maintaining and supporting wires ; and

The removal of wires erected or placed otherwise than in accordance with such byelaws and of disused wires :

And they may by such byelaws fix and determine the penalties to be imposed on the company or any person failing to comply with any of the provisions of this Act and the continuing penalties to be imposed in the event of any such offence being continued after conviction thereof :

Provided that no such byelaw shall have any force or effect until it shall have been approved by the Board of Trade who may prescribe to whom and in what manner notices of the intended byelaws shall be given and provided also that before any such byelaws are proposed to the Board of Trade for confirmation notice thereof with copies of the intended byelaws shall be given to the postmaster general :

After the making of any such byelaws a copy thereof shall be published in the London Gazette and in such other newspapers as the Board of Trade may direct :

Provided also that the Board of Trade may exempt any then existing wire from the operation of any such byelaw for such period as they think proper not exceeding five years from the confirmation thereof.

Note.—Byelaws were made by the Council under this section on July 29, 1892, and will be found in Appendix III., Part II., *post.*

Enforcement of byelaws by local authority.

6. Byelaws under this Act shall subject to the provisions of this Act be enforced and administered by the Local Authority.

Providing for uniformity in enforcement of byelaws.

7. If in any case in any one or more of the parishes or districts within the county any byelaw under this Act is in the opinion of the Council inadequately enforced or if in any two or more of such parishes or districts owing to want of uniformity in the method of administering any byelaw the Council consider it is

54 & 55 Vict. c. lxxvii. ss. 8, 9.

expedient in the public interest that provision should be made for duly enforcing such byelaw or establishing uniformity in the application and enforcement of the same the Council may apply to the Board of Trade who may after hearing any vestry or district board concerned if they desire to be heard make under the hand of a secretary or assistant secretary such order for securing the enforcement of such byelaw or for establishing uniformity in the administration thereof as they may think expedient. Any such order may include a power to the Council to enforce any byelaw in any case in any parish or district and to recover any expenses incidental thereto from the vestry or district board.

Inspectors of overhead wires.

8. It shall be lawful for the Council or the Local Authority as the case may be to appoint and employ an inspector or inspectors of wires and such other officers and workmen as they may find requisite for the purposes of this Act.

Removal of existing overhead wires.

9. If at any time on the report of any of their inspectors it shall appear to the Local Authority that any wire is in such a condition that danger to the public using the streets may be apprehended the Local Authority may serve notice in writing on the company requiring them to remove renew or alter the same and to place such wire in such position as the Local Authority may reasonably determine and in the event of such requisition not being complied with within such reasonable time as shall be therein specified it shall be lawful for the Local Authority to apply to a court of summary jurisdiction to issue a summons calling on the company to show cause why the wire should not be dealt with in accordance with such requisition and such court may make an order authorising the Local Authority or any of their inspectors or officers to remove or alter any such wire and to charge the expenses of such removal or alteration on the company to whom the wire belongs as may be prescribed in such order. And such expenses may be recovered under the provisions of the Summary Jurisdiction Acts :

Provided that the Local Authority may at any time after byelaws shall have been made and published under the provisions of this Act proceed under this section without any such notice or requisition in the case of any wire not being in accordance with such byelaws and at any time after such byelaws are made and published it shall be lawful for the Council or Local Authority to

remove any such wire if they are unable to ascertain the owner thereof. 54 & 55 Vict. c. lxxvii. ss. 10–15.

Note.—With regard to summary proceedings, see the note to sect. 166 of the Act of 1894, *ante*, p. 254.

10. Nothing in this Act or in any byelaw made under this Act or any compliance with any of the provisions of this Act or of any such byelaw shall relieve the company from any liability in respect of damage caused by any wire or support or attachment or the failure thereof or otherwise due to any works or operations of the company. As to liability for accidents.

11. Where under the provisions of this Act any matter is referred to an arbitrator the reference shall be to an arbitrator who shall be appointed by the Board of Trade on the application of the Council Local Authority or the company to whom the question refers. Arbitrator.

12. [*Note.*—As notice of action is rendered unnecessary by 56 & 57 Vict. c. 61, *post*, this section has been omitted. See also sect. 1 of that statute as to the period within which actions against public authorities must be commenced.] Notice to be given of legal proceedings.

13. Every sum of money required by this Act to be paid to the Council or Local Authority and every penalty imposed by any byelaw made in pursuance of this Act may be recovered by the Council or Local Authority in a summary way. Recovery of penalties.

Note.—See as to summary proceedings the note to sect. 166 of the Act of 1894, *ante*, p. 254.

14. All penalties which may be recovered under any of the byelaws made under the powers of this Act shall notwithstanding anything contained in an Act made and passed in the session holden in the second and third years of the reign of Her present Majesty chapter 71 or in any other Act or Acts to the contrary if recovered by the Council be paid to the council and be carried by them to the credit of the county fund or if recovered by the local authority be paid to their treasurer to their account or if recovered by the Commissioners of Sewers be carried to the credit of their consolidated rate. Application of penalties.

15. The production of a written copy of a byelaw made under this Act if authenticated by the corporate seal of the council shall until the contrary is proved be sufficient evidence of the due making and existence of the byelaw and of the byelaw having been approved by the Board of Trade. Evidence of byelaws.

54 & 55 Vict. c. lxxvii. ss. 16–21.

Wires not to be inconsistent with regulations of Board of Trade.

16. The company shall not under the powers of this Act or any byelaw made under this Act be required to place any wire in any manner which shall be inconsistent with any regulation or condition for securing the safety of the public or for the protection of the electric lines and works of the Postmaster General made prescribed or imposed by the Board of Trade under the Electric Lighting Acts 1882 and 1888 or under any special Act or Provisional Order or licence under the provisions of the Electric Lighting Acts 1882 and 1888 or either of them.

As to authorised electric lighting undertakers and wires.

17. Nothing in this Act or any byelaw made in pursuance thereof shall apply or extend to any undertakers acting under special Act Provisional Order or licence under the Electric Lighting Acts 1882 and 1888 or to any wires of such undertakers.

Exempting private wires.

18. Nothing in this Act shall extend to any wire placed by any person for his private use over land belonging to him or in his occupation which does not extend over any street and is so constructed and placed that neither the wire nor any support thereof or attachment thereto would be liable to fall into any public street.

Not to authorise placing unauthorised wires overhead.

19. Nothing in this Act contained shall be deemed to authorise the Council to confer any powers of placing wires for electric lighting purposes overhead on any company body or person not authorised so to place such wires by a special Act Provisional Order or licence under the provisions of the Electric Lighting Acts 1882 and 1888.

Exemption of Government and Crown property from powers as to overhead wires.

20. Nothing in this Act shall authorise any wire to be carried over supported on or attached to any land building or structure in the occupation and under the management of or maintained by Her Majesty or Her Majesty's Duchy of Lancaster or the Duchy of Cornwall or any department of Her Majesty's Government or shall authorise any entry upon any such land building or structure without in each case the consent of the department of Her Majesty's Government or of the officer or body charged with the management of such land building or structure.

Saving for Postmaster General.

21. Nothing in this Act or in any byelaws made in pursuance of this Act shall be deemed to apply or extend (except by way of protection) to any telegraphic line belonging to or used by the Postmaster General or to any support or attachment thereof and nothing in this Act or

in any such byelaws shall be deemed to take away abridge or prejudicially affect any right power or privilege enjoyed by the Postmaster General. 54 & 55 Vict. c. lxxvii. ss. 22, 23.

22. All costs and expenses of any vestry or district board in the execution of this Act or any byelaws under this Act shall be paid as part of the expenses of such vestry or district board of executing the Metropolis Management Act 1855 and the Acts amending the same and all costs and expenses of the Commissioners of Sewers in the execution of this Act or any byelaws under this Act shall be paid out of the consolidated rate as part of the expenses of such commissioners. As to payments by local authorities under this Act.

Note.—The expenses of vestries and district boards in executing the Act of 1855 are defrayed by means of rates levied by the overseers of the parish or parishes under sect. 158 and the following sections of that Act.

23. 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 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. As to payments under this Act.

Note.—As to the mode in which payments for general county purposes are to be defrayed, see sect. 68 of the Act of 1888; and see also sect. 40 (9) of that Act.

THE
PUBLIC AUTHORITIES PROTECTION ACT, 1893.

56 & 57 Vict. c. 61.

An Act to generalize and amend certain statutory provisions for the protection of persons acting in the execution of statutory and other public duties.

. . . . . .

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 six months next after the act, neglect or default complained of, or in case of a continuance of injury or damage, within six 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. 56 & 57 Vict. c. 61. ss. 2, 4, 5.

This section shall not affect any proceedings by any department of the Government against any local authority or officer of a local authority.

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— Repeal.

(*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.

Note.—Sect. 106 of the Metropolis Management Amendment Act, 1862, which contained limitations on the bringing of actions for anything done or intended to be done under the Metropolis Management Acts, is one of the enactments mentioned in the schedule to the present Act.

. . . . . .

4. This Act shall come into operation on the first day of January one thousand eight hundred and ninety-four. Commencement.

5. This Act may be cited as the Public Authorities Protection Act, 1893. Short title.

APPENDIX II.

THE
CITY OF LONDON SEWERS ACT, 1848.

11 & 12 Vict. Cap. clxiii.

An Act to provide for the Sanatory Improvement of the City of London and the Liberties thereof, and for the better cleansing, sewering, paving, and lighting the same. [5th September, 1848.]

. . . . . .

No house to be built without drains constructed to the satisfaction of the commissioners.

62. And be it enacted, that it shall not be lawful to erect any house or other building within the city unless a drain be constructed to the satisfaction of the commissioners, of such materials, of such size, at such level, and with such fall as they shall direct, so that the same shall be available for the drainage of the lowest floor of such building, and also of its areas, waterclosets, privies, and offices (if any), which drain shall lead from the intended site of such house to such sewer, already made or intended to be constructed near thereto, as the commissioners shall direct and appoint, or if there be no such sewer existing or intended to be constructed within fifty feet of any part of the intended site of such house, then to such covered cesspool or other place, not being under any dwelling house, as the commissioners shall direct.

Note.—This section corresponds to sect. 75 of the Metropolis Management Act, 1855. See the note to that section, *ante*, p. 336.

As to the mode in which house drains are to be constructed, see the regulations for house drains, &c., of the Commissioners of Sewers in Appendix III., Part III., *post*.

Notice of buildings to be given to

63. And be it enacted, that before beginning to lay or dig out the foundations of any new house or building within the city, or to rebuild any house or building

11 & 12 Vict. c. clxiii. s. 64.

the commissioners before commencing the same.

therein, and also before making any drain for the purpose of draining water directly or indirectly from any land or tenement into any sewer under the jurisdiction of the commissioners, fourteen days' notice in writing shall be given to the commissioners, by the person intending to build or re-build such house or building or to make such drain; and every such foundation shall be laid at such level as is provided by this Act, and under such regulations as the commissioners shall order; and every such branch drain shall be made in such direction, manner, and form, and of such materials and workmanship, as the commissioners shall order, and the making of every such drain shall be under the survey and control of the commissioners; and in default of such notice or if such house, building, or drain shall be begun or erected or made without or in any respect contrary to any order of the commissioners or the provisions of this Act, it shall be lawful for the commissioners to cause such building to be demolished, and to cause such drain to be re-laid, amended, or re-made, as the case may require, and to cause the expenses thereof to be levied and repaid to them by the owner thereof in the manner hereinafter provided.

Note.—This section corresponds to sect. 76 of the Act of 1855, *ante*, p. 336. A penalty is imposed by sect. 256, *post*, p. 433, for obstructing any person in the execution of the Act; and by sect. 72, *post*, p. 422, a penalty is imposed for making or altering drains contrary to the order of the Commissioners. As to the application to be made for permission to construct drains, and as to the mode in which such drains are to be constructed, see the regulations for house drains, &c. of the Commissioners of Sewers in Appendix III., Part III., *post*.

Houses re built to be on a level determined by commissioners.

64. And be it enacted, that whenever any house or building shall be re-built within the city, the level of the lowest floor of such house or building shall be raised sufficiently to allow of the construction of such a drain as is hereinbefore provided in the case of houses or buildings to be built after the commencement of this Act, and for that purpose the levels shall be taken and determined under the direction of the commissioners; and whenever any house or building shall be taken down within twelve feet of the surface of the ground, for the purpose of being built up again, such building up shall be deemed a re-building within the meaning of this Act.

What shall be deemed a rebuilding.

. . . . . .

11 & 12 Vict. c. clxiii. ss. 72, 99.

Penalty on persons making or altering drains, &c. contrary to the order of the commissioners.

72. And be it enacted, that in case any sewer, drain, privy, or cesspool, or other work, shall, on inspection, be found not to have been made according to the directions and regulations of the commissioners, or contrary to the provisions of this Act, or in case any person, without the consent of the commissioners, shall construct, re-build, clear out, unstop, or in anywise alter any sewer, drain, privy, cesspool, or other work which may have been ordered by them not to be made, or to be demolished, stopped up, or amended, every person offending shall forfeit and pay any sum not exceeding the sum of ten pounds; and in case the person so making any sewer, drain, privy, cesspool, or other work, contrary to the directions and regulations of the commissioners, or, without such consent as aforesaid, constructing, re-building, clearing out, unstopping, or altering, any sewer, drain, privy, cesspool, or other work which may have been ordered to be demolished, stopped up, or amended, shall not, within seven days after notice in writing by the commissioners cause such sewer, drain, privy, cesspool, or other work to be altered in conformity with the directions of the commissioners, or, as the case may be, to be demolished, stopped up, or amended, then and in every such case the commissioners may cause the same to be done, and the costs and charges thereof shall be paid by the person who shall have so made such sewer, drain, privy, cesspool, or other work contrary to the directions of the commissioners, or shall without such consent have constructed, re-built, cleared out, or unstopped, or altered any sewer, drain, privy, cesspool, or other work which they may have ordered to be demolished, stopped up, or amended.

Note.—See the corresponding section of the Act of 1855, viz. sect. 83, *ante*, p. 339, and also sect. 41 of the Public Health (London) Act, 1891, *ante*, p. 404.

. . . . . .

Commissioners may require owners of houses to provide privies and ashpits for the same.

99. And be it enacted, that it shall be lawful for the commissioners to require the owner of any house to which no sufficient privy or ashpit is attached to provide such proper privy to the same, in such situation, not disturbing any building already erected, and with such proper door and covering to such privy, and also such fit and sufficient ashpit, and in such situation, not disturbing any building already erected, as the commissioners shall consider requisite for the use of the inmates

and occupiers thereof; provided that a privy and ashpit, or two or more privies and ashpits, may, with the approbation of the commissioners, be used in common by the inmates and occupiers of two or more such houses. 11 & 12 Vict. c. clxiii. ss. 100–102.

Note.—The term '*ashpit*' includes a dustbin, see sect. 28 of the City of London Sewers Act, 1851, *post*, p. 436. See also with regard to this and the following sections, the Public Health (London) Act, 1891, *ante*, p. 399 *et seq.*

100. And be it enacted, that no house shall hereafter be built without there being constructed, to the satisfaction of the commissioners, either in such house or in a yard attached to such house, a privy, with proper doors and coverings to the same, and also an ashpit, together (if required by the commissioners) with a proper funnel or flue or other means of carrying off upwards any offensive stench from such privy or ashpit. No houses to be built without a privy and ashpit being provided.

Note.—See the note to the preceding section.

101. And be it enacted, that it shall be lawful for the commissioners, if they shall think fit so to do, by notice in writing to the owner or occupier of any house or building in which persons of both sexes above twenty in number are employed or intended to be employed at one time in any manufacture, trade, or business, to require such owner or occupier to provide, within a time to be limited in such notice, a sufficient number of water-closets or privies for the separate use of each sex; and if any such owner or occupier shall neglect or refuse to comply with such notice he shall forfeit a sum not exceeding twenty pounds and a further sum of forty shillings for every day during which such neglect or refusal shall continue. Water-closets to be provided in manufactories. Penalty for neglect.

Note.—See the corresponding provisions in sect. 38 of the Public Health (London) Act, 1891, *ante*, p. 401.

102. And be it enacted, that the owner of every house now built or hereafter to be built shall keep the privy and ashpit belonging to such house, or used by the inmates or occupiers thereof, in good repair, to the satisfaction of the commissioners; and if the owner of any house shall not provide the same with a privy, with such door and covering to the same, and with such ashpit as aforesaid, or shall not repair the said privy and ashpit, to the satisfaction of the commissioners, within Owners of houses to keep privies and ashpits in repair.

11 & 12 Vict. c. clxiii. ss. 105, 106.

one month next after notice in writing for that purpose from the clerk or surveyor to the commmissioners shall have been given to such owner, or left for him at his usual or last known place of abode, or upon or affixed to the premises in respect of which the same shall be given, every owner so making default shall for every such default forfeit any sum not exceeding five pounds, and any further sum not exceeding ten shillings for every week during which such default shall in anywise continue unamended.

Note.—The term '*ashpit*' includes a dustbin by virtue of sect. 28 of the Act of 1851, *post*, p. 436. See also sects. 37 and 39 of the Public Health (London) Act, 1891, *ante*, pp. 399 and 402.

. . . . . .

Commissioners may require owners of houses to provide cistern.

105. And be it enacted, that it shall be lawful for the commissioners to require the owner of any house in or to which there shall not be or be attached a sufficient cistern for water to provide such fit and capacious cisterns, of such materials and in such situations, and with such proper coverings and cocks and other necessary apparatus, as the commissioners shall consider necessary, for the use of the occupiers thereof, and to require such owner, and also the owner of every house in or to which there shall be or be attached a sufficient cistern, to compound or agree with some water company for a sufficient supply at all times of good and wholesome water, and to keep such cisterns well and sufficiently cleansed, and the same, and everything relating thereto, in good order and repair, so that the occupiers of such house may at all times be enabled conveniently to supply themselves with a sufficient quantity of water; provided that in cases of houses in courts one cistern, if of a sufficient size, may, with the consent of the commissioners, be provided for the inmates or occupiers of two or more such houses.

No house to be built without a cistern being provided for the same.

106. And be it enacted, that no house shall hereafter be built without there being erected, to the satisfaction of the commissioners, either in such house or in a yard attached thereto, a fit and capacious cistern, with a proper covering and cock and other necessary apparatus attached thereto; and it shall be lawful for the commissioners to require the owner of such house to compound with some water company for a due and sufficient supply of wholesome water.

Note.—The requirements of this section will cease to be obligatory where in the opinion of the Commissioners it ceases to be necessary, owing to a continuous supply of water having been provided in the city, that every house should be provided with a cistern : see sect. 31 of the City of London Sewers Act, 1851, *post*, p. 437. 11 & 12 Vict. c. clxiii. ss. 120, 125.

. . . . . .

Regulations for paving streets.

120. And be it enacted that it shall be lawful for the commissioners from time to time to cause all or any of the streets within the city, or any part thereof respectively to be paved or repaired, when and as often and in such form and manner and with such materials as the commissioners shall think fit, and to cause the ground or soil thereof to be raised or lowered, and the course of the channels running in, into, or through the same to be turned or altered in such manner as they shall think proper, and all such mains and pipes as now lie or hereafter shall be laid underground to be taken up, and new laid in such places, manner, and form as they shall judge best.

Note.—As sect. 68 of the Lands Clauses Consolidation Act, which relates to the taking and purchase of lands otherwise than by agreement, is not incorporated in this Act, a person whose land is injuriously affected by work done under this section is not entitled to compensation. See *Ferrar* v. *the Commissioners of Sewers for the City of London*, 38 L. J. Ex. 102.

. . . . . .

Vaults and cellars under streets not to be made without the consent of the commissioners.

125. And be it enacted, that no vault, arch, or cellar shall be made under any street within the city without the consent of the commissioners first obtained ; and that all such vaults, arches, and cellars hereafter to be made within the city shall be substantially made, and so as not to interfere or communicate with any drains or sewers under the control of the commissioners, without their consent first obtained ; and if any vault, arch, or cellar shall be made contrary to the provisions of this Act it shall be lawful for the commissioners to fill up the same, and the expenses incurred thereby shall be paid by the person making such vault, arch, or cellar.

Note.—This section corresponds to sect. 101 of the Metropolis Management Act, 1855, *ante*, p. 343. A penalty is imposed by sect. 256, *post*, p. 433, for obstructing any person in the execution of the Act. As to the mode in which vaults are to be constructed, see the Standing Order A. of the Commissioners of Sewers in Appendix III., Pt. II., *post*.

. . . . . .

11 & 12 Vict. c. clxiii. ss. 128, 145, 146, 153.

Persons liable to pave footways to complete the same with curbstones.

128. And be it enacted, that any person who shall be required by the commissioners, under the provisions of this Act, to pave the footway of any present or future street within the city, shall not be considered to have well and sufficiently paved the same unless he shall have completed the same with curbstones and gutters to the satisfaction of the commissioners.

. . . . . .

Power to commissioners to cause names of streets, &c. to be painted, &c.

145. And be it enacted, that it shall be lawful for the commissioners from time to time to cause to be painted or affixed on a conspicuous part of some house or building at or near each end, corner, or entrance of every street, the name by which such street is to be known, and from time to time to alter the name of any street, with consent of the major part of the owners of the houses or buildings therein, and to call it by any other name which they the commissioners may see fit, and also to cause every house or building in each of the streets to be marked or numbered, in such manner as they shall judge most proper for distinguishing the same, which mark or number shall alone be allowed to be affixed to such house or building, and if any person shall wilfully or maliciously destroy, pull down, obliterate, or deface any such name or number, or any part thereof, or shall affix or paint or set up any name or number different from the name or number directed by the commissioners, he shall for every such offence forfeit and pay a sum not exceeding forty shillings; and it shall be lawful for the commissioners to obliterate and destroy such name or number so painted or affixed contrary to their order.

Note.—The provisions of the Act of 1894 with regard to the naming and numbering of streets are contained in Part IV. of that Act, *ante*, pp. 89 to 94.

Numbers of houses to be renewed by occupiers.

146. And be it enacted, that the occupiers of houses or buildings shall be bound to renew the numbers of their houses or buildings as often as they shall be obliterated or defaced.

Note.—See the note to the preceding section.

. . . . . .

Houses projecting beyond line of

153. And be it enacted, that if any building which shall in any part thereof project beyond the regular line of the street in which the same may be situate, or beyond

11 & 12 Vict. c. clxiii. ss. 154, 155.

street, when taken down, to be set back.

the front of the building, wall, or railing on either side thereof, shall at any time be taken down to be rebuilt or altered, it shall be lawful for the commissioners to require the same to be set backwards to such a line and in such a manner as the commissioners shall direct for the improvement of such street, the commissioners making full compensation to the owner of such building for any damage which he may sustain thereby.

Note.—The provisions of this section are similar to those contained in sect. 23 of the Act of 1894, *ante*, p. 82. See the note to that section.

Owners, &c. to remove future projections on notice from commissioners.

154. And be it enacted, that if the commissioners shall consider any porch, shed, projecting window, step, cellar door or window, or steps leading into any cellar or otherwise, lamp, lamp post, lamp iron, sign, sign post, sign iron, showboard, window shutter, wall, gate, fence, or opening, or any other projection or obstruction that hereafter may be placed or made against or in front of any house or building, to be an annoyance, in consequence of the same projecting into or being made in or endangering or rendering less commodious the passage along any street, it shall be lawful for them to give notice in writing to the owner or occupier of any such house or building to remove such projection or obstruction, or to alter the same in such manner as the commissioners shall think fit; and such owner or occupier shall within fourteen days after the service of such notice upon him remove such projection or obstruction, or alter the same in such manner as shall have been directed by the commissioners.

Note.—See as to the maximum projection allowed for gratings or frames over areas and openings to cellars or cellar flaps, and generally as to the mode of construction of such gratings, frames, openings, cellar flaps, and coal-plates, the 20th Standing Order of the Commissioners of Sewers in App. III., Pt. III., *post*. As to projecting lamps, see the 18th of such Standing Orders, also in App. III., Pt. III., *post*.

A penalty is imposed by sect. 256, *post*, p. 433, for obstructing any person in the execution of the Act.

Penalty on owners for refusing to remove projections, &c.

155. And be it enacted, that if the owner or occupier of any such house or building shall neglect or refuse, within fourteen days after service of such notice upon him, to remove such projection or obstruction, or to alter the same in such manner as shall have been directed by the commissioners, he shall forfeit and pay any sum not

11 & 12 Vict. c. clxiii. ss. 156, 157

Commissioners may remove the same, and charge the expense to the owners.

exceeding five pounds for every such offence; and it shall be lawful for the commissioners to cause the same to be removed or altered; and all the charges for such removal or alteration shall be repaid to the commissioners by such owner or occupier, and in default of payment the same may be levied and recovered in the same manner as penalties and forfeitures are by this Act directed to be levied and recovered.

Note.—See as to this section sect. 119 of the Metropolis Management Act, 1855, *ante*, p. 345, and see also the case of *Att.-Gen.* v. *Hooper*, *ante*, p. 227. A penalty is imposed by sect. 256, *post*, p. 433, for obstructing any person in the execution of the Act.

Commissioners may remove existing projections, and make compensation for the same.

156. And with regard to all projections or obstructions of a like kind as those before mentioned, which have been erected, placed, or made against or in front of any house or building in any street before the commencement of this Act, be it enacted, that it shall be lawful for the commissioners, if they shall consider any such projection or obstruction to be an annoyance, in consequence of the same projecting into or being made in or endangering or rendering less commodious the passage along any street, to cause the same to be removed or altered as they shall think fit: provided always, that the commissioners shall give notice in writing of such intended removal or alteration to the owner or occupier against or in front of whose house or building such projection or obstruction shall be, seven days before such removal or alteration shall be commenced, and shall make reasonable compensation (to be ascertained, in case of dispute, by any justice, in manner by this Act directed) to every person who shall incur any loss or damage by such removal.

Note.—Similar provisions to those contained in this section are contained in sect. 120 of the Metropolis Management Act, 1855, *ante*, p. 42. Under sect. 256, *post*, p. 433, a penalty is imposed for obstructing any person in the execution of the Act.

Ruinous or dangerous houses to be taken down, or secured by owners, &c.

157. And be it enacted, that if any house, building, or wall, or anything affixed therein or thereto, shall be deemed by the surveyor of the commissioners to be in a ruinous state, and dangerous to passengers, or to the occupiers of any neighbouring house or building, such surveyor shall immediately cause a proper hoard or fence

to be put up for the protection of passengers, and shall cause notice in writing to be given to the owner of such house, building, or wall, if he be known, and resident within the city, and shall also cause such notice to be put on the door or other conspicuous part of the said premises, or otherwise to be given to the occupier thereof (if any), requiring such owner or occupier forthwith to take down, secure, or repair such house, building, wall, or other thing, as the case shall require; and if such owner or occupier shall not begin to repair, take down, or secure such house, building, wall, or other thing within the space of three days after any such notice has been given or put up as aforesaid, and complete such repairs, or take down or secure such house, building, wall, or other thing, as speedily as the nature of the case will admit, the said surveyor may make complaint thereof before two justices; and it shall be lawful for such justices to order the owner, or in his default the occupier (if any), of such house, building, wall, or other thing to take down, rebuild, repair, or otherwise secure, to the satisfaction of such surveyor, the same or such part thereof as shall appear to them to be in a dangerous state, within a time to be fixed by such justices; and in case the same shall not be taken down, repaired, rebuilt, or otherwise secured within the time so limited, or if no owner or occupier can be found to serve such order upon, the commissioners shall with all convenient speed cause all or so much of such house, building, wall, or other thing as shall be in a ruinous condition, and dangerous as aforesaid, to be taken down, repaired, rebuilt, or otherwise secured in such manner as shall be requisite; and all the expenses of putting up every such fence, and of taking down, repairing, rebuilding, or securing such house, building, wall, or other thing, shall be paid by the owner thereof.

11 & 12 Vict. c. clxiii. s. 158.

If owner, &c. neglect, commissioners may cause the same to be done charging owner, &c. with the expenses.

Note.—The provisions of this section are extended to houses or buildings which, in the opinion of the medical officer of health, are permanently unwholesome and unfit for human habitation, by sect. 41 of the City of London Sewers Act, 1851, *post*, p. 437. See also Part IX. of the Act of 1894, *ante*, pp. 192–207. See also sect. 256, *post*, p. 433, by which a penalty is imposed for obstructing any person in the execution of the Act.

158. And be it enacted, that if such owner can be found within the city, and if, on demand of the expenses aforesaid, he neglect or refuse to pay the same,

The expenses to be levied by distress on the owner

11 & 12 Vict. c. clxiii. ss. 159, 160, 161.

then such expenses may be levied by distress, and any justice may issue his warrant accordingly.

If owner cannot be found, commissioners may take the house or ground, making compensation pursuant to 7 & 8 Vict. c. 18.

159. And be it enacted, that if such owner cannot be found within the city, or sufficient distress of his goods and chattels within the city cannot be made, the commissioners, after giving twenty-eight days' notice of their intention to do so by posting a printed or written notice in a conspicuous place on such house or building or wall, or on the land whereon such house, building, or wall stood, may take such house, building, or land, provided that such expenses be not paid or tendered to them within the said twenty-eight days, making compensation to the owner of such house, building, or land in the manner provided by the Lands Clauses Consolidation Act, 1845, in the case of lands taken otherwise than with the consent of the owners and occupiers thereof; and the commissioners shall be entitled to deduct out of such compensation the amount of the expenses aforesaid, and may thereupon sell or otherwise dispose of the said house, building, or land for the purposes of this Act.

Commissioners may sell the materials, restoring to the owner the overplus arising from the sale.

160. And be it enacted, that if any such house, building, or wall, or anything affixed thereon or thereto, as aforesaid, or any part of the same, be pulled down by virtue of the powers aforesaid, it shall be lawful for the commissioners to sell the materials thereof, or so much of the same as shall be pulled down, and to apply the proceeds of such sale in payment of the expenses incurred in respect of such house, building, wall, or other thing: Provided always, that the commissioners shall restore any overplus arising from such sale to the owner of such house, building, wall, or other thing, on demand; provided further, that the commissioners, although they may sell such materials for the purposes aforesaid, shall have the same remedies for compelling the payment of so much of the said expenses as may remain due after the application of the proceeds of such sale as are hereinbefore given to them for compelling the payment of the whole of the said expenses.

Note.—The expenses may be levied by distress, see sect. 158, *ante*, p. 423.

Hoards to be erected during repairs.

161. And be it enacted, that every person who shall build or begin to build, or to take down or begin to take down, any house or wall, or alter or repair, or begin to alter or repair, the outward part of any house or wall,

shall cause to be put up a proper and sufficient hoard or fence or scaffold, in all cases in which the footway shall be thereby obstructed or rendered inconvenient, with a convenient platform and handrail, if there shall be room enough for the same, to serve as a footway for passengers outside of such hoard or fence, and shall continue such hoard or fence or scaffold, in such cases as aforesaid, with such platform and handrail, standing and in good condition, to the satisfaction of the commissioners, during such time as may be necessary for the public safety or convenience, and shall, in all cases in which the same shall be necessary, to prevent accidents, cause such hoard or fence to be well lighted during the night; and every such person who shall fail to put up such hoard or fence or scaffold, or such platform, with such handrail as aforesaid, or who shall not, whilst the said hoard or fence is standing, keep the same well lighted during the night, shall for every such offence forfeit a sum not exceeding five pounds, and a further sum not exceeding forty shillings for every day during the continuance of such default.

11 & 12 Vict. c. clxiii. ss. 162, 163.

Penalty on not erecting hoards, &c.

Note.—See as to this section sect. 121 of the Metropolis Management Act, 1855, *ante*, p. 346, and the notes thereto.

162. And be it enacted, that it shall not be lawful for any person to erect or set up in any street any hoard or fence or scaffold for any purpose whatever, or any posts, bars, rails, boards, or other things by way of inclosure, for the purpose of making mortar, or of depositing bricks, lime, rubbish, or other materials, without a licence in writing first had and obtained from the commissioners under the hand of their clerk or surveyor; and every such licence shall state the name of the street in which and the purpose for which such hoard or fence or inclosure is to be made, and the size thereof, and the time for which it is to be permitted to continue.

No hoard to be erected without licence from commissioners.

Note.—A similar provision is contained in sect. 122 of the Metropolis Management Act, 1855, *ante*, p. 347; see the note to that section. The regulations of the Commissioners of Sewers as to applications for licences to erect hoards, &c., and as to the erection and continuance of such hoards, &c., will be found in App. III., Pt. III., *post*.

163. And be it enacted, that for every such licence there shall be paid to the commissioners a fee, according to a scale to be prepared by the commissioners, regulated,

Fee on licence.

11 & 12 Vict. c. clxiii. s. 164.

with reference to the space of ground to be enclosed by such hoard or fence or covered by such scaffold, and the length of time for which such hoard or fence or scaffold is to continue: Provided always, that the sum to be paid for such licence shall not in any case exceed the sum of ten pounds.

Note.—A table of the fees to be paid for licences to erect hoards, &c., will be found in the regulations of the Commissioners of Sewers in App. III., Pt. III., *post.* An additional fee is payable under such regulations for the right to affix advertisements to such hoards, &c.

If hoard be erected or materials be deposited in any manner otherwise than to the satisfaction of the commissioners the same may be removed.

164. And be it enacted, that if any person shall erect or set up in any street any hoard or fence or scaffolding for any purpose whatever, or any posts, bars, rails, boards, or other things by way of inclosure, for the purpose of making mortar, or of depositing bricks, lime, rubbish, or other materials, without a licence from the commissioners, or shall do any such acts as aforesaid in any other manner than as permitted by such licence, or shall continue the same beyond the time stated in such licence, or shall fail to keep any hoard, fence, platform, or handrail in good repair, he shall for every such offence forfeit a sum not exceeding five pounds, and a further sum not exceeding forty shillings for every day during the continuance of such offence; and it shall be lawful for the commissioners to cause such hoard, fence, or scaffolding, or other inclosure or erection, to be pulled down, and the materials thereof, and also all the bricks, mortar, lime, or other building materials or other matters or things contained within the same or thereto belonging, to be removed to the common pound of the city commonly called the Green-yard, there to be deposited and kept until the owner thereof, or his known servant, shall pay to the person in whose custody the same shall be the charges of pulling down and removing the same; and in case the same shall not be claimed and the said charges paid within the space of eight days next after such seizure thereof, it shall be lawful for the commissioners to order the same to be sold, and by and out of the proceeds of such sale to pay the costs and charges thereby incurred, rendering any surplus to the owner or other person by law entitled thereto; and it shall be lawful for the commissioners to remove to such place as they shall think fit any rubbish or other matters which shall not

be of sufficient value to take to the greenyard; and in case the proceeds of such sale shall be insufficient to cover the costs, charges, and expenses incurred or occasioned by the pulling down of such hoard or fence or scaffolding or other enclosure or erection, and of removing the materials thereof, and of other materials, matters, and things, and of selling and disposing of such materials, matters, and things, and of removing and carting away such rubbish and things as shall not be of sufficient value to take to the greenyard, the deficiency shall be repaid by the owner of such materials, matters, and things, to the commissioners, on demand, and in default of payment the same may be levied or recovered in the same manner as penalties and forfeitures are by this Act directed to be levied and recovered. 11 & 12 Vict. c. clxiii. ss. 256, 262.

Note.—The provisions of this section correspond to those of sect. 123 of the Metropolis Management Act, 1855, *ante*, p. 347. See also the following section.

. . . . . .

256. And be it enacted, that if any person shall at any time obstruct, hinder, or molest any commissioner, or any surveyor, inspector, collector, or other officer, workman, or person whomsoever, who shall be employed by virtue of this Act, in the performance or execution of his duty, every such person so offending shall for the first offence forfeit and pay the sum of five shillings, for the second offence the sum of twenty shillings, and for the third and every other offence the sum of five pounds. Penalty on interrupting workmen, &c. in execution of duties.

. . . . . .

262. And be it enacted, that in this Act the following words and expressions shall have the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,) Interpretation of Act.

The word 'city' shall mean the city of London and the liberties thereof, and shall include such parts of Holborn, the Minories, and Aldersgate Street as are or have been usually treated as being within the liberties of the city, and the courts and alleys leading into the same or communicating therewith, and also the north side of Eldon Street, formerly called Broker Row, Moorfields, and the courts and alleys leading into the same or communicating therewith, and all precincts and places within the city of London or the liberties thereof; 'City.'

11 & 12 Vict. c. clxiii. s. 262.

'Land.' The word 'land' shall extend to and comprise messuages, lands, tenements, or hereditaments of any tenure, and shall include houses and buildings:

'House.' The word 'house' shall mean a dwelling house:

'Building.' The word 'building' shall extend to and comprise houses, warehouses, manufactories, and all buildings of what nature or kind soever, and every part thereof:

'Street.' The word 'street' shall include any square, street, court, alley, footpath, footway, highway, lane, road, thoroughfare, or public passage or place.

'Court.' The word 'court' shall mean any present or future court, or passage leading into a court, or any present or future alley, or other way or place, having a house or houses or the principal entrance into a house therein, but not having a road or carriageway:

'Passage.' The word 'passage' shall mean any present or future passage, alley, or other way or place not having a house or houses or the principal entrance into a house therein, but merely leading into any street or court, or to any house in such street or court, and not being a road or carriageway:

. . . . . .

'Pavement.' The word 'pavement' shall include stone of all kinds, bricks, tiles, wood, asphalte, or any other preparation, or any materials used in lieu of paving stones, by or with the approbation of the commissioners:

. . . . . .

'Owner.' The word 'owner' shall mean any person in the possession or the receipt of rent or profit arising from any house, building, or land. And whenever any forfeiture, penalty, or damage is payable to a party aggrieved, it shall be payable to a body corporate in like manner as to an individual; and where the doing of any act or thing is made punishable by this Act, or by any of the rules or regulations to be made by the commissioners in pursuance thereof, with any penalty, fine, or forfeiture, the causing, procuring, permitting, or suffering such act or thing to be done shall be punishable in like manner.

THE
CITY OF LONDON SEWERS ACT, 1851.

14 & 15 Vict. Cap. xci.

An Act to continue 'The City of London Sewers Act, 1848,' and to alter and amend the provisions of the said Act. [24th July, 1851.]

. . . . . .

Cellars in courts not to be occupied as dwellings.

11. That it shall not be lawful to let for occupation, or suffer to be occupied separately as a dwelling, any vault or cellar under any house or building in any court.

Note.—See also the provisions as to underground rooms in sects. 96 to 100 of the Public Health (London) Act, 1891, in the note to sect. 70 of the Act of 1894, *ante*, pp. 135–139. See sect. 15, *post*, p. 436, as to when a cellar, &c., shall be deemed to be occupied as a dwelling. For the penalty for so occupying a cellar, &c., see sect. 13, *post*, p. 436.

Cellars, &c., not to be let as dwelling rooms, except under certain conditions.

12. That it shall not be lawful to let or continue to let for occupation, or suffer to be occupied separately as a dwelling, any vault or cellar under any house or building in any street, unless such vault or cellar be in every part thereof at least eight feet in height, measured from the floor to the ceiling thereof, nor unless the same be at least three feet of its height above the surface of the street adjoining the same, nor unless there be outside of and adjoining the same vault or cellar, and extending along the entire frontage thereof and upwards, from six inches below the level of the floor thereof up to the surface of the said street, an open area of at least two feet and six inches wide in every part, nor unless the same be well and effectually drained by means of a drain the uppermost part of which shall be one foot at least below the level of the floor of such vault or cellar, nor unless its floor be so constructed as to render it, in the judgment of the commissioners, fit and proper for habitation, nor unless there be attached to such vault or cellar the

14 & 15 Vict. c. xci. ss. 13–15, 28

use of a watercloset or privy, and a dustbin, furnished with proper doors and coverings, kept and provided according to the provisions of the said recited Act or this Act, nor unless the same vault or cellar have a fireplace with a proper chimney or flue, nor unless the same have an external window of not less than three feet square, or otherwise of an area of not less than nine feet clear of the sash frame, and made to open in such manner as shall be approved by the commissioners, except in the case of an inner or back vault, cellar, or room let or occupied along with a front vault, cellar, or room as part of the same letting or occupation, in which last mentioned case the external window may be of any dimensions not less than two feet square, or otherwise of an area not less than four feet clear of the sash frame.

Note.—See sect. 15, *post*, as to when a cellar, &c., shall be deemed to be occupied as a dwelling.

Penalty on letting underground rooms for dwellings.

13. That every person who shall let, or knowingly suffer to be occupied for hire or rent as a dwelling, any vault, cellar, or underground room, contrary to the provisions of this Act, shall for every such offence forfeit any sum not exceeding 2*l.*, and also any sum not exceeding 10*s.* for every day during which such vault, cellar, or underground room shall be so occupied.

As to placing steps to cellars.

14. That in any area adjoining a vault, cellar, or underground room used or intended to be used as a dwelling there may be placed steps necessary for access to such vault, cellar, or room, if such steps be so placed as not to be over, across, or opposite to the external window of such vault, cellar, or room, and so as to allow between every part of such steps and the external wall of such vault, cellar, or room, a clear space of six inches at the least, and that over or across any such area there may be placed steps necessary for access to any building above the vault, cellar, or room to which such area adjoins, if the same be so placed as not to be over, across, or opposite to any such external window.

When a cellar is to be deemed a dwelling place.

15. That every vault, cellar, or underground room in which any person shall pass the night shall be deemed to have been occupied as a dwelling within the meaning of this Act.

. . . . . .

Ashpit to include dustbin.

28. That throughout the said recited Act, wherever the word 'ashpit' shall be used, it shall be deemed and taken to include 'dustbin.'

Note.—See sects. 99, 100, and 105 of the City of London Sewers Act, 1848, *ante*, pp. 422, 423, 424. 14 & 15 Vict. c. xci. ss. 31, 39, 41.

. . . . . .

31. That if any time hereafter, owing to a continuous supply of water having been provided for the use of the inhabitants of the city, it shall, in the opinion of the commissioners, cease to be necessary that every house should be provided with a cistern, then and in such case the provisions contained in the said recited Act requiring that every house then existing, as well as those that should thereafter be built, should be provided with a cistern, with a proper covering and cock, to the satisfaction of the commissioners, shall be no longer binding or obligatory. Upon a continuous supply of water being provided, the necessity to provide cisterns shall cease.

. . . . . .

39. That no urine or filthy or offensive liquid of any kind shall be permitted to flow from any house or building, private court or passage, upon the footway of any street, or upon the pavement of any court or passage, or into the surface drain or channel of any street, but all such houses, buildings, private courts or passages, shall be drained into the public sewers by close drains or pipes or tunnels placed below the surface of the pavement of the streets; and if any person shall wilfully permit or suffer any urine or offensive fluid of any kind to flow from any house or building, or private court or passage, upon the footway of any street, or upon the pavement of any court or passage, or into the surface drain or channel of any street, such person shall be liable to a penalty not exceeding 5*l.* for every such offence: provided always, that in the case of any tempest, flood, or other unavoidable necessity in which it may be requisite that water should be pumped up or discharged from any house, building, or place, such water may be conveyed over or under the footway, or over or under the pavement of any court or passage, by spouts or troughs, into the surface drain or channel of the street. Offensive liquids to be conveyed into the sewers without flowing over the pavement. Penalty.

. . . . . .

41. That the provisions contained in the one hundred and fifty-seventh section of the said recited Act, with reference to the taking down, securing, or repairing any house, building, wall, or other thing which shall be deemed by the surveyor of the commissioners to be in a ruinous state, and dangerous to passengers or to the occupiers of any neighbouring house or building, shall Provisions in sect. 157 of recited Act, with reference to taking down, &c. houses, to extend to houses unfit for human habitation.

14 & 15 Vict. c. xci. s. 48.

extend and be applied to any house or building which in the opinion of the medical officer of health is permanently unwholesome and unfit for human habitation.

. . . . . .

After Jan. 1, 1852, furnaces to consume their own smoke.

48. That from and after the first day of January one thousand eight hundred and fifty-two every furnace employed or to be employed in the working of engines by steam, and every furnace employed or to be employed in any mill, factory, printing house, dyehouse, iron foundry, glasshouse, distillery, brewhouse, bakehouse, gasworks, waterworks, or other buildings used for the purpose of trade or manufacture within the city (although a steam engine be not used or employed therein), shall in all cases be constructed or altered so as to consume the smoke arising from such furnace; and if any person shall, after the first day of January one thousand eight hundred and fifty-two, use any such furnace which shall not be constructed so as to consume or burn its own smoke, or shall so negligently use any such furnace as that the smoke arising therefrom shall not be effectually consumed or burnt, or shall carry on any trade or business which shall occasion any noxious or offensive effluvia, or otherwise annoy the neighbourhood or inhabitants, without using, to the satisfaction of the commissioners, the best practicable means for preventing or counteracting such annoyance, every person so offending shall forfeit and pay a sum of not more than 5*l.* nor less than 40*s.*, for and in respect of every day during which or any part of which such furnace or annoyance shall be so used or continued.

Penalty on neglect.

APPENDIX III.

Part I.

STANDING ORDERS OF THE LONDON COUNTY COUNCIL.

Council Meetings.

5. The Council shall meet at three o'clock in the afternoon of Tuesday in each week, unless otherwise specially ordered by the Council. The Council may, if it think fit, adjourn over any period.

6. All meetings of the Council shall be open to the press and the public.

Deputations to send Memorial.

28. Deputations wishing to be received by the Council shall be requested, in the first instance, to send in a memorial in writing, and the clerk shall bring the memorial before the committee concerned, which shall be authorised, if it think fit, to receive the deputation, and to report to the Council. If the committee is of opinion that the memorial is one which should be brought before the Council, the committee shall so report; and, if the Council shall so order, the deputation shall be invited to attend. If the matter in question concerns any particular electoral division, the members of such division shall be summoned to the committee meeting at which the memorial shall be considered.

Reception of Deputations.

29. A deputation shall not exceed ten in number, and only one member thereof shall be at liberty to address the Council, except in reply to questions from members of the Council, and the matter shall not be further considered by the Council until the deputation shall have withdrawn.

App. III. Pt. I. Standing Orders.

Minutes.

90. Minutes of the proceedings of every meeting of the Council shall be drawn up and printed, and shall be signed at the same or the next ensuing meeting by the chairman of the meeting at which the minutes are signed.—London County Council (General Powers) Act, 1893, Sched.

92. Copies of the minutes are to be sent to the vestries and district boards, the School Board for London, and the Metropolitan Asylums Board.

Committees.

93. The Council may from time to time appoint committees, either general or special, and consisting of such number of persons as the Council may think fit, for any purposes which, in the opinion of the Council, 'would be better regulated and managed by means of such committees.'—Municipal Corporations Act, 1882, s. 22.

96. The Council may delegate to a committee, with or without regulations and conditions, the powers and duties transferred under the Local Government Act, except the power of making a rate or raising money.—Local Government Act, 1888, sect. 28 (2) (3); sect. 81 (3).

97. The powers and duties of committees shall be specifically delegated to them by the Council. The Council may at any time withdraw, extend, or modify any reference to a committee, so nevertheless that any proposition to withdraw or modify a reference shall first be referred to the committee concerned for consideration, and report to the Council.

98. The Council may transfer any reference from one committee to another after such report as aforesaid.

99. The Council may from time to time refer any new matter to a committee.

129. Every committee shall make minutes of its proceedings, and cause the same to be duly entered in a book kept for the purpose.

130. At any meeting of a committee the minutes of the last meeting shall be read as the first business after the chairman has taken his seat, and, if accurate, shall be signed by the chairman.

144. No committee shall examine witnesses or take evidence unless specially empowered to do so by the Council. During the examination of witnesses by or

before any committee, the proceedings shall be open to the press and the public, unless the committee shall otherwise order.

Common Seal.

155. All deeds and other documents to which the common seal of the Council shall require to be affixed shall be sealed in pursuance of a resolution of the Council or of a committee duly authorised thereto, and in the presence of either the chairman, vice-chairman, or deputy-chairman of the Council.

156. It shall not be necessary that the seals be affixed during the sitting of the Council, but as a general rule all documents shall be sealed on the day following that on which the Council has ordered them to be sealed.

157. The chairman, vice-chairman, and deputy-chairman, or either of them may, whenever the Council is in vacation, give such instructions as may be required by the officials of the Council with respect to matters which will not admit of delay, and any one or more of them may direct the seal of the Council to be affixed to such deeds, notices, warrants, petitions, or other documents as may be required for the transaction of business ; provided that all such official acts shall in due course be reported to the Council.

158. An entry of the sealing of every deed and other document to which the common seal shall have been affixed, shall be registered in a separate book to be provided for the purpose, and signed by the chairman, vice-chairman, or deputy-chairman of the Council, in whose presence the document has been sealed.

Publications of the Council.

165. The minutes of the Council shall be sold at the price of 6*d.* a copy, and the annual abstract of accounts and the annual estimates, each at 1*s.* a copy. The price of other publications is to be at the rate of 1*d.* per four pages folio, the minimum charge being 1*d.*

Interpretation.

171. Throughout these orders, if not inconsistent with the context, the term 'chairman' shall mean the chairman of the meetings of the Council for the time being.

App. III. Pt. I. Standing Orders.

REFERENCES TO COMMITTEES.

1. Appeal Committee (special and statutory).

The committee shall consist of ten members.

The quorum shall be three.

The committee shall be the statutory appeal committee under the provisions of the Metropolis Management Act, 1855, sect. 212, and shall hear and decide all appeals made to the Council under that Act or any other Act of Parliament.

REGULATIONS MADE BY THE COMMITTEE.

Any person or persons presenting any appeal to the London County Council, under the 211th section of the Metropolis Management Act, 1855 (*a*), or under any other Act in that behalf, shall in their notice of appeal distinctly set forth the grounds of appeal, and if the subject of appeal be any order of a vestry or district board, a copy, or the material contents of such order shall accompany the notice of appeal; and at the time of lodging such notice of appeal a copy thereof, as well as of the grounds of appeal, shall be left with the clerk of the Council, and at the same time the parties shall leave at the office of the Council a plan, in duplicate, of any premises which may be referred to in the notice of appeal; and in default of compliance with the provisions contained in this regulation the committee shall be at liberty to adjourn the proceedings on such appeal until this regulation shall be complied with, and also to exercise such power as to the payment of costs as to the committee may seem fit.

The following regulations shall be observed on the hearing of appeals:—

When the parties are present the clerk of the committee is to read the order appealed against and the notice of appeal.

Preliminary objections, if any be taken, are, after hearing both parties upon them, to be disposed of before the merits of the appeal are discussed.

The appellant is to state his case and call his witnesses.

The order of examination of each witness (whether of the appellant or the respondent) is to be as follows:—

Examination in chief.

Cross-examination.

Questions by the chairman and members of the committee.

Re-examination.

The respondent is then to state his case and call his witnesses.

The appellant is to reply.

The parties are then to retire, and the committee are to deliberate and come to a resolution by vote. The chairman has a second or casting vote.

The parties are then to be called in, and the chairman is to announce the terms of the resolution of the committee without stating the reasons for the same.

STANDING ORDERS OF THE COUNCIL RELATIVE TO THE FOLLOWING MATTERS UNDER THE LONDON BUILDING ACT, 1894. (*JANUARY* 1, 1895.)

General.[1]

Where special conditions are imposed by the Council in granting applications, the acceptance of such conditions by the owners of property is to have a sixpenny stamp affixed.

Whenever an application is rejected, a copy of the reasons for the rejection, as stated in the Committee's minutes, is to be sent to each of the parties concerned.

The following conditions are to be imposed in the case of buildings sanctioned, viz.:—'That the building shall be commenced within six months, and be completed within eighteen months from the date of the licence; . . . . that the erection be made in entire conformity with the letter of application, and as shown on the plan accompanying it, and be not at any time, in any manner, altered or raised without the consent of the Council; and that if the plan or application be hereafter found to be inaccurate in any particular, the consent of the Council shall be null and void.'

Where any land is to be given up these words shall be inserted, viz.:—'That within three months after the erection of the building the whole of the land coloured blue on the deposited plan be dedicated to and left open for the use of the public.'

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[1] With regard to these Orders see the Instructional Letter of December 15, 1894, in App. IV., *post*, which accompanied the copies of the Orders supplied by the Council to the District Surveyors.

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In the case of a one-storey shop these words shall be inserted, viz.:—'That no part of the proposed shop or any structure or erection connected therewith do exceed sixteen feet in height above the footway.'

Note.—See also the General Regulations of the Council of January 1, 1895, as to applications for its sanction or consent under the Act of 1894, in Part II. of this Appendix.

FORMATION AND WIDENING OF STREETS.

A copy of each plan for the formation of a new street, or for the adaptation of a way for a street, or for the erection of a building or structure at less than the prescribed distance from the centre of the roadway, is to be sent to the Local Authority in whose district the proposed street, building, or structure is situated, with a request that they will inform the Council within fourteen days whether they have any suggestions to make with reference to such plan, and with an intimation in cases of proposed erection at less than the prescribed distance from the centre of the road, that the communication is to be treated as the Council's communication within the meaning of section 13 of its intention to give the consent applied for if upon consideration of the application it should think it ought to be granted.

Whenever plans of new streets are approved, a condition is to be attached, that the name of each street, as approved by the Council, shall be affixed on posts at both ends of such streets, until the houses are built, when the name shall be affixed according to law.

Whenever plans of new streets to be laid out for foot traffic only are sanctioned, a condition is to be attached binding the applicant to pave the same over the entire surface, and by posts, bars or otherwise, to prevent the same from being used for carriage traffic.

Whenever the Council has approved of a plan for the formation of a street to be laid out for carriage traffic, and open at both ends, the applicant is to be cautioned that if at any time, without the written consent of the Council, any posts or other obstructions are placed across the carriage-way to prevent the access of carriages, he will be liable to prosecution under section 199.

Note.—See also the Regulations II. (1) and (5) of the Council of January 1, 1895, as to the drawings required to be

submitted to it upon applications for its sanction or consent under the Act of 1894, in Part II. of this Appendix, *post*.

Lines of Building Frontage.

On the receipt of an application to erect or extend buildings beyond the general line of frontage, such application, together with copies or tracings of so much of the drawings accompanying the application as may be sufficient for identifying the property proposed to be dealt with, and explaining the object of the application, is to be communicated to the Local Authority of the district in which the site is situated; and the Local Authority is to be apprised that the Council will be prepared to receive any suggestions they may deem it desirable to make upon the subject within fourteen days; also a notice that such application has been made shall be sent to the owner and occupier of the nearest building on each side of the proposed building; and no such application shall be brought before the committee until after the expiration of fourteen days from the date of such notice.

Note.—See also the Regulation II. (2) of January 1, 1895, as to the drawings to be submitted to the Council upon applications for its sanction under the Act of 1894, in Part II. of this Appendix.

Naming and Numbering of Streets.

Whenever application is made for the re-naming of a street, or the re-numbering of houses, the Local Authority in whose jurisdiction the same may be situated is to be asked to state its views on the subject.

The decision of the committee shall be reported to the Local Authority, and notice-boards shall be attached to two or more lamp-posts in the street for the period of one month notifying the intention of the Council. At the expiration of the time any protests that may have been received shall be reported to the committee.

When an order has been made by the Council for naming a street or numbering houses, an officer responsible to the superintending architect is, at the expiration of three months from the transmission of the order to the Local Authority, to inspect the street in respect of which the order has been made, and to report to the committee any non-compliance with the terms thereof.

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Immediately after the making of an order for the re-naming of any street, an intimation thereof is to be sent to the post office authorities.

Note.—See also Regulation II. (11) of January 1, 1895, as to the drawings, &c., required upon applications being made to the Council for its consent under the Act of 1894, in Part II. of this Appendix.

Construction of Buildings.

Applications for projections under section 73 are to be treated in the same way as applications under Part III., except that in the case of projections at the rear the communication to the Local Authority is to be omitted.

Note.—See also Regulation II. (8) of January 1, 1895, in Part II. of the Appendix.

Special and Temporary Buildings, &c.

On an application being made by the trustees or owners of any temporary building for an extension of the period already granted by the Council, the district surveyor shall be requested to inspect the structure and certify as to its condition, and as to its stability for use for such further period as may be applied for, and also as to any repairs requisite for adding additional strength to the building.

A register is to be kept by the superintending architect, showing the periods for which temporary buildings are licensed by the Council, and whenever a building is not removed at the expiration of the term specified in the licence, he is to report the fact to the solicitor, who is forthwith to write and caution the holder of the licence, and report the result to the committee.

Hoardings.

The following regulations are to be enforced by the Council as regards hoardings around or on vacant land—

No existing hoardings to be increased in height so as to exceed twelve feet.

No new hoardings to be erected exceeding twelve feet in height.

Existing hoardings exceeding fifteen feet in height to be reduced to that height within six months of notice given.

Note.—See the Regulation II. (10) of January 1, 1895, as to the drawings, &c., to accompany applications for the consent of the Council under the Act of 1894, in Part II. of this Appendix, *post.*

Dangerous and Neglected Structures.

Dangerous Structures.

When information of a dangerous structure is received, an order to survey shall be immediately sent to the district surveyor in whose district the structure is situated. District surveyors are not to certify unless required to do so, except in cases of imminent danger to life not admitting of the least delay; all such very exceptional cases are to be specially notified to the comptroller by the superintending architect.

A daily extract of fires, where structural damage has probably resulted, is to be made in the dangerous structures department from the fire brigade return, and the extract is to be forwarded to those district surveyors in whose districts the fires have occurred, in order that they may visit the premises and ascertain if any walls or buildings have been left in a dangerous condition, and take steps accordingly.

On receipt of a certificate from the district surveyor that the structure is dangerous, a notice in the terms of the certificate shall be served on the occupier, or be affixed to the building, and a copy sent by registered letter to the owner, if known.

Accompanying the notice a warning is to be sent that any delay in complying with the requirements of the notice will involve the owner in increased expense.

Where shoring or hoarding is required the owner shall be afforded an opportunity for executing the work when it can be done without risk of accident. In urgent cases, or on the owner's neglect, the manager of the works department of the Council shall be directed to carry out the necessary works.

The time to be allowed for works of repair or demolition must be limited according to circumstances.

At the expiration of the time given, the district surveyor is to report whether such works have been executed.

If the owner neglect to comply with the notice he shall, if the structure be in such a dangerous condition as to require immediate treatment, or if he do not within

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seven days from the service of the notice upon him give notice requiring that the subject shall be referred to arbitration, be summoned before a petty sessional court as directed by the Act.

At the expiration of the time specified in the order, the district surveyor is again to report, stating that the danger has or has not been removed, and if the order shall not have been complied with, the required work shall be executed by the works department of the Council, under the supervision of an officer in the superintending architect's department.

On the completion of a case the amount for fees payable to the district surveyor shall be made out in accordance with the scale, and that account, together with the account for hoarding, shoring, and other works (if any), shall be forthwith submitted to the finance committee.

As soon as these accounts have passed the finance committee and been paid, the whole of the expenses incurred in relation to each dangerous structure shall be charged to the owner, and the necessary steps for the recovery of those expenses shall be taken by the comptroller.

Licences are not to be taken out by the Council for hoarding or shoring, but the manager of the works department is in every case, upon the request of the Local Authority, to make good the pavement to the satisfaction of their surveyor, so soon as the hoarding or shoring is removed. The costs and expenses so incurred are to be recovered by the Council from the owner.

Neglected Structures.

Upon receipt of information that a structure is in a dilapidated or neglected condition, an inspection shall be made by an officer responsible to the superintending architect, and the result of such inspection shall be reported to the committee.

When the owner of the neglected or dilapidated structure is known, a communication shall be addressed to him, calling his attention to the condition of such structure, and allowing fourteen days for the repair or removal of the same; and should the works not be commenced at the expiration of that time, a summons shall be applied for.

When it is found necessary to procure evidence from

a local source to satisfy the petty sessional court that the condition of the structure is such as to be prejudicial to the property, or to the inhabitants of the neighbourhood, the solicitor or the superintending architect shall be authorised to obtain such evidence.

If, upon the hearing of the summons by the magistrate, an order be made, the superintending architect shall, at the expiration of the time allowed by such order, further report to the Building Act Committee. In the event of the order not being complied with, the committee may instruct the manager of the works department to carry out the necessary work.

Mr. Norman Bevan, of the comptroller's department, is to act as proxy on behalf of the Council to prove any debt due to the Council on account of, or in relation to dangerous or neglected structures, in cases of bankruptcy or liquidation.

Where the Council has incurred any expenses in respect of any dangerous or neglected structure, and has not been paid or has not recovered the same, and a petty sessional court has (in accordance with sect. 116) made an order fixing the amount due to the Council, the comptroller shall give notice thereof to the district surveyor for the district in which the property is situated, and the district surveyor shall be requested to give immediate notice to the Council when any building is about to be commenced upon the site, with a view to the necessary steps being taken to obtain payment of the amount due. The register of such orders [sect. 116 (3)] shall be kept in the comptroller's department.

Dwelling-Houses on Low-lying Land.

Regulation made by the Council 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 drain sewer of the Council.

Regulations made by the Council under section 123, *with the concurrence of the Tribunal of Appeal.*

Every person who shall be desirous of erecting or adapting any building to be used wholly or in part as a

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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 $\frac{1}{8}$th 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.

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.

In addition to the foregoing regulations the Building Act Committee has made the following regulation, dated January 1, 1895, viz. :—

All applications are to be forthwith referred to the engineer.

When a licence is granted by the Council under this part of the Act, the Local Authority and the district surveyor are each to be informed of the fact, and to be supplied with a copy of the plan approved. The Local Authority and the person to whom the licence is granted are to be informed at the same time that nothing in such licence is to be held to interfere in any way not therein specified with the powers of the Local Authority under the Metropolis Management Act, 1855, the Public Health (London) Act, 1891, or any other Act with regard to house drainage.

Note.—Although the foregoing regulations with respect to 'Dwelling-houses on low-lying land' were published by the Council with the Standing Orders, dated January 1, 1895, they would appear from the Report of the Building Act Committee to the Council on May 7, 1895, to have been made on March 26, 1895, and to have had the seal of the Tribunal of Appeal affixed to them in evidence of its concurrence on April 8, 1895.

District Surveyors.

No person shall be accepted as a candidate for the appointment of district surveyor unless he shall have attained twenty-eight years of age, and be under fifty years of age, and every such candidate shall deliver with his application satisfactory evidence of his age.

Every candidate shall be required to sign a declaration and deliver it with his application that he becomes a candidate, and will accept the appointment if he should be appointed, on the following understanding—

(*a*) That he will personally discharge the duties of his office subject to sect. 142 of the London Building Act, 1894.

(*b*) That he will give his whole time to the duties of his office.

(*c*) That he will not during his continuance in office (except in the discharge of the duties thereof) carry on business as an architect, surveyor, or builder, or directly or indirectly, as a partner or otherwise, be interested in such business.

(*d*) That he will make no claim for compensation in

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case a diminution of his income shall at any time hereafter arise.

(*e*) That he will keep his district office open from Monday to Friday (both inclusive) between the hours of 9.30 A.M. and 5 P.M., and on Saturday from 9.30 A.M. until 2 P.M., and give his personal attendance there daily from 9.30 A.M. to 11.0 A.M., and except Saturday from 4 to 5 P.M., or at such times (not exceeding two hours a day) as the committee may from time to time appoint.

(*f*) That he will retire if required to do so on attaining the age of sixty-five, or at any date subsequent to his attaining that age. The declaration of the appointed candidate shall on his appointment be entered on the minutes of the Council.

The districts are to be re-arranged by the Committee as opportunities may occur, so that the average of the fees received may in no case amount to less than £500 per annum.

The following fees are to be paid by the Council to district surveyors in accordance with sect. 155 of the Building Act.

	£	*s.*	*d.*
On reporting that a street has been formed or laid out in accordance with the drawings sanctioned by the Council.	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 the drawings sanctioned by the Council.	1	0	0
On reporting that a building has been set back the distance from the centre of the street sanctioned by the Council.	0	5	0
On reporting that a building has been erected to the line of frontage for which the consent of the Council was given	0	5	0
For attending the Court to give evidence on behalf of the Council in relation to any of the above matters: for each attendance	0	10	0

January 1, 1895.

Part II.

BYELAWS AND REGULATIONS.

LONDON COUNTY COUNCIL.

Byelaws and Regulations.[1]

Byelaw relating to the construction of sewers in London.

This byelaw was made by the Metropolitan Board of Works on March 14, 1856, under the Metropolis Management Act, 1855, and confirmed on the twenty-eighth day of the same month. It is continued in force by the 123rd section of the Local Government Act, 1888.[2]

No new sewer shall be made without the previous approval of the London County Council; and all vestries and district boards proposing to construct new sewers shall, before commencing any works for that purpose, submit to the said Council plans of the streets or places in which it is proposed to construct new sewers, drawn upon tracing cloth, to a scale of five feet to the mile, with the position of the proposed sewers shown thereon, and longitudinal sections of such sewers drawn to the same horizontal scale, and to a vertical scale of eleven feet to an inch, with the heights from ordnance datum to the invert of the proposed sewers figured, and the rate of inclination specified therein. Also cross sections of the proposed sewers, drawn to a scale of half an inch to a foot, with a statement of the thickness and a description of the materials intended to be used in their construction.

[1] The Council published these byelaws with a prefatory note dated December 1894, in which it was stated that the Council had not yet passed any new byelaws; and the Instructional Letter of December 15, 1894, to the District Surveyors stated that the Council did not propose to exercise the power of drafting new byelaws until some experience had been gained of the working of the Act; see Instructional Letter in App. IV., *post*. As none of the byelaws as to the foundation of streets, approved May 1, 1857, and as to the foundations and sites of buildings, the description and quality of the substances of walls, the deposit of plans and sections, and the description and quality of the substances of which plastering is to be made, confirmed on October 19, 1891, have been repealed, they remain in force according to sect. 216 of the Act of 1894, *ante*, p. 303. The byelaws referred to will be found on p. 484 and p. 489 of this Appendix.

[2] By the fortieth 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 byelaw 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 byelaw by the Board to an offender may be given by the Council.

App. III. Pt. II. Byelaws. (March 14, 1856.)

When it shall be intended to abandon wholly or in part, or to extend, contract, or alter, any design for a sewer previously submitted to and approved by the Metropolitan Board of Works or the London County Council, notice in writing of such intention shall be given to the said Council, accompanied by plans and sections, as hereinbefore described, showing the extension, contraction, or alteration which may be intended; and no such abandonment, extension, contraction, or alteration shall be permitted without the previous approval in writing of the Council.

Three clear days' notice in writing shall be given to the London County Council by a vestry or district board previously to the connection of any sewer or drain with a main sewer, and the necessary junction for that purpose shall be made by such vestry or district board to the satisfaction of the Council.

By an order of the Metropolitan Board of Works of May 1857 (No. 4) it was further provided: Where it is intended to lay house-drains into main sewers, the following is to be the form of notice to be given by vestries and district boards—

To the Metropolitan Board of Works.[1]

Application having been made to the vestry or district board of .....

by ..... of .....

for leave to lay down a ..... pipe drain ..... inches in diameter, to and from the house situate .....

into the main sewer, situate .....

.....

the said vestry or district board of .....

therefore hereby give notice, in accordance with the regulations of the said board, that the said communication with the said sewer will be made by them at the expiration of three days from the service hereof.

Dated this ..... day of ..... 18.....

The following formalities shall be observed by persons wishing to branch sewers into main or other sewers, and

[1] Now the London County Council, see note [2], *ante*, p. 453.

y persons proposing to branch drains into main ewers—

All persons wishing to make or branch a sewer either nto a sewer vested in the Metropolitan Board of Works,[1] r into a sewer vested in any vestry or district board, hall, in the first instance, lay the plans and sections elating thereto before, and apply for the sanction of, he vestry or district board in which such last-mentioned sewer shall be situate, and no such sewer shall be begun o be made until the sanction of such vestry or district board shall have been given.

Before any vestry or district board shall sanction the construction of any such sewer, they shall submit the plans and sections thereof, when the same shall have been approved by them, to the Metropolitan Board of Works,[1] for their sanction, in the same manner as if such sewer were proposed to be constructed by such vestry or district board.

All persons wishing to make or branch any drain into a sewer vested in the Metropolitan Board of Works,[1] shall, seven days before commencing any works for that purpose, submit a proper plan and description in reference thereto before, and apply in writing for the sanction of, the vestry or district board of the parish or district in which such sewer shall be situate, and no such work shall be commenced until the sanction of the said vestry or district board shall have been given.

Bye-law as to the Formation of New Streets in the Metropolis.[2]

Made by the Metropolitan Board of Works, at a meeting of the said Board, held at the 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

[1] Now the London County Council, see note [2], *ante*, p. 453.

[2] See note [1], *ante*, p. 453.

App. III. Pt. II. Byelaws. (March 17, 1857.)

principal Secretaries of State, pursuant to the said Act; and published this first 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,[1] 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; twenty 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 footway 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[1] otherwise consent in writing, have at the least two 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 four nor more than eight inches

[1] Now the London County Council, see the note [2], *ante*, p. 453.

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 bye-law 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 bye-law, the offender shall be liable for each offence to a penalty of forty shillings; and in case of a continuing offence to a further penalty of twenty shillings for each day after notice thereof from the Metropolitan Board of Works.[1]

THE SLAUGHTERHOUSES, &c. (METROPOLIS) ACT, 1874.

37 & 38 Vict. c. 67.[2]

Byelaws for regulating the conduct of the business of a knacker, *i.e.*, a person whose business it is to slaughter any horse, ass, or mule, or any cattle, sheep, goat, or swine, which is not killed for the purpose of its flesh being used as butchers' meat, and the structure of the premises on which such business is being carried on, within the limits of the metropolis (except the City of London and the liberties thereof).

In pursuance of the above Act, by which the Metropolitan Board of Works is constituted the Local

[1] Now the London County Council, the powers and duties of the Metropolitan Board of Works having been transferred by sect. 40 of the Local Government Act, 1888, to the London County Council.

[2] The Public Health (London) Act, 1891, repeals the Slaughterhouses (Metropolis) Act, 1874, but sect. 142 (2) (*b*) of the former Act provides that 'all orders, bye-laws, rules, regulations, and notices duly made or issued under or having effect in pursuance of any Act hereby repealed shall be of the same validity and effect as if they had been given, made, or issued under this Act, and any penalties recoverable under any such order, bye-law, rule, regulation, or notice may be recovered as if they were imposed by bye-laws under this Act.'

App. III. Pt. II. Byelaws. (Feb. 28, 1876.)

Authority for the metropolis, as defined in the said Act (except the City of London and the liberties thereof), the said Metropolitan Board of Works (for the purposes of these byelaws called the 'Board') doth hereby make the following byelaws. Throughout and for the purposes of these byelaws 'the premises' shall mean and include the slaughterhouse, and all the premises used for and forming part of the business of a knacker as defined by the Act, and 'slaughterhouse' shall mean the portion of the premises used for the slaughtering and dressing of the animals above mentioned, and 'occupier' shall mean the occupier of premises where the business of a knacker is carried on.

Definitions.

. . . . . .

As to the structure of the premises upon which the business of a knacker is carried on.

Water supply and ventilation.

14. The occupier shall cause the slaughterhouse to be provided with an adequate tank or other proper receptacle for water and water supply, and so placed that the bottom thereof shall not be less than six feet above the level of the floor; and shall cause the slaughterhouse to be well and thoroughly ventilated.

Paving and drainage.

15. The occupier shall cause the slaughterhouse to be well paved with asphalt, or flag stone, or proper paving bricks, set in cement, to be laid with proper slope and channel towards a gully, and to be effectually drained by an adequate drain of glazed pipes or in other sufficient manner communicating with the public sewer, and the gully to be trapped by an appropriate trap, and to be covered with a grating, the bars of which shall not be more than three-eighths of an inch apart.

Walls.

16. The occupier shall cause every inner wall of a slaughterhouse to be covered with hard, smooth, impervious material, to the height of four feet at the least, and to be always kept in good order and repair.

Alterations.

17. The occupier shall cause all needful works and repairs to the premises to be forthwith done and executed as and when the same shall become requisite; and shall not allow any alteration whatsoever to be made in respect of the paving, drainage, ventilation, or water supply to or in the premises which have been licensed, without the consent of this board.

Penalties.

18. The occupier, if he neglect or omit to observe or perform, or shall in any way break any one of the bye-

laws as to the structure of the premises, shall be subject to a penalty of the sum of 5*l.*, and in the case of a continuing offence, the sum of 1*l.* for every day during which such offence is continued after a conviction for the first offence.

Sealed by order,
J. E. WAKEFIELD,
Clerk of the Board.

L.S.

SPRING GARDENS, *February 4th*, 1876.

Allowed by the Local Government Board, this 28th day of February, 1876.

L.S.

THOMAS SALT,
Secretary.
G. SCLATER-BOOTH,
President.

THE SLAUGHTERHOUSES, &c. (METROPOLIS) ACT, 1874.

37 & 38 VICT. c. 67.[1]

BYE-LAWS for the regulation of the conduct of the business of a blood boiler, bone boiler, manure manufacturer, soap boiler, or tallow melter, within the limits of the metropolis, as defined by this Act (except the City of London and the liberties thereof), and the structure of the premises on which any such business may be carried on.

In pursuance of the above Act, by which the Metropolitan Board of Works[2] is constituted the Local Authority for the metropolis, as defined in the said Act (except the City of London and the liberties thereof), the said Metropolitan Board of Works (for the purposes of these bye-laws called 'the Board') doth hereby make the following bye-laws:—

. . . . . .

Bye-law for regulating the Structure of the Premises.

7. Every blood boiler, bone boiler, manure manufacturer, soap boiler, or tallow melter, shall cause every

Construction of rooms, &c.

[1] See note [2], *ante*, p. 457.

[2] See note [1], *ante*, p. 457.

App. III. Pt. II. Byelaws. (Sept. 8, 1876.)

room, chamber, or other place which may be used on or in connection with the premises where his business is carried on, for the purpose of receiving or storing any manufactured product, residue, or other matter from which any offensive vapour or gas may be evolved, to be constructed so that there may be no opening from such room, chamber, or place into the external atmosphere.

Sealed by order,

J. E. WAKEFIELD,

Clerk of the Board.

L.S.

SPRING GARDENS, 11*th August*, 1876.

Allowed by the Local Government Board, this eighth day of September, 1876.

JOHN LAMBERT,

Secretary,

L.S.

DANBY P. FRY,

Assistant Secretary.

Acting on behalf of the said Board, under the authority of the general order, dated the 13th day of August, 1873.

THE SLAUGHTERHOUSES, &c. (METROPOLIS) ACT, 1874.

37 & 38 VICT. c. 67.[1]

BYE-LAWS for the regulation of the conduct of the business of a tripe boiler, the structure of the premises on which such business is carried on; and the mode in which application is to be made for sanction to establish such business anew; within the limits of the metropolis (except the city of London and the liberties thereof).

In pursuance of the above Act by which the Metropolitan Board of Works[2] is constituted the local authority for the metropolis, as defined in the same Act (except the City of London and the liberties thereof), the said Metropolitan Board of Works (for the purpose of these bye-laws called 'the Board') doth hereby make the following bye-laws:—

. . . . . .

[1] See note [2], *ante*, p. 457. [2] See note [1], *ante*, p. 457.

App. III. Pt. II. Byelaws. (Sept. 8, 1876.)

Bye-law for regulating the mode of application for sanction to new establishment of business.

Application for sanction to new business.

11. Every person who may apply to the board for their sanction to establish anew the business of a tripe boiler, shall furnish with his application a plan of the premises and sections of the building in which it is proposed to carry on such business, such plans and sections being drawn to a scale of a quarter of an inch to the foot, and showing the provision made, or proposed to be made, for the drainage, lighting, ventilation, and water supply of such premises; he shall at the same time furnish the board with a key plan of the locality, showing the buildings adjacent to the premises, such plan being drawn to a scale of five feet to the mile.

Bye-laws for regulating the structure of the premises.

Paving and drainage.

12. Every tripe boiler shall cause the premises on which his business is carried on to be well paved with asphalte, Yorkshire flag-stone, Stourbridge paving bricks, closely set in cement upon a bottom of four inches of good concrete, or with other suitable material, and to be laid with a proper slope and channel towards a gully, and to be effectually drained by an adequate drain of glazed pipes communicating with the public sewer, and properly ventilated. He shall cause such gully to be properly trapped, and to be covered with a grating, the bars of which shall not be more than three-eighths of an inch apart.

Repairs.

13. Every tripe boiler shall cause all works and repairs to the premises to be forthwith done and executed as and when required by the board; and shall not make or allow to be made any alteration whatsoever in respect of the structure of the premises, without the consent of the board.

Sealed by order,

J. E. Wakefield,
Clerk of the Board.

L.S.

Spring Gardens, 11*th August*, 1876.

Allowed by the Local Government Board this eighth day of September, 1876.

John Lambert,
Secretary,

Acting on behalf of the said Board, under the authority of the general order, dated the 13th day of August, 1873.

L.S.

Danby P. Fry,
Assistant Secretary.

App. III. Pt. II. Byelaws.[1] (Feb. 23, 1877.)

THE SLAUGHTERHOUSES, &c. (METROPOLIS) ACT, 1874.

37 & 38 VICT. c. 67.[1]

BYE-LAWS for regulating the conduct of the business of a catgut maker or catgut manufacturer, *i.e.* a person whose business it is to manufacture articles from the gut or intestines of animals; and the structure of the premises on which such business is being carried on; and the mode in which application is to be made for sanction to establish such business anew, within the limits of the metropolis (except the City of London and the liberties thereof).

In pursuance of the Slaughterhouses, &c. (Metropolis) Act, 1874, by which the Metropolitan Board of Works[2] are constituted the Local Authority for the metropolis (except the City of London and the liberties thereof), the said Metropolitan Board of Works (for the purposes of these bye-laws called 'the Board') do hereby make the following bye-laws:—

. . . . . .

Bye-laws for regulating the structure of the premises, which shall be complied with as regards all buildings now used for the business, before the expiration of twelve calendar months from the date of the publication thereof; and as regards buildings to be used hereafter, before the business shall be commenced therein.

Close chamber.

14. Every catgut maker shall provide, or cause to be provided, upon the premises, a chamber or chambers in which the offensive processes of the business are to be carried on, and such chamber or chambers shall be constructed in the following manner, viz.:—

Walls and roof.

(*a*) The walls shall be of brick, stone, or concrete; and the walls and the ceiling shall be constructed in such manner that the atmosphere of the close chamber cannot escape into the external atmosphere.

Lighting.

(*b*) The windows or lights shall be of glass, not less than one-quarter of an inch in thickness, and shall be fixed in the walls or roof in such a manner as not to open, and to be air-tight, and such windows or lights shall be covered externally with a wire-netting.

[1] See note [2], *ante*, p. 457. [2] See note [1], *ante*, p. 457.

(*c*) There shall be only one doorway in a close chamber, and the door thereto shall be made to closely fit the doorway in such a manner that when shut the atmosphere of a close chamber cannot escape through such doorway.

Paving and drainage.

(*d*) The paving shall be asphalte, Yorkshire flagstone, Stourbridge paving bricks, closely set in cement upon a bottom of four inches of good concrete or other suitable material; and shall be laid with a proper slope and channel towards a gully, and shall be effectually drained by an adequate drain of glazed pipes communicating with the public sewer, and properly ventilated. The drain shall be properly trapped, and be covered with a fixed grating, the bars of which shall not be more than three-eighths of an inch apart.

Walls.

(*e*) The inner walls shall be covered with hard, smooth impervious material, to the height of four feet at the least, and such covering shall be always kept in good order and repair.

Supply of air.

(*f*) There shall be provided one or more inlet valves for air, adequate for supplying a sufficient quantity of fresh air from the outside of the chamber for the persons employed and working therein, and so constructed as not to allow the atmosphere of the chamber to escape thereby; and such valve or valves shall be always kept in good working order and repair.

Exhaust shaft.

(*g*) There shall be provided a shaft to lead from the upper part of a close chamber to a furnace, and such shaft shall be so constructed that any gas or air drawn through the shaft shall be consumed in the furnace fire.

Rooms over close chamber.

(*h*) There shall be no room or loft over any such chamber, other than a room used solely for the purpose of the business; and such room shall be provided with separate means of access from without, and shall not communicate directly or indirectly with any close chamber.

Machinery.

15. Every catgut maker shall provide, or cause to be provided, upon the premises on which his business is carried on, machinery or appliances for effectually drawing the atmosphere from a close chamber or chambers, and from every room or place in which any

App. III. Pt. II. Byelaws. (Feb. 23, 1877.)

offensive vapour or gas may be evolved, through a shaft and into a furnace fire.

Alterations.

16. He shall cause all needful works and repairs to the premises to be forthwith done and executed as and when the same shall become requisite, and shall not allow any alteration whatsoever to be made in respect of the structure of the premises without the consent of the board.

Penalties.

17. Every person who shall not comply with any of the foregoing bye-laws relating to the structure of the premises, shall be guilty of an offence, and shall be liable, for every such offence, to a penalty of five pounds, and in the case of a continuing offence, to a penalty of one pound for every day during which the offence may be continued after the conviction for the first offence.

Bye-law for regulating the Mode of Application for Sanction to new Establishment of the Business.

Application for sanction to establish a catgut manufactory anew.

18. Every person who may apply to the board for their sanction to establish anew the business of a catgut maker, shall furnish with the application a plan of the premises and sections of the buildings in which it is proposed to carry on such business, such plans and sections being drawn to a scale of a quarter of an inch to the foot, and showing the provision made, or proposed to be made, for the drainage, lighting, ventilation, and water supply of such premises, and for the construction of close chambers thereon, and shall also furnish a key plan of the locality, showing the buildings and streets within one hundred yards of the premises, drawn to a scale of five feet to the mile.

Dated this twenty-third day of February, in the year of our Lord one thousand eight hundred and seventy-seven.

Sealed by order,

J. E. WAKEFIELD,
Clerk of the Board.

L.S.

Allowed by the Local Government Board, this twenty-eighth day of March, 1877.

JOHN LAMBERT,
Secretary.

L.S.

G. SCLATER BOOTH,
President.

App. III. Pt. II. Byelaws. (May 10, 1879.)

THE SLAUGHTERHOUSES, &c. (METROPOLIS) ACT, 1874.

37 & 38 Vict. c. 67.[1]

Byelaws for regulating the conduct of the business of a blood drier, and any business in which blood or any of the constituent parts of blood is used, provided that heat be in any way applied or used to the same, and that, whether such blood or any of the constituent parts thereof be or be not at the time of the application or use of such heat diluted or mixed with any other substance; and the structure of the premises on which such business is being carried on; and the mode in which application is to be made for sanction to establish such business anew; within the limits of the Metropolis (except the City of London and the liberties thereof).

In pursuance of the Slaughterhouses, &c. (Metropolis) Act, 1874, by which the Metropolitan Board of Works[2] are constituted the Local Authority for the Metropolis (except the City of London and the liberties thereof), the said Metropolitan Board of Works do hereby make the following bye-laws:—

. . . . . .

Bye-laws for regulating the Structure of the Premises.

Paving and drainage.

11. Every blood drier shall cause the floor of the yard and every part of his premises in which any process of his business (except the drying and packing processes) is carried on, to be properly paved with asphalte, concrete, or other suitable jointless material, laid upon a suitable bottom of at least 4 inches in thickness, and such floor to have a proper slope towards a channel or gully; and shall cause his premises to be effectually drained by adequate drains communicating with a public sewer. The drains shall be properly trapped, and the entrance thereto shall be covered with fixed gratings, the bars of which shall not be more than three-eighths of an inch apart.

[1] See note [2], *ante*, p. 457. [2] See note [1], *ante*, p. 457.

App. III. Pt. II. Byelaws. (May 10, 1879.)

Walls.

12. Every blood drier shall cause the inner wall of every building in which any process of his business (except the drying and packing processes) is carried on, to be covered to a height of at least six feet, with hard, smooth, impervious material.

Appliances for destroying effluvia.

13. Every blood drier shall cause his premises to be provided with appliances capable of effectually destroying all offensive effluvia, vapours or gases arising in any process of his business, or from any material, residue or other substance which may be kept or stored upon his premises.

Alterations.

14. Every blood drier shall cause all needful works and alterations to the premises to be forthwith done and executed as and when the same shall become requisite, but shall not allow any alteration whatsoever to be made in respect of the structure of the premises without the consent of the Board.

Penalties.

15. Every person who shall not comply with any of the foregoing bye-laws relating to the structure of the premises shall be guilty of an offence, and shall be liable, for every such offence, to a penalty of five pounds, and in the case of a continuing offence, to a penalty of one pound for every day during which the offence may be continued after the conviction for the first offence. Provided always that the foregoing bye-laws for regulating the structure of the premises shall not, until after the expiration of twelve months from the date of the confirmation of the bye-laws, be deemed to apply to any premises where at such date the business of a blood drier may be carried on.

Bye-law for regulating the Mode of Application for Sanction to new Establishment of the Business.

Application for sanction to establish the business anew.

16. Every person who may apply to the board for their sanction to establish anew the business of a blood drier, shall furnish with the application a plan of the premises and sections of the buildings in which it is proposed to carry on such business, such plans and sections being drawn to a scale of a quarter of an inch to the foot, and showing the provision made, or proposed to be made, for the proper conduct of such business, and for the drainage, ventilation and water supply of such premises, and shall also furnish a key plan of the locality, showing the buildings and streets within one

App. III. Pt. II. Byelaws. (August 18, 1879.)

hundred yards of the premises, drawn to a scale of five feet to the mile.

Dated this 31st day of January, 1879.

Sealed by order,

J. E. WAKEFIELD,
Clerk of the Board.

L.S.

Allowed by the Local Government Board, this 10th day of May, 1879.

G. SCLATER BOOTH, *President.*
JOHN LAMBERT, *Secretary.*

L.S.

THE SLAUGHTERHOUSES, &c. (METROPOLIS) ACT, 1874.

37 & 38 VICT. c. 67.[1]

BYELAWS for regulating the conduct of the business of a glue and size manufacturer, and the structure of the premises on which such business is being carried on; and the mode in which application is to be made for sanction to establish such business anew; within the limits of the Metropolis (except the City of London and the liberties thereof).

In pursuance of the Slaughterhouses, &c. (Metropolis) Act, 1874, by which the Metropolitan Board of Works[2] are constituted the Local Authority for the Metropolis (except the City of London and the liberties thereof), the said Metropolitan Board of Works, for the purposes of these bye-laws called 'the Board,' do hereby make the following bye-laws:—

. . . . . .

Bye-laws for regulating the Structure of the Premises.

Paving and drainage.

11. Every glue and size manufacturer shall cause every floor upon which any process of his business (except the drying and packing processes) is carried on, in any part of his premises, to be properly covered with a layer of concrete, or other suitable jointless and impervious material, laid (in the case of a ground floor)

[1] See note [2], *ante*, p. 457. [2] See note [1], *ante*, p

App. III. Pt. II. Byelaws. (August 18, 1879.)

upon a suitable bottom of at least four inches in thickness. He shall cause such floor to have a proper slope towards a channel or gully; and shall cause every part of his premises wherein any such floor may be constructed to be effectually drained by adequate drains communicating with a public sewer. He shall also cause every drain to be properly trapped, and the entrance thereto to be covered with a fixed grating, the bars of which shall not be more than three-eighths of an inch apart.

Appliances for destroying effluvia.

12. Every glue and size manufacturer shall cause his premises to be provided with appliances capable of effectually destroying all offensive effluvia, vapours or gases arising in any process of his business, or from any material, residue or other substance which may be kept or stored upon his premises; or with such appliances as shall be effectual for drawing off and discharging such effluvia, vapours, or gases, into the atmosphere at a sufficient elevation to render them inoffensive.

Alterations.

13. Every glue and size manufacturer shall cause all needful works and alterations to the premises to be forthwith done and executed as and when the same shall become requisite, but shall not allow any alteration whatsoever to be made in respect of the structure of the premises without the consent of the Board.

Penalties.

14. Every person who shall not comply with any of the foregoing bye-laws relative to the structure of the premises shall be guilty of an offence, and shall be liable, for every such offence, to a penalty of five pounds, and in the case of a continuing offence, to a penalty of one pound for every day during which the offence may be continued after the conviction of (*sic*) the first offence. Provided always that the foregoing bye-laws for regulating the structure of the premises shall not, until after the expiration of twelve months from the date of the confirmation of the bye-laws, be deemed to apply to any premises where at such date the business of a glue and size manufacturer may be carried on.

Bye-law for regulating the Mode of Application for Sanction to new Establishment of the Business.

Application for sanction to establish a glue and size manufactory anew.

15. Every person who may apply to the Board for sanction to establish anew the business of a glue and size manufacturer shall furnish with the application a plan of the premises and sections of the buildings in which it is proposed to carry on such business, such plans and sections being drawn to a scale of a quarter of

an inch to the foot, and showing the provision made, or proposed to be made, for the drainage, lighting, ventilation and water supply of such premises, and shall also furnish a key plan of the locality, showing the buildings and streets within one hundred yards of the premises, drawn to a scale of five feet to the mile. App. III. Pt. II. Byelaws. (Feb. 18, 1881.)

Dated the 1st day of August, one thousand eight hundred and seventy-nine.

Sealed by order,

J. E. WAKEFIELD,
Clerk of the Board.

L.S.

Confirmed by the Local Government Board, this 18th day of August, 1879.

L.S.

JOHN LAMBERT, *Secretary.*

G. SCLATER BOOTH, *President.*

THE SLAUGHTERHOUSES, &c. (METROPOLIS) ACT, 1874.

37 & 38 VICT. c. 67.[1]

BYELAWS for regulating the conduct of the business of a fat melter, or fat extractor, that is to say, any business in which fat is melted, rendered, extracted from any material, or remelted; and the structure of the premises on which such business is being carried on; and the mode in which application is to be made for sanction to establish such business anew; within the limits of the metropolis (except the City of London and the liberties thereof).

In pursuance of the Slaughterhouses, &c. (Metropolis) Act, 1874, by which the Metropolitan Board of Works[2] are constituted the Local Authority for the Metropolis (except the City of London and the liberties thereof), the said Metropolitan Board of Works do hereby make the following byelaws:—

. . . . . .

Byelaws for regulating the Structure of the Premises.

10. Every fat melter or fat extractor shall cause every floor upon which any process of his business is Paving and drainage.

[1] See note [2], *ante*, p. 457. [2] See note [1], *ante*, p. 457.

App. III. Pt. II. Byelaws. (Feb. 18, 1881.)

carried on, in any part of his premises, to be properly covered with a layer of concrete, or other suitable jointless impervious material, laid (in the case of a ground floor) upon a suitable bottom of at least four inches in thickness. He shall cause every such floor to have a proper slope towards a channel or gully; and shall cause every part of his premises wherein any such floor may be constructed to be effectually drained by adequate drains communicating with a public sewer. He shall also cause every drain to be properly trapped, and the entrance thereto to be covered with a fixed grating, the bars of which shall not be more than three-eighths of an inch apart.

Appliances for destroying effluvia.

11. Every fat melter or fat extractor shall cause his premises to be provided with appliances capable of effectually destroying all offensive effluvia, vapours or gases arising in any process of his business, or from any material, residue, or other substance which may be kept or stored upon his premises.

Alterations.

12. Every fat melter or fat extractor shall cause all needful works and alterations to the premises to be forthwith done and executed as and when the same shall become requisite, but shall not allow any alteration whatsoever to be made in respect of the structure of the premises without the consent of the board.

Penalties.

13. Every person who shall not comply with any of the foregoing byelaws relating to the structure of the premises shall be guilty of an offence, and shall be liable, for every such offence, to a penalty of five pounds, and in the case of a continuing offence, to a penalty of one pound for every day during which the offence may be continued after the conviction for the first offence. Provided always that the foregoing byelaws for regulating the structure of the premises shall not, until after the expiration of six months from the date of the confirmation of the byelaws, be deemed to apply to any premises where at such date the business of a fat melter or fat extractor may be carried on.

Byelaw for regulating the Mode of Application for Sanction to new Establishment of the Business.

Application for sanction to establish anew the business of a fat melter or fat extractor.

14. Every person who may apply to the board for sanction to establish anew the business of fat melter or fat extractor, shall furnish with the application a plan of the premises and sections of the buildings in which it is proposed to carry on such business, such plans and sections

being drawn to a scale of a quarter of an inch to the foot, and showing the provision made, or proposed to be made, for the drainage, lighting, ventilation, and water supply of such premises, and shall also furnish a key plan of the locality, showing the buildings and streets within one hundred yards of the premises, drawn to a scale of five feet to the mile.

Dated the eighteenth day of February, one thousand eight hundred and eighty-one.

Sealed by order,

J. E. WAKEFIELD,
Clerk of the Board.

L.S.

Confirmed by the Local Government Board this fifteenth day of March, 1881.

J. G. DODSON,
President.

JOHN LAMBERT,
Secretary.

L.S.

THE SLAUGHTERHOUSES, &c. (METROPOLIS) ACT, 1874.

37 & 38 VICT. c. 67.[1]

BYELAWS for regulating the conduct of the business of a gut scraper, that is to say, any business in which gut is cleansed, scraped or dealt with otherwise than for the manufacture of catgut; and the structure of the premises on which such business is being carried on; and the mode in which application is to be made for sanction to establish such business anew; within the limits of the Metropolis (except the City of London and the liberties thereof).

In pursuance of the Slaughterhouses, &c. (Metropolis) Act, 1874, by which the Metropolitan Board of Works[2] are constituted the Local Authority for the Metropolis (except the City of London and the liberties thereof), the said Metropolitan Board of Works do hereby make the following bye-laws:—

* * * * * *

[1] See note [2], *ante*, p. 457. [2] See note [1], *ante*, p. 457.

App. III. Pt. II. Byelaws. (July 21, 1882.)

Bye-laws for regulating the Structure of the Premises.

Paving and drainage.

13. Every gut scraper shall cause every floor upon which any process of his business is carried on, in any part of his premises, to be properly covered with a layer of concrete, or other suitable jointless, impervious material, laid (in the case of a ground floor) upon a suitable bottom of at least four inches in thickness. He shall cause every such floor to have a proper slope towards a channel or gully; and shall cause every part of his premises wherein any such floor may be constructed to be effectually drained by adequate drains communicating with a public sewer. He shall also cause every drain to be properly trapped, and the entrance thereto to be covered with a fixed grating, the bars of which shall not be more than three-eighths of an inch apart.

Walls.

14. Every gut scraper shall cause the inner walls of every part of his premises within which gut-scraping is carried on, to be covered with hard, smooth, impervious material, to a height of four feet at the least; and such covering shall be always kept in good repair.

Alterations.

15. Every gut scraper shall cause all needful works and repairs to the premises to be forthwith done and executed as and when the same shall become requisite, and shall not allow any alteration whatsoever to be made in respect of the structure of the premises, without the consent of the board.

Penalties.

16. Every person who shall not comply with any of the foregoing bye-laws relating to the structure of the premises shall be guilty of an offence, and shall be liable, for every such offence, to a penalty of five pounds, and in the case of a continuing offence, to a penalty of one pound for every day during which the offence may be continued after the conviction for the first offence.

Bye-law for regulating the Mode of Application for Sanction to new Establishment of the Business.

Application for sanction to establish business anew.

17. Every person who may apply to the board for sanction to establish anew the business of a gut scraper, shall furnish with the application a plan of the premises and sections of the buildings in which it is proposed to carry on such business, such plans and sections being drawn to a scale of a quarter of an inch to the foot, and showing the provision made, or proposed to be made,

for the drainage, lighting, ventilation and water supply of such premises; and shall also furnish a key plan of the locality, showing the buildings and streets within one hundred yards of the premises, drawn to a scale of five feet to the mile.

Dated this twenty-first day of July, one thousand eight hundred and eighty-two.

Sealed by order,

J. E. Wakefield,
Clerk of the Board.

L.S.

Confirmed by the Local Government Board, this twentieth day of November, 1881.

J. G. Dodson,
President.
John T. Hibbert,
Secretary.

L.S.

THE SLAUGHTERHOUSES, &c. (METROPOLIS) ACT, 1874.

37 & 38 Vict. c. 67.[1]

Byelaws for regulating the conduct of the business of an animal charcoal manufacturer, that is to say, any business in which bones are converted into charcoal, or in which any residual produced in such conversion is dealt with, and the structure of the premises on which such business is being carried on; and the mode in which application is to be made for sanction to establish such business anew; within the limits of the Metropolis (except the City of London and the liberties thereof).

In pursuance of the Slaughterhouses, &c. (Metropolis) Act, 1874, by which the Metropolitan Board of Works[2] are constituted the Local Authority for the Metropolis (except the City of London and the liberties

[1] See note [2], *ante*, p. 457.

[2] See note [1], *ante*, p. 457.

App. III. Pt. II. Byelaws. (August 29, 1888.)

thereof), the said Metropolitan Board of Works do hereby make the following bye-laws :—

. . . . . .

Bye-laws for regulating the Structure of the Premises.

Appliances for destroying effluvia.

8. Every animal charcoal manufacturer shall cause his premises to be provided with appliances capable of effectually arresting or destroying all offensive effluvia, vapours or gases arising in any process of his business, or from any material, residue or other substance which may be kept or stored upon his premises.

Alterations.

9. Every animal charcoal manufacturer shall cause all needful works and alterations to the premises to be forthwith done and executed as and when the same shall become requisite.

Penalties.

10. Every person who shall not comply with either of the foregoing bye-laws relating to the structure of the premises shall be guilty of an offence, and shall be liable, for every such offence, to a penalty of five pounds, and in the case of a continuing offence, to a penalty of one pound for every day during which the offence may be continued after the conviction for the first offence. Provided always that the foregoing bye-laws for regulating the structure of the premises shall not, until after the expiration of six months from the date of the confirmation of the bye-laws, be deemed to apply to any premises where at such date the business of an animal charcoal manufacturer may be carried on.

Bye-law for regulating the Mode of Application for Sanction to new Establishment of the Business.

Application for sanction to establish the business anew.

11. Every person who may apply to the board for sanction to establish anew the business of an animal charcoal manufacturer, shall furnish with the application a plan of the premises and sections of the buildings in which it is proposed to carry on such business, such plans and sections being drawn to a scale of a quarter of an inch to the foot, and showing the provision made, or proposed to be made, for the drainage, lighting, ventilation and water supply of such premises, and shall also furnish a key plan of the locality, showing the buildings and streets within one hundred yards of the premises, drawn to a scale of five feet to the mile.

Dated the eighth day of June, one thousand eight hundred and eighty-eight.

Sealed by order,

J. E. WAKEFIELD,[1]
Clerk of the Board.

L.S.

Confirmed by the Local Government Board, this twenty-ninth day of August, 1888.

S. B. PROVIS,
Assistant Secretary.

L.S.

Acting on behalf of the Board, under the authority of their general order, dated the 26th day of May, 1877.

BYE-LAWS FOR SLAUGHTERHOUSES IN THE COUNTY OF LONDON.

37 & 38 VICT. c. 67.

IN pursuance of the Slaughterhouses, &c. (Metropolis) Act, 1874,[1] and of the Local Government Act, 1888, the London County Council hereby make the following bye-laws for regulating—

(*a*) The conduct of the business of a slaughterer of cattle;

(*b*) The structure of the premises in which such business is being carried on; and

(*c*) The mode in which application is to be made for sanction to establish such business anew within the County of London (except the City of London and the liberties thereof), that is to say—

* * * * * * *

Bye-laws for regulating the structure of the premises upon which the business of a slaughterer of cattle is being carried on in the County of London.

Premises. Slaughter-house.

10. Every occupier of a slaughterhouse—

(*a*) Shall cause such slaughterhouse to have the walls thereof substantially constructed of brick,

[1] See note [2], *ante*, p. 457.

App. III. Pt. II. Byelaws. (Oct. 27, 1891.)

stone, iron or concrete to a height of 6 feet from the ground; and to cover such slaughterhouse with a properly constructed roof.

Pounds, &c.

(*b*) Shall cause a sufficient number of pounds, pens, or lairs of adequate size, and of suitable construction, to be provided on the premises; and he shall cause such pounds, pens, or lairs to be separated from such slaughterhouse by means of close partitions to a height of at least 5 feet, and cause all doors in such partitions to be closely boarded.

Entrance.

(*c*) Shall cause the entrance or approach to such slaughterhouse to be throughout of a width of at least 3 feet 6 inches, and such approach to be neither up nor down steps, nor over slopes having a steeper gradient than 1 foot in 4 feet; provided that where sheep, lambs, and pigs only are killed, he shall cause the width of the approach to be at least 2 feet 9 inches throughout.

Sanitary Provisions.

11. Every occupier of a slaughterhouse shall cause such slaughterhouse and every pound, pen, or lair attached thereto—

Light and ventilation.

(*a*) To be well and sufficiently lighted and ventilated by louvred openings in the walls and roofs, or by other adequate openings, windows, or lights.

Paving and drainage.

(*b*) To be well paved upon a duly prepared foundation with a jointless flooring of granite cement, concrete, or other suitable hard and impervious material having a proper slope towards a gully-hole; and he shall cause such gully-hole to communicate by an adequate drain of glazed stoneware pipes with the public sewer, and be trapped by an appropriate fixed trap, and be covered with a fixed wrought-iron grating, the bars of which shall be not more than $\frac{3}{8}$ of an inch apart.

Water fittings.

(*c*) To be provided with means for an adequate supply of water; and where there is not a constant water supply, with a slate, metal, or metallic-lined tank, the bottom of which shall be not less than 6 feet from the floor; and he shall cause such tank to be properly covered, and adequate water trough to be provided in every pound, pen or lair.

Wall covering.

12. Every occupier of a slaughterhouse shall cause

the inner surface of every wall, door, and woodwork of such slaughterhouse to be covered with hard, smooth, and impervious material to a height of at least 6 feet from the floor.

Lofts, openings, &c.

13. An occupier of a slaughterhouse shall not use or permit to be used as a dwelling any room or loft thereover, nor shall he permit any watercloset, privy, urinal, or stable to be within any slaughterhouse, pound, pen or lair, nor any watercloset, privy, urinal or stable to be in direct communication with, or ventilate into, any slaughterhouse.

Water-closets, &c.

Penalties.

14. Every person who shall not comply with any of the foregoing bye-laws relating to the structure of the premises shall be guilty of an offence, and shall be liable for every such offence to a penalty of five pounds, and, in the case of a continuing offence, to a penalty of one pound for every day during which the offence may be continued after conviction for the first offence. Provided always that the foregoing bye-laws for regulating the structure of the premises shall not, until after the expiration of six months from the date of the confirmation of the bye-laws, be deemed to apply to any premises where at such date the business of a slaughterer of cattle may be carried on.

Bye-law for regulating the mode in which application is to be made for sanction to establish anew the business of a slaughterer of cattle in the County of London.

New Slaughter-houses.

15. Every person applying for sanction to establish anew the business of a slaughterer of cattle—

Form of application.

(*a*) Shall furnish particulars as to the situation of the premises, and as to the arrangement and construction of the buildings in which such business is proposed to be established.

Plans and sections.

(*b*) Shall also furnish a plan of such premises and sections of the buildings, drawn to a scale of one-eighth of an inch to one foot, showing the buildings proposed to be used as slaughterhouse, pounds, pens or lairs, their construction, the provision for drainage, and the means proposed for lighting and ventilation.

Key plan.

(*c*) Shall also furnish a key plan of the locality, showing the site, and all buildings, dwellings, streets, and places within 250 yards of such site, and such key plan shall be drawn to a scale of five feet to one mile.

App. III. Pt. II. Regulations. (July 3, 1885.)

Repeal of former bye-laws.

Repeal.

In further pursuance of the Acts aforesaid, the said London County Council hereby repeal the bye-laws regulating the conduct of the business of a slaughterer of cattle, the structure of the premises on which such business is being carried on, and the mode in which application is to be made for sanction to establish such business anew, made on the 7th day of May, 1875, by the Metropolitan Board of Works, and confirmed by the Local Government Board on the 27th day of May, 1875.

Dated the thirty-first day of July, one thousand eight hundred and ninety-one.

L.S.

Sealed by order,

H. DE LA HOOKE,

Clerk of the Council.

Confirmed by the Local Government Board, this 27th day of October, 1891.

S. B. PROVIS,

Assistant Secretary.

L.S.

Acting on behalf of the said board, under the authority of their general order, dated the 26th day of May, 1877.

REGULATIONS AS TO DAIRIES, COWSHEDS, AND MILKSHOPS.

41 & 42 VICT. CH. 74, AND 49 & 50 VICT. CH. 32.

. . . . . .

Regulations for prescribing and regulating the lighting, ventilation, cleansing, drainage and water supply of dairies and cowsheds in the occupation of persons following the trade of cowkeepers or dairymen.

Cowsheds.

Lighting.

3. Every cowshed shall be well and sufficiently lighted by openings in the sides or roof, or by windows therein.

Ventilation.

4. Every cowshed shall be thoroughly ventilated by lantern-louvred ventilators in the roof thereof, or by louvred ventilators in the walls, or by openings in the sides or roofs.

App. III. Pt. II. Regulations. (July 3, 1885.)

5. In every cowshed there shall be sufficient air-space for the health and good condition of the cattle therein, *i.e.*, there shall be for each animal kept in a separate stall a superficial space of at least 8 ft. by 4 ft., and for two animals kept in one stall a superficial space of 8 ft. by 7 ft.; and there shall be an air-space of at least 600 cubic feet in respect of every animal kept in a cowshed, where, taking into consideration the position and construction of the shed, there are perfectly satisfactory means of ventilation; but in other cases there shall be an air-space of 800 cubic feet in respect of every animal kept, and in any case the height of the shed in excess of 16 ft. shall not be taken into account in estimating the air-space.

Air-space.

Drainage.

6. Every cowshed shall be well paved with Stourbridge or other impervious brick, or other impervious material, set with cement properly bedded on concrete, with a proper slope towards a gully-hole, which shall, where practicable, be outside the shed; and such gully-hole shall communicate by an adequate drain of glazed stoneware pipes with the public sewer, and be trapped by an appropriate fixed trap, and be covered with a grating, the bars of which shall be not more than $\frac{3}{8}$ inch apart; excepting that not exceeding three feet of the foremost part of the stalls may be paved with chalk or other similar material.

Water supply.

7. Every cowshed shall be provided with an adequate supply of water, and where there is not a constant water supply, with a slate, metal, or metallic-lined tank, properly covered and provided with an overflow or warning pipe, and with piping for conveying the water to the cowshed; such tank to be so placed that the bottom thereof shall be not less than 6 feet above the floor level. Every such tank shall be of a capacity equal to twelve gallons of water for each cow lawfully kept; it shall have no communication with any water-closet or drain by means of a waste-pipe; and it shall be supplied with good and wholesome water, which, if practicable, shall be procured by the occupier from a public water company, and such tank shall be cleansed as often as is necessary for keeping the same in a clean condition.

Troughs.

8. Each stall or standing-place for cows in every cowshed shall be provided with a water-trough or receptacle, constructed of or lined with hard, smooth and impervious material, and each such trough or receptacle

App. III. Pt. II. Regulations. (July 3, 1885.)

shall be supplied with water by means of a pipe communicating with a water tank, or, in the case of a constant water supply, with the water company's pipes, and each such trough or receptacle shall also be provided with a waste-pipe or waste-hole in the lowest part thereof.

Walls, &c.

9. The inner walls, doors, and woodwork (except the partitions between the cows) of every cowshed shall be covered with hard, smooth, and impervious material to a height of at least 5 feet from the floor of such cowshed, and such hard, smooth, and impervious material shall not be covered with cement-wash, lime-wash, or other substance.

Grain and dung pits.

10. Every cowshed shall be provided with properly constructed places or receptacles for storing any brewers' grains intended for the animals therein, and also places or receptacles for receiving the dung and litter from the cowsheds, and such places or receptacles shall be constructed of or lined with impervious material and be properly drained; but no such places or receptacles shall be within, or communicate directly with, any cowshed.

Water-closets, &c.

11. No water-closet, privy, cesspool, or urinal shall be within, communicate directly with, or ventilate into a cowshed.

. . . . . .

Dairies.

Lighting and ventilation.

18. Every dairy shall be sufficiently lighted, and shall be thoroughly ventilated by louvred ventilators, ventilating shafts, or openings in the walls or roof.

Floor and walls.

19. Every dairy shall be well paved with flagstones, concrete, or other suitable material, properly set in cement, and the inner walls thereof shall be covered with hard, smooth, and impervious material to a height of at least six feet from the floor of such dairy, and such hard, smooth, and impervious material shall not be covered with cement-wash, lime-wash, or other substance.

Drainage.

20. The floor of every dairy shall fall or slope towards an opening in the walls thereof, leading to a properly trapped gully-hole outside such dairy; and no inlet to a drain shall be within any dairy.

Water supply.

21. Every dairy shall be provided with an adequate supply of water, and, where there is not a constant supply, with a slate, metal, or metallic-lined tank, properly covered, and provided with an overflow or warning pipe, and with piping for conveying the water to the dairy.

The tank shall have no communication with any water-closet or drain by means of a waste pipe, and shall be supplied with good and wholesome water, which, if practicable, shall be procured by the occupier from a public water company, and such tank shall be cleansed as often as may be necessary for keeping the same in a clean condition. App. III. Pt. II. Regulations. (Dec. 3, 1889.)

. . . . . .

Revocation of former Regulations.

33. The regulations made by the board in pursuance of the dairies, cowsheds, and milkshops order of July, 1879, are hereby revoked. Revocation of former regulations.

By order,

J. E. Wakefield,

Clerk of the Board.

Dated this third day of July, 1885, at the office of the Metropolitan Board of Works, Spring Gardens, Charing Cross.

Note.—Any person guilty of an offence against the foregoing order or regulations is liable to a penalty of five pounds, and in the case of a continuing offence, to a further penalty of forty shillings for each day after written notice of the offence from the Board.

HOUSING OF THE WORKING CLASSES COMMITTEE.

Building Regulations approved by the Council on December 3, 1889.

(*a*) *Staircases.*—A central staircase in blocks of dwellings is objectionable, and as regards convenience of plan and thorough ventilation of each dwelling, the best amongst the modes commonly in use is that which provides a staircase close to the outer wall, and having large openings communicating with the open air. Such a staircase can be conveniently arranged to give access to four dwellings, and the ventilation of such dwellings can be effected by means of open doors and fanlights, so that a thorough current of air can be obtained when it is desired. If it is felt in the winter time that this arrangement leaves the persons using the staircases too much

App. III. Pt. II. Regulations. (Dec. 3, 1889.)

exposed to the weather, windows partially enclosing the openings can be provided.

The chief alternative to this kind of staircase seems to be one which is in the centre of the block, and gives access to dwellings on each side of it. In this case the ingress of fresh air to the staircases can only be through the entrance doorway and along a short passage, and through the skylight at the top of the staircase. Upon this the dwellings opening from the staircase have to depend for their through ventilation.

Both these plans are in considerable use.

Staircases in buildings more than three storeys high should be at least 4 feet in width. The walls of the staircases to a height of about 4 feet 6 inches should be finished with glazed or hard-pressed bricks; the upper portions with hard bricks neatly pointed.

(*b*) *Basement floors.*—There is no doubt that, as compared with the other floors of a building, the basement floor is undesirable as a residence, but in building artisans' dwellings it is generally expedient to construct a storey below the ground floor, though it is not necessary that they be used as 'dwellings;' but inasmuch as there is no definite evidence at the present time that basement rooms, fronting upon a principal street, should not be used for dwelling purposes, their use need not be forbidden, provided that adequate precautions against fire are taken, and that the bottom of the window sillls is not lower than the level of the adjoining pavement, and not more than 3 feet above the floor, and that in other respects they agree with the provisions of section 103 of the Metropolis Local Management Act (18 and 19 Vict. cap. 120),[1] as applied to new buildings.

They are usually let at a rate materially lower than the rooms above them, but if they are let at the same rate as the upper floors in a high block of buildings, they are preferred by many people who are not able to mount a considerable number of stairs. Beyond the question of health, it is not necessary to object to such rooms on account of their proximity to the street, those who occupy them being able to make such arrangements for privacy as they find necessary.

Where no areas are practicable, the walls should be

[1] This section is repealed by sect. 142 of the Public Health (London) Act, 1891. For the provisions which now regulate the construction of underground rooms see sects. 96 to 100 of that Act, which will be found set out in the note to sect. 70 of the Act of 1894, *ante*, pp. 135 to 139.

covered with asphalte or other damp-resisting material, from the damp-course to the footings.

(*c*) *Bath-rooms, &c.*—Unless they are in close vicinity to public baths and wash-houses (a condition which can very rarely happen), bath and wash-house accommodation should be provided to every block of dwellings, and this can best be provided in a separate building or on the basement floor, or in a distinct section of the block that can be constantly under inspection, and to which inexpensive arrangements for water supply, &c., can be applied.

In connection with this matter, the water-closet accommodation has been considered, on the assumption that the dwellings to be built or promoted by the Council will generally be for the accommodation of the lowest class of the population which inhabits separate tenements, a class just above that which uses the common lodging houses, and for which neither private speculators nor the societies for building artisans' dwellings make any provision. It seems inexpedient that either water-closets or separate water supply or sinks should be constructed so as to be immediately accessible from any dwelling rooms. A sufficient number of closets should be supplied to each floor of dwellings to which a separate staircase is provided, together with a provision of sinks and water supply for common use. Such closets should have both doors and windows opening directly to the open air; and where possible there should be one closet to each family.

Dust shoots should be provided from each common scullery, or from the landing adjacent, to discharge into galvanized iron moveable dustbins, which can be carried out and emptied into the dust-cart.

(*d*) *Size of rooms.*—The number of rooms to be provided in each tenement, and their sizes, have been considered as one question, and the following may be regarded as minima—

(1.) In a one-roomed tenement the minimum superficial area should be 144 feet. This would conveniently be provided in a room measuring about 12 feet by 12 feet.

(2.) A two-roomed tenement should have a similar room, with an additional room containing 96 superficial feet, or measuring 12 feet by 8 feet.

(3.) A three-roomed tenement should have a large room containing 144 feet in superficial area, and two rooms each containing 96 feet.

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These sizes, however, should not be rigidly fixed, but rooms of various sizes should be provided.

Four-roomed tenements need not be provided, but if they are, the fourth room should be of about 100 feet superficial area.

It would be convenient as regards planning, and also as regards the population to be accommodated, that some little variety should exist in the sizes of the rooms in each tenement as well as in their number, in order to provide for the different conditions of the families.

The standard height for every room should be 9 feet. The walls of the rooms should be finished in some hard material, for which purpose Portland cement upon brickwork, or brick with pressed face on both sides, should be used up to a height of about 3 feet 6 inches. The upper parts of the walls can be finished by a thin coating of hard plaster upon brickwork, but upon this point some further inquiry is desirable.

In designing the buildings some care should be taken to give a pleasant appearance to them.

As regards the interval which should exist between any block of dwellings and the nearest building obstructing the light from its windows, it is suggested that, if practicable, this distance should be equal to $1\frac{1}{2}$ times the height of the obstructing building. But it does not appear that this space can, in view of the cost of land, be generally provided. Under no circumstances should a nearer distance than the height of the buildings be allowed.

BYE-LAWS MADE BY THE COUNCIL UNDER SECTION 16 OF THE METROPOLIS MANAGEMENT AND BUILDING ACTS AMENDMENT ACT, 1878.[1]

1. REPEAL OF PREVIOUS BYE-LAWS.

THE heretofore subsisting bye-laws 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

[1] This section is repealed by sect. 215 of the Act of 1894, *ante*, p. 302; but by sect. 216 of that Act, *ante*, p. 303, the above byelaws are continued in force. See also note [1], *ante*, p. 457.

the 6th of October, 1879, and the 23rd of June, 1886, are hereby repealed, and in lieu thereof the following are made:— App. III. Pt. II. Byelaws. (Oct. 13, 1891.)

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 six 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 nine inches thick, and projecting at least four 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 burned lime or cement in the proportions of one of lime to six, and one of cement to eight of the other material.

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

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stacks. Cuttings 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 one of lime to three of sand or grit.[1]

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 one of cement to four 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 abuts 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 one 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., one part of Portland cement, two parts of clean sand, and three parts of the coarse material, which is to be broken up sufficiently small to pass through a two-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

[1] With regard to the use of spent mortar and plaster see the Instructional Letter of 15th December 1894, Appendix IV., *post*.

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.[1]

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 bye-laws 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 five 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 bye-laws;[2] such fees to be payable in the manner and at the time prescribed by section 51 of the Metropolitan Building Act, 1855.[3] The district surveyor shall also, in every case where in respect of any breach of these bye-laws, or of the above Act of Parliament, an application

[1] See now sect. 53 of the Act of 1894, *ante*, p. 115, and the first schedule to that Act, *ante*, p. 305.

[2] See now sect. 164 of the Act of 1894, *ante*, p. 249, and the note [1] on p. 457, *ante*.

[3] See now sect. 157 of the Act of 1894, *ante*, p. 245.

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shall have been made by him to a justice, and an order made thereon, be in like manner entitled to receive the sum of ten shillings in addition to the before mentioned fee of five shillings.

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.

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.

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 bye-laws, the offender shall be liable for each breach to a penalty not exceeding five pounds, and in each case of a continuing offence, to a further penalty not exceeding forty 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 bye-laws, 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 bye-laws, then such proceedings may be taken, and such liabilities shall be incurred, as if the same had been enacted by such bye-laws.

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 bye-laws.

Henry Matthews,
One of Her Majesty's Principal Secretaries of State.

Whitehall, 19*th October*, 1891.

BYE-LAWS MADE BY THE COUNCIL UNDER SECTION 31 OF THE LONDON COUNCIL (GENERAL POWERS) ACT, 1890.[1]

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

[1] This section is repealed by sect. 215 of the Act of 1894, *ante*, p. 302; but by sect. 216, *ante*, p. 303, the above bye-laws are continued in force. See also sect. 164, *ante*, p. 249.

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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 lbs. 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 byelaws.

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 five shillings, such fee to be payable in the manner and at the time specified in section 51 of the Metropolitan Building Act, 1855. App. III. Pt. II. Regulations. (Feb. 9, 1892.)

5. Penalties.

In case of any breach of the provisions contained in these bye-laws, the offender shall be liable for each offence to a penalty not exceeding five pounds, and, in each case of a continuing offence, to a further penalty not exceeding forty 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 bye-laws.

Henry Matthews.
One of Her Majesty's Principal Secretaries of State.
Whitehall, 19*th October*, 1891.

THE METROPOLIS MANAGEMENT AND BUILDING ACTS AMENDMENT ACT, 1878.[1]

Regulations made by the Council on the 9th of February, 1892, with respect to the requirements for the protection from fire of theatres, houses, rooms, and other places of public resort within the Administrative County of London.

These regulations shall, unless otherwise specified, apply to all theatres, houses, rooms, or other places of public resort within the Administrative County of London, to be kept open for the public performance Limits of regulations.

[1] These regulations were made under sect. 12 of the Act of 1878, which section is not repealed by the Act of 1894, and will be found set out in Appendix I., *ante*, p. 378. See also sects. 78 and 80 of the latter Act, *ante*, pp. 150 and 152, with regard to the construction of 'public buildings,' which term includes by virtue of the definition in sect. 5 (27), *ante*, p. 24, theatres and other places of public resort.

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of stage-plays, and to all houses, rooms, or other places of public resort within the said County, to be kept open for public dancing, music, or other public entertainment of the like kind, under the authority of letters patent from Her Majesty the Queen, her heirs or successors, or of licences by the Lord Chamberlain of Her Majesty's Household, or by the London County Council, other than letters patent, or licences which may have been granted for the first time before the passing of the above-mentioned Act.

Interpretation of 'such premises.'

In these regulations the expression 'such premises' means a theatre, house, room, or other place of public resort to be kept open for any of the purposes aforesaid.

I.—Structural.

Applications and drawings.

1. Every person who for the first time after the making of these regulations shall be desirous of obtaining authority to open any such premises within the said county, shall first make an application in writing to the clerk of the Council for a certificate under the above Act.

Such application shall contain a statement as to the nature and extent of the interest of such person in such premises, and the character of the entertainment for which such premises are proposed to be used, and be accompanied by complete plans, elevations and sections, drawn on tracing linen, to a scale of $\frac{1}{8}$th of an inch to a foot; and by a block plan showing the position of such premises in relation to any adjacent premises, and to the public thoroughfares upon which the site of such premises abuts, drawn to a scale of not less than $\frac{1}{20}$th of an inch to a foot.

Such drawings shall be coloured to distinguish the materials employed in the construction of the building; the width of all staircases, corridors, gangways, and doorways, together with the heights of the tiers, and other parts of the building.

The thickness of the walls and scantlings of the various materials shall be clearly shown by figured dimensions, and the cardinal points shall be marked upon each plan.

Such drawings shall be accompanied by a specification of the works to be executed, describing the materials to be employed and the mode of construction to be adopted, together with such other particulars as may be necessary

to enable the Council to judge whether the requirements of these regulations will, when such premises have been completed, have been complied with.

Such drawings shall also show the respective numbers of persons to be accommodated in the various parts of such premises, and the area to be assigned to each person, which shall not be less than 1 foot 8 inches by 1 foot 6 inches in the gallery, and not less than 2 feet 4 inches by 1 foot 8 inches in other parts of such premises.

Such drawings and specifications to be deposited with the Council. A duplicate copy of approved drawings and specification shall be signed by the chairman of the committee and returned to the applicants.

Site.

2. One-half at least of the total length of the boundaries of the site of any such premises which consist of an entire building, and in case of a room or other such premises not consisting of an entire building, one-half at least of the total length of the boundaries of the site of the building of which such room or other such premises form part, shall abut upon public thoroughfares, of which one thoroughfare at least shall not be less than 40 feet wide, and of the remainder none shall be less than 30 feet wide if a carriageway, or 20 feet wide if a footway.

If, in compliance with Regulation No. 10, an additional passage or way should be necessary, it may be provided by means of a private passage or way.

Such passage or way shall not be less than 10 feet in width, and under the complete control of the owner of such premises, and no doors, windows or other openings of the adjoining premises shall communicate therewith, or overlook any portion of such passage or way.

Windows overlooking site.

3. No such premises shall be erected upon a site within 20 feet of any windows or other openings belonging to any other premises overlooking the site.

Walls.

4. All such premises shall be enclosed with proper external or party walls of brick or stone.

The thickness of such walls shall not be less than the thickness prescribed by the Metropolitan Building Act, 1855, for walls of similar height and length in buildings of the warehouse class.

Dressing-rooms.

5. Dressing-rooms shall be arranged in a separate block of buildings, or divided from the place of public resort by party walls, with only such means of communication therewith as may be approved by the Council.

All such dressing-rooms shall be constructed of fire-

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resisting materials, and connected with an independent exit leading directly into a thoroughfare or way.

All such dressing-rooms shall be ventilated to the outer air by windows in the external walls.

The walls of all such dressing-rooms shall be hung, for decorative purposes, only with materials completely adhering to the surface of such walls.

No such dressing-rooms shall be situated more than one storey below the street level.

Sufficient and separate w.c. and urinal accommodation, properly ventilated to the outer air, shall be provided for the use of the male and female artistes.

No theatre under or over any other building.

6. No theatre shall be constructed underneath, or on the top of, any part of any other building.

Number of tiers.

7. No such premises shall have more than three tiers or horizontal divisions, including the gallery, above the level of the pit.

Where the front seats of the gallery are separated from the gallery by a partition, such seats shall not count as a separate tier.

Height of tiers.

8. Where the first tier or balcony extends over the pit, stalls, or area, the height between the floor of the pit and the first tier shall not be at any part less than 10 feet, and the height between the floor of the highest part of the gallery and the lowest part of the ceiling over the same shall not be less than 12 feet.

Floor of pit.

9. In all such premises the floor of the highest part of the pit, or of the stalls where there is no pit, shall not be more than 6 inches above the level of the street adjoining the principal entrance to the pit, and the lowest part of the floor of the pit or stalls shall not be more than 15 feet below such level.

Entrances and exits.

10. Two separate exits, not leading into the same thoroughfare or way, shall be provided to every tier or floor of such premises.

If any tier or floor shall be divided into two parts, two separate exits, not leading into the same thoroughfare or way, shall be provided to each of such parts.

Such exits shall be arranged so as to afford a ready means of egress from both sides of each tier or floor, and shall lead directly into a thoroughfare or way.

Vestibules.

11. Where vestibules are provided, not more than three tiers or floors (or where such tiers or floors are divided into two or more parts, such parts of tiers or floors) shall communicate with one vestibule.

The width of each vestibule shall be at least one-third

greater than the united width of all the doorways or passages that lead thereto.

The united widths of all the doorways or passages that lead from a vestibule towards a thoroughfare or way, shall be at least of the same width as such vestibule.

Not more than one exit from each separate part of a tier or floor shall be used as an entrance.

Proscenium wall.

12. In all such premises where a stage with a proscenium shall be erected, such stage shall be separated from the auditorium by a brick proscenium wall not less than 13 inches in thickness, and such wall shall be carried up the full thickness to a height of at least 3 feet above the roof, such height being measured at right angles to the slope of the roof, and shall be carried down below the stage to a solid foundation.

Not more than three openings shall be formed in the proscenium wall, exclusive of the proscenium opening.

No such opening shall exceed 3 feet in width and 6 feet 6 inches in height, and each of such openings shall be closed by a wrought iron door not less than $\frac{1}{4}$th of an inch in thickness in the panel, hung in a wrought iron frame so as to close of itself without a spring.

No openings formed in the proscenium wall shall, at the lowest part, be at a higher level than the floor of the stage.

All the decorations around the proscenium shall be constructed of fire-resisting materials.

Proscenium opening.

13. The proscenium opening shall be provided with a fire-resisting screen to be used as a drop curtain, of such pattern, construction and gearing, and with such arrangements for pouring water upon the surface of the screen which is towards the stage as may be approved by the Council.

Roof over stage.

14. The height of the wall plate carrying the rafters of the roof over the stage shall not be less than twice the height of the proscenium opening, such height being measured from the level of the stage at the curtain line.

An opening shall be formed in the roof near the back of the stage, of a superficial area at the base of at least $\frac{1}{10}$th of the superficial area of the stage. Such opening shall be covered with a lantern light, glazed on the top and sides, and be fitted with suitable exhaust cowls.

Corridors, passages and staircases.

15. Every staircase, landing, lobby, corridor or passage intended for the use of not more than 400 persons of the audience, shall be formed of fire-resisting

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materials, and shall not be less than 4 feet 6 inches wide; but, if communicating with any portion of the house intended for the accommodation of a larger number of the audience than 400 persons, it shall be increased in width by 6 inches for every additional 100 persons until a maximum width of 9 feet be obtained.

Staircases.

16. Every staircase for the use of the audience shall have solid square (as distinguished from spandril) steps of York or other stone or fire-resisting materials, to be approved by the Council, with treads not less than 11 inches wide and with risers not more than 6 inches high, without winders, in flights of not more than 12 or less than 3 steps each.

The treads of each flight of steps shall be of uniform width, and be pinned into brick walls at both ends.

The several flights of such steps shall be supported and enclosed upon all sides by brick walls not less than 9 inches thick, to be carried down to the level of the footings.

No staircase shall have more than 2 flights of 12 steps each without a turn.

All landings shall be 6 inches thick, be square upon plan, and have brick arches 9 inches deep turned under them in the middle of such landings.

Every staircase shall have a roof of fire-resisting materials to be approved by the Council.

A continuous handrail shall be fixed on both sides of all steps and landings, supported by strong metal brackets built into the wall.

Such handrails shall be chased into the walls, where the thickness of the walls will permit, but in all cases where the flights of steps re-turn, the newel wall shall be chased so as to allow the handrail to turn without projecting on the landing.

Gangways.

17. A clear passage or gangway not less than 3 feet wide shall be formed at the sides and in the rear of the seating in every part of such premises.

Such passages or gangways shall at all times be kept entirely free from chairs, flap seats, or other obstructions, whether permanent or temporary.

Ironwork.

18. All constructional ironwork in such premises shall be embedded in fire-resisting materials in a manner to be approved by the Council.

Workshops, &c.

19. All workshops, store-rooms, wardrobe or painting rooms, in connection with such premises, shall be separated from such premises by brick walls not less than 9 inches thick.

All openings in such walls shall be closed with self-closing wrought-iron doors hung in wrought-iron frames.

All such doors, if consisting of a single fold, shall be made to overlap, when closed, the door frame at least three inches; and, if made in two folds, such folds shall overlap each other, when closed, at least three inches on each side.

All floors and ceilings of such rooms shall be formed of fire-resisting materials.

All such rooms shall be ventilated by windows in the outer walls.

Limelight tanks, boilers, and dynamos.

20. All limelight tanks, boilers with engines, and dynamos with engines, shall be each placed in a ventilated chamber or building of fire-proof construction.

Such chambers or buildings shall be separated from such premises, and from each other, by brick walls and fire-proof floors without openings, and shall be enclosed upon one or more sides by external walls.

Scene dock.

21. All scene docks or stores and property rooms in connection with such premises shall be enclosed by brick walls not less than 9 inches thick, and shall have floors and ceilings of fire-resisting materials.

All openings from such docks, stores or rooms to such premises shall be closed by self-closing wrought-iron doors, hung in wrought-iron frames.

All such doors, if consisting of a single fold, shall be made to overlap, when closed, the door frame at least three inches; and, if made in two folds, such folds shall overlap each other, when closed, at least 3 inches on each side.

Enclosures.

22. No enclosure shall be allowed in any such premises where the public can assemble for any other purpose than to view the performance, except so far as the Council shall consider necessary for the provision of refreshment bars, or in the case of a theatre for the provision of a foyer.

Skylights.

23. All skylights, and the sloping sides of lantern lights, shall be protected by galvanized iron wire guards, securely fixed on the outside of such skylights or lantern lights.

Gas.

24. All such premises when lighted by gas shall have separate and distinct gas services and meters as follows—

(*a*) To the stage; (*b*) To the auditorium;
(*c*) To the staircases, corridors, and exits.

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Such meters shall be placed in properly ventilated chambers of fireproof construction.

All gas brackets shall be fixed without joints; and all burners within reach of the audience shall be fitted with secret taps, and be efficiently protected by glass or wire globes.

All gas burners within 3 feet of the ceiling shall have hanging shades of uninflammable material to distribute the heat.

All gas pipes shall be made of iron or brass.

Where there is a stage or wings with scenery, the footlights or floats shall be protected by fixed iron-wire guards, and the burners shall be provided with glass chimneys.

The rows and lines, and gas burners in the wings (which must commence 4 feet at least from the level of the stage) shall be protected by fixed iron-wire guards.

All battens shall be hung by at least three wire ropes, and be protected at the back by a solid metal guard and wire fixed to a stiff iron frame at such a distance from the gas jets that no part of the scenery or decoration can become heated.

All movable lights shall be fitted with flexible tubes, and the gas in every case shall be turned off by the tap on the stage as well as by that on the flexible tube.

All flexible tubes shall be of sufficient strength to resist pressure from without.

An indicating gas plate shall be provided at a convenient place at the side of the stage.

Doors and fastenings.

25. All doorways used by the public shall be at least 4 feet 6 inches wide in the clear, with doors hung in two folds made to open outwards towards the thoroughfare or way.

All internal doors shall be so hung as not to obstruct, when open, any gangway, passage, staircase, or landing.

No door shall open immediately upon a flight of steps, but a square landing at least the width of the doorway shall be provided between such steps and such doorway.

All exit doors having fastenings shall be fastened by automatic bolts only, of a pattern to be approved by the Council; but where such doors are also to be used by the public for entrances, they shall be fastened with espagnolette or lever bolts only, of a pattern to be approved in each case by the Council, and fitted with lever handles at a height of 3 feet 6 inches from the floor.

All doors used for entrances, and all gates, shall be

made to open both ways, and shall, when opened inwards, be locked back against the wall in such a manner as to require a key to release them.

All barriers and internal doors shall be made to open outwards, with no other fastenings than automatic bolts.

No locks, monkey-tail, flush or barrel bolts, or locking bars, or other obstructions to exit, shall be used on any doors, gates or barriers.

Ventilation

26. All parts of such premises shall be properly and sufficiently ventilated in a manner to be approved by the Council.

All openings for ventilation shall be shown on the plans, and described in the specification, which shall be submitted to the Council for its approval.

Warming

27. No fire-place shall be formed in any portion of the auditorium or stage of such premises.

All open fire-places or stoves in any other part of such premises shall be protected by strong fixed iron-wire guards and fenders, part of which may be made to open for all necessary purposes.

All heating apparatus shall be placed in a position to be approved by the Council, and enclosed upon all sides by brick walls not less than 9 inches thick, and shall be properly ventilated.

All hot water pipes or coils shall, where necessary, be recessed in the walls, or otherwise arranged so as not to diminish the clear width of the gangways.

Where such premises are heated by artificial means, the high pressure hot-water system with sealed pipes will be inadmissible, and either hot-air or the low pressure hot-water circulation system shall be adopted, having an open cold water supply cistern, and the pipes throughout the system shall be of galvanized wrought iron, with the exception of those in immediate contact with the boiler, which may be either of galvanized wrought iron or copper.

The boiler shall be made of wrought iron, copper, or mild steel, and shall be provided with a dead weight or other approved safety valve, which must be attached to the boiler by an independent galvanized wrought iron or copper pipe, and must not under any circumstances be fixed to the circulating pipes, and must be placed in such a position as will ensure protection from soot and dirt.

The term low pressure shall be understood to mean the pressure due to the vertical head of water between the boiler and the supply cistern.

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Water supply.

28. All such premises containing a superficial area for the accommodation of the public of 1,000 feet and upwards shall be provided with a sufficient number of hydrants, each of a diameter of not less than 2½ inches, to be connected by a 3-inch main with a water company's high pressure street main.

Each of such hydrants shall be provided with at least a 30-feet length of hose with fittings of the Metropolitan Fire Brigade pattern.

In all such premises where there is no constant supply of water, there shall be provided on the top of the proscenium wall, or at some other place to be approved by the Council, two cisterns, to be kept always filled with water.

Such cisterns shall be each capable of containing at least 250 gallons of water for every hundred persons of the audience to be accommodated in the building.

Such cisterns shall be properly protected from all danger from frost.

Fire mains shall be connected with such cisterns to hydrants to be fixed in such places and manner as may be approved by the Council.

Addition or alteration to premises.

29. Notice shall be given to the Clerk of the Council of any intended structural addition to, or alteration of, any such premises, in respect of which the Council may have granted a certificate under the said Act of 1878, to the effect that such premises were, on their original completion, in accordance with the Council's regulations.

Such notice shall be accompanied by plans, elevations and sections, block plan, and specification of the works to be executed similar to those required in the case of premises to be certified for the first time by the Council, and showing such intended addition or alteration.

The Council will, if necessary, cause a fresh survey of such premises to be made.

No doors, bolts or other fastenings, obstructions to the means of egress, flap seats or other means of diminishing or stopping up the gangways, shall be put, nor shall any alterations of a like nature be made to such premises without the previous consent of the Council being obtained thereto.

II.—GENERAL.

Oil or candle lamps.

30. Additional means of lighting, for use in the event of the gas or the electric light being extinguished, shall be provided for the auditorium, corridors, passages, exits,

and staircases, by a sufficient number of oil or candle lamps, of a pattern to be approved by the Council, properly secured to an uninflammable base out of the reach of the public.

Such lamps shall be kept alight during the whole time the public are in such premises.

No mineral oils shall be permitted to be used in such lamps.

Fire alarm.

31. Every theatre, and, where considered necessary by the Council, all other premises licensed by the Council, shall be connected with the nearest fire brigade station by telephone.

Notices.

32. All exit and other doors used by the public shall be indicated by painted notices in 3-inch white block letters upon a black ground.

Such notices shall be painted on the doors and walls at least 6 feet 9 inches above the floor.

The words 'no exit' shall be painted at least 6 feet 9 inches above the floor, in 3-inch white block letters upon a black ground, upon all doors, in sight of the audience, which do not lead to exits.

Precautions against fire.

33. Wet blankets or rugs, and buckets filled with water shall be always kept on the stage or in the flies, scene-docks, or wings, and attention shall be directed to them by placards legibly printed or painted, and fixed immediately above them.

Some person shall be held responsible by the management for keeping the wet blankets or rugs, and buckets ready for immediate use.

Hatchets, hooks and other appliances, for taking down hanging scenery in case of fire, shall be always kept in readiness for immediate use.

The regulations as to fire shall be always posted in some conspicuous place in such premises, so that all persons connected with such premises may be acquainted with such regulations.

III.—Electric Lighting.

Certificate.

34. Where the electric light is permitted in such premises, it shall be on condition that a competent electrical engineer do certify in writing to the satisfaction of the Council once in six months that the system is in proper working order.

Circuits.

(1.) All such premises when lighted by electric light shall have at least three separate and distinct

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circuits (*a*) for the stage, (*b*) and (*c*) for the auditorium, corridors and exits.

The circuits referred to in (*b*) and (*c*) shall be so arranged that half the lights in each division of the auditorium and half those in each corridor and exit shall be on (*b*) and the other half on (*c*) circuit.

When the current is supplied by a public lighting company these circuits shall be taken separately from the street mains.

Under all circumstances complete metallic circuits must be employed.

Gas and water pipes shall never form part of any circuit.

The number of lamps shall be so sub-divided that no sub-circuit shall carry more than sixty-five ampères ; and each sub-circuit shall start from a distributing board.

Conductors.

(2.) All conductors used within buildings shall be of copper, having a conductivity equal to not less than ninety-eight per cent. of that of pure copper, and shall be so proportioned to the work they have to do that, if double the normal current be transmitted, their temperature shall not rise to above 150 degrees Fahr.

The conductors shall be insulated with pure and vulcanized india rubber.

The insulation resistance shall be not less than 300 megohms per statute mile, at sixty degrees Fahr., after one minute's electrification, when tested with at least 400 volts, and after forty-eight hours' immersion in water.

The insulated conductors shall be protected on the outside by stout tape or braiding impregnated with preservative compound.

If it is desired to use any other means of insulation than that above specified, special permission shall be obtained from the Council, and no material shall be used which is not waterproof, or which will soften at a temperature below 170 degrees Fahr.

In all cases conductors conveying currents of high electro-motive force inside buildings, shall be specially and exceptionally insulated, and cased in, and the casing made fireproof.

The positive and negative terminals connected to

such conductors shall not be nearer to each other than 12 inches, and shall be efficiently protected from risk of contact.

Flexible conductors in connection with movable lights shall be insulated with vulcanized india rubber, and protected on the outside by a stout braiding; should any of these flexible conductors be damaged, it shall be at once replaced.

No circuit of this nature shall carry more than ten ampères, and each circuit shall be protected by a double pole fuse.

Conductors, fixing and protection.

(3.) All conductors shall be efficiently protected from mechanical injury.

Where conductors pass through walls, fire-proof floors, or ceilings, they shall be protected by iron pipes or by glazed stoneware or porcelain tubes, and precautions shall be taken to prevent the possibility of fire or water passing along the course of the conductors.

In special cases, or where necessary for protection from the depredations of rats, mice, or other vermin, armour cables may be used. These need receive no further mechanical protection.

Lead-covered cables shall not be used unless protected by external armour of iron or steel.

Metal fastenings for fixing conductors shall be avoided; but when unavoidable some additional covering shall be used to protect the conductor, unless armoured, from mechanical injury at the points of support.

If casing be used, it shall be of hard wood, and each conductor shall be laid in a separate groove; the cover shall be secured with screws.

Casings shall, as far as possible, be placed in sight, and the conductors shall always be accessible.

Joints in conductors shall be avoided, but when unavoidable, they shall be electrically and mechanically perfect. Soldering fluids shall not be used in making such joints.

External conductors.

(4.) All external conductors shall be specially insulated and laid in iron pipes properly jointed, and of ample size.

Such iron pipes shall be protected where necessary, and securely fixed and supported when not underground.

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(5.) All exposed metal works, such as fittings, switch and fuse covers, &c., shall be efficiently insulated from the circuits.

Switches, cut-outs, &c.

All switches, cut-outs, ceiling-roses, wall and floor sockets and lamp-holders, shall have uninflammable bases.

All switches shall be of ample size to carry the currents for which they are intended without heating, and shall be so constructed that it will be possible for them to remain in any position intermediate between the 'on' and the 'off' positions, or to permit of a permanent arc.

All circuits shall be efficiently protected by cut-outs, placed in positions easily accessible to the staff, but inaccessible to the public.

The main cut-outs shall be of such pattern and be fixed in such a position as to admit of quick replacement.

All circuits carrying a current of twenty ampères or more shall be provided with a cut-out on each conductor, and the two cut-outs shall not come in the same compartment.

All cut-outs shall be so constructed that fused metal in falling cannot cause a short circuit or an ignition.

All cut-outs shall be so marked as to show what circuit or lamps they control.

All wall or floor sockets shall be provided with fuses in their fixed portions.

The sockets for the stage shall be of hard wood with metal guards, care being taken to avoid risk of ignition, and they shall be of specially substantial construction.

Resistances.

(6.) Resistances for regulating the power of the lights shall be mounted on incombustible bases, and shall be so protected and placed at such a distance from any combustible material that no part of the resistance, if broken, can fall on such material.

Principal resistances shall be placed in a fire-proof room reserved for the purpose.

Arc lamps.

(7.) Arc lamps shall not be used inside buildings without special permission from the Council.

When they are used special precautions shall be taken to guard against danger from falling glass or incandescent particles of carbon.

All parts of the lamps, lanterns, and fittings which are liable to be handled (except by the persons employed to trim them) shall be insulated.

(8.) Where there is a stage, special care shall be taken that all works in connection with the lighting of the stage are carried out in as substantial a manner as possible. Stage lighting.

No metal work in connection with the circuits shall be exposed or so fixed or constructed as to be liable to cause a short circuit.

Lamps on battens, footlights, &c., shall be protected by stiff wire guards, so arranged that no scenery or other inflammable material can come in contact with the lamps.

No readily combustible material shall be used in connection with any lamps on the stage in such a manner that it might come in contact with the lamps.

No soft or readily inflammable wood shall be used in connection with the lamps on the stage, and all wood shall be protected by uninflammable material from the possibility of ignition by an arc between any two parts of the two conductors, or by heated particles from any conductor or part of a conductor which may connect together the two main conductors.

Where a number of lights, as in the footlights, battens, &c., are supplied under control of one switch, and protected by one single or double pole cut-out, as the case may be, the conductors shall be maintained throughout of such a section that they will be effectually protected by the cut-outs against heating.

The leads to the battens shall be specially guarded, particularly at the points where they join on to the battens, and a sufficient length shall be allowed to prevent the leads receiving any injury through any movement of the battens.

The battens shall be suspended by at least three wire ropes attached to insulators on the battens.

On no account shall the same battens be adapted for both gas and electric light.

(9.) A switchboard, containing all the necessary switches, cut-outs, and other fittings for the control and regulation of the stage lighting Stage switchboard.

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shall be fixed in some convenient position overlooking the stage.

This board shall be inaccessible to all but the persons employed at such premises to work it.

Generating plant.

(10.) Boilers, steam engines, gas engines and dynamos, when used for the supply of electricity to such premises shall be placed in such positions as shall be sanctioned by the Council.

Gas engines shall be placed in rooms so adequately and continuously ventilated that no explosive mixture of gas can accumulate by any leakage through the engine in the event of any of the gas cocks being left turned on.

A hood, connected with a pipe carried into the external air, shall be fixed over the ignition tube when this is used.

Batteries.

(11.) Primary or secondary batteries shall be placed in rooms so adequately ventilated that no fan shall be necessary.

The batteries shall be well insulated.

Transformers.

(12.) Transformers used to transform either direct or alternating currents, together with the switches and cut-outs connected therewith, shall be placed in a fire and moisture proof structure.

Where the primary current is of high potential, such structure should be preferably outside the building.

No part of such apparatus should be accessible except to the persons in charge of its maintenance.

No transformer which, under normal conditions of load, heats above 130 degrees Fahr., shall be used.

Transformer circuits shall be so arranged that under no circumstances shall a contact between the primary and the secondary coils lead an electro-motive force of high pressure into the building. The term high pressure means in all cases pressure above 200 volts.

Insulation resistance.

(13.) The insulation resistance of a system of distribution shall be such that the greatest leakage from any conductor to earth, when all branches are switched on, the lamps and motors being removed, shall not exceed one fifteen thousandth part of the total current intended for the supply of the said lamps and motors; the test

being made at the usual working electro-motive force. Provided that this rule shall not be held to justify a lower insulation resistance than 5,000 ohms, nor to require one higher than 5 megohms.

Supervision.

(14.) The generating plant and switching gear shall be in the hands of thoroughly competent manipulators, and the engine room (if any) shall be inaccessible to the general public, and shall where possible have an independent entrance.

Plan of wiring.

(15.) A plan of the wiring shall be always kept in a prominent position in the office of the manager of such premises.

IV.

Power to modify or dispense with these regulations.

35. The Council reserves to itself from time to time, in any special case, to modify or dispense with these regulations.

All applications for dispensations or modifications shall be made in writing, addressed to the Clerk of the Council, and contain a statement of the facts of the particular case, and the reasons why it is desired to modify or dispense with these regulations as applicable thereto.

Person responsible.

36. The person or persons in whose name the licence is granted will be held responsible by the Council for the carrying out of the above regulations, for the due management of such premises, and for the safety of the public and his or their employés in the event of fire.

NOTE.—Every person who receives a certificate under the Act of 1878 shall be informed that the issue of the certificate does not preclude the Council from considering, on its merits, any application which may hereafter be made with respect to the licensing of the building.

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BYE-LAWS—OVERHEAD WIRES.

Bye-laws made by the London County Council in pursuance of the London Overhead Wires Act 1891.[1]

[N.B.—The Act (see section 18) does not extend to any wire placed by any person for his private use over land belonging to him or in his occupation, which does not extend over any street, and is so constructed and placed that neither the wire nor any support thereof or attachment thereto would be liable to fall into any public street.]

In these bye-laws—

The expression 'the Act' means the London Overhead Wires Act, 1891.

The expression 'wire' has the same meaning as in the Act, except that it does not include any support or attachment.

The expression 'cable' means any covered or insulated wire, of which the diameter to the outside of the covering exceeds twice the diameter of the bare wire, and where more wires than one are enclosed in the same covering or insulation, includes all such wires and covering, without reference to diameter.

General.

1. The company shall deliver to the Council and the local authority full particulars of the material and gauge of the wires of the company, and the nature and position of the several supports, and the length of span between the several supports. The company shall also deliver to the Council a plan, on a scale of not less than 25 inches to the mile, showing the routes of such wires, and the position of the supports, or at their option shall cause the routes of such wires and the position of the supports to be marked upon a map to be supplied for the purpose at the office of the Council.

Existing wires.

2. In the case of wires or supports existing at the date of the approval of these bye-laws the company shall comply with the requirements of bye-law 1 within six months after that date.

New wires.

3. In the case of new wires or supports placed after the date of the approval of these bye-laws, the company

[1] This Act will be found set out *ante*, pp. 410 to 417.

shall comply with the requirements of bye-law 1 within one month after the placing thereof.

4. A wire shall not be placed so as at any point to be at a less height above the ground than 20 feet, or where it crosses a street 35 feet, or at a less height above the roof of any building than 6 feet, except where it is brought into any building for use in that building, or is attached to a chimney or other part of a building in accordance with these bye-laws.

5. Every wire shall be supported at intervals not exceeding 115 yards, unless permission in writing be obtained from the Council and the Local Authority for a longer span.

6. Every support for a wire shall be of durable material, and properly stayed against forces due to wind pressure, change of direction of the wires, and unequal length of span; and all independent conductors and suspending wires shall be securely attached to the supports.

7. The factor of safety for all stresses arising from the weight of conductors and suspending wires shall be at least four at a temperature of 22° F. The factor of safety for all other parts of the structures shall be at least ten, taking the maximum possible wind pressure against a support acting in a horizontal direction at 30 lbs. per square foot. No addition need be made for a possible accumulation of snow.

8. Every support for a wire shall be marked in such manner to be approved in the case of each company by the Council as to identify the company to whom it belongs.

9. Where a support is used for the wires of more than one company, the company owning the support shall be responsible for the support and the attachment of the wires thereto.

10. No cable shall exceed one pound per lineal foot in weight; and every cable shall be carried by independent suspending wires and attached to the same by efficient slings.

11. Every iron or steel wire, and every iron or steel support or attachment, shall be efficiently protected from oxidation.

12. All poles erected on buildings as supports for wires, unless fixed through the roof, shall be carried on shoes or saddles properly protected from oxidation and shall be efficiently stayed, so that in the event of a pole

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breaking it shall be impossible for it to fall into any street.

13. Every wire, attached to a chimney, wall, or other part of a building, shall be efficiently supported by angle plates of iron or bronze or other device approved by the Local Authority.

14. Every wire support and attachment shall be duly and efficiently supervised and maintained by the company.

15. No wire support or attachment shall be in such a condition that danger to the public using the streets may be apprehended therefrom, and the company to whom any wire, support, or attachment being in such condition belongs, shall be guilty of an offence against these bye-laws.

16. No wire support or attachment shall remain erected after it has ceased to be in use, unless the company intend within a reasonable time to take it again into use, and give notice of such intention to the Council and the Local Authority.

17. On reasonable notice being given by the Council or the Local Authority to the company, access at all reasonable times for the purpose of inspection of the company's wires, supports, and attachments shall be given or secured by the company to the inspectors of the Council and the Local Authority.

Penalties.

18. Any company or person failing to comply with any of these bye-laws, or of the provisions of the London Overhead Wires Act, 1891, or delivering any particulars which to their or his knowledge are incorrect, shall be guilty of an offence against these bye-laws, and shall be liable to a penalty not exceeding five pounds, and to a further penalty not exceeding forty shillings for each day during which such offence is continued after conviction thereof.

Sealed, by order,

H. DE LA HOOKE,

Clerk of the Council.

L.S.

Approved on behalf of the Board of Trade.

HENRY G. CALCRAFT,

Secretary.

29th July, 1892.

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BYE-LAWS MADE BY THE LONDON COUNTY COUNCIL UNDER THE PUBLIC HEALTH (LONDON) ACT, 1891.

Bye-laws under Section 39 (1).[1]

With respect to waterclosets, earthclosets, privies, ashpits, cesspools, and receptacles for dung, and the proper accessories thereof in connection with buildings, whether constructed before or after the passing of this Act.

Watercloset and earthclosets.

1. Every person who shall hereafter construct a watercloset or earthcloset in connection with a building, shall construct such watercloset or earthcloset in such a position that, in the case of a watercloset, one of its sides at the least shall be an external wall, and in the case of an earthcloset two of its sides at the least shall be external walls, which external wall or walls shall abut immediately upon the street, or upon a yard or garden or open space of not less than one hundred square feet of superficial area, measured horizontally at a point below the level of the floor of such closet. He shall not construct any such watercloset so that it is approached directly from any room used for the purpose of human habitation, or used for the manufacture, preparation, or storage of food for man, or used as a factory, workshop, or workplace, nor shall he construct any earthcloset so that it can be entered otherwise than from the external air.

He shall construct such watercloset so that on any side on which it would abut on a room intended for human habitation, or used for the manufacture, preparation, or storage of food for man, or used as a factory, workshop, or workplace, it shall be enclosed by a solid wall or partition of brick or other materials, extending the entire height from the floor to the ceiling.

He shall provide any such watercloset that is approached from the external air with a floor of hard smooth impervious material, having a fall to the door of such watercloset of half an inch to the foot.

[1] By sect. 39 (1) of the Public Health (London) Act, 1891 (54 & 55 Vict. cap. 76), it is enacted that—'The County Council shall make bye-laws with respect to water-closets, earth-closets, privies, ashpits, cesspools, and receptacles for dung, and the proper accessories thereof in connection with buildings, whether constructed before or after the passing of this Act.' By sect. 141 of the Act the expression 'building' includes the curtilage of a building (as to which see the note to sect. 13 of the Act of 1894, *ante*, p. 66), and the expression 'cistern' includes a water-butt.

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He shall provide such watercloset with proper doors and fastenings.

Provided always that this bye-law shall not apply to any watercloset constructed below the surface of the ground and approached directly from an area or other open space available for purposes of ventilation, measuring at least forty superficial feet in extent, and having a distance across of not less than five feet, and not covered in otherwise than by a grating or railing.

2. Every person who shall construct a watercloset in connection with a building, whether the situation of such watercloset be or be not within or partly within such building, and every person who shall construct an earthcloset in connection with a building, shall construct in one of the walls of such watercloset or earthcloset which shall abut upon the public way, yard, garden, or open space, as provided by the preceding bye-law, a window of such dimensions that an area of not less than two square feet, which may be the whole or part of such window, shall open directly into the external air.

He shall, in addition to such window, cause such watercloset or earthcloset to be provided with adequate means of constant ventilation by at least one air-brick built in an external wall of such watercloset or earthcloset, or by an air-shaft, or by some other effectual method or appliance.

Water-closets.

3. Every person who shall construct a watercloset in connection with a building, shall furnish such watercloset with a cistern of adequate capacity for the purpose of flushing, which shall be separate and distinct from any cistern used for drinking purposes, and shall be so constructed, fitted, and placed as to admit of the supply of water for use in such watercloset so that there shall not be any direct connection between any service pipe upon the premises and any part of the apparatus of such watercloset other than such flushing cistern.

Provided always that the foregoing requirement shall be deemed to be complied with in any case where the apparatus of a watercloset is connected for the purpose of flushing with a cistern of adequate capacity, which is used solely for flushing waterclosets or urinals.

He shall construct or fix the pipe and union connecting such flushing cistern with the pan, basin, or other receptacle with which such watercloset may be provided, so that such pipe and union shall not in any

part have an internal diameter of less than one inch and a quarter.

He shall furnish such watercloset with a suitable apparatus for the effectual application of water to any pan, basin, or other receptacle with which such apparatus may be connected and used, and for the effectual flushing and cleansing of such pan, basin, or other receptacle, and for the prompt and effectual removal therefrom and from the trap connected therewith of any solid or liquid filth which may from time to time be deposited therein.

He shall furnish such watercloset with a pan, basin, or other suitable receptacle of non-absorbent material, and of such shape, of such capacity, and of such mode of construction as to receive and contain a sufficient quantity of water, and to allow all filth which may from time to time be deposited in such pan, basin, or receptacle, to fall free of the sides thereof and directly into the water received and contained in such pan, basin, or receptacle.

He shall not construct or fix under such pan, basin, or receptacle, any 'container' or other similar fitting.

He shall construct or fix immediately beneath or in connection with such pan, basin, or other suitable receptacle, an efficient siphon trap, so constructed that it shall at all times maintain a sufficient water seal between such pan, basin, or other suitable receptacle and any drain or soil pipe in connection therewith. He shall not construct or fix in or in connection with the watercloset apparatus any D trap or other similar trap.

If he shall construct any watercloset or shall fix or fit any trap to any existing watercloset or in connection with a soil pipe, which is itself in connection with any other watercloset, he shall cause the trap of every such watercloset to be ventilated into the open air at a point as high as the top of the soil pipe, or into the soil pipe at a point above the highest watercloset connected with such soil pipe, and so that such ventilating pipe shall have in all parts an internal diameter of not less than two inches, and shall be connected with the arm of the soil pipe at a point not less than three and not more than twelve inches from the highest part of the trap and on that side of the water seal which is nearest to the soil pipe.

Soil pipes.

4. Any person who shall provide a soil pipe in connection with a building to be hereafter erected, shall cause such soil pipe to be situated outside such building,

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and any person who shall provide or construct or refit a soil pipe in connection with an existing building, shall, whenever practicable, cause such soil pipe to be situated outside such building, and in all cases where such soil pipe shall be situated within any building, shall construct such soil pipe in drawn lead, or of heavy cast iron jointed with molten lead and properly caulked.

He shall construct such soil pipe so that its weight in proportion to its length and internal diameter shall be as follows—

Diameter	LEAD Weight per 10 feet length not less than	IRON Weight per 6 feet length not less than
inches	lbs.	lbs.
$3\frac{1}{2}$	65	48
4	74	54
5	92	69
6	110	84

Every person who shall provide a soil pipe outside or inside a building shall cause such soil pipe to have an internal diameter of not less than three and a half inches, and to be continued upwards without diminution of its diameter, and (except where unavoidable) without any bend or angle being formed in such soil pipe, to such a height and in such a position as to afford by means of the open end of such soil pipe a safe outlet for foul air, and so that such open end shall in all cases be above the highest part of the roof of the building to which the soil pipe is attached, and where practicable, be not less than three feet above any window within twenty feet measured in a straight line from the open end of such soil pipe.

He shall furnish the open end of such soil pipe with a wireguard covering, the openings in the meshes of which shall be equal to not less than the area of the open end of the soil pipe.

In all such cases where he shall connect a lead trap or pipe with an iron soil pipe or drain he shall insert between such trap or pipe and such soil pipe or drain a brass thimble, and he shall connect such lead trap or pipe with such thimble by means of a wiped or overcast joint, and he shall connect such thimble with the iron soil pipe or drain by means of a joint made with molten lead, properly caulked.

In all such cases where he shall connect a stoneware trap or pipe with a lead soil pipe, he shall insert between such stoneware trap or pipe and such soil pipe a brass socket or other similar appliance, and he shall connect such stoneware trap or pipe by inserting it into such socket, making the joint with Portland cement, and he shall connect such socket with the lead soil pipe, by means of a wiped or overcast joint.

In all cases where he shall connect a stoneware trap or pipe with an iron soil pipe or drain, he shall insert such stoneware trap or pipe into a socket on such iron soil pipe or drain, making the joint with Portland cement.

He shall so construct such soil pipe that it shall not be directly connected with the waste of any bath, rainwater pipe, or of any sink other than that which is provided for the reception of urine or other excremental filth, and he shall construct such soil pipe so that there shall not be any trap in such soil pipe or between the soil pipe and any drain with which it is connected.

Watercloseets.

5. A person who shall newly fit or fix any apparatus in connection with any existing watercloset, shall, as regards such apparatus and its connection with any soil pipes or drain, comply with such of the requirements of the foregoing bye-laws as would be applicable to the apparatus so fitted or fixed if the watercloset were being newly constructed.

Earthclosets.

6. Every person who shall construct an earthcloset in connection with a building shall furnish such earthcloset with a reservoir or receptacle, of suitable construction and of adequate capacity, for dry earth, and he shall construct and fix such reservoir or receptacle in such a manner and in such a position as to admit of ready access to such reservoir or receptacle for the purpose of depositing therein the necessary supply of dry earth.

He shall construct or fix in connection with such reservoir or receptacle suitable means or apparatus for the frequent and effectual application of a sufficient quantity of dry earth to any filth which may from time to time be deposited in any receptacle for filth constructed, fitted, or used, in or in connection with such earthcloset.

He shall construct such earthcloset so that the contents of such reservoir or receptacle may not at any time be exposed to any rainfall or to the drainage of any waste water or liquid refuse from any premises.

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7. Every person who shall construct an earthcloset in connection with a building shall construct such earthcloset for use in combination with a movable receptacle for filth.

He shall construct such earthcloset so as to admit of a movable receptacle for filth, of a capacity not exceeding two cubic feet, being placed and fitted beneath the seat in such a manner and in such a position as may effectually prevent the deposit upon the floor or sides of the space beneath such seat, or elsewhere than in such receptacle, of any filth which may from time to time fall or be cast through the aperture in such seat.

He shall construct such receptacle for filth in such a manner and in such a position as to admit of the frequent and effectual application of a sufficient quantity of dry earth to any filth which may be from time to time deposited in such receptacle for filth, and in such a manner and in such a position as to admit of ready access for the purpose of removing the contents thereof.

He shall also construct such earthcloset so that the contents of such receptacle for filth may not at any time be exposed to any rainfall or to the drainage of any waste water or liquid refuse from any premises.

Privies.

8. Every person who shall construct a privy in connection with a building shall construct such privy at a distance of twenty feet at the least from a dwelling-house, or public building, or any building in which any person may be or may be intended to be employed in any manufacture, trade, or business.

9. A person who shall construct a privy in connection with a building shall not construct such privy within the distance of one hundred feet from any well, spring, or stream of water used, or likely to be used, by man for drinking or domestic purposes, or for manufacturing drinks for the use of man, or otherwise in such a position as to render any such water liable to pollution.

10. Every person who shall construct a privy in connection with a building shall construct such privy in such a manner and in such a position as to afford ready means of access to such privy, for the purpose of cleansing such privy and of removing filth therefrom, and in such a manner and in such a position as to admit of all filth being removed from such privy, and from the premises to which such privy may belong, without being carried through any dwelling-house, or public building, or any building in which

any person may be or may be intended to be employed in any manufacture, trade, or business.

11. Every person who shall construct a privy in connection with a building, shall provide such privy with a sufficient opening for ventilation as near to the top as practicable and communicating directly with the external air.

He shall cause the floor of such privy to be flagged or paved with hard tiles or other non-absorbent material, and he shall construct such floor so that it shall be in every part thereof at a height of not less than six inches above the level of the surface of the ground adjoining such privy, and so that such floor shall have a fall or inclination towards the door of such privy of half an inch to the foot.

12. Every person who shall construct a privy in connection with a building shall construct such privy for use in combination with a movable receptacle for filth, and shall construct over the whole area of the space immediately beneath the seat of such privy a floor of flagging or asphalte or some suitable composite material, at a height of not less than three inches above the level of the surface of the ground adjoining such privy; and he shall cause the whole extent of each side of such space between the floor and the seat, other than any part that may be occupied by any door or other opening therein, to be constructed of flagging, slate, or good brickwork, at least nine inches thick, and rendered in good cement or asphalted.

He shall construct the seat of such privy, the aperture in such seat, and the space beneath such seat, of such dimensions as to admit of a movable receptacle for filth of a capacity not exceeding two cubic feet being placed and fitted beneath such seat in such a manner and in such a position as may effectually prevent the deposit, upon the floor or sides of the space beneath such seat or elsewhere than in such receptacle, of any filth which may from time to time fall or be cast through the aperture in such seat.

He shall construct such privy so that for the purpose of cleansing the space beneath the seat, or of removing therefrom or placing or fitting therein an appropriate receptacle for filth, there shall be a door or other opening in the back or one of the sides thereof capable of being opened from the outside of the privy, or in any case where such a mode of construction may be

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impracticable, so that for the purposes aforesaid the whole of the seat of the privy or a sufficient part thereof may be readily moved or adjusted.

13. A person who shall construct a privy in connection with a building shall not cause or suffer any part of the space under the seat of such privy, or any part of any receptacle for filth in or in connection with such privy to communicate with any drain.

Water-closets, earth-closets and privies.

14. Every person who shall intend to construct any watercloset, earthcloset, or privy, or to fit or fix in or in connection with any watercloset, earthcloset, or privy any apparatus or any trap or soil pipe, shall, before executing any such works, give notice in writing to the clerk of the Sanitary Authority.

Earth-closets and privies.

15. Every owner of an earthcloset or privy existing at the date of the confirmation of these bye-laws shall, before the expiration of six months from and after such date of confirmation, cause the same to be reconstructed in such manner that its position, structure and apparatus shall comply with such of the requirements of the foregoing bye-laws as are applicable to earthclosets or privies newly constructed.

Ashpits.

16. When any person shall provide an ashpit in connection with a building, he shall cause the same to consist of one or more movable receptacles sufficient to contain the house refuse which may accumulate during any period not exceeding one week. Each of such receptacles shall be constructed of metal and shall be provided with one or more suitable handles and cover. The capacity of each of such receptacles shall not exceed two cubic feet.

Provided that the requirement as to the size of each of such receptacles shall not apply to any person who shall construct such receptacle or receptacles in connection with any premises to which there is attached as part of the condition of tenancy the right to dispose of house refuse in an ashpit used in common by the occupiers of several tenancies, but in no case shall such ashpit be of greater capacity than is required to enable it to contain the refuse which may accumulate during any period not exceeding one week.

17. The occupier of any premises who shall use any ashpit shall, if such ashpit consist of a movable receptacle, cause such receptacle to be kept in a covered place, or to be properly covered, so that it shall not be exposed to rainfall, and if such ashpit consist of a fixed

receptacle, he shall cause the same to be kept properly covered.

18. Where the Sanitary Authority have arranged for the daily removal of house refuse in their district, or in any part thereof, the owner of any premises in such district or part thereof shall provide an ashpit which shall consist of one or more movable receptacles, sufficient to contain the house refuse which may accumulate during any period not exceeding three days, which the Sanitary Authority may determine, and of which the Sanitary Authority shall give notice by public announcement in their district. Each of such receptacles shall be constructed of metal, and provided with one or more suitable handles and cover. The capacity of each of such receptacles shall not exceed two cubic feet.

Provided always that this bye-law shall not apply to the owner of any premises until the expiration of three months after the Sanitary Authority have publicly notified their intention to adopt a system of daily collection of house refuse in that part of their district which comprises such premises.

19. Where any receptacle shall have been provided as an ashpit for any premises in pursuance of any bye-law in that behalf, no person shall deposit the house refuse which may accumulate on such premises in any ashpit that does not comply with the requirements of these bye-laws.

Cesspools.

20. Every person who shall construct a cesspool in connection with a building, shall construct such cesspool at a distance of one hundred feet at the least from a dwelling-house or public building, or any building in which any person may be, or may be intended to be, employed in any manufacture, trade, or business.

21. A person who shall construct a cesspool in connection with a building, shall not construct such cesspool within the distance of one hundred feet from any well, spring, or stream of water.

22. Every person who shall construct a cesspool in connection with a building, shall construct such cesspool in such a manner and in such a position as to afford ready means of access to such cesspool, for the purpose of cleansing such cesspool, and of removing the contents thereof, and in such a manner and in such a position as to admit of the contents of such cesspool being removed therefrom, and from the premises to which such cesspool may belong, without being carried through any dwelling-house, or public building, or any building in which any

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person may be, or may be intended to be, employed in any manufacture, trade, or business.

He shall not in any case construct such cesspool so that it shall have, by drain or otherwise, any means of communication with any sewer or any overflow outlet.

23. Every person who shall construct a cesspool in connection with a building, shall construct such cesspool of good brickwork bedded and grouted in cement, properly rendered inside with cement, and with a backing of at least nine inches of well-puddled clay around and beneath such brickwork, and so that such cesspool shall be perfectly watertight.

He shall also cause such cesspool to be arched or otherwise properly covered over, and to be provided with adequate means of ventilation.

Receptacles for dung.

24. A person shall not use as a receptacle for dung any receptacle so constructed or placed that one of its sides shall be formed by the wall of any room used for human habitation, or under a dwelling-house, factory, workshop, or workplace, and he shall not use any receptacle in such a situation that it would be likely to cause a nuisance or become injurious or dangerous to health.

25. Every owner of any existing receptacle for dung shall, before the expiration of six months from the date of the confirmation of these bye-laws, and every person who shall construct a receptacle for dung, shall cause such receptacle to be so constructed that its capacity shall not be greater than two cubic yards, and so that the bottom or floor thereof shall not, in any case, be lower than the surface of the ground adjoining such receptacle.

He shall so construct such receptacle that a sufficient part of one of its sides shall be readily removable for the purpose of facilitating cleansing.

He shall also cause such receptacle to be constructed in such a manner and of such materials, and to be maintained at all times in such a condition as to prevent any escape of the contents thereof, or any soakage therefrom into the ground or into the wall of any building.

He shall cause such receptacle to be so constructed that no rain or water can enter therein, and so that it shall be freely ventilated into the external air.

Provided that a person who shall construct a receptacle for dung, the whole of the contents of which are removed not less frequently than every forty-eight hours, shall not be required to construct such receptacle

so that its capacity shall not be greater than two cubic yards.

And provided that a person who shall construct a receptacle for dung, which shall contain only dung of horses, asses or mules with stable litter, and the whole of the contents of which are removed not less frequently than every forty-eight hours, may, instead of all other requirements of this bye-law, construct a metal cage, and shall beneath such metal cage adequately pave the ground at a level not lower than the surrounding ground, and in such a manner and to such an extent as will prevent any soakage into the ground; and if such cage be placed near to or against any building he shall adequately cement the wall of such building in such a manner and to such an extent as will prevent any soakage from the dung within or upon such receptacle into the wall of such building.

Cleansing of water-closets, privies, and receptacles for dung.

26. The occupier of any premises shall cause every watercloset belonging to such premises to be thoroughly cleansed from time to time as often as may be necessary for the purpose of keeping such watercloset in a cleanly condition.

The occupier of any premises shall once at least in every week cause every earthcloset, privy, and receptacle for dung belonging to such premises to be emptied and thoroughly cleansed.

The occupier of any premises shall once at least in every three months cause every cesspool belonging to such premises to be emptied and thoroughly cleansed.

Provided that where two or more lodgers in a lodging-house are entitled to the use in common of any watercloset, earthcloset, privy, cesspool, or receptacle for dung, the landlord shall cause such watercloset, earthcloset, privy, cesspool, or receptacle for dung to be cleansed and emptied as aforesaid.

The landlord, or owner of any lodging house, shall provide and maintain in connection with such house, watercloset, earthcloset, or privy accommodation in the proportion of not less than one watercloset, earthcloset, or privy, for every twelve persons.

For the purposes of this bye-law, 'a lodging-house' means a house or part of a house which is let in lodgings or occupied by members of more than one family. 'Landlord' in relation to a house or part of a house which is let in lodgings, or occupied by members of more than one family, means the person (whatever

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may be the nature or extent of his interest) by whom or on whose behalf such house or part of a house is let in lodgings or for occupation by members of more than one family, or who for the time being receives or is entitled to receive the profits arising from such letting. 'Lodger' in relation to a house or part of a house which is let in lodgings or occupied by members of more than one family, means a person to whom any room or rooms in such house or part of a house may have been let as a lodging or for his use or occupation.

Nothing in this bye-law shall extend to any common lodging-house.

Maintenance of closets, &c.

27. The owner of any premises shall maintain in proper condition of repair every watercloset, earthcloset, privy, ashpit, cesspool, and receptacle for dung, and the proper accessories thereof belonging to such premises.

Penalties.

Penalties.

28. Every person who shall offend against any of the foregoing bye-laws shall be liable for every such offence to a penalty of five pounds, and in the case of a continuing offence to a further penalty of forty shillings for each day after written notice of the offence from the Sanitary Authority. Provided nevertheless that the Court before whom any complaint may be made or any proceedings may be taken in respect of any such offence may, if the Court think fit, adjudge the payment as a penalty of any sum less than the full amount of the penalty imposed by this bye-law.

L.S.

The seal of the London County Council was hereunto affixed on the 22nd day of June, 1893.

H. DE LA HOOKE,
Clerk of the Council.

L.S.

Allowed by the Local Government Board this twenty-eighth day of June, 1893.

HENRY H. FOWLER,
President.

HUGH OWEN,
Secretary.

REGULATIONS AS TO APPLICATIONS FOR SANCTION OR CONSENT UNDER THE LONDON BUILDING ACT, 1894. (JANUARY 1, 1895.)

I.—GENERAL.

ALL applications are to be addressed to the Superintending Architect, County Hall, Spring Gardens, S.W.

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 name of the person on whose behalf the application is made must be stated. Reference must be made to the section of the Act under which sanction is sought, and particulars must be furnished as to the nature of the application and the situation of the street, building, or structure.

All drawings must be sent in duplicate.

Note.—In addition to the foregoing 'General' regulations, the following regulations have been made by the Building Act Committee, viz.:—

'The chairman of the Committee is authorised to refer letters and other documents relating to the business of the Committee to the various officers, with instructions to them to take whatever steps he may think advisable in each case, and to report the same to the Committee.

'The officers are to note carefully that the Act in many places—*e.g.* sects. 10, 11, 15, 16, 22, 24, 32, 35, 42, and 44—imposes a limit of time within which objections must be raised or action taken. This is modified by sect. 174.

'All items affected by such limits are to be marked on the agenda with an asterisk.'

See also the 'General' requirements of the Standing Orders of the Council of January 1, 1895.

App. III.
Pt. II.
Regulations.
(Jan. 1, 1895.)

II.—PARTICULARS AS TO DRAWINGS REQUIRED IN EACH CASE.

(1) *New Streets, &c., sect.* 7 *and sect.* 10.

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.

A key plan of the locality showing the surrounding property must also be sent.

The names proposed to be given to the streets must be submitted; they must be such as are not already in use.

In the event of the application being sanctioned, two additional copies of the plans will be required.

In the case of the widening of streets under sect. 10 (4), sections will not be required.

Note.—See also the Standing Orders of the Council of January 1, 1895, as to the formation and widening of streets, *ante*, p. 444. And see Regulation II. (5), *infra*.

(2) *Buildings within prescribed distance, lines of frontage, &c., sect.* 13, *sect.* 17, *and sect.* 22.

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. 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 sect. 13 (5), the extent and height of the old buildings on the site must be shown to the same scale.

Note.—See also the Standing Orders of the Council of January 1, 1895, as to 'Lines of Building Frontage,' *ante*, p. 445.

(3) *Space at rear of domestic buildings, sect.* 41, *and open space about working class dwellings not on the public way. Sect.* 42.

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 the scale of 22 feet to 1 inch, showing the adjoining premises, with the approximate height of any buildings thereon.

Note.—In addition to the foregoing regulation, the following regulation has been made by the Building Act Committee, viz.:—'Applications under sect. 42 are to be reported upon by the Medical Officer as well as the Architect.'

See also Regulation II. (5), *infra.*

(4) *Open space at rear of domestic buildings on old sites. Sect.* 43.

Plans and sections to the 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 the scale of 22 feet to 1 inch.

(5) *Laying out new streets on a cleared area. Sect.* 44.

In addition to the plans required under Regulation II. (1), and (so far as any relaxation or modification of the rules of Part V. of the Act may be asked for) under II. (3), a plan will be required to the scale of 88 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, as well as of the proposed new streets and buildings.

Note.—See the note to Regulation II. (1), *supra.*

(6) *Height of Buildings. Sect.* 47 *and sect.* 49.

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.

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Also a plan and sections to the scale of one-eighth of an inch to the foot, showing the height of the several parts of the building.

(7) *Timber in External Walls, sect.* 55 ; *and Furnace Chimney-shafts, sect.* 65.

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 the scale of 22 feet to the inch, showing the position of the building.

(8) *Projections. Sect.* 73.

In addition to the drawings, &c., required by Regulation II. (2), a plan, section, and side elevation to the 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.

Note.—See also the Standing Orders of January 1, 1895, *ante*, p. 446.

(9) *Additional Cubical Extent, sect.* 76 ; *and Buildings for the Supply of Electricity, sect.* 203.

A block plan to the scale of 22 feet to the inch showing the position of the building and buildings adjacent.

Plans and sections to the 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 are to be indicated, and any points bearing upon the question of liability to fire.

(10) *Special and Temporary Buildings and Wooden Structures. Part VII.*

Applications must be accompanied by a block plan of the premises, showing the position of the building or structure, and also by a plan, elevation, and section to a scale of one-eighth of an inch to the foot, together with such details to a larger scale as may be necessary to show the construction.

A fee of 5*s*. must be paid to the cashier of the Council on depositing the application, and a further fee of 5*s*. on obtaining a notification of the order of

the Council, and in no case will the work be allowed to proceed until the fees are paid.

Every application for an extension of the period for which the Council has allowed the use of a temporary building must be accompanied by a certificate from the district surveyor as to its condition, and 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 structure has existed for less than three years, and if the inspection be merely to ascertain that the building has not been altered as to condition or position, and to certify that an extension of time may be allowed, a fee of 10*s*. may be demanded and received by the district surveyor.

In cases where the structure has existed for three years or more, and a certificate with regard to structural stability is required, a fee of 20*s*. may be demanded and received by the district surveyor.

Note.—See also the Standing Orders of the Council of January 1, 1895, *ante*, p. 446.

(11) *Naming of Streets and Numbering of Houses. Part IV.*

Persons laying out new streets or building rows of houses would facilitate their own operations with reference to leases and the numbering of houses required by the Council under the statute by observing the following rules:—

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 must start 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.

No name is to be used for a street unless with the approval of the Council; and it must be a name consisting, if possible, of one word, with the addition of 'street,' 'road,' or other like term, and not already in use within the county.

Only such streets as are leading thoroughfares of considerable length can be designated 'roads.'

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No street under 50 feet in width can be called an 'avenue.'

The names 'gardens' and 'groves' can only be used when the terms seem appropriate.

Names in some way associated with the locality are preferred.

Names for terraces or places, or other blocks of houses, and sections of streets, usually known as subsidiary names, are not recognised.

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*s.* 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.*

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.

Note.—See also the Standing Orders of the Council of January 1, 1895, *ante*, p. 445.

THE LONDON BUILDING ACT, 1894.

57 & 58 VICT. CHAP. CCXIII. SECT. 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 Sect. 184.

1. ALL communications shall be written, type-written, or printed on foolscap paper.

Generally. All drawings shall be on tracing linen and in duplicate.

2. 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.

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. 13A, 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 fourteen 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 twenty 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 sect. 13	The District Surveyor The Local Authority

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Section	With reference to	Persons to whom notice to be given
25	The Certificate of Superintending Architect as to general line of buildings	The Superintending Architect The Local Authority and all other persons entitled under sect. 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.

7. The hearing of appeals shall be open to the public.

The full tribunal of three members shall sit to hear appeals.

Procedure of the hearing of 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[1] £	s.	d.	Lower Scale[2] £	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
Inspection 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.

[1] 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.

[2] The Lower Scale shall apply to all other cases.

App. III. Pt. II. Regulations. (March 1, 1895.)

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. 13A, Great George Street, Westminster, S.W.

All payments to be made in cash. Cheques will not be received.

Part III.

STANDING ORDERS, BYE-LAWS, AND REGULATIONS OF THE COMMISSIONERS OF SEWERS.

Vaults.

Standing Order.

A.

That the walls and arches be built of good hard stock bricks, set in mortar or cement, and that the walls and arches be at least one brick and a half in thickness.

That the springing walls be at right angles with, and the ends of the springing walls parallel with, the line of the frontage of the house.

That the top of each arch be at least 15 inches below the surface of the pavement.

That 10 feet, measuring from the front line of the house to the extreme outer point of the brickwork of the end walls, be the greatest projection granted in any street; but that in streets where the footway has not so great a projection as 10 feet, that the external face of the brickwork be only allowed to the line of curb of such footways.

That where ovens are constructed beneath vaults they be built entirely independent of the walls and arches, and the surface of the crown of the oven be at least 12 inches beneath the underside of the arches of the vault.

That the openings for coals be as near the house as possible, and be covered with chequered iron plates not less than $\frac{3}{4}$ of an inch thick, and not more than 12 inches diameter, or if to give light to the cellars beneath they be formed of iron frames, the space or width between the bars being not more than $1\frac{1}{2}$ inch at any point, and be filled with glass lenses.

That the persons constructing vaults pay the expenses of taking up and replacing the pavement, which work shall be done by the contractor to the commission.

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Standing Order 20.

Open and closed areas.—1. That the maximum projection of all gratings or frames over areas, whether they be open frames or filled with slabs of glass or lenses, be twelve inches, measuring from the general line of the front of the walls at one foot above the ground level, and the maximum length of each be six feet. 2. That where more than one area grating, or other such covering is permitted in the front of one house or building, the division between each be not less than nine inches, and be formed by a solid piece of hard stone, not less than nine inches wide, and nine inches deep, such stone to be securely pinned into, or to rest upon the brickwork, not less than six inches at each end; that these stone curbs be fixed at the levels of the footways; that the gratings or frames be securely let into the curbs, and be run with lead; and that they be not permitted to open. 3. That where covered with open iron gratings, the gratings be made with frames or borders; that the bars of the gratings be fixed at right angles with the house, and the space or width between each bar do not exceed one inch and a half; that each bar be not more than three-quarters of an inch in width on the surface, and be not less than one inch in transverse sectional area. 4. That the coverings over areas where intended to be close or filled with glass slabs, be formed by iron gratings or frames, the bars not more than three inches apart; that the bars of the gratings be fixed at right angles to the line of the house; that each bar have at least one inch of sectional area, and that the spaces be filled with glass of at least one inch in thickness. 5. That no covering of any material or description be permitted over any area openings, excepting those formed by open iron gratings, or by iron frames filled with slabs of glass or lenses, as before described, or with York stone landings six inches thick.

Cellar flaps.—6. That the maximum projection of the openings to cellars or cellar flaps be eighteen inches, measuring from the front line of the wall of the house at twelve inches above the ground level, and the maximum width of the openings be four feet; that they be surrounded at the footway level by curbs made of hard stone, not less than nine inches wide upon the face; that the flaps be securely fastened from the underside, and be made so as to shut on to ledges or rabbets in

stone curbs, and to open outwards. 7. That the coverings of cellar openings be made of oak wood only, and of sufficient thickness. 8. That there be no staircases or steps fixed beneath the cellar flaps, and that openings to basements be not granted for the purpose of constant access, but for occasionally raising and lowering goods, or removing dust, &c.; and that they be closed immediately after such operations are completed. That the curbs be not made of Portland stone, but of Sprinkwell or Hopton Wood stone, or stone of hard quality.

Coal plates.—9. That the coal plates be circular, and of not more than twelve inches diameter, and be securely let into rabbets, cut into the paving stones; that they be formed of iron, not less than three-quarters of an inch thick, and deeply chequered on the surface; or if to give light to the cellars they be formed of iron frames, the space or width between the bars being not more than one and a half inches at any point, and be filled with glass lenses.

Lamps.

Standing Order 18.

That the underside of any portion of a lamp, other than a French lamp, be not less than 9 feet from the footway surface.

That the external dimensions, including frame and ornaments, shall not exceed 4 feet in height and 2 feet 3 inches measured sideways.

That no lamp project more than 4 feet 6 inches from the front of the house where the pavement permits, and never be less than 2 feet from the carriage way.

That advertisements be permitted on the sides but not on the bottom of the lamp, and that the bottom of the lamp in all cases be of clear glass.

That the lamps be kept lighted from sunset until the premises are closed.

That the underside of every French lamp be 7 feet 6 inches from the surface of the pavement, that the lamp project not more than 2 feet, and be removed when not alight.

That no person be allowed to erect a private lamp until notice has been sent to the inspector of the district, that he may measure the same, and report whether it be conformable to the standing order of the Commissioners.

REGULATIONS FOR HOUSE DRAINS, &c.

App. III. Pt. III. Regulations of Com. of Sewers.

Persons wishing to construct house drains shall make application at the Sewers Office, Guildhall, on a form to be obtained there, and deposit a plan of the premises to be drained, to a scale of eight feet to an inch, with the lines of the drains, their branches and inlets shown thereon in red, together with the sizes and the depth of the lower floor of the premises below the footway kerb fronting the premises. All drains shall be formed of socketed, impermeable, glazed stoneware pipes, or iron pipes, of sufficient thickness, and of such internal dimensions as the Commission shall direct. All drains, where practicable, shall be laid at least one foot below the floor level, measuring to the tops of the pipes; the ground shall be carefully excavated to true hanging lines, and the pipes have a firm bearing throughout. All junctions shall be curved, and made at the sides of the pipes, and the joints of all pipes be made good with Portland or other good cement.

All works beneath the public way shall be done by the contractor to the Commission, and the applicant, before the works are commenced, shall pay the cost of such drain, as estimated by the engineer to the Commission.

All water closets, surface drains, sinks, gullies, rain-water pipes, and other inlets (excepting vertical soil pipes), shall be efficiently trapped before being connected with the drains. All water closet connections are to be trapped before they enter soil pipes. All soil pipes shall be ventilated from their highest points, by pipes of not less than three inches internal diameter, formed of impervious material, and be made air-tight, be carried well above the roofs of the premises, be covered with cowls, and so placed as to discharge as far away as practicable from windows, chimneys, or other openings. The heads of all drains are to be ventilated by pipes carried up above the roofs in a similar manner.

All soil pipes shall, where practicable, be placed outside buildings, and where inside, be fixed in grooves, or chases, so as to be readily accessible.

No waste-water pipes shall be connected with soil pipes.

No rain-water pipes shall be used as ventilators.

All premises shall have a water-supply for the water closets distinct from that for drinking purposes.

All disused drains and cesspools shall be emptied, and filled up with dry brick rubbish.

All work shall be executed with the best materials, the drains be laid in accordance with the sections furnished by the engineer to the Commission, and all work be done to the satisfaction of the district inspector, or other officer appointed to supervise that work.

No drain shall be covered in until it has been seen and approved by the Commissioners' officer. Notice shall be given by the applicant to the district inspector, at the Sewers Office, Guildhall, at least twenty-four hours before, when the drains are laid in and ready for his inspection. If any drain be covered up without such notice, the Commission shall be empowered to uncover the work, and recover the expense of so doing from those disobeying these regulations.

REGULATIONS AND FEES FOR HOARDS AND SCAFFOLDS.

AGREED TO BY THE COMMISSIONERS OF SEWERS OF THE CITY OF LONDON, 3RD MAY, 1887, 5TH MAY, 1891, AND 7TH MARCH, 1893.

Applications.

Each application for hoard or scaffold is to be entered in a book, with headings for the following information :—

1. Name of street or place, and number of house.
2. Nature of work to be executed.
3. Area of ground level of new premises to be built, or old premises largely altered.
4. Number of storeys, including ground floor, if new premises are to be built or old premises altered.
5. Length of hoarding or scaffolding needed.
6. Time for which licence is requested.
7. Name and address of building owner.
8. Do. do. architect.
9. Do. do. builder.
10. Do. do. applicant.
11. Date of application.
12. Signature of applicant.

Regulations.

13. The inspector of pavements is to report in the application book the time he thinks needful for the hoard

App. III. Pt. III. Regulations of Com. of Sewers.

or scaffold to be licensed; the licence is then to be made out, and the conditions entered in the book by the clerk.

14. If there is disagreement between the applicant and the inspector, as to the time needed, the engineer to the Commissioners to decide.

15. No hoard or scaffold is to project beyond the footway pavement where it is narrow, nor more than 6 feet where it is wide enough to admit of such projection; any deviation on account of special reasons is to be stated upon the licence.

16. No hoard is to have doors opening outwards.

17. No scaffold is to be enclosed so as to prevent passengers passing under it.

18. The lower stages of scaffolds are to be close or doubly planked; each stage to have fan and edge boards, and such other precautions to be taken as the inspector of pavements requires, to prevent dirt or wet falling upon the public, or for the public safety.

19. No materials are to be deposited below any scaffold. If in the opinion of the inspector it is necessary for the public safety, a hoard licence to be granted instead of a scaffold licence.

20. Where practicable or needed, a boarded platform, 4 feet wide, and as much wider as may be necessary for the traffic, with stout post rails, and wheel kerbs on the outside of it, are to be constructed outside the hoard or scaffold, as the inspector may direct.

21. Where the inspector thinks it necessary in the public interest, applicants shall form a gantry, stage or bridge over the public way, so as to allow the foot traffic to pass beneath it. The gantry is to be double planked, and so constructed as to prevent dust, rubbish or water falling upon the foot passengers, and the licensee shall keep the public way beneath it clean to the satisfaction of the inspector.

22. Hoards and scaffolds are to be watched and lighted at night.

23. All fire hydrants must be left unenclosed in recesses formed of such size and in such manner as may enable the hydrant to be easily got at and used.

24. Public lamps are not to be enclosed without the permission of the inspector of pavements. When such enclosure is permitted, the applicant shall put a lamp or lamps temporarily outside the hoard or scaffold, so that the public way may be properly lighted.

25. The licensee shall undertake to employ and pay

the contractors to the Commission to make good the pavements, lamps, and all works disturbed, to the satisfaction of the engineer.

26. No advertisements allowed on hoardings unless specially licensed.

FEES FOR LICENCES (WITHOUT THE RIGHT TO ADVERTISE).

For Hoards.

	£	s.	d.
If to remain not more than two weeks, per foot lineal of frontage	0	0	6
If over two weeks and not more than four weeks, per foot lineal	0	1	6
If over four weeks and not more than eight weeks, per foot lineal	0	4	6
If over eight weeks and not more than twelve weeks, per foot lineal	0	9	0
For every month or part of a month beyond the twelve weeks, per foot lineal	0	5	0

For Scaffolds.

	£	s.	d.
If to remain not more than two weeks, per foot lineal of frontage	0	0	4
If more than two weeks and not more than four weeks, per foot lineal	0	1	0
If more than four weeks and not more than eight weeks, per foot lineal	0	3	0
If more than eight weeks and not more than twelve weeks, per foot lineal	0	6	0
If more than twelve weeks and not more than sixteen weeks, per foot lineal	0	10	0
For every month or part of a month beyond the sixteen weeks, per foot lineal	0	5	0

For Raking Shores.

	£	s.	d.
If to remain not more than two weeks, each	0	5	0
If more than two weeks and not more than four weeks, each	0	15	0
If more than four weeks and not more than eight weeks, each	2	0	0
If more than eight weeks and not more than twelve weeks, each	4	0	0
For every month or part of a month beyond twelve weeks	2	0	0

No fee, either for hoard or scaffold, to be more than 10*l.*, without the right to advertise.

When a licence (without the right to advertise) is renewed, the fee is to be that which would have been charged had the licence been taken out for the full time at first, less the sum of money already paid for the first licence.

For the Right to Advertise.

In addition to the scale of fees charged as above for hoards without the privilege of advertising, the following payments have to be made for the right to advertise,

App. III. Pt. III. Regulations of Com. of Sewers.

viz.: 10*s.*, per 100 super feet, per month, in first-class streets and the return frontages thereto; 5*s.*, per 100 feet super, per month, in all other streets.

HENRY BLAKE, *Principal Clerk*,
Sewers Office, Guildhall.

LIST OF FIRST-CLASS STREETS.

Adelaide Place.
Aldersgate Street.
Aldgate.
Aldgate High Street.
Barbican.
Beech Street.
Bishopsgate Street Within.
Do. Without.
Blackfriars Bridge Approach.
Blomfield Street.
Cannon Street.
Chancery Lane.
Charterhouse Street.
Cheapside.
Cornhill.
Eastcheap.
Farringdon Street.
Fenchurch Street.
Finsbury Pavement and Moorgate.
Fleet Street.
Fore Street.
Gracechurch Street.
Great Tower Street.
Gresham Street.
Holborn.
Holborn Circus.
Holborn Viaduct.
Houndsditch.
King Street, Cheapside.
King William Street.
Leadenhall Street.
Liverpool Street.
Lombard Street.
London Wall.
Long Lane.
Lothbury.
Lower Thames Street.
Ludgate Circus.
Ludgate Hill.
Mansion House Street.
Moorgate Street.
New Bridge Street.
New Broad Street.
Newgate Street.
Old Broad Street.
Poultry.
Prince's Street.
Queen Street.
Queen Street Place.
Queen Victoria Street.
St. Andrew Street.
St. Bride Street.
St. Martin's-le-Grand.
St. Paul's Churchyard.
Threadneedle Street.
Throgmorton Street.
Upper Thames Street.
Victoria Embankment Approach.
West Smithfield.

APPENDIX IV.

Part I.

THE LONDON BUILDING ACT, 1894.

57 & 58 Vict. Cap. 213.

Seal of the London County Council

No. 1.—Notice from the builder or person causing or directing the work to be executed to District Surveyor.

To Mr.

District Surveyor of

As the builder or person causing or directing the work undermentioned to be executed, I hereby give you notice that after two clear days from the service on you of this notice, the proposed work will be begun.

The following are the particulars of the proposed work:—

Situation of building or structure (or of each, if more than one):—

Parish of
Street
Number in street (if any)
Description of locality (if the site be vacant)

Intended use of building or structure (or of each, if more than one), *and number of buildings or structures* (if more than one):—

Domestic building to be used as
Building of the warehouse class to be used
Public building to be used as
Structure to be used as

App. IV. Pt. I. Form No. 1.

Additions or alterations to building or structure (or to each, if more than one, if additions or alterations are the subject of the notice), *and nature of addition or alteration* :—

To domestic building
To building of the warehouse class
To public building
To structure
The nature of the work is

Dimensions of building or structure (or of each, if more than one) :—

Area—
Depth ..... feet
×
Width ..... „
Height
Number of storeys

Additions (if any) :—

..... ft. × ..... ft.

Owner :—

Name
Address

Occupier (if any) :—

Name
Address

Date of commencement of work day of 189 .

Date of notice day of 189 .

Signature of person giving notice

Address

INSTRUCTIONS.

1. This form is to be used for new buildings or structures, or additions, or alterations, or on work being resumed after suspension for a period exceeding three months, or where there is change of builder (sect. 145).

2. For neglecting to give notice a penalty of 40*s*.

may be imposed, and also a daily penalty of a like amount.

3. Where several additions or alterations are to be made, each should be clearly described.

4. As to area. The expression 'area' applied to a building means the superficies 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 (sect. 5, sub-sect. 22). In calculating the area of any new building for the purposes of their fees, District Surveyors are authorised to include the area of all outbuildings not exceeding thirty feet in area, whether attached or not, provided such outbuildings be erected at the same time as the main building (third schedule, reg. 5).

5. As to height. The height of every enclosing wall is to be measured from the base of the wall ('base' is defined to mean the underside of the course immediately above the footings) (sect. 5, sub-sect. 10) to the top of the topmost storey, whether such wall be 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 (schedule 1, preliminary rule 7).

6. Work required, by reason of any emergency, to be done immediately or before notice can be given may be begun provided notice be served on the District Surveyor within twenty-four hours after it has been begun (sect. 149). In such cases this form will have to be varied so as to suit the altered circumstances.

7. 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 (sect. 5, sub-sect. 33).

8. Seven days' notice of any new house or building has to be given to the Vestry or District Board under sect. 76 of the Metropolis Local Management Act, 1855.

App. IV.
Pt. I.
Form No. 2.

THE LONDON BUILDING ACT, 1894.

57 & 58 VICT. CAP. 213.

Seal of the London County Council

No. 2.—Notice from District Surveyor to builder or building owner of objection.

DISTRICT SURVEYOR'S OFFICE :

To Mr.
of
Builder or Building Owner

With reference to the building notice served on me on the day of , 189 , relating to proposed work to be carried out by you as builder or building owner at the undermentioned building or structure, I hereby give you notice of objection to such work, as it will not be in conformity with the above Act in the following particulars :—

Building or structure referred to :—

Situation of building or structure :—

Parish of
Street
Number in street (if any)
Description of locality (if the site be vacant)

Particulars of work which will be in contravention of the Act :—

Particulars of work required by the Act, but which is proposed to be omitted :—

Dated this day of 189 .
Signature of District Surveyor
District of

INSTRUCTION.

Any person dissatisfied with the decision of the District Surveyor may within fourteen 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 (sect. 150).

App. IV.
Pt. I.
Form No. 3.

THE LONDON BUILDING ACT, 1894.

57 & 58 Vict. Cap. 213.

Seal of the London County Council

No. 3.—Notice of irregularity.

District Surveyor's Office :

To Mr.

of

Builder

I hereby give you notice that the work which you are now engaged in doing at the undermentioned building or structure is not in conformity with the said Act in the particulars hereunder stated; and I hereby require you, within forty-eight hours from the date hereof, to bring the same into conformity with the said Act in such particulars.

Building or structure referred to :—

Situation of building or structure :—

Parish of

Street

Number in street (if any)

Description of locality (if the site be vacant)

Particulars of work done in contravention of the Act, and to be amended :—

Particulars of work required to be done by the Act, but omitted, and now to be done :—

Particulars of work to be cut into, laid open or pulled down, to ascertain whether anything has been done or omitted to be done as aforesaid :—

Dated this day of 189 .

Signature of District Surveyor

District of

App. IV.
Pt. I.
Form No. 4.

INSTRUCTIONS.

1. If the building has ceased to be in charge of or under the control of the builder, the builder or owner should, on this notice being served, immediately serve on the District Surveyor a notice in writing, *stating the date* at which the building ceased to be in the charge of or under the control of such builder (sect. 152, sub-sect. 1A).

2. If the owner of the building or structure does not allow the builder to comply with the requisitions of this notice, the builder should serve on the District Surveyor notice to that effect *as soon as possible* after the service on the builder of this notice (sect. 152, sub-sect. 2).

THE LONDON BUILDING ACT, 1894.

57 & 58 VICT. CAP. 213.

Seal of the London County Council

No. 4.—Notice to owner or occupier, &c., of irregularity.

DISTRICT SURVEYOR'S OFFICE:

To Mr.

of

The owner or occupier of the building or structure undermentioned, or other the person causing or directing or who has caused or directed the work hereunder specified.

I hereby give you notice that the work at the undermentioned building or structure (which building or structure has ceased to be in charge of or under the control of the builder) *or* (the owner of which building or structure does not allow the builder to comply with the requisitions of a Notice of Irregularity, which has been duly served on such builder) is not in conformity with the said Act in the particulars hereunder stated, and I hereby require you, within forty-eight hours from

the date hereof, to bring the same into conformity with the said Act in such particulars.

Building or structure referred to :—

Situation of building or structure :—

Parish of

Street

Number in street (if any)

Description of locality (if the site be vacant)

Particulars of work done in CONTRAVENTION of the Act, and to be amended :—

Particulars of work required to be done by the Act, but OMITTED, and now to be done :—

Particulars of work to be cut into, laid open or pulled down, to ascertain whether anything has been done or omitted to be done as aforesaid :—

Dated this day of 189 .

Signature of District Surveyor

District of

Form 'A.'

Seal of the Board.

[N.B.—This Form was sanctioned by the Metropolitan Board of Works, and sealed as required by the Statutes in that behalf provided. It is still in use under the Council's Bye-laws.]

THE METROPOLITAN BUILDING ACT, 1855, 18 & 19 VICT. CAP. 122, AND THE METROPOLIS MANAGEMENT AND BUILDING ACTS AMENDMENT ACT, 1878, 41 & 42 VICT. CAP. 32, PART II.

DISTRICT SURVEYOR'S OFFICE FOR THE DISTRICT.

(*a*)

To Mr. (*b*) of the occupier [*or* the builder, *or* the owner] engaged in constructing the house, building, or erection hereinafter described.

(*a*) Insert address.

(*b*) Insert name of owner, occupier, or builder, as the case may be. It will be preferable to insert that of the builder in cases where the work is actually going on. Strike out the part not adapted to the case.

App. IV. Pt. I. Form 'A.'

Take notice that the house, building, or other erection situate and being as follows :

Nature of building
Parish
Street or place
Number in Street (if any)
Description of Locality or Site

has been begun to be and is constructed contrary to the provisions of the bye-laws made under the authority of the said Act of 1878, in the following respects (*c*) :

And I hereby require you forthwith to conform to the provisions of the said Acts and bye-laws by (*d*) altering the whole [*or* the part] of the aforesaid house, building, or other erection as follows (*e*) :

[*or*] (*f*) pulling down and removing the whole [*or* the part] of the aforesaid house, building, or other erection.

Dated this day of 188 .

District Surveyor for the District of

N.B.—By section 17 of the Act 41 & 42 Vict. c. 32 (1878), it is enacted that in case any occupier, builder, owner, or other person, during 28 days after the service of this notice, fails to comply with the requirements of such notice, he shall be liable to a penalty of not less than ten shillings, and not more than forty shillings, for every day from the time of the service of such notice, as aforesaid, until the house, building, or other erection, or any part thereof, comprised in such notice is altered, pulled down, or removed, in accordance with the terms of such notice, and every such penalty shall be in addition to any other penalty for breach of any bye-law.

(*c*) Here shortly state what is objected to, as: 'The foundation or site has not been properly prepared by excavating and removing the refuse or dust therefrom.'

'The site has not been covered with a layer of concrete.'

'The concrete used is not properly composed, or the materials, namely, the lime is not of proper quality,' &c., &c.

'The external walls are not constructed of proper bricks or stone, or are improperly put together, or bad mortar or cement is used.'

(*d*) In cases where alteration or addition and no pulling down is required, adopt this part of the form. Strike out the part not adapted to the case.

(*e*) Here state what alteration is required.

(*f*) In cases where pulling down and removal are required, adopt this part. Strike out the part not adapted to the case.

Form 'B.'

Seal of the Board.

[This Form was sanctioned by the Metropolitan Board of Works, and sealed as required by the Statutes in that behalf provided. It is still in use under the Council's Bye-laws.]

App. IV. Pt. I. Form 'B.'

THE METROPOLITAN BUILDING ACT, 1855, 18 & 19 VICT. CAP. 122, AND THE METROPOLIS MANAGEMENT AND BUILDING ACTS AMENDMENT ACT, 1878, 41 & 42 VICT. CAP. 32, PART II.

DISTRICT SURVEYOR'S OFFICE FOR THE DISTRICT.

(*a*)

I, the undersigned, being the district surveyor in and for the said district, having received from you notice of the intended erection of [*or* (*b*) re-erection of *or* alteration of *or* addition to] the building [(*c*) *intended to be*] erected on the site described in your said notice as being in street or place in the parish of in the county of and known as (*d*) and situate within my aforesaid district, do hereby require you forthwith to deposit with me at my office aforesaid, plans and sections of the proposed new building [*or* (*e*) alterations and additions to the said building] such plans and sections to be of sufficient detail to show the construction.

Dated this day of 188 .

District Surveyor for the District of

(*f*) To Mr.

N.B.—By the bye-laws made under the authority of the above-mentioned statutes, and confirmed by the Secretary of State, it is provided that 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

(*a*) Insert address. (*b*) As the case may be.
(*c*) Omit if building is one already built.
(*d*) Insert name, if any, by which building is known.
(*e*) As the case may be.
(*f*) The person giving the notice of works.

App. IV. Pt. I. Form 'C.'

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.

In case of any breach of any of the provisions contained in the bye-laws, the offender shall be liable for each offence to a penalty not exceeding three pounds, and, in each case of a continuing offence, to a further penalty not exceeding thirty shillings for each day after notice thereof from the board or the district surveyor.

Form 'C.'

Seal of the Board.

[This form was sanctioned by the Metropolitan Board of Works, and is sealed as required by the statutes in that behalf provided. It is still in use under the Council's bye-laws.]

THE METROPOLITAN BUILDING ACT, 1855, 18 & 19 VICT. CAP. 122, AND THE METROPOLIS MANAGEMENT AND BUILDING ACTS AMENDMENT ACT, 1878, 41 & 42 VICT. CAP. 32, PART II.

DISTRICT SURVEYOR'S OFFICE FOR THE DISTRICT.

(*a*)

I, the undersigned, being the district surveyor in and for the said district, do hereby require you forthwith to produce and show to me for my inspection, at my office aforesaid, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon, a plan or plans and sections of and relating to the intended house, building, or other erection [*or* (*b*) of and relating to the intended alterations and additions to the house, building, or other erection], situate and being No. Street [*or* (*c*) to be erected on the plot of land situate in] in the parish of , in the county of , and within my aforesaid district, and in respect of which

(*a*) Insert address. (*b*) As the case may be.
(*c*) Strike out the words not adapted to the case.

erection, alterations, or additions you have caused notice to be given to me as such district surveyor.

Dated this day of 188 .

District surveyor for the district of

(*d*) *To Mr.*

N.B.—By the bye-laws made under the authority of the above-mentioned statutes, and confirmed by the Secretary of State, it is provided that 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, 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.

In case of any breach of any of the provisions contained in the bye-laws, the offender shall be liable for each offence to a penalty not exceeding three pounds, and, in each case of a continuing offence, to a further penalty not exceeding thirty shillings for each day after notice thereof from the board or the district surveyor.

Registered No.

METROPOLITAN BUILDING ACTS, 1855 AND 1869.

Notice of a Dangerous Structure.

day of 18 .

TO THE METROPOLITAN BOARD OF WORKS.

I hereby give you information that a certain structure, known as and being No. in the parish of in the county of is in my opinion in a dangerous state, and request that the same may be dealt with by you according to the statute.

Name

Address

(*d*) The person giving the notice of works.

App. IV. Pt. I. Form.

Certificate of Survey of Works.

Registered No.

day of 18 .

METROPOLITAN BUILDING ACT, 1869.

Dangerous Structures.

I certify that I have made a survey of the structure as required by the Metropolitan Board of Works, and that in my opinion the said structure is in 'a dangerous state:' Further, that it is necessary for the protection of passengers that the said structure be shored up and hoarded or fenced; further, that the owner or occupier should be required to take down .

Owner's Name and Address

Area of Building

Number of Storeys

Length of time which may be reasonably allowed for execution of Works.

Do. Hoarding and Shoring (if necessary)

The Superintending Architect of Metropolitan Buildings, Spring Gardens, S.W.

District Surveyor.

Part II.

INSTRUCTIONAL LETTERS OF THE METROPOLITAN BOARD OF WORKS AND LONDON COUNTY COUNCIL.

Monthly Returns by District Surveyors.

Superintending Architect's Department,
1 Greek Street, Soho, W.,
5th April, 1860.

Dear Sir,—I beg to enclose a copy of the annual report on the examination of the monthly returns by district surveyors, showing, in abstract, the fees received and remaining due in 1859, with the losses and expenses incurred in each district under the Metropolitan Building Act.

As much trouble is occasioned in producing these abstracts of returns in an accurate and trustworthy shape, I must beg of each district surveyor to send in the monthly returns in as perfect a form as possible.

The fees in Part II. should be cast up in one sum; and in Part III. a classification to suit the heads of the abstract should be made, and each total given, with the number of works, but not including a second time any work upon which partial payments have been received, except as a receipt. In some instances this is not done, and at the end of the year the imperfect returns have to be completed before any result can be attained. Part II. of the returns has been relied upon as a correct statement of all works completed each month, and every fee should be entered once in that sheet, when the building is covered in or the fee becomes legally due. The areas and storeys of buildings should be repeated in Part III., to facilitate examination and identification.

I am, dear Sir, yours faithfully,
Fredk. Marrable,
Superintending Architect.

To

The Surveyor of the District

of

App. IV. Pt. II.

General Line of Buildings and Projections.

Superintending Architect's Department,
1 Greek Street, Soho, W.,
25th October, 1860.

Dear Sir,—I am directed by the Metropolitan Board of Works to request—in the event of any building being commenced in your district which will project either wholly or in part before the regular line of fronts in the street in which the same is situated, without your having received any notice from this office that the permission in writing of the Metropolitan Board of Works has been obtained, in accordance with the provisions of the 143rd section of the Metropolis Local Management Act,[1] that you will send a notice to that effect to this office, in order that the board may take such steps for preserving the regular line of frontage as shall to them appear to be expedient. And in case of any projection from a building which shall appear to you to be contrary to the provisions of the 26th section of the Metropolitan Building Act,[2] and of which you have received no notice of permission having been granted, that you will take immediate steps for the removal of the same as the Act directs.

I beg to observe that in every case, as soon as the permission of this board has been obtained, notice will be sent to you to that effect, with a copy of the drawing or other document for your guidance.

I am, dear Sir, faithfully yours,
FREDK. MARRABLE,
Superintending Architect.

To
The Surveyor of the District
of

Buildings to which Rules Inapplicable.

Superintending Architect's Department,
Spring Gardens, S.W.,
6th November, 1862.

Dear Sir,—By direction of the board I beg to transmit you a copy of a report by the solicitor of the board, relative to the due exercise of the powers of the board under the 56th section of the Building Act,[3] in cases

[1] Now s. 22 (1) of the Act of 1894, *ante*, p. 77.
[2] Now s. 73 of the Act of 1894, *ante*, p. 140.
[3] Now s. 82 of the Act of 1894, *ante*, p. 155.

where other rules may be considered applicable. This question arose on an application by Mr. Charles Fowler, jun., on behalf of Mr. J. Freeman, for the permission of the board to reconstruct a passage-way between the ground floors of Nos. 23 and 24, Great Queen Street, St. Giles, of fireproof materials, and to carry up a party wall through the remaining storeys of those premises.

I am, dear Sir, yours faithfully,

GEORGE VULLIAMY,

To *Superintending Architect.*

The Surveyor of the District

of

RESOLVED—That the said report be approved and entered on the minutes of the proceedings of this day, and that a copy thereof be sent to each district surveyor, and it is entered accordingly—

Solicitor's Department,
Spring Gardens, S.W.,
October, 1862.

Metropolitan Building Act—As to Mr. J. Freeman's Application.

In obedience to the order of the board, I have considered the papers with a view to advise the board whether they ought, under the 56th section of the Metropolitan Building Act,[1] to interfere in this case.

I cannot see any reason why the board should interfere in this case—I much doubt the power of the board to do so. The board, under the 56th section, can only interpose, in special cases, where no provision is made in the Building Act as to any particular buildings. It seems to me that sect. 83 [2] and sect. 24 [3] apply expressly to this case, and that it is for the district surveyor to see that the Act is carried out in the usual way, and that the board should do nothing more than suggest for the applicant to communicate with the district surveyor, who should see that the requirements of the Act are complied with.

As a rule, I think that the board should never interfere, under the 56th section,[4] where the case is provided for by the legislature under other parts of the Act.

(Signed)

W. W. SMITH.

[1] Now s. 82 of the Act of 1894, *ante*, p. 155.
[2] Now s. 88 of the Act of 1894, *ante*, p. 167.
[3] Now s. 71 of the Act of 1894, *ante*, p. 139.
[4] Now s. 82 of the Act of 1894, *ante*, p. 155.

App. IV.
Pt. II.

OPEN SPACES NEAR BUILDINGS.

Superintending Architect's Department,
Spring Gardens, S.W.,
6th August, 1863.

Dear Sir,—The board have lately considered a complaint relative to the erection of buildings in the back-yards of dwelling-houses, originally intended for wash-houses, but afterwards used as dwellings by Irish and other tenants for the day or week, and accessible from the houses adjoining. The circumstances were such as to preclude a remedy, by reason of the lapse of time; and I am, therefore, directed by the board to address a circular on the subject to district surveyors.

The Building Act gives full powers to the district surveyor to require notice of all works, and full particulars of their nature; and if works are begun without notice, or if preparations for operations are indicated, he may enter premises for the purposes of the Act.

It is, therefore, considered to be his duty to stop every irregular work, and to have it demolished, if need be, in due course of law; or if buildings are proceeding without proper means of access by streets or ways, immediate notice should be given to this board, or other authority having power in the matter.

Difficulties frequently arise under the 29th section[1] as to the application of the rule to back areas or yards of very limited extent, where some small office building is required for the convenience of inhabitants, or where premises originally constructed for dwelling-houses are afterwards converted into shops on the ground storey, and extensions are wanted in the rear. In these cases, crowding of dwellings is increased, as well as danger from fire to adjoining premises; and under such circumstances much care is required on the part of the district surveyor to cause the observance of the Act where the light and air to back windows are interfered with, and the full dimensions of area diminished. Covering over yards on the ground storey for back shops, and lighted with lantern lights, could only be effected where there was no sunk storey, or on the blocking up of any windows in that storey.

[1] The provision of open spaces near buildings, which was provided by section 29 of the Act of 1855, is now provided for by Part V. of the Act of 1894, *ante*, pp. 94–115.

The board deem it essential that there should be a strict observance of the rules in regard to these matters. App. IV. Pt. II.

Yours faithfully,

GEORGE VULLIAMY,

Superintending Architect.

To

The Surveyor of the District

of

DISTRICT SURVEYORS ACTING PRIVATELY.

Superintending Architect's Department,
Spring Gardens, S.W.,
6th August, 1863.

Dear Sir,—I am directed by the Metropolitan Board of Works to request your attention to the terms of the 37th section of the Metropolitan Building Act (1855),[1] which provides that 'If any building is executed, or any work done to, in, or upon any building by or under the superintendence of any district surveyor, acting professionally or on his own private account, it shall not be lawful for such surveyor to survey any such building for the purposes of this Act, or to act as district surveyor in respect thereof or in any matter connected therewith, but it shall be his duty to give notice thereof to the said Metropolitan Board, who shall then appoint some other district surveyor to act in respect of such matter.'

I am further to inform you that the board consider that the intention of this enactment is, that whilst the district surveyor is not precluded from exercising his profession beyond the limits of the district to which he is appointed, he is, so far as regards that district, jealously to reserve himself from any bias by which he may be influenced in the performance of his public duties.

Yours faithfully,

GEORGE VULLIAMY,

Superintending Architect.

To

The Surveyor of the District

of

[1] See now s. 144 of the Act of 1894, *ante*, p. 234. But see the Standing Orders of the Council of January 1, 1895, *ante*, p. 451, which require candidates for appointment as district surveyors to sign a declaration that they will give their whole time to the duties of their offices.

App. IV. Pt. II.

Dangerous Businesses.

Superintending Architect's Department,
Spring Gardens, S.W.,
12th October, 1864.

Dear Sir,—I am directed by the Metropolitan Board of Works to forward you a copy of a letter which they have caused to be sent to the Chief Commissioner of the Metropolitan Police, and to the clerk of each vestry and district board in the metropolis.

As the subject connects itself with the duties of the district surveyor, the board have thought it right, in the interest of the metropolitan public, to make you acquainted with the letter enclosed.

Yours faithfully,
George Vulliamy,
Superintending Architect.

To
The Surveyor of the District
of

Dangerous Businesses.

7 & 8 Vict. cap. 84, sect. 54 (1844).[1]

Superintending Architect's Department,
Spring Gardens, S.W.,
11th October, 1864.

Sir,—The Metropolitan Board of Works has been considering the effect which the Metropolitan Building Act, cap. 84, sect. 54,[1] as it now stands, with the cessation of the rights which were saved up to 1864, may have upon the metropolis; and it has occurred to the board that it may not be out of place if they request your attention to the law as it has stood since the month of August, 1864.

The Metropolitan Building Act of 1844 prohibits, after 9th August, 1864, the erection of any buildings within a certain distance from any buildings, public road, or ground in use for any of the following businesses, viz.: 'The manufacture of gunpowder, or of detonating powder, or of matches ignitable by friction or

[1] So much of the Act of 1844 as remained unrepealed at the passing of the Act of 1894 was repealed by s. 215 of that Act, *ante*, p. 302. The carrying on of any of the businesses enumerated in the above letter is now prohibited by s. 118 of the Act of 1894, *ante*, p. 207.

otherwise, or other substances liable to sudden explosion, inflammation or ignition, or of vitriol, or of turpentine, or of naphtha, or of varnish, or of fireworks, or of painted table covers, and any other manufacture dangerous on account of the liability of the materials or substances employed therein to cause sudden fire or explosion; and it prohibits persons from establishing or newly carrying on, after 1844, any such business within the prohibited distances.'

This Act, however, saved the rights of persons until August, 1864, who had actually carried on, in 1844, businesses of the nature referred to within the prohibited distances.

As now all these saving rights have ceased, it is unlawful for any person to carry on such businesses within the distances, however long they may have been in existence; and the board think it may be useful to draw your attention to the subject, and, at the same time, to request that you will bear in mind that several sections in the Act of 1844 are in force on these subjects. I would also call your attention to the provisions of the Act 23 & 24 Vict. cap. 139, with regard to gunpowder, fireworks, &c.

Your obedient servant,
GEORGE VULLIAMY,
Superintending Architect.

PROJECTIONS FROM BUILDINGS.

Superintending Architect's Department,
Spring Gardens, S.W.,
31st October, 1864.

Dear Sir,—With a view to improve the practice of builders, and to cause a better observance of the law regarding the construction of overhanging eaves and cornices, I am directed by the board to address to the district surveyors a circular on the subject, as the rules of section 26 of the Building Act [1] do not appear to be uniformly observed, and many streets of houses are in progress with wooden eaves merely lathed and plastered, or cemented on the soffit, and covered with slate as part of the roof, without any corbel of separation at the party walls, as would be required if application were made to the board. The

[1] See now s. 73 of the Act of 1894, *ante*, p. 140.

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corbel is a great protection against the spread of fire from roof to roof, and in the case of shop fronts it is to a limited extent a requirement of the statute. Section 17 of the Act[1] may give a somewhat similar protection to eaves; for it provides that '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.'

Section 26 of the Act[2] directs that 'the eaves or cornices to any overhanging roof (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[3] otherwise permit, be of brick, tile, stone, artificial stone, slate, cement, or other fireproof material.'

The board are desirous that the above rules should receive more attention than they appear to do in practice; and that where eaves and cornices are not rendered fireproof as required, application should be made to the board by the builders or architects in every case.

The object of that condition, as to corbelling out the party wall, which the board annexes to any approvals granted by them, is, that the roof covering and wooden portions of the eaves should not be continuous, but be broken, as provided regarding party walls under section 17. Yours faithfully,

GEORGE VULLIAMY,

Superintending Architect.

To

The Surveyor of the District

of

[1] See now s. 59 of the Act of 1894, *ante*, p. 122, which requires that every party wall shall be carried up of a thickness, in a building of the warehouse class, equal to the thickness of such wall to the topmost storey, and in any other building of eight and a half 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 thirty feet in height) of at least three feet, and (in any other building) of fifteen inches, measured at right angles to the slope of the roof, or fifteen inches above the highest part of any flat or gutter, as the case may be.

[2] Section 73 of the Act of 1894, *ante*, p. 140, contains provisions similar to those referred to in the letter, save that it includes 'barge-boards,' as well as eaves and cornices, and instead of the exception above set out, excepts 'the eaves, barge-boards, and cornices to detached and semi-detached dwelling-houses in which the party walls are corbelled out so as to project four inches beyond such eaves, barge-boards, or cornices.'

[3] Now the London County Council.

Bonding Brickwork.

Superintending Architect's Department,
Spring Gardens, S.W.,
15th December, 1866.

Dear Sir,—A case has been decided in the police-court at Lambeth, of a special nature, and which it is hoped will not be taken as a precedent in regard to others, as the judge probably did not intend that his decision should so rule.

The facts are these :—

1. A builder proceeded in the usual manner, and under the direction of a local architect and surveyor, to erect four houses of three storeys in height, the basement having walls of 13 inches in thickness, and two storeys, 9 inches.

2. When the roofs came to be finished, arrangements were made for rooms in the roof, thus constructing a fourth storey, and rendering the ground floor storey insufficient in the thickness of its external walls.

3. The party walls were properly constructed.

4. When the district surveyor objected to the irregularity the builder proceeded to thicken the storey, by adding $4\frac{1}{2}$ inches of brickwork in Portland cement and with iron bond laid at intervals, and by drawing bricks occasionally so as to form some degree of bond.

5. Such proceedings did not satisfy the district surveyor, as the 'proper bond' required by the statute was not secured as it might have been had the wall been originally 13 inches thick in that storey.

6. The case thus came before the magistrate, witnesses were examined on both sides, and it was proved that the walls, as they now stood, were better than they could be made without being rebuilt in the upper storeys.

The magistrate dismissed the case, after patient and careful consideration; thus in the particular case feeling himself not justified in dissenting from the strong evidence given as to the work by the builder.

A complexity of decision and practice hence arises which it is desirable to reconcile in the interest of the public. Twice such a decision, as to adding to the thickness of a wall, has been arrived at; and in other courts work has been ordered to be pulled down, because it was not properly bonded or was built of improper materials.

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It is possible, however, that parties may much misunderstand the effect of the decision. As it was a question so much of fact, it was thought injudicious to attempt to get it reviewed by a superior court; but the board will be most anxious that, if possible, the attention of the district surveyors should be directed to the work of builders being done effectually and properly, and in compliance with the Act.

Yours faithfully,

GEORGE VULLIAMY,

Superintending Architect.

To

The District Surveyor of

STOVES—CONSTRUCTION OF FLOORS, &c.

Superintending Architect's Department,
Spring Gardens, S.W.,
17th February, 1866.

Dear Sir,—To remove a slight misunderstanding respecting the information which is, from time to time, sent to district surveyors from this office relative to the causes of fire in the metropolis, as reported in the daily returns by the fire brigade, I beg to state that such information is sent with the view of directing attention to defects in buildings, whether old or new, that may indicate the necessity for alteration in the reinstatement of the works, or the irregular construction of new buildings. Stoves are also frequently fixed on floors so as to cause fires. In all such cases it appears to be the duty of the district surveyor, under the Building Act, to inspect and ascertain whether the circumstances require his interference to enforce the law; and, if so, to adopt proceedings for penalties, or other remedy.[1]

It is not requisite to report to the board, unless opposition should occur, and further proceedings might be desirable with the sanction and aid of the board.

Yours faithfully,

GEORGE VULLIAMY,

Superintending Architect.

To

The Surveyor of the District

of

[1] See s. 66 of the Act of 1894, *ante*, p. 131.

Wooden Enclosures.[1]

Superintending Architect's Department,
Spring Gardens, S.W.,
29th July, 1867.

Dear Sir,—The use of wood in the construction of the exterior enclosures of buildings used for trade purposes, and for stables, sheds, and other buildings, appears to indicate that the provisions of the Building Act are not strictly enforced; and I am, therefore, directed by the board to inquire what means you adopt in your supervision, as district surveyor, to detect the use of improper materials, and what proceedings have been taken by you to effect an amendment of irregular works, constructed of wood.

You will be so good as to endeavour to explain the nature of the difficulties you have experienced in enforcing the Act; and what portion of these may be attributed to the want of proper evidence, and in what respects the decisions of the magistrates may have aided or thwarted your proceedings.

Such buildings not only operate adversely to the due enforcement of the construction of buildings of brick, stone, &c., but are often the cause of other and more valuable buildings being destroyed by fire; and as it is now one of the duties of the board to extinguish fires, it is also a primary duty of the board and its officers to prevent their occurrence, by seeing that proper materials are used for that purpose.

In the proposed amendment of the Building Act, clauses have been inserted to exempt small water-closets and privies, and other small office buildings, and also greenhouses, plant-houses, orchard-houses, summer-houses, poultry-houses, and aviaries, under certain conditions as to heating, and distance from other buildings, and continuance of use. It will, however, be some time yet before such provisions can become law; and as questions will occur about summer-houses and small moveable structures in rural districts, it might be prudent not too much to press the present law in reference to such rustic garden arbours. But if, under colour of such

[1] A licence from the Council is required for the erection of any wooden structure, unless exempt from Part VII. of the Act of 1894, and except hoardings enclosing vacant land and not exceeding twelve feet in height. See s. 84 of the Act of 1894, *ante*, p. 161.

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erections, sheds or larger buildings were attempted, then the law should be applied.

I may add, that no decision of a superior court has yet affected that given by the Court of Common Pleas, in the case of *Stevens* against *Gourley*, in 1859,[1] where a moveable wooden shop was prohibited, as contrary to the Act; and such cases should be strongly brought to the notice of magistrates, where they may incline to allow wooden erections, under the assumption that they are of the nature of tenants' chattels. That rule may be useful in adjusting the rights of occupiers and owners, but, under the Building Act, a building is not regarded as to its property, but essentially as to its safety in reference to structure and materials; and therefore its moveability is not so important as its inflammability, which it is the duty of the district surveyor to restrict.

Yours faithfully,

GEORGE VULLIAMY,

To *Superintending Architect.*

The Surveyor of the District

of

FORMS OF NOTICES UNDER BYELAWS.

Superintending Architect's Department,
Spring Gardens, S.W.,
2nd February, 1880.

Dear Sir,—I am directed to forward the accompanying forms of notice required under the byelaws made by the board in pursuance of the provisions of the Metropolis Management and Building Acts Amendment Act, 1878.[2]

Form A to be used in respect of any breach of the byelaws Nos. 1 and 2;[3]

Form B on the non-deposit of plans and sections of public buildings, and buildings to which section 56 of the Metropolitan Building Act, 1855, applies;[4] and

Form C in cases in which you may require a plan, or plans and sections of any proposed house or other building to be produced for your inspection.[5]

[1] *Ante*, p. 11. [2] See note 1, *ante*, p. 453.
[3] This form will be found *ante*, p. 547.
[4] This form will be found *ante*, p. 549.
[5] This form will be found *ante*, p. 550.

These forms of notice have been approved and sealed by the board, in accordance with the requirements of the Metropolitan Building Act, 1855.

I am, dear Sir,

Yours faithfully,

GEORGE VULLIAMY,

Superintending Architect.

To

The District Surveyor.

BYELAWS.—MORTAR.

Superintending Architect's Department,
Spring Gardens, S.W.,
23rd November, 1880.[1]

Dear Sir,—A case has occurred at Wandsworth in which the district surveyor succeeded in obtaining a conviction under the byelaws against a builder who constructed a building with refuse or earth instead of mortar properly compounded with lime and clean sand, and I am instructed by the board to call your attention to the facts, in order that you may adopt proceedings when any builder fails to use proper materials.

On the 23rd September, Mr. J. A. J. Woodward, the district surveyor for central Lambeth and part of Battersea, found that a builder in Battersea was using mortar composed of earthy matter, and he gave notice requiring the defendant to conform to the byelaws. Finding he did not do so, the district surveyor took out a summons against him, which was heard before Mr. Paget, at Wandsworth, on the 30th October, and the defendant was convicted and fined 3*l.* penalty and 2*l.* costs.

There are several modes of proceeding for this class of offence :

1st. By summons under the byelaws for the full penalty of 3*l.*, and the continuing penalty of 1*l.* 10*s.* a day so long as the works proceed.[2]

2nd. By section 17 of the Metropolis Management and Building Acts Amendment Act, 1878, a penalty of not less than 10*s.*, and not more

[1] See also the Instructional Letters of July 6 and December 15, 1894, *post*, pp. 568 and 571.

[2] See s. 164 of the Act of 1894, *ante*, p. 249, and the byelaws, *ante*, p. 488.

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than 40*s*., for every day from the time of service until the building is altered, pulled down, or removed, can be obtained against the builder.[1]

The summonses under the byelaw, and under section 17 of the above Act, when necessary, can be taken out together.

3rd. By proceeding to remove the building under section 17 of the above Act, if the notice is not complied with.[2]

The board, upon application, will be ready to advise the district surveyors which course of proceeding in any particular case may be the most expedient.

Yours faithfully,

GEORGE VULLIAMY,

To *Superintending Architect.*

The District Surveyor.

DISTRICT SURVEYORS' FEES.

Spring Gardens, S.W.,
25th May, 1881.

Sir,—A dispute having occurred between two of the district surveyors under the Metropolitan Building Act, whose districts adjoin one another, one of them, instead of submitting the question to the board as the authority under the Act, sought a settlement of it by means of proceedings before a magistrate.

The facts of the case are stated in the accompanying report, made by the Building Act Committee, which the board adopted, directing me at the same time to send a copy to every district surveyor for his information.

You will observe that the report concludes with an expression of regret that the case was not submitted to the board for settlement, and I have written to the two district surveyors concerned to request that this course may be adopted in case of any similar difference in future. I am, Sir,

Your obedient Servant,

J. E. WAKEFIELD,

To *Clerk of the Board.*

The District Surveyor.

[1] See ss. 53, 200 (3 *c*) and (11 *d*) and Sch. 1 Prel. R. (2) of the Act of 1894, *ante*, pp. 115, 284, 290, and 305.

[2] See now s. 170 of the Act of 1894, *ante*, p. 264, by which a conviction has to be obtained in the first instance before the Council can exercise the power of removal conferred by the section.

Report made to the Board by the Building Act Committee on the subject of a Dispute between two District Surveyors.[1]

(*Extracted from the Minutes of the Board of the* 20*th May*, 1881.)

Your committee have considered the report, which appeared in the *Times* newspaper of the 3rd March last, of proceedings at the Mansion House, before Alderman Sir Andrew Lusk, on the adjourned hearing of a summons obtained by Mr. Collins, district surveyor for the Eastern Division of the City, against Messrs. Trollope and Sons, for having neglected to give him notice as to certain building operations within his district, from which it appeared that the notice had by mistake been given to Mr. Power, the surveyor for the adjoining southern district of the City, and that Mr. Power had subsequently sent to Mr. Collins the notice and the fees which he had received, but had failed to attend the court and give an explanation of the matter, referred by the board on March 4 last (No. 7). Your committee find that in April, 1880, Messrs. Trollope gave notice to Mr. Power of their intention to erect premises at Nos. 27 and 28, Nicholas Lane, King William Street, City. Mr. Power, having referred to the map supplied to him some years since by the Commissioners of Sewers, believed the proposed buildings to be in the Ward of Candlewick, in his district. He surveyed them during construction, and on their completion in November last received from Messrs. Trollope his fees in respect of the same, amounting to 10*l*. 17*s*. 6*d*. On the 5th day of that month Mr. Collins discovered the erection of the buildings, which he believed to be in his district, and wrote to Messrs. Trollope, informing them that no notice of the works had been given to him in accordance with the Building Act. The builders replied that the notice had been given to Mr. Power, who had accepted the same, and received his fees. Mr. Collins feeling sure, after making careful inquiries of the ward beadle and the tax collector, that the premises were in his district, applied to Mr. Power for the fees. A long correspondence ensued between the

[1] See now the Regulation of the Council, *ante*, p. 487.

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district surveyors, and in the result Mr. Collins took out a summons against Messrs. Trollope for having neglected to give him, as district surveyor, the required legal notice of the works. The case was heard at the Mansion House on February 23 last, when the evidence showed that the main portion of the buildings was in Langbourn Ward, within Mr. Collins' district. In consequence of the non-attendance of Mr. Power, the further hearing of the case was adjourned for a week. On the morning of the day of the adjourned hearing, Mr. Power paid to Mr. Collins out of the fees received the sum of 8*l.* 10*s.*, being the amount due in respect of the main portion of the buildings, retaining the fee of 2*l.* 7*s.* 6*d.* received in respect of alterations to the party wall within his district, and respecting which there was no dispute. He also paid Mr. Collins 1*l.* 3*s.* for expenses, and believing the matter to be settled, did not consider it necessary to attend the court upon the adjourned hearing, when Mr. Collins withdrew the summons. Your committee having received and carefully considered the written statements of both the district surveyors with reference to this dispute, regret that the case was not submitted to the board for settlement, and that Mr. Collins should have deemed it necessary to summon the builders before a magistrate for the recovery of fees which he knew had been paid to another district surveyor. Your committee recommend—

'That Mr. Collins and Mr. Power be informed that the board regret that the case was not submitted to them for settlement, and have to request that this course may be adopted with respect to any similar matter of difference which may arise in future, prior to any action being taken before a magistrate.'

Bad Mortar.[1]

Spring Gardens, S.W.,
6th July, 1894.

Dear Sir,—Cases have recently occurred in which district surveyors have incurred expenses in legal proceedings and in obtaining analyses of mortar used in the

[1] See also the Instructional Letter of November 23, 1880, *ante*, p. 565, and the notes thereto, and the last paragraph of the letter of December 15, 1894, *post*, p. 571.

construction of the walls of buildings in their respective districts, and in which applications have been subsequently made to the Council for payment of such expenses. Such a course of procedure has on more than one occasion placed the Council in a position of legal difficulty, and the Building Act Committee, being desirous of preventing its recurrence, direct me to say that on any future occasion on which you contemplate taking proceedings under the byelaws for enforcing the use of mortar properly compounded, and the Committee are satisfied as to the suitability of the case, they will be prepared to allow the chemist to make the necessary analysis, and to instruct the solicitor to afford such legal assistance as may be required.

Yours faithfully,
THOS. BLASHILL,
Superintending Architect.

To
District Surveyor.

THE LONDON BUILDING ACT, 1894.

Superintending Architect's Department,
Spring Gardens, S.W.,
15th December, 1894.

Dear Sir,—I am directed by the Building Act Committee to forward a copy of the regulations made under the above Act,[1] and of the standing orders of the Council as recently revised,[2] in order that you may make yourself fully acquainted with such of those regulations and orders as in any way relate to the performance of your duties or affect your interests. The solicitor is now engaged in settling the forms of building notices required under the Act, and copies of these notices will be sent to you as early as possible. I am also to say that an edition of the Act, with a copious index and appendices, is being issued under the authority of the Council by Mr. Edward Stanford, 26 Cockspur Street, at the price of 2*s.* 6*d.*, or with cloth covers, 3*s.*

The Council does not propose to exercise the power of drafting new byelaws until some experience has been gained of the working of the Act. After such experience

[1] These regulations will be found *ante*, pp. 523 *et seq.*
[2] The Standing Orders referred to are set out *ante*; pp. 439 *et seq.*

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the Committee will be better able to judge of the alterations which may be necessary; and as the 216th section of the Act[1] provides for all existing byelaws remaining in force until repealed, no inconvenience can be occasioned by the delay.

As regards the Act itself, the Committee desire me to call your attention to the following points:—

Definition (6) must be read in connection with sects. 207–212.[2] Under this last section any building, structure, or work which has been commenced before, and is in progress on, January 1, 1895, or which is to be carried out under any contract entered into before the date of the passing of the Act (August 25 last), may be completed in accordance with the provisions of the now existing Acts.

Under definitions (37) and (38) a 'living room' is a habitable room, and is therefore subject to the restrictions contained in sects. 45 and 70.[3] The Committee are of opinion that the following should *not* be regarded as living rooms—scullery, wash-house, store-room, pantry, larder, glass-closet, beer or wine cellar, water-closet, lavatory, and bath-room.

Sect. 150 enables a builder or building owner to obtain, previously to the commencement of the work, the decision of a court of law with respect to any proposed building, structure, or work to which objection is made by a district surveyor.[4] Thus a builder or building owner will have it in his power to obtain a legal decision before a brick is laid, instead of having, as is now the case, to begin his building before the question as to the legality of his proceedings can be tested.

[1] See *ante*, p. 303.

[2] Section 5 (6), *ante*, p. 11, defines the meaning of the expression 'new building.' The sections referred to will be found *ante*, pp. 299 and 301. They relate to: the alteration of buildings so as not to conform with the Act, s. 207; the re-erection of buildings partially taken down or destroyed, s. 208; the making of additions to or alterations in buildings, s. 209; the application of the Act to existing buildings, s. 210, and to buildings in course of construction, &c., on January 1, 1895, s. 212, and to the conversion of buildings into dwelling-houses, s. 211.

[3] Section 5 (37), *ante*, p. 37, defines the expression 'inhabited,' and subsection (38) of that section, *ante*, p. 37, defines 'habitable.' Section 45, *ante*, p. 109, regulates the construction of courts within buildings, and section 70, *ante*, p. 134, contains rules as to habitable rooms.

[4] Section 150, *ante*, p. 239, gives the builder or building owner who is dissatisfied with a notice of objection served upon him with reference to any building by the district surveyor an appeal within fourteen days to a petty sessional court.

Every district surveyor is required by sect. 163[1] to notify to the Council all irregularities which come to his knowledge and with which he is not competent to deal.

New exemptions appear in sect. 201[2]: the more important of these will be found in subsects. 10–16.

The commencement of a building within the meaning of sect. 212 shall include any work which it is the duty of the district surveyor to survey, and which shall have been commenced pursuant to notice duly given under sect. 38 of the Act of 1855.

As to the meaning of the word 'contract' in sect. 212 the Committee are advised that a distinction has to be drawn between a 'building contract' and a 'building agreement.'[3]

By the latter is meant merely an agreement between a ground landlord and an intended lessee to take certain lands and to build within a certain time certain houses of a value probably specified in such agreement. By a 'building contract' is meant a contract between a building owner and a builder, by which the latter contracts to build certain houses upon the building owner's land at a stipulated price and on specified terms.

The meaning of sect. 212 may not be quite clear, but having regard to the preceding words of the section it is thought it should be construed so as to except *only* buildings covered by a building *contract*, as distinct from a building agreement, and the Committee, as at present advised, will adopt that construction.

There is another matter of general interest to which I am desirous of calling attention. Several cases have recently been brought to my notice in which spent mortar and plaster has been used in the composition of the mortar employed in the construction of the walls of buildings.[4] Such materials are neither 'lime' nor 'sand' nor 'grit' as required by the byelaw, and cannot but make bad work. The chemist to the Council reports that the old lime in such material is not merely useless, but is mischievous. If each district surveyor would

[1] Section 163 will be found *ante*, p. 248.

[2] This section will be found *ante*, pp. 292–298.

[3] Section 212, *ante*, p. 301, enables works commenced before or in progress at the commencement of the Act—*i.e.* January 1, 1895—or which are to be carried out under any contract entered into before such date, to be completed in accordance with the previous Acts.

[4] See also the letters of November 23, 1880, *ante*, p. 565, and of July 6, 1894, *ante*, p. 568.

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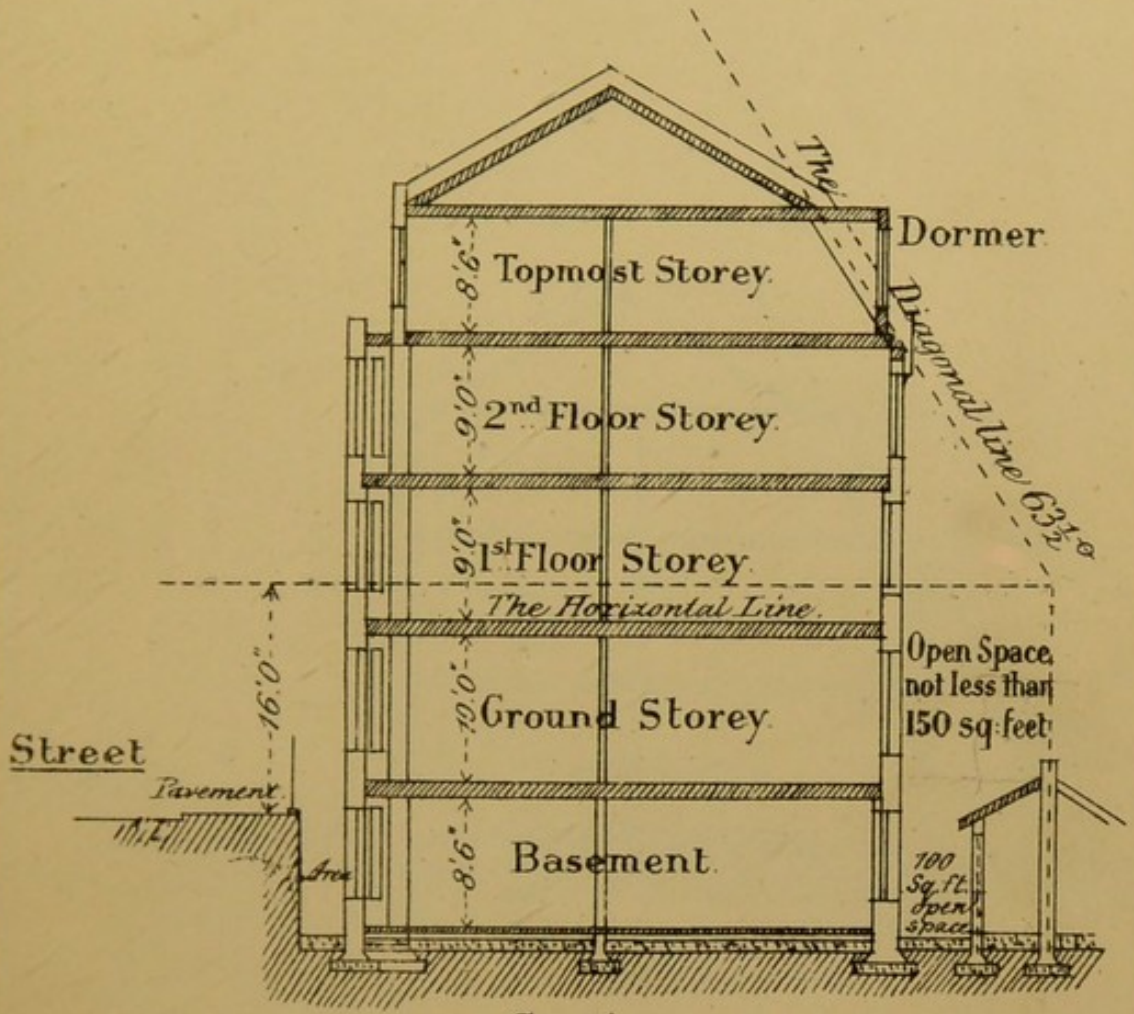
cause every builder in his district to understand that sand or grit only could be used, and would insist on the rule being observed, further attempts at evading the law would soon cease.

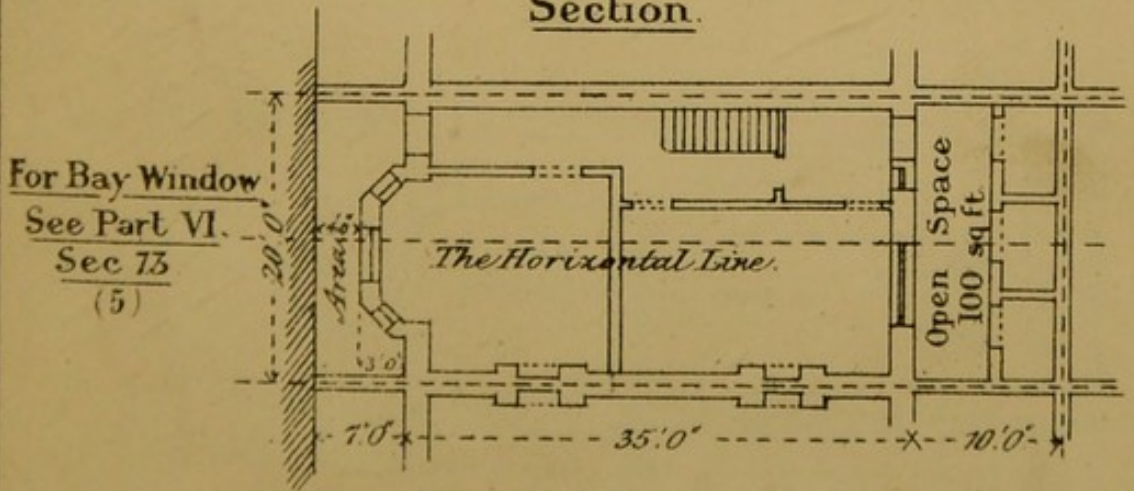
Yours faithfully,
THOMAS BLASHILL,
Superintending Architect.

To
District Surveyor.

Part V. Sections 40 & 41. Open Space at rear of Habitable Basements & Domestic Buildings

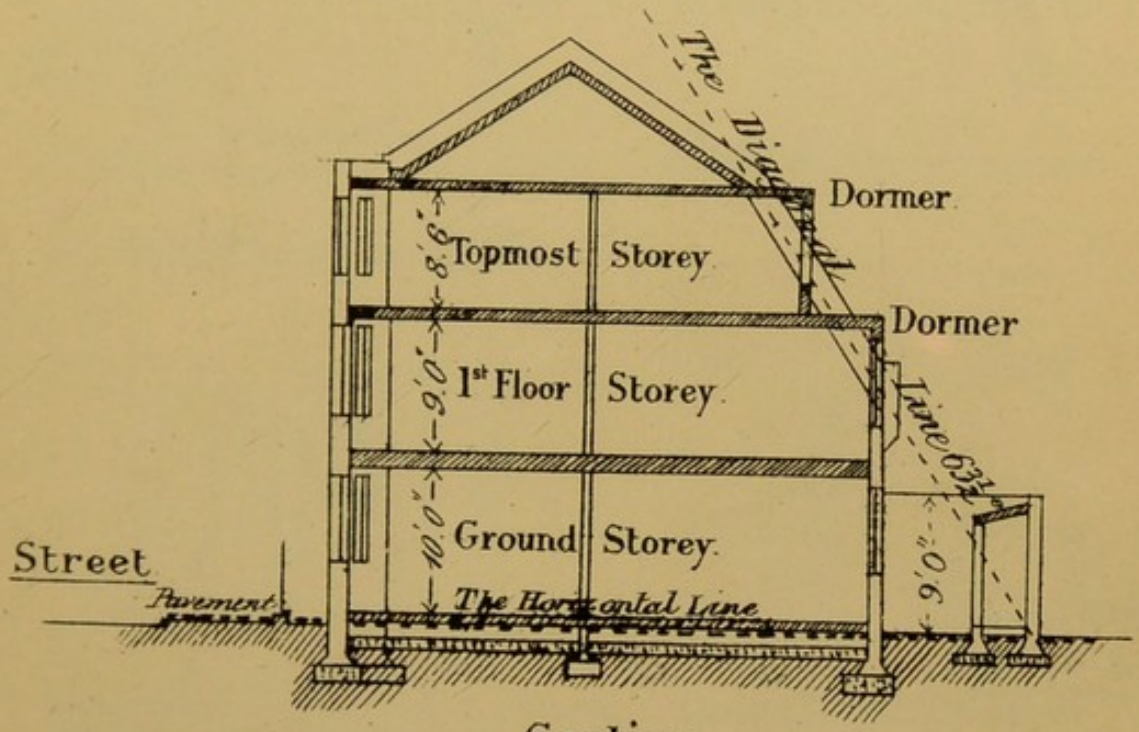


Section.



Plan of Basement Storey.

Part V. Sec 41. Open Space at rear of Domestic Buildings.



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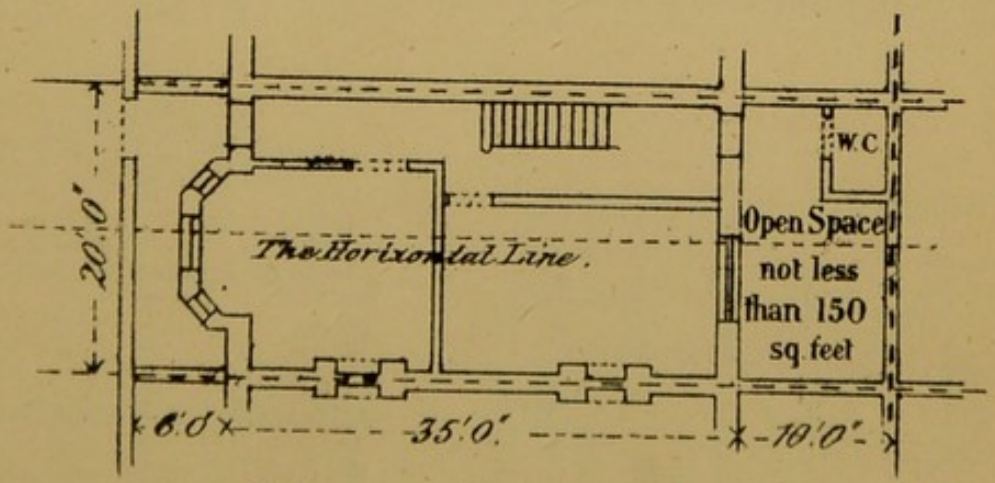
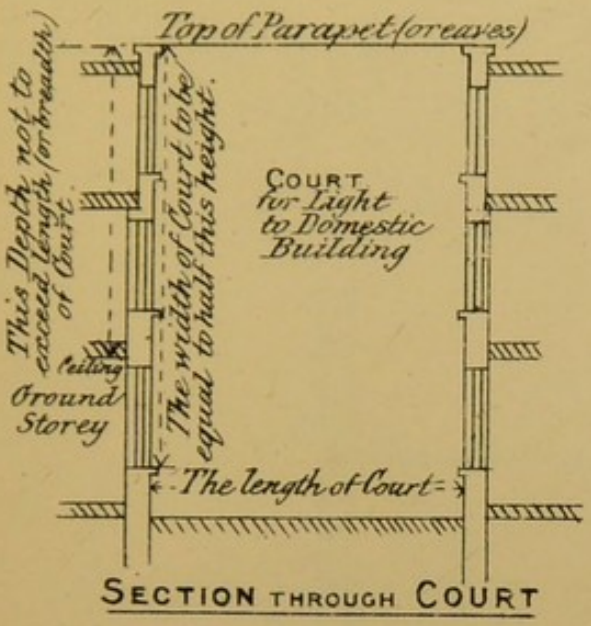
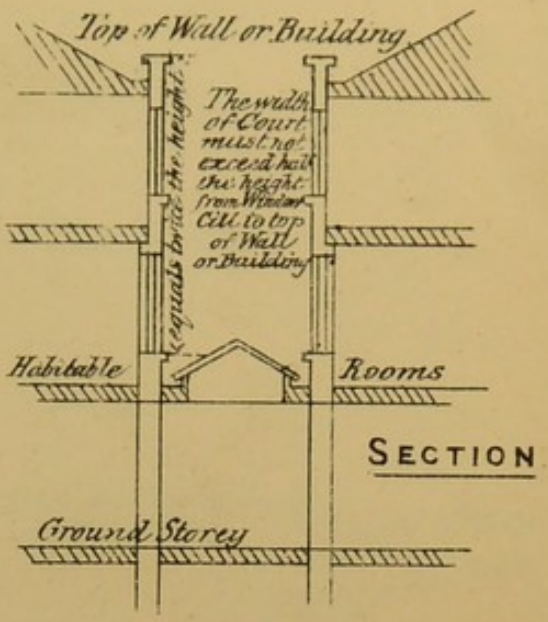


Plan of Ground Storey.

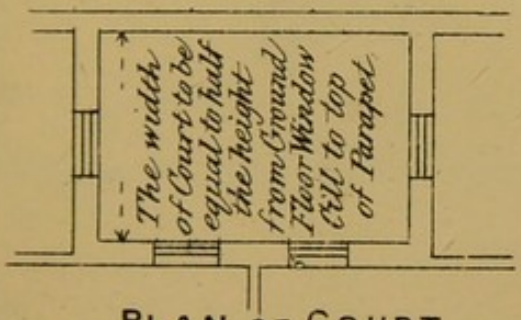
Part V. Sec 45
Courts within a building.



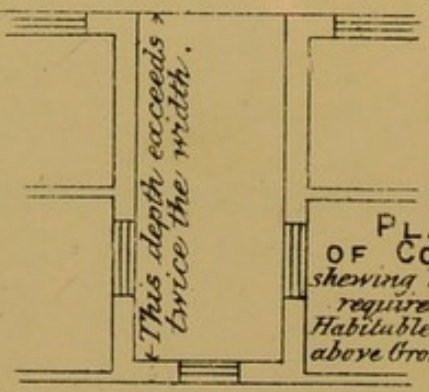
SECTION THROUGH COURT



SECTION

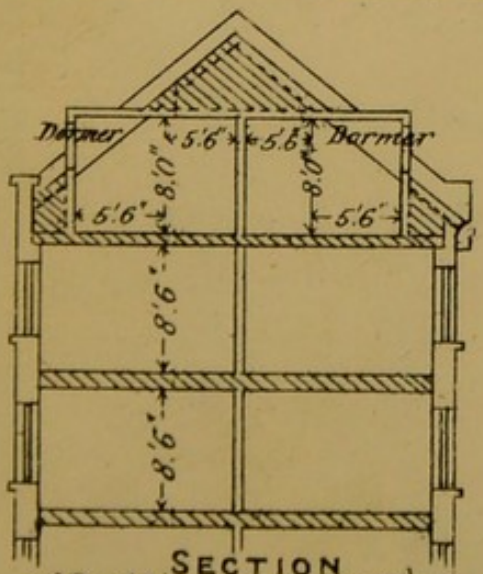


PLAN OF COURT
enclosed on all sides in a Domestic Building, where lower end need not have communication with outer air.

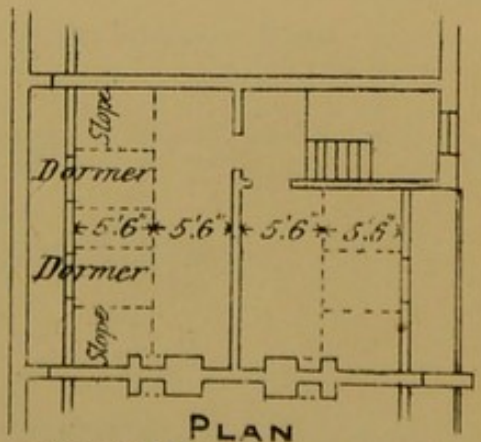


PLAN OF COURT
shewing Windows required for Habitable Rooms above Ground Storey

Part VI. Sec 70. (1)(a)(b) Minimum height of Habitable rooms



SECTION
of Building with Habitable Rooms.



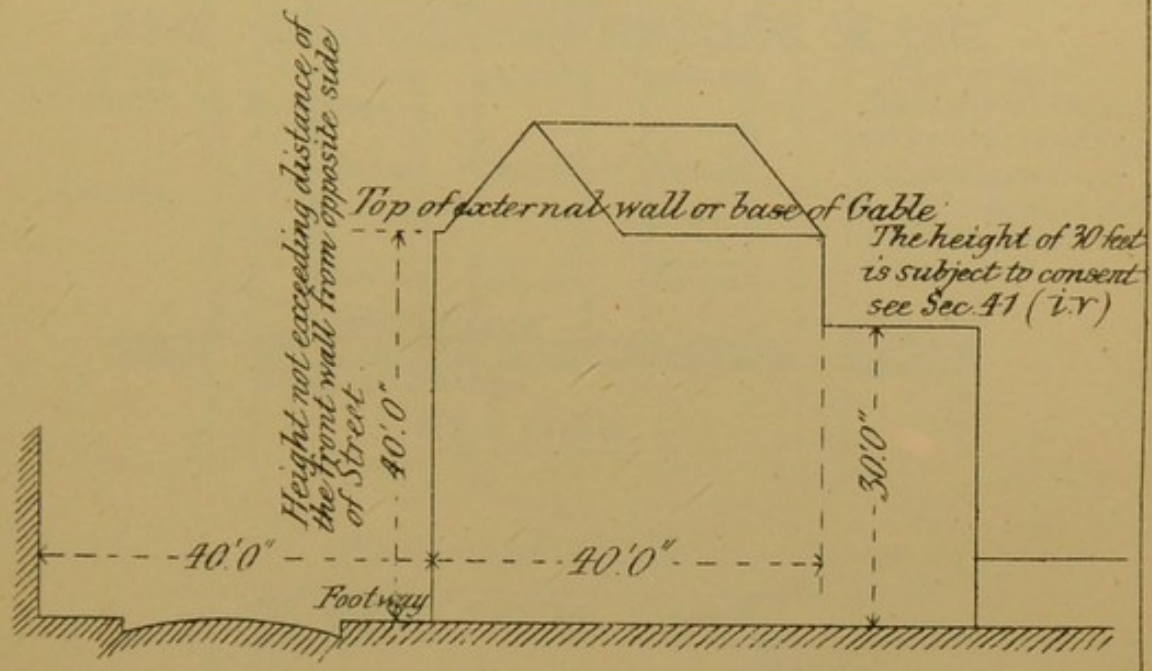
PLAN
of Habitable Rooms partly in Roof.

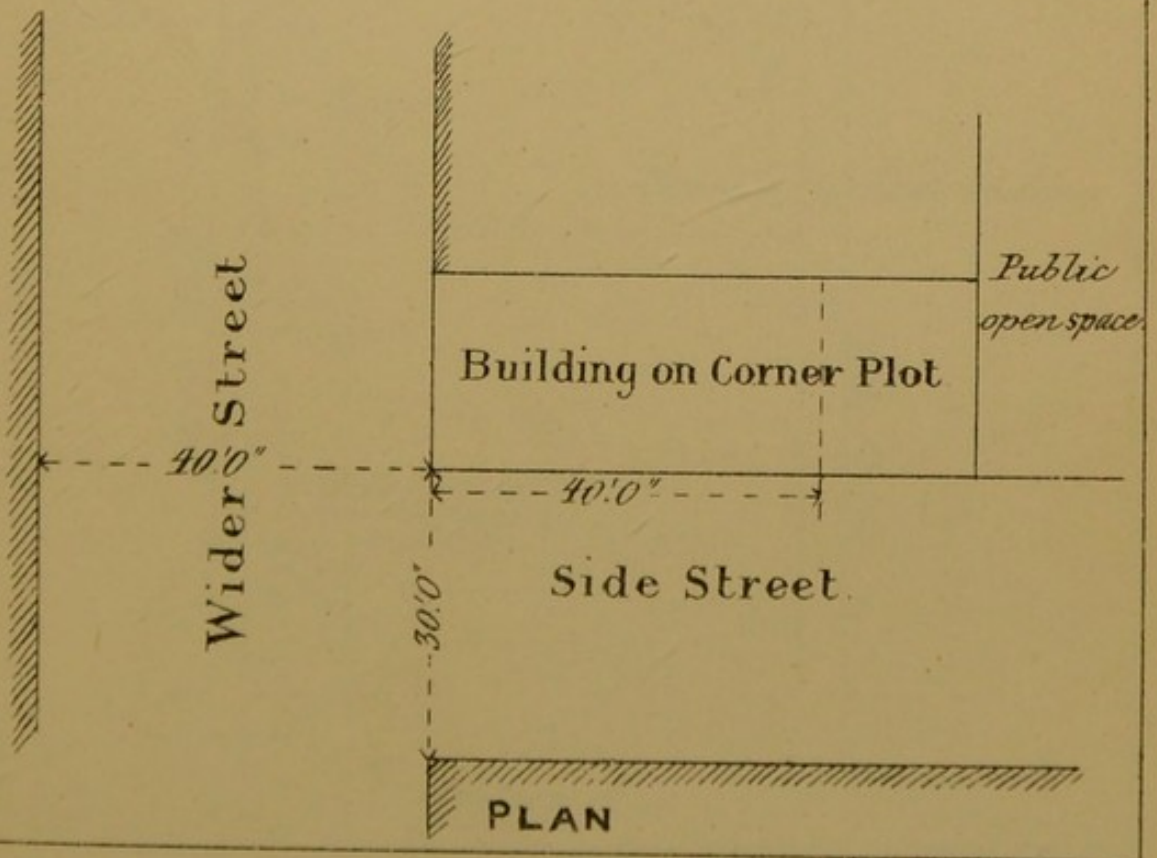
Part V. Sec: 49.

Height of Building on a Corner Plot.

(other than a Church or Chapel)
on the side of a Street, laid out after 1862, of a less width than 50 feet.

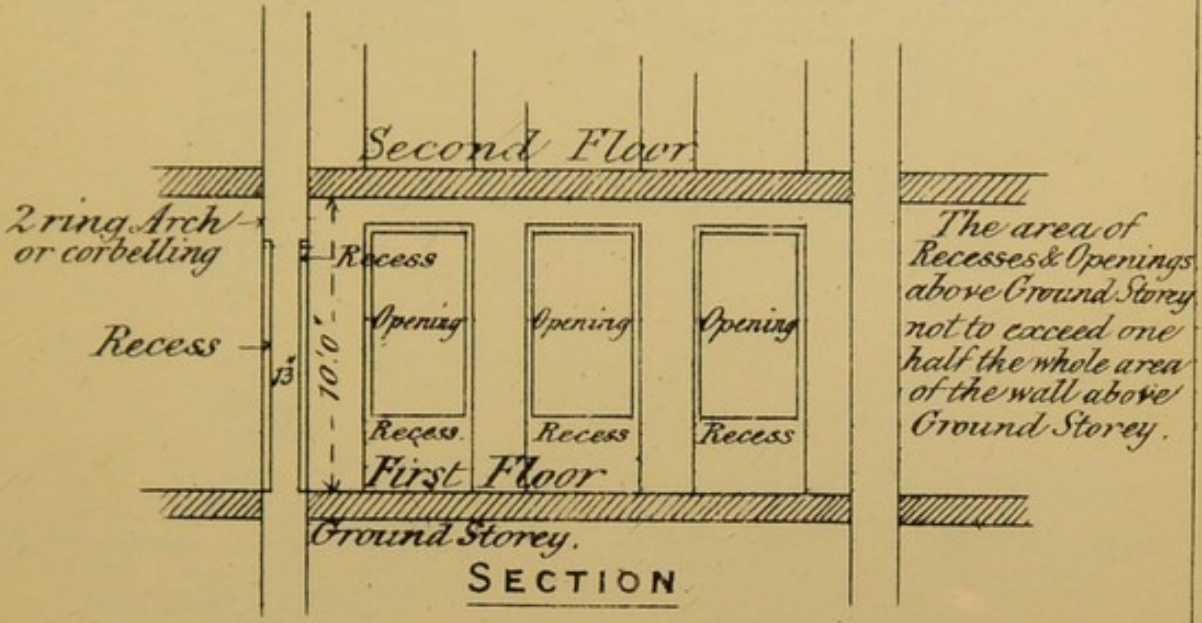
Side Elevation of Building.



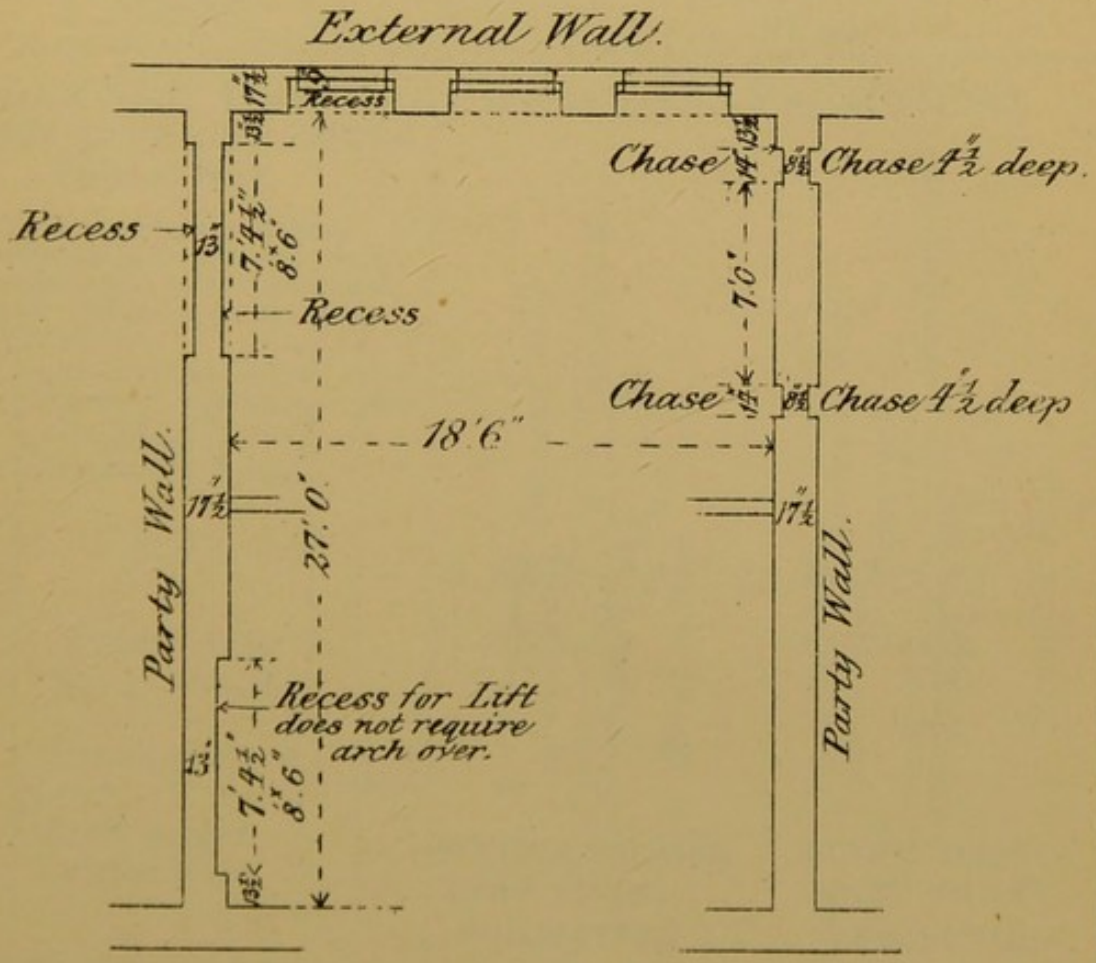


Part VI. Sec. 54. Sec. 60.

RECESSES and OPENINGS in EXTERNAL and PARTY WALLS
CHASES IN PARTY WALLS.



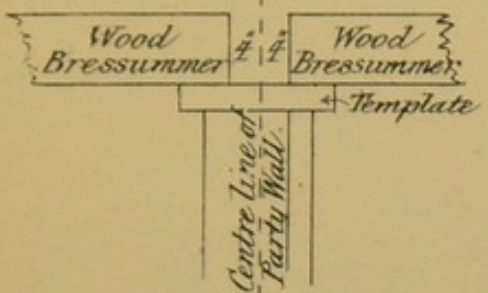
SECTION



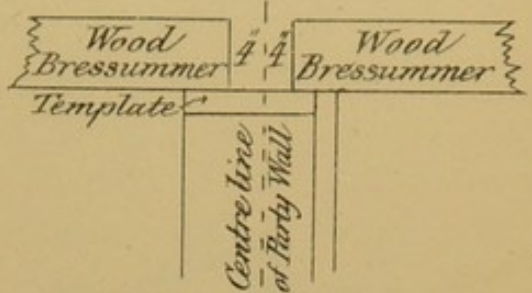
PLAN

Part VI.

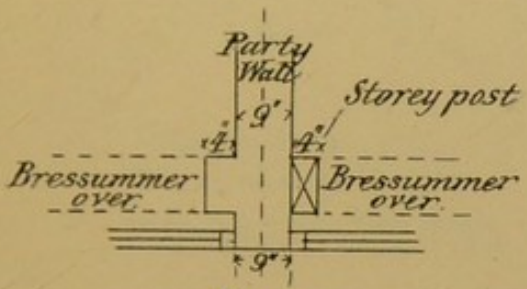
Section 56. BRESSUMMERS.



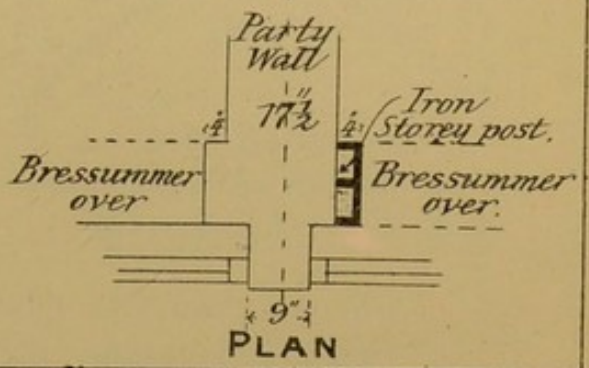
ELEVATION



ELEVATION



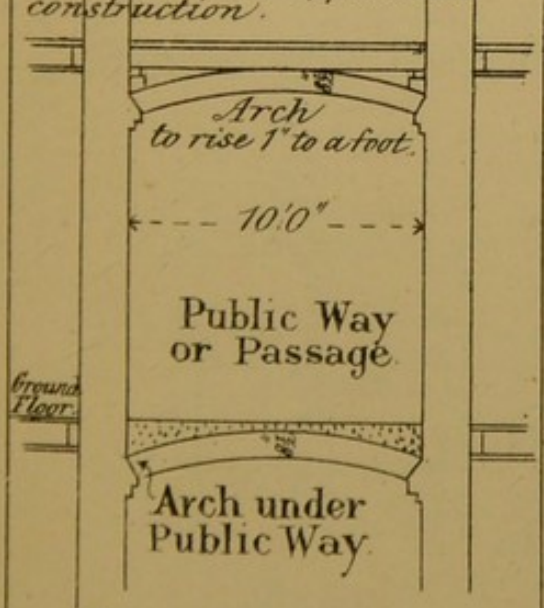
PLAN



PLAN

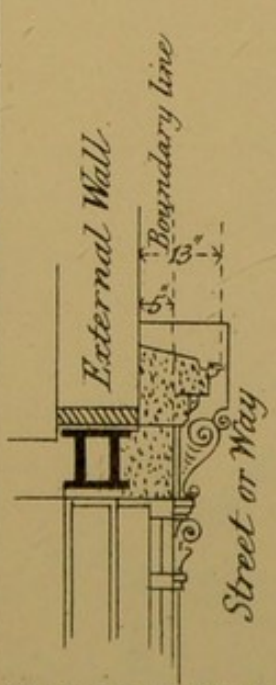
Sections 71 & 72. PARTY ARCH ARCHES OVER AND UNDER PUBLIC WAY.

If an arch or floor of other incombustible material than brick or stone be used District Surveyor must approve the construction.

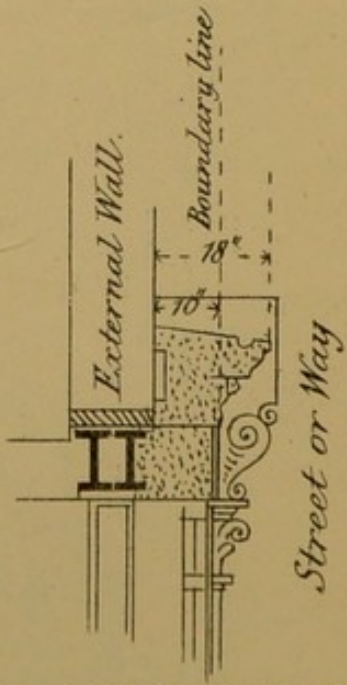


SECTION THROUGH PUBLIC WAY

Section 73. PROJECTIONS.

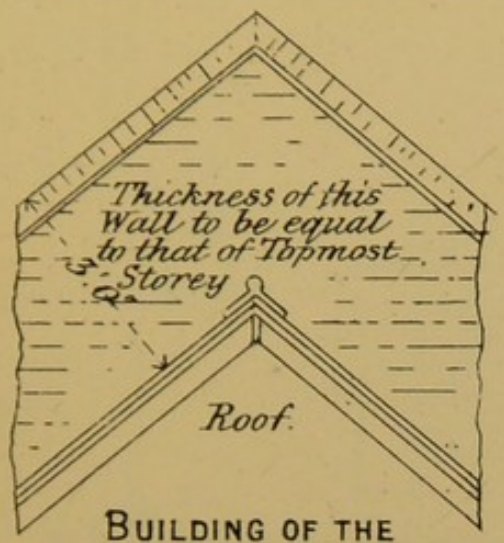


SECTION SHEWING SHOP FRONT PROJECTION *in a Street not more than 30 feet wide.*

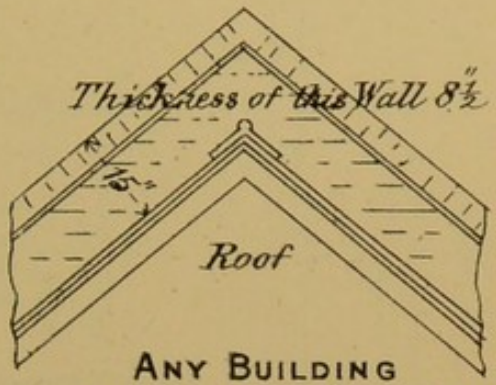


SECTION SHEWING SHOP FRONT PROJECTION *in a Street more than 30 feet wide.*

Part VI. Sections 57 & 59. HEIGHT OF PARAPET ABOVE GUTTER, AND HEIGHT OF PARTY WALLS ABOVE ROOF



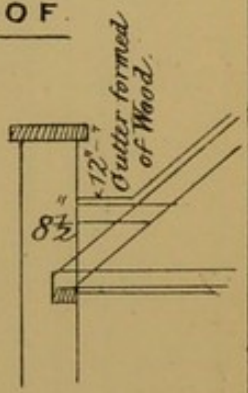
BUILDING OF THE WAREHOUSE CLASS exceeding 30 feet High.



ANY BUILDING other than the WAREHOUSE CLASS exceeding 30 feet High.

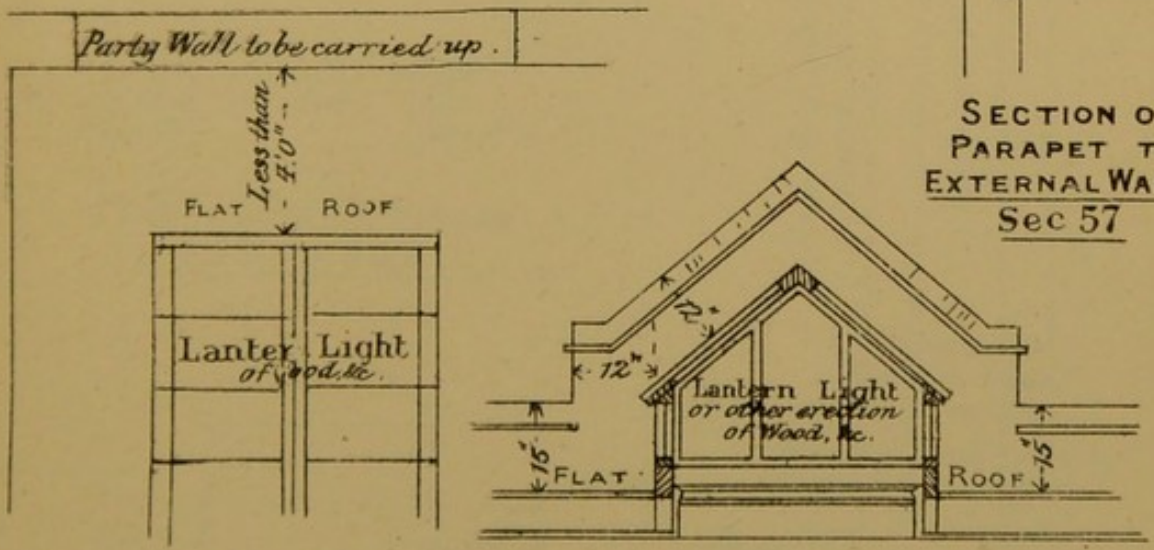
SECTIONS AT UPPER PART OF ROOFS, SHEWING PARTY WALL CARRIED UP ABOVE ROOF.

Sec 59. (1)



SECTION OF PARAPET TO EXTERNAL WALL

Sec 57

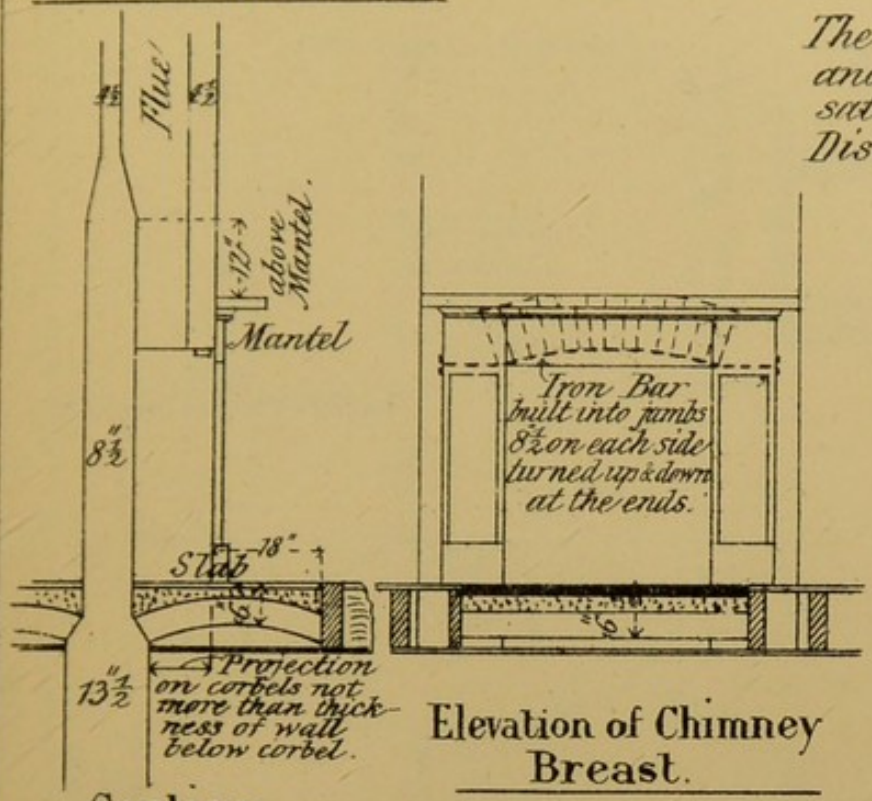


PLAN SECTION

LANTERN LIGHT ON ROOF

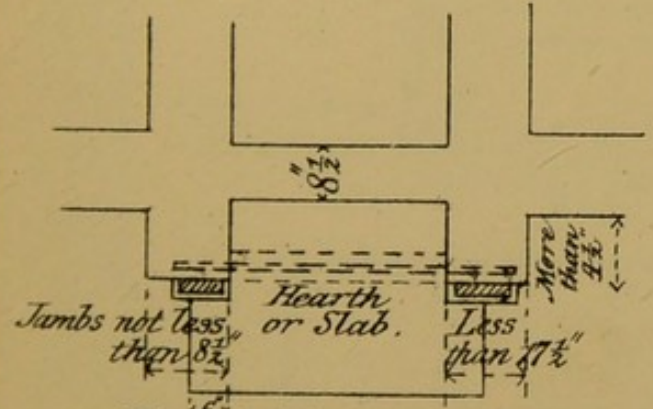
Sec 59 (2)

Part VI
Sec 64. CHIMNEYS.

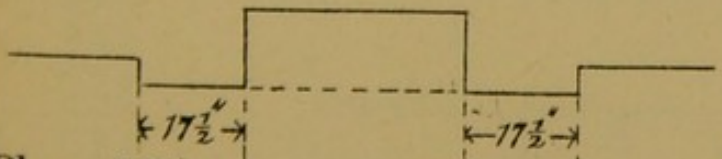


Section

Elevation of Chimney Breast.

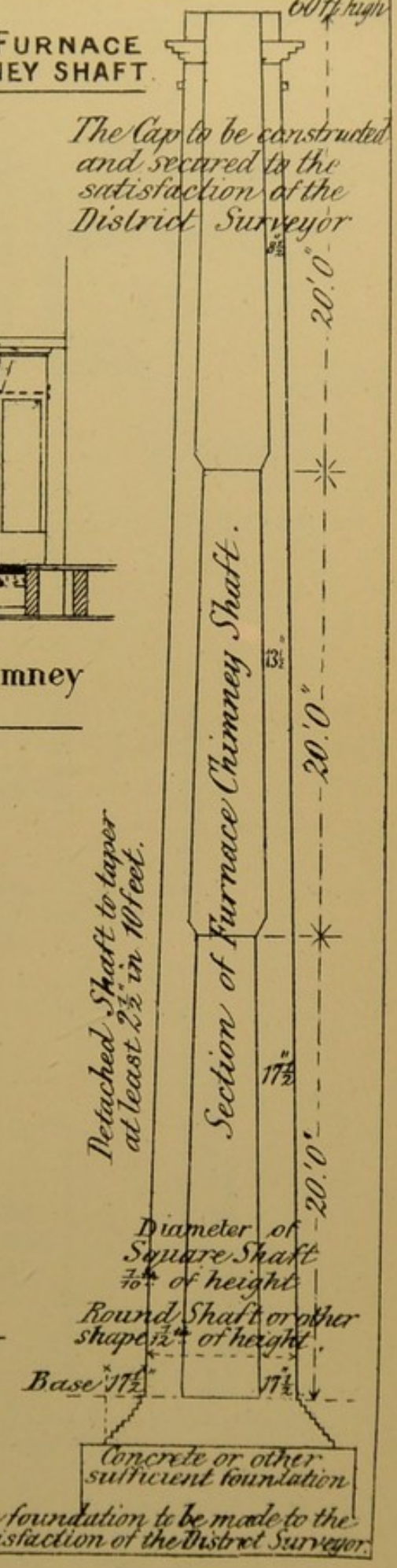


Plan of Chimney Breast in Party Wall

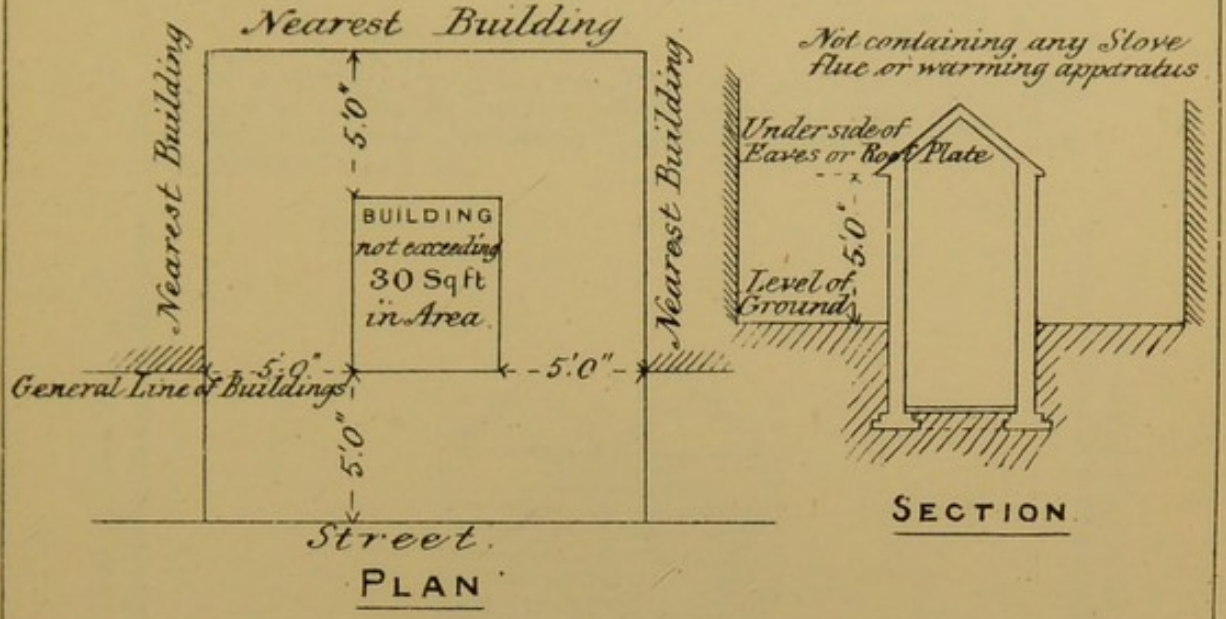


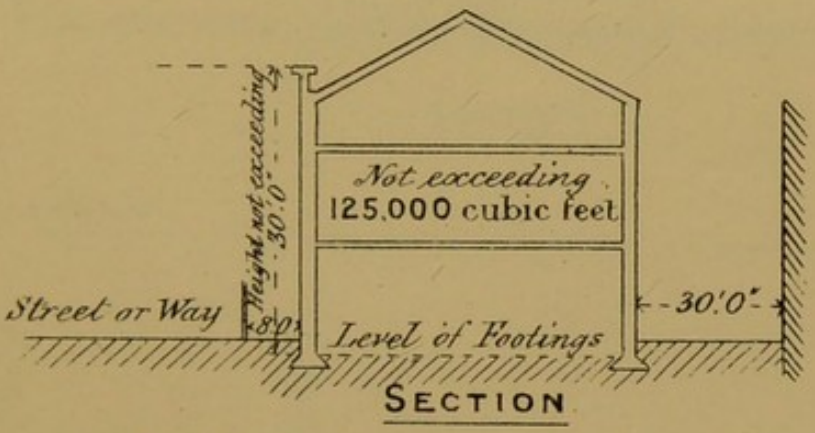
Plan of Chimney Breast where no bar is required.

Sec 65. FURNACE CHIMNEY SHAFT.

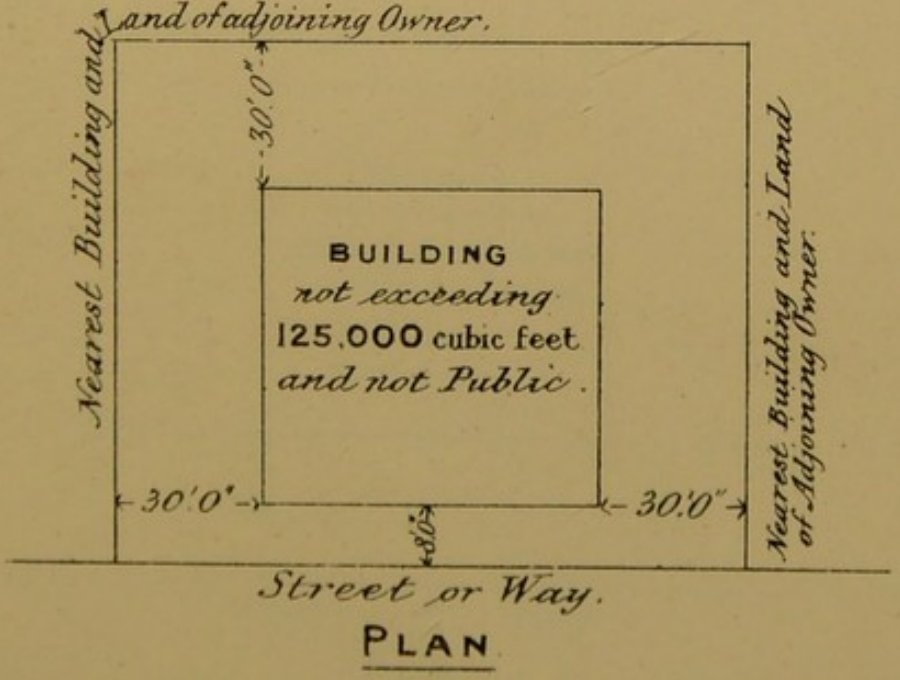


Sec 201. BUILDINGS exempt from PARTS VI & VII



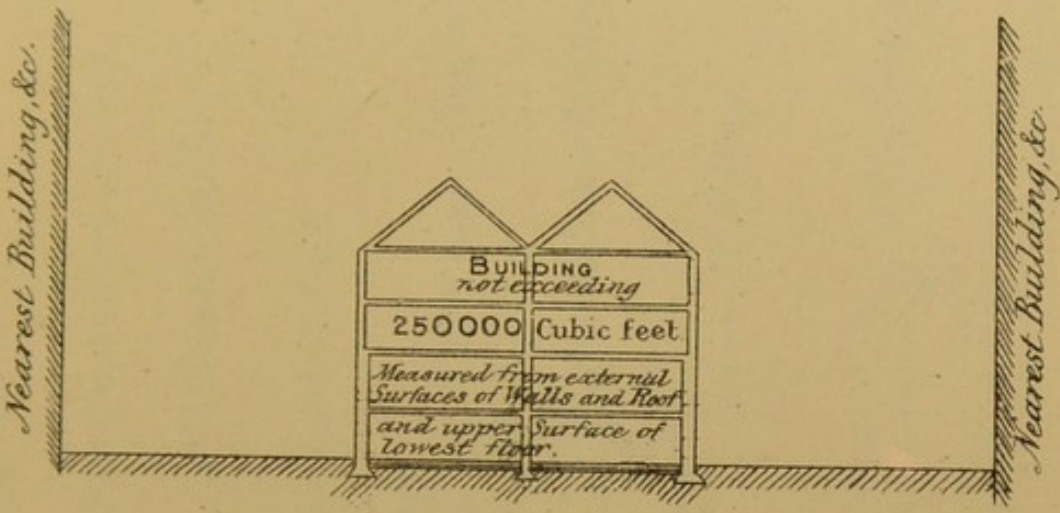


Note. A Detached Dwelling House is not excluded from this exemption solely by reason of its being within 30 feet of another detached building used as Stables or Offices in connection with it.

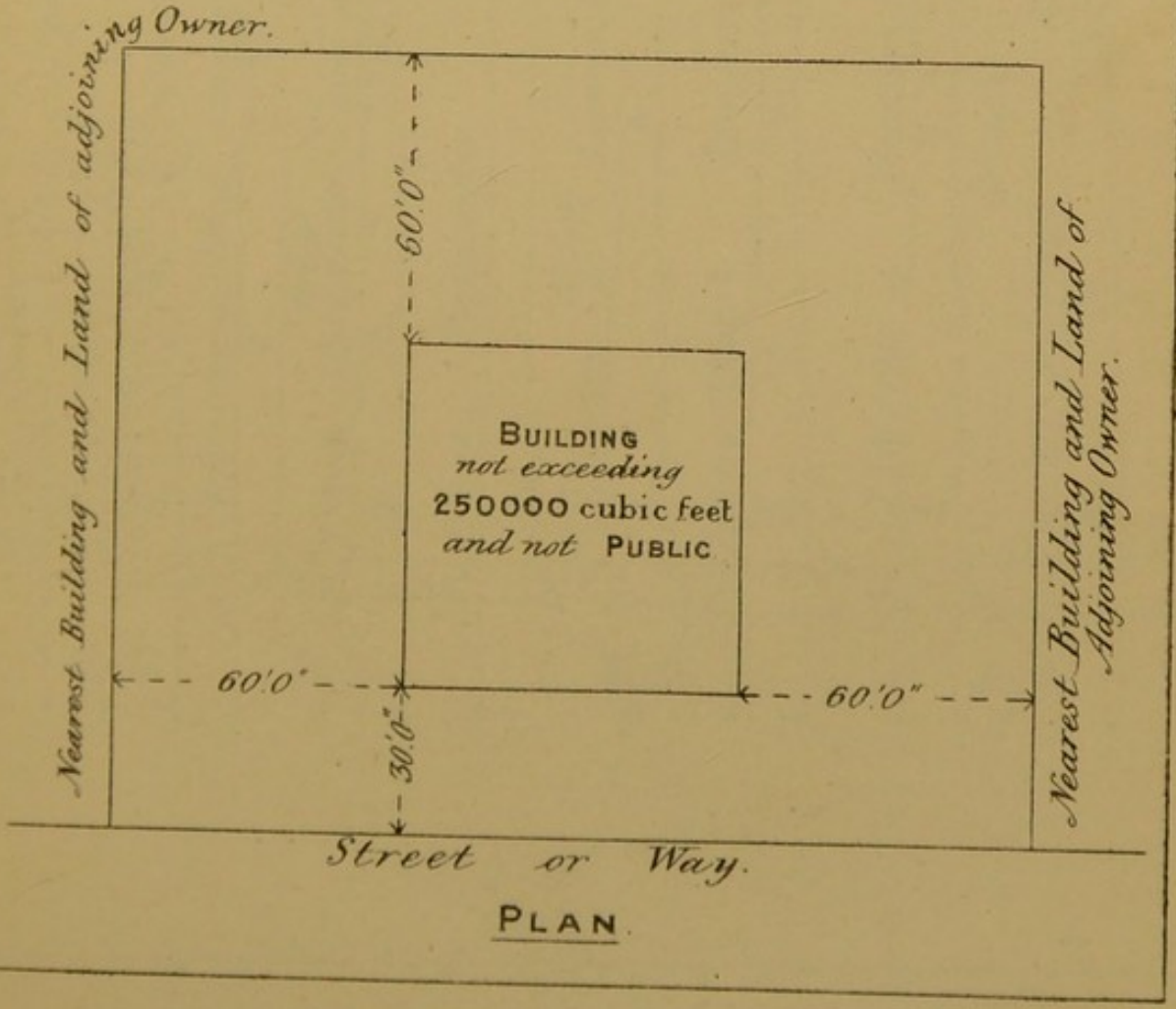


Sec 201. BUILDINGS and WORKS EXEMPT from PARTS VI & VII

Note. *A detached Dwelling-house is not excluded from this exemption solely by reason of it's being within 60 feet of another detached Building used as Stables or Offices in connection with it.*



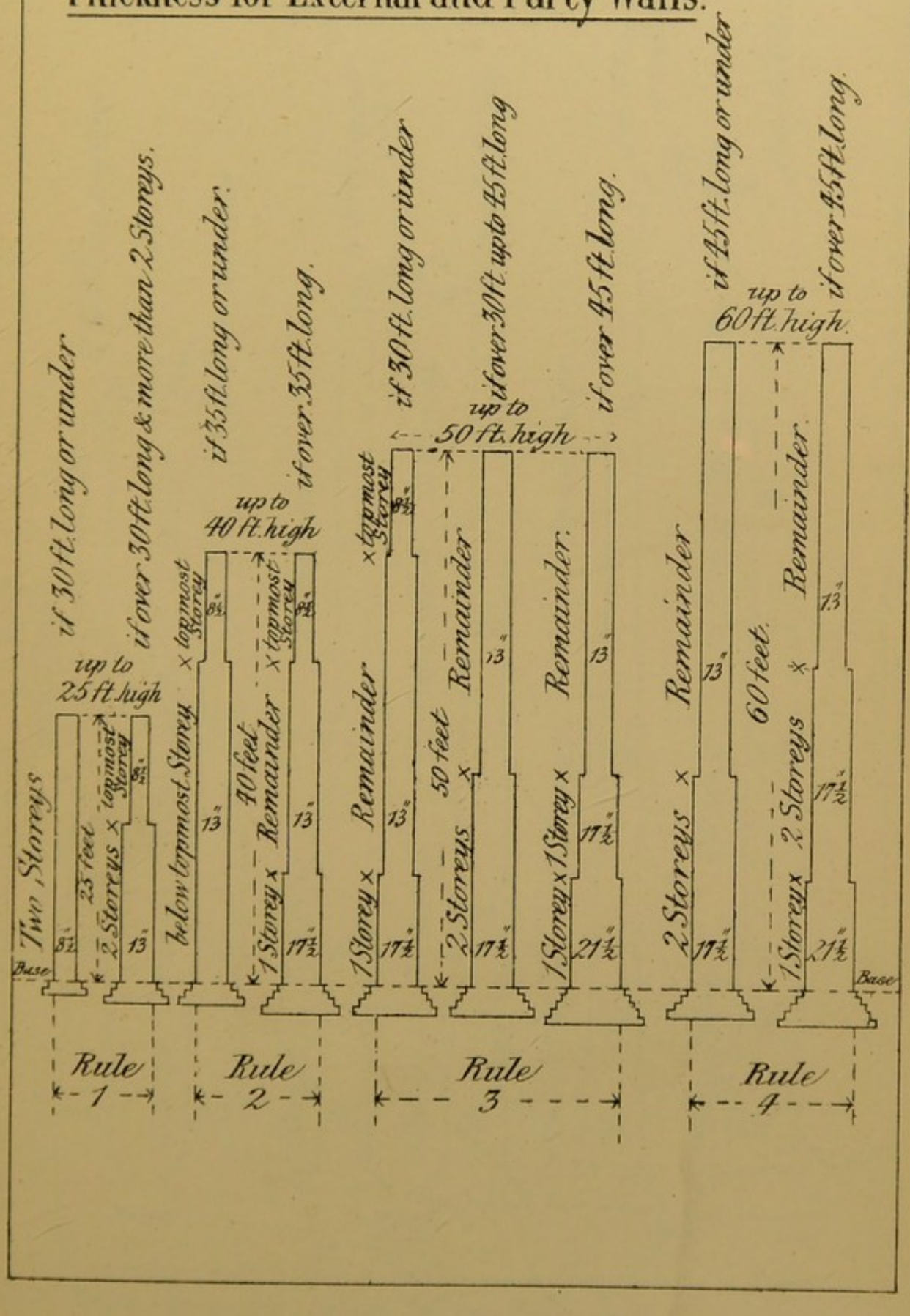
SECTION



PLAN

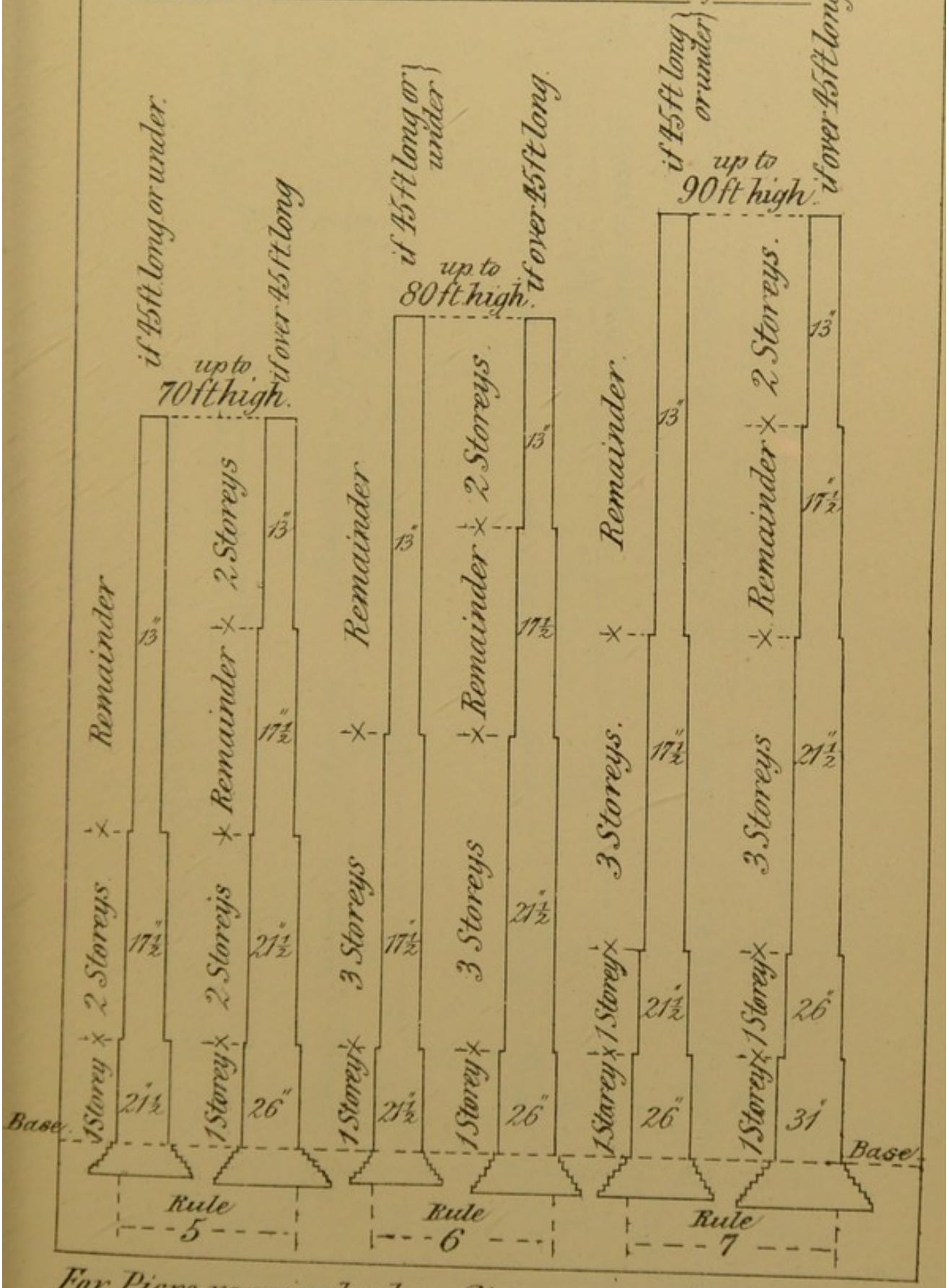
Schedule 1. Part 1. BUILDINGS NOT PUBLIC AND NOT OF THE WAREHOUSE CLASS.

Thickness for External and Party Walls.



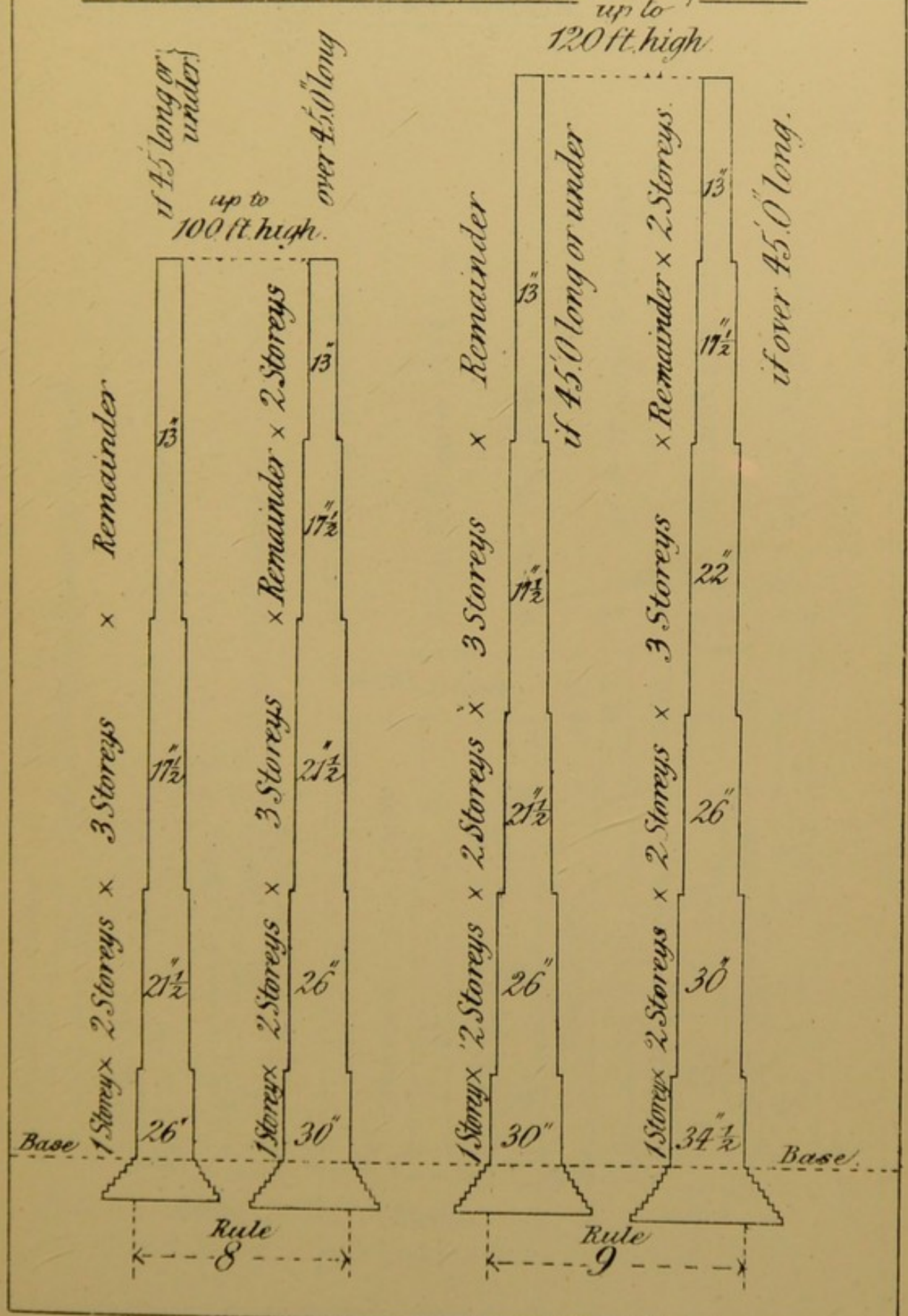
Schedule I. Part I. BUILDINGS NOT PUBLIC AND NOT OF THE WAREHOUSE CLASS.

Thickness for External and Party Walls



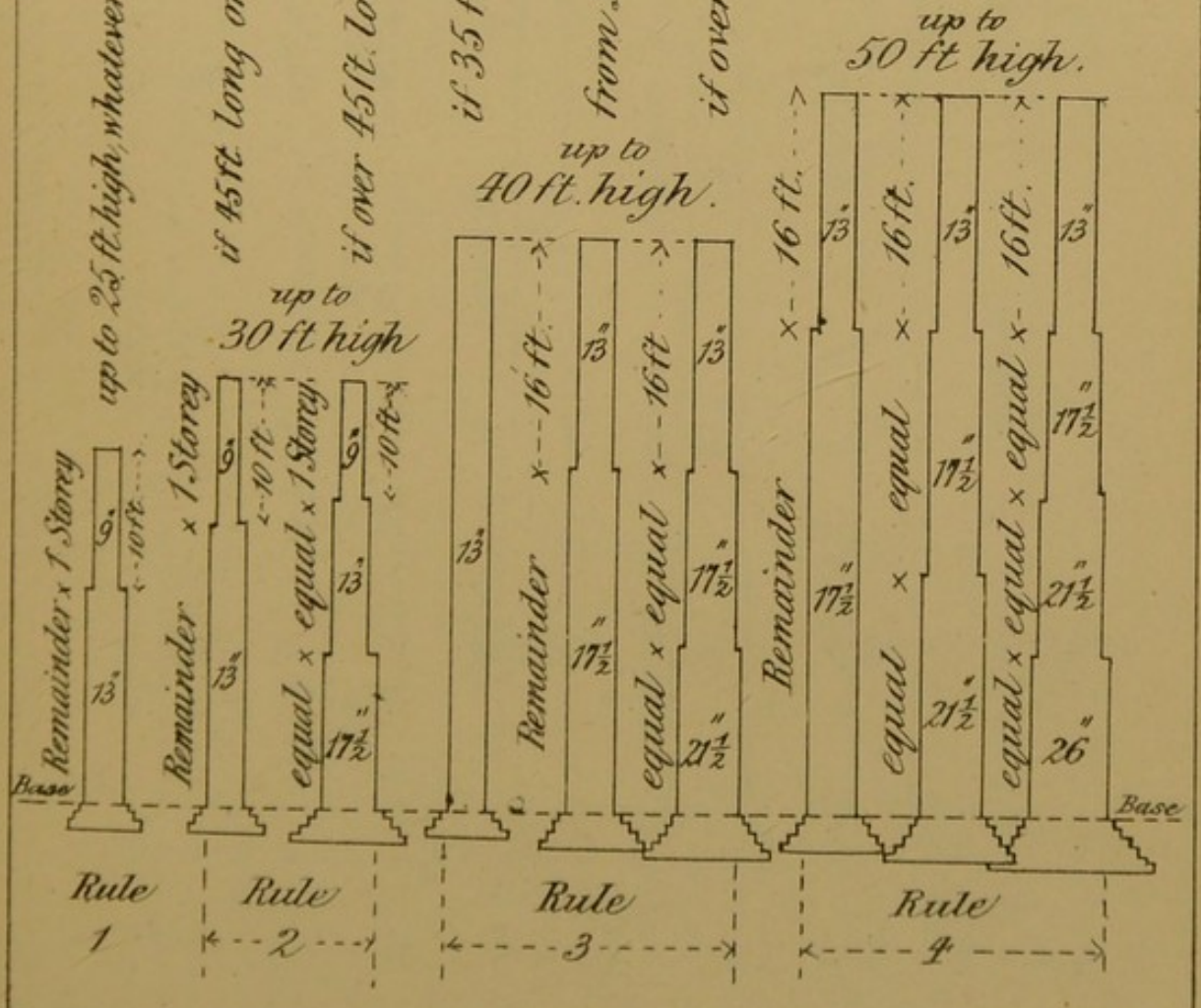
For Piers required when Storeys exceed a certain height, see Rule 10 Part 1 The first Schedule.

Schedule 1. Part 1. BUILDINGS NOT PUBLIC AND NOT OF THE WAREHOUSE CLASS, Thickness for External and Party Walls.

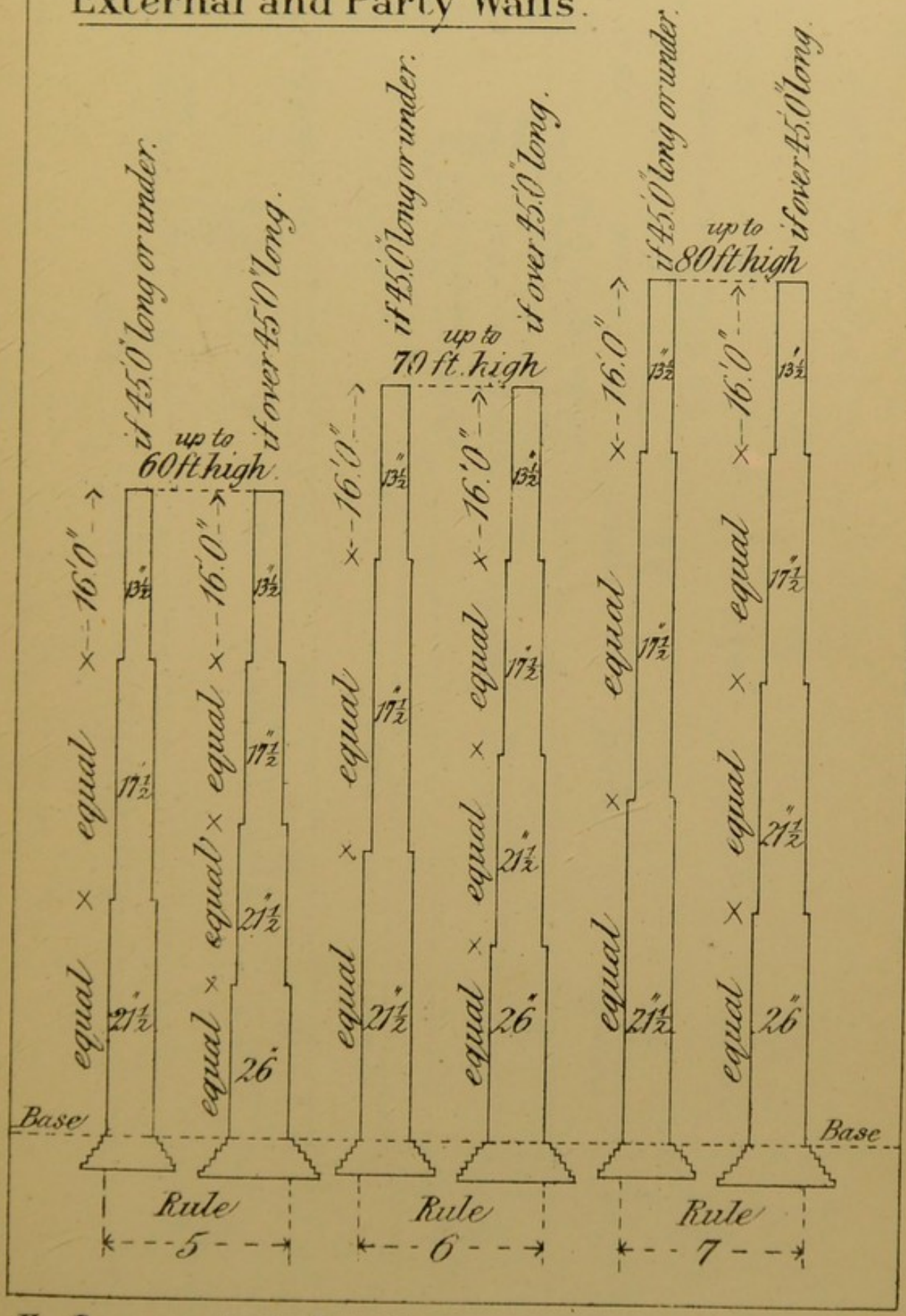


For Piers required when Storeys exceed a certain height see Rule 10. Part 1. The first Schedule.

Schedule I. Part II. BUILDINGS OF THE WAREHOUSE CLASS. Thickness for External and Party Walls.



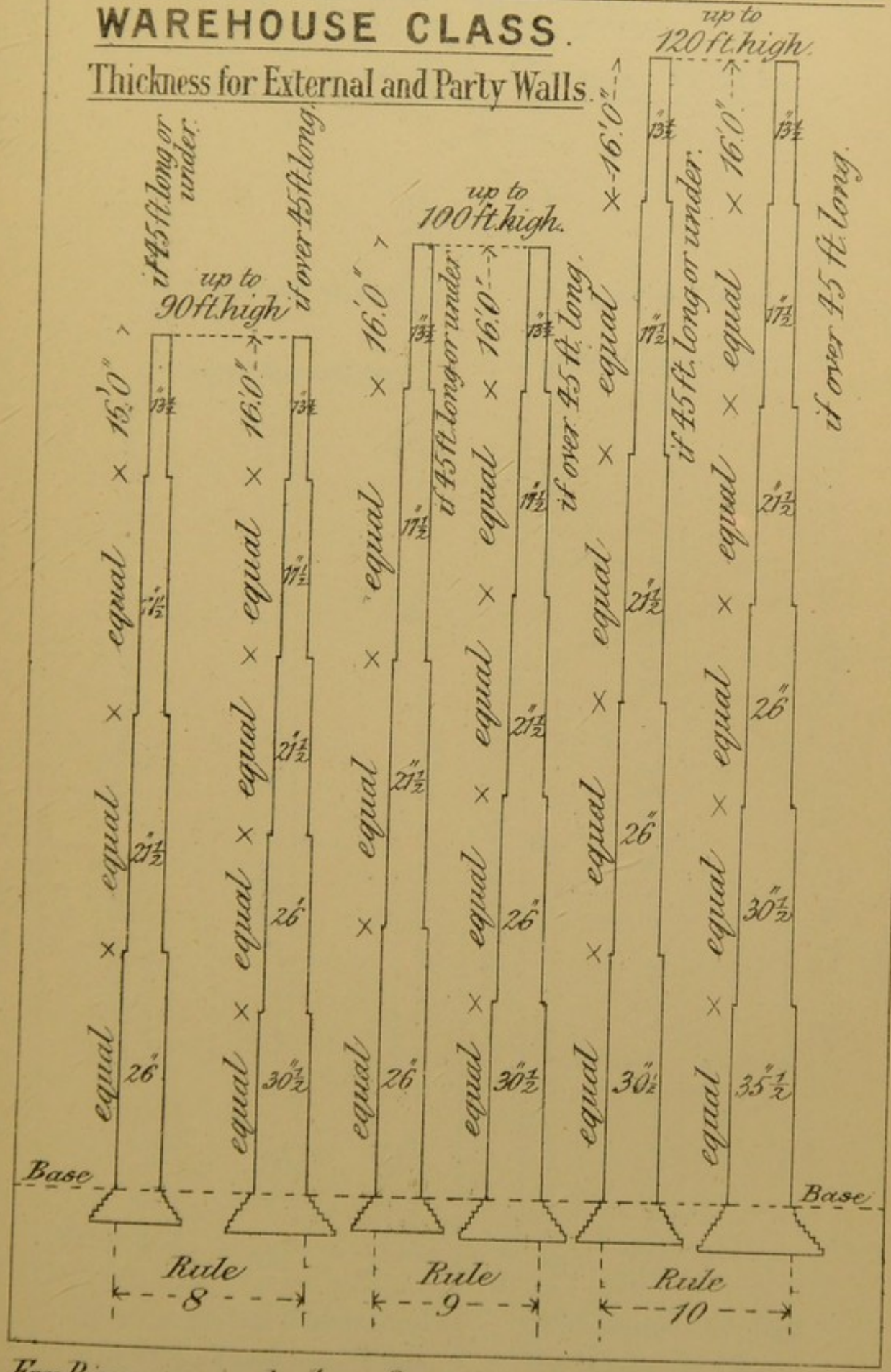
Schedule 1. Part II. BUILDINGS OF THE WAREHOUSE CLASS. Thickness for External and Party Walls.



For Piers required when Storeys exceed a certain height see Rule 12. Part 2. Schedule 1.

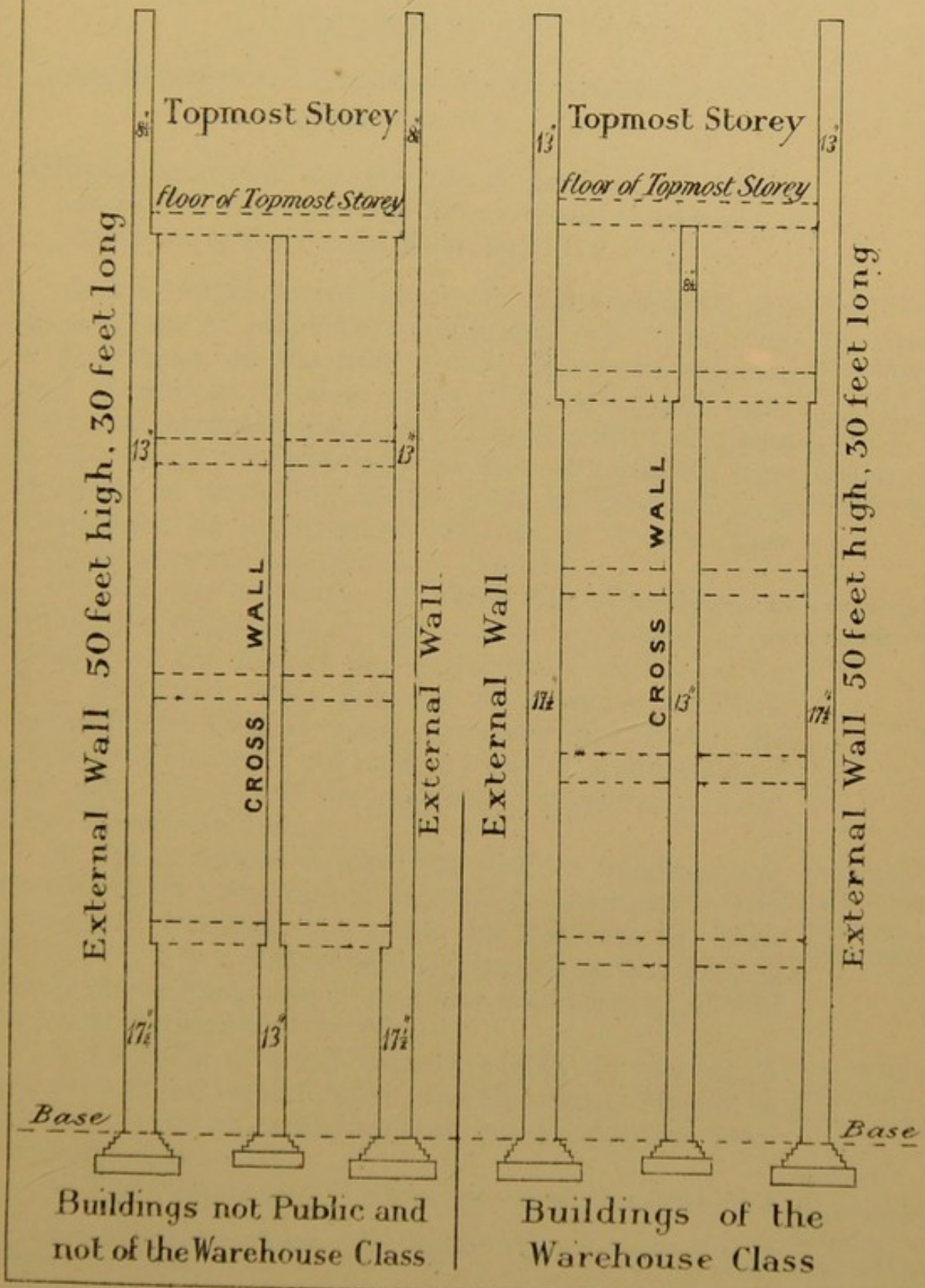
Schedule 1. Part II. BUILDINGS OF THE WAREHOUSE CLASS.

Thickness for External and Party Walls.



For Piers required when Storeys exceed a certain height see Rule 12 Part 2 Schedule 1.

Schedule I. Miscellaneous.
Thickness for Cross Walls.



APPENDIX VI

PROFESSIONAL PRACTICE AND CHARGES OF ARCHITECTS[1]

Schedule sanctioned by the Royal Institute of British Architects, and confirmed at a General Conference of Architects of the United Kingdom, 1872.

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The usual remuneration is at 5 per cent. commission besides expenses,

1. The usual remuneration for an architect's services, except as hereinafter mentioned, is a commission of 5 per cent. on the total cost of the works executed from his designs; besides which all travelling and other incidental expenses incurred by the Architect are paid by the Employer, who may be also charged for time occupied in travelling if the work be executed at a considerable or inconvenient distance, or if more than ordinary personal attendance is required.

except for decorative work.

2. But for all works in which the expenditure is mainly for skilled labour and not for materials, *e.g.* in designs for the fittings and furniture of buildings, for their decoration with painting or mosaics, for their sculpture, for stained glass, and other like works, the Architect's charge is not made by way of commission on the cost, but should be regulated by special circumstances and conditions.

Repetition in some cases justifies a lower rate,

3. When several similar but distinct buildings are erected at the same time from a single specification and one set of drawings and under one contract, the commission of 5 per cent. should be charged on the cost of one such building, and a modified arrangement should be made in respect of the others.

and small outlay a higher rate of percentage.

4. In works of small value, say £500 in amount, 5 per cent. is not remunerative, and the charge should be by time, or by an ascending scale reaching 10 per cent. for works under £100.

Commission is to be reckoned as if for new

5. The commission is reckoned upon the total cost

[1] Published by permission of the Council of the Royal Institute of British Architects.

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of the works, valued as if executed by a Builder, and of new materials. Two and a half per cent. is charged upon any works originally included in the contract, but subsequently omitted in execution.

This is exclusive of the charge for measuring extras and omissions.

materials and a builder employed, chargeable on all executed, and 2½ per cent. on all omitted work.

6. The Architect is entitled during the progress of the building to payment on account at the rate of 5 per cent. on the instalments paid to the Builder, or otherwise to half the commission on the signing of the contract, or the commencement of the works, and the remainder by instalments as above.

An Architect always entitled to payments on account.

N.B.—The terms of payment adopted by Her Majesty's Office of Works and Public Buildings may also be taken as an equitable method of payment on account, viz.:

One-third part of the commission shall be paid to the Architect immediately after the signing of the contract;

One-third part shall be paid to the Architect as soon as one-half of the contract sum has been paid to the Builder;

And the remaining one-third part shall be paid to the Architect after the final payment to the Builder.

Charge for special services,

7. The above charges do not cover professional services in connection with negotiations for site, in surveying it and taking levels, in making surveys and plans of buildings to be altered, in arrangements respecting party walls or right of lights, nor services incidental to arrangements consequent upon the failure of Builders whilst carrying out work, or in cases of subsequent litigation; but all such services are charged for in addition.

and material alterations of plan by time.

8. If the Employer, after having agreed to a design, and had the contract drawings prepared, should have material alterations made, whether before or after the contract is prepared, an extra charge should be made, unless such alterations are rendered necessary by an unreasonable excess in the Builder's tender beyond the Architect's approximate estimate.

Charge for plans and specification only half the commission, adding one-half per cent. if tenders are obtained.

9. If the Architect should have drawn out the approved design complete, with plans, elevations, sections and specification, the charge is half the commission upon the estimated cost. If he should, in addition, have procured tenders in accordance with the instruction of his Employer, the charge is one-half per cent. extra.

Alterations to premises may be charged at higher rate.

10. For works in the alteration of premises, a special charge may be made on account of the special difficulties and trouble generally involved.

11. The following are the professional services included in the ordinary charge of 5 per cent.: The commission covers

The requisite preliminary sketches, drawings and specifications sufficient for an estimate and contract. sketches, plans, details, one set

Detailed drawings and instructions for execution. tracings, and duplicate specification,

One set of tracings and duplicate specification. instructions,

General superintendence of works (exclusive of Clerk of the Works). superintendence, examining accounts,

Examining and passing the accounts, exclusive of measuring and making out extras and omissions.

12. No additional remuneration is due for making an approximate estimate, such as may be obtained, for instance, by cubing out the contents. If a detailed estimate be required by the employer, an additional percentage charge may be made. also approximate estimate.

13. The charge per day made by Architects depends upon their professional position, the minimum charge being three guineas per day. The usual charge per day.

14. The above payments alluded to in this document are to be made by the Employer to the Architect, who is not to receive commission or payment of any kind from the Builder, or any tradesman, in respect of works executed under the Architect's direction. All payments to Architect to be from Employer.

15. When an Architect supplies Builders with quantities, on which to form tenders for executing his designs, he should do so with the concurrence of his Employer, and it is desirable, when practicable, that the Architect should be paid by him rather than by the Builder, the cost of such extra labour not being included in the commission of 5 per cent. Quantities.

16. In respect of the ownership of drawings and specifications, it has hitherto been the general custom for the Architect to be paid for their use only, those documents remaining his property. Ownership of drawings.

N.B.—In case of sketches for works abandoned, this custom is recognised by Her Majesty's Office of Works and Public Buildings. No authoritative decision in the Courts of Law has, however, as yet been given on the subject: it is therefore desirable, for the present at least, that the Architect should have a distinct understanding with his Employer on this point.

17. The charge for taking a plan of an estate, laying it out, and arranging for building upon it, should be regulated by the time, skill, and trouble involved. Estates.

18. For actually letting the several plots (in ordinary

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cases) a sum not exceeding a whole year's ground rent may be charged.

19. For inspecting the buildings during their progress (so far as may be necessary to ensure the conditions being fulfilled) and finally certifying for lease, the charge should be a percentage not exceeding one-half per cent. up to £5,000, and above that by special arrangement.

20. All the above fees to be exclusive of travelling expenses, and time occupied in travelling, as before mentioned.

21. The charge for the above does not include the commission for preparing specification, directing, superintending, and certifying the proper formation of roads, fences, and other works executed at the cost of the Employer, nor for putting the plans on the leases.

Valuations.

22. The following definite charges are recognised for valuation of property:

> The charge throughout is 1 per cent. on the first £1,000, and half per cent. on the remainder up to £10,000. Below £1,000, and beyond £10,000, by special arrangement. These charges do not include travelling expenses, nor attendance before juries, arbitrators, &c.

Dilapidations.

23. The charge for estimating dilapidations is 5 per cent. on the estimate, and in no case less than two guineas.

WILLIAM H. WHITE,
The Secretary of the Royal Institute.

THE ROYAL INSTITUTE OF BRITISH ARCHITECTS,
No. 9 CONDUIT STREET, HANOVER SQUARE, LONDON, W.

DISTRICT SURVEYORS.

LIST OF DISTRICT

App. VI.

—	District *	Name	Date of Appointment
1	Battersea, Central Division of	Wilfred J. Hardcastle	1888
2	Battersea, North	Henry John Hansom	1867
3	Battersea, Southern Division of, and the detached portion of Clapham	Horace Cheston	1888
4	Bermondsey, St. Mary Magdalen, and St. John, St. Olave, and St. Thomas, Southwark	Thomas Barnes-Williams	1880
5	Bethnal Green, St. Matthew, East, and South Bow	Edward Street	1885
6	Bethnal Green, St. Matthew, West	Robert Pledge Notley	1875
7	Bromley, St. Leonard	Chester Foulsham	1874
8	Camberwell, St. Giles	Ellis Marsland	1885 1891
9	Charlton, Lee, and Kidbrooke	Walter Lewis Spiers	1887
10	Chelsea, North	Samuel Flint Clarkson	1886
11	Chelsea, South	Thomas Edward Mundy	1886
12	City of London, Eastern Division of	Hyman Henry Collins	1877
13	City of London, Northern Division of	Edmund Woodthorpe	1888
14	City of London, Southern Division of	Edward Power	1869
15	City of London, Western Division of	Hugh McLachlan	1886
16	Clapham	William Grellier	1888
17	Clerkenwell (St. James and St. John) and part of Islington	Ernest Carritt	1882
18	Deptford, North-east	John Baldry Redman	1843 1885
19	Deptford, South-east	William Hewson Lees	1885
20	Fulham	Andrew Moseley	1844
21	Greenwich	Benjamin Tabberer	1870

* DISTRICTS.

1. Consisting of that part of the parish of Battersea southward of the London and South Western Railway, northward and westward of the boundary of the parish of Clapham, and northward of Clapham Common and Battersea Rise.

2. Consisting of that portion of the parish of Battersea which lies on the northern side of the London and South Western Railway, and to the westward of the boundary of district No. 36.

3. Consisting of that part of the parish of Battersea southward of Battersea Rise and westward of Clapham Common, together with the detached portion of Clapham.

5. Consisting of that portion of the parish of Bethnal Green east of Cambridge Road; and that portion of the parish of Bow south of Old Ford Road, and of the embankment of the Northern Outfall Sewer.

6. Consisting of that portion of the parish west of Cambridge Road.

10. Consisting of that portion of the parish to the northward of a line drawn along the centre of King's Road and Sloane Square.

11. Consisting of that portion of the parish to the southward of such line, together with the detached portion of Kensington near to Chelsea Hospital.

12. Consisting of the wards of Lime Street, Tower, Aldgate, Portsoken, Billingsgate, and Langbourn.

SURVEYORS.

District Office	Office Hours	Residence
73 Marney Rd., Battersea Rise, S.W.	10 to 4	3 Cannon Place, Hampstead.
535 Battersea Park Road, S.W. .	9.30 to 5	29 Rosenau Crescent, Bridge Road.
35 Belleville Road, Wandsworth Common, S.W.	10 to 4	102 Oakley Street, Chelsea.
24 Railway Approach, London Bridge, S.E.	10 to 4	2 Spanish Place, Manchester Sq.
109 Bow Road, E.	10 to 4	9 Serjeant's Inn, Fleet Street.
11 Paradise Row, B'thn'l Grn. Rd., E.	10 to 4	Aulaby House, Upper Clapton.
105 High Street, Bromley, E. .	10 to 4	9 Caversham Road, Kentish Town.
244 Camberwell Road, S.E. . .	9.30 to 5, Saturday 9.30 to 2	62 Camberwell Road.
5 Lee Road, S.E.	10 to 4	21 Bernard Street, Russell Square.
40 Sydney Street, Chelsea, S.W. .	10 to 4	28 Great Ormond Street.
31 King's Road, Chelsea, S.W. .	10 to 4	43 Cecile Park, Crouch Hill.
15 Fenchurch Street, E.C. . .	10 to 4	Frankfort House, Clarendon Gardens, Maida Hill.
1 Circus Place, London Wall, E.C.	10 to 4	20 Hilltop Road, West Hampstead.
97 Queen Victoria Street, E.C. .	10 to 4	Bush Lodge, Southgate.
29 Furnival Street, Holborn, E.C. .	10 to 4	148 Richmond Road, Dalston.
6 Clapham Common, S.W. . .	10 to 4	Fairview, Macaulay Rd., Clapham.
7 Attneave St., Clerkenwell, W.C. .	10 to 4	1 Claredale Villas, Victoria Road, Surbiton.
493 New Cross Road, S.E. . .	10 to 4	25 Great George St., Westminster.
171 Lewisham High Road, S.E. .	10 to 4	27 Doughty Street.
Churchfield House, King's Road, Fulham, S.W.	at residence before 9 and after 6	Churchfield House, King's Road.
Lecture Hall, Royal Hill, Greenwich, S.E.	10 to 4	Alverstoke, Montpelier Row, Blackheath.

* DISTRICTS.

13. Consisting of the wards of Bassishaw, Bishopsgate Within, Bishopsgate Without, Broad Street, Coleman Street, Cornhill, Cripplegate Within, and Cripplegate Without, and Precinct of Monkwell.

14. Consisting of the wards of Bread Street, Bridge, Candlewick, Castle Baynard, Cordwainers, Dowgate, Farringdon Within, Queenhithe, Vintry, Walbrook, and Bridewell Precinct.

15. Consisting of the wards of Aldersgate Within and Without, Cheap, and Farringdon Without, St. Martin's-le-Grand, St. Bartholomew the Great and Less, the Inner Temple, and that part of the Middle Temple within the City, Serjeant's Inn, Fleet Street, and Chancery Lane, Clifford's Inn, Barnard's Inn, Thavies Inn, and those parts of Furnival's Inn and Staple Inn which are within the City.

17. Consisting of that part of the parish of Islington situate to the south of the southern boundary of district No. 33, and bounded on the east by the centre line of Upper Street.

18. Consisting of the parish of St. Nicholas, Deptford, and so much of the parish of St. Paul, Deptford, in Kent, as lies to the northward of a line drawn along the centre of New Cross Road, the Broadway, and Deptford Bridge.

19. Consisting of the remaining portion of the parish of St. Paul, Deptford, in Kent.

LIST OF DISTRICT

App. VI.

—	District *	Name	Date of Appointment
22	Hackney, North-east	Frederick Richard Meeson	1875
23	Hackney, South-east, and North Bow . .	Alexander Payne . .	1880
24	Hackney, West.	George Legg . . .	1861
25	Hammersmith	Thomas Edward Knightley	1863
26	Hampstead, East	William Smallpeice . .	1888
27	Hampstead, West	Rowland Plumbe . .	1874, 1887
28	Hatcham, or the portion of St. Paul, Deptford, in Surrey	Augustus William Tanner	1883
29	Holborn and East Strand, including St. Andrew, Holborn, above Bars, St. George-the-Martyr, the Liberty of the Rolls, the Liberty of Saffron Hill, Hatton Garden, and Ely Rents, St. Clement Danes, St. Mary-le-Strand, the Savoy Precinct, St. Sepulchre without, the Charter House, and St. Paul, Covent Garden	Frederick William Porter	1854, 1858
30	Islington, East	Josiah Goodchild . .	1890
31	Islington, South, St. Leonard, Shoreditch, and the Liberty of Norton Folgate	Henry Lovegrove . .	1887, 1892
32	Islington, North-west, St. Pancras, North, and the detached portion of Clerkenwell, near Muswell Hill	Frederic Hammond . .	1880, 1894
33	Islington, South-west, St. Luke, Old Street, and the Liberty of Glasshouse Yard	George McDonell . .	1880, 1892
34	Kensington, North-west	Henry Hart . . .	1866, 1885, 1891
35	Kensington, South	Alfred Williams . .	1865, 1885
36	Lambeth, Central, and part of Battersea. .	John Alexander James Woodward	1874
37	Lambeth, Southern Division of, and part of Camberwell	Henry Parsons . . .	1858

* DISTRICTS.

22. Consisting of that portion of the parish lying north of the North London Railway, and bounded on the west by Lower Clapton Road and Upper Clapton to Stamford Hill.

23. Consisting of that portion of the parish of Hackney lying south of the North London Railway, and bounded on the west by the centre line of Mare Street and Cambridge Road, and on the south and east by the boundary of the parish; and also that portion of Bow north of the centre line of Old Ford Road and north-east of the embankment of the Northern Outfall Sewer.

24. Consisting of that portion of the parish lying west of Mare Street, Lower Clapton Road, and Upper Clapton to Stamford Hill.

26. Consisting of that part of the parish to the eastward of a line drawn along the centre of Avenue Road and Finchley Road.

27. Consisting of that part of the parish to the westward of the line lastly described.

30. Consisting of that part of the parish lying on the east side of Highgate Hill and Holloway Road, and on the west side of Highbury Place, Highbury Park, and Blackstock Road.

31. Consisting of that part of the parish of Islington situate on the east side of High Street, Upper Street, Highbury Place, Highbury Park, and Blackstock Road.

32. Consisting of that part of the parish of Islington bounded on the north and west by the boundaries of the parish, on the south by the centre line of Camden Road, and on the east by the centre line of Highgate Hill and Holloway Road, and that portion of the parish of St. Pancras north of the Tottenham and Hampstead Junction Railway.

33. Consisting of that portion of the parish of Islington bounded on the north by the centre line of Camden Road, on the south by the centre line of Copenhagen Street and Cloudesley Place,

SURVEYORS.—*Continued.*

District Office	Office Hours	Residence
Portland House, Portland Place, Lower Clapton, E.	10 to 4	Palmerston Rd., Horsell, Woking.
10 St. Thomas's Square, Mare St., E.	10 to 4	Norfolk House, Victoria Embankment.
116 Graham Road, Dalston, E. .	10 to 4	65 Shooter's Hill Rd., Blackheath.
3 The Grove, Hammersmith, W. .	9 to 5	Clive House, Trinity Rd., Tulse Hill.
42 Well Walk, N.W. . . .	10 to 4	42 Well Walk, Hampstead.
104 West End Lane, N.W. . .	10 to 4	13 Fitzroy Square.
85 New Cross Road, S.E. . .	10 to 4	29 Pelham Place, S. Kensington.
28 Great Ormond Street, W.C. .	10 to 4	16 Russell Square.
59 Tollington Park, N. . . .	9.30 to 5, Saturday 9.30 to 2	59 Tollington Park.
314 Old Street, E.C. . . .	10 to 4	Eboracum, Herne Hill.
2 Mercer's Rd., Upper Holloway, N.	10 to 4	2 Mercer's Road, Upper Holloway.
12 City Road, E.C.	10 to 4	Chase Cross, Havering-atte-Bowe, near Romford.
52 Norland Square, Notting Hill, W.	9.30 to 5, Saturday 9.30 to 2	52 Norland Square, Notting Hill.
10 Exhibition Rd., Kensington, S.W.	10 to 4	17 Onslow Gardens.
69 Kennington Oval, S.E. . .	10 to 4, 12 till 2 Sat.	69 Kennington Oval.
88 Angell Road, Brixton . . .	10 to 4 and by appointment	Homelea, Angell Road, Brixton.

* DISTRICTS.

and by the southern enclosure of the Agricultural Hall, on the east by the centre line of Upper Street and Holloway Road, and on the west by the boundary of the parish.

34. Consisting of that part of the parish of St. Mary Abbott, Kensington, to the northward of Kensington High Street and Kensington Road, and westward of a line drawn along the centre of Redcliffe Gardens, and Earl's Court Road, and the detached portion of St. Luke's, Chelsea, to the northward of the parish at Kensington, at Kensal Green.

35. Consisting of that part of the parish of Kensington, and also that portion of the parish of St. Margaret, Westminster, adjoining thereto, lying on the south side of Knightsbridge Road, Kensington Gore, Kensington High Street, and Kensington Road, and on the eastward side of Earl's Court Road and Redcliffe Gardens.

36. Consisting of that portion of the parish of Lambeth situate westward of Kennington Road and Clapham Road, and bounded on the south by the centre line of Dorset Road, South Lambeth Road, Miles Street, and Nine Elms Lane; and on the north by Church Street and Lambeth Road to its junction with Kennington Road; and also that portion of the parish of Battersea lying to the eastward of the centre line of Albert Road and of a line continued thence southward by the eastern wall of the 'Clockhouse' Tavern, Battersea Park Road, to the embankment of the railway leading to Battersea and Kensington; and to the northward of the London and South Western Railway.

37. Consisting of that portion of the parish of Lambeth bounded on the south by the centre line of Nine Elms Lane, Miles Street, South Lambeth Road, Dorset Road, Holland Street, Vassall Road, and Camberwell New Road, and on the north by Brixton Hill and Dulwich Road; and also that portion of the parish of Camberwell south-west of the Camberwell New Road.

App. VI.

LIST OF DISTRICTS.

—	District *	Name	Date of Appointment
38	Lewisham	Charles James Badger	1863 1870
39	Limehouse, St. Anne, St. John, Wapping, Precinct of St. Katherine, and Hamlet of Ratcliff	Henry William Stock	1888
40	Lower Norwood	Percy Hunter	1884
41	Mile End Old Town	Henry Simpson Legg	1865
42	Newington, East, and part of St. George-the-Martyr, Southwark	Bernard Dicksee	1893
43	Newington, West, and part of Lambeth	Banister Fletcher	1875
44	Paddington	Horace Gundry.	1874
45	Penge	George Elkington	1884
46	Plumstead and Eltham	Thomas Batterbury	1887
47	Poplar, All Saints	John Clarkson	1878
48	Putney and Hamlet of Roehampton	Thomas William Willis	1879
49	Rotherhithe, St. Mary, and part of Camberwell	Alexander Rose Stenning	1883
50	Stoke Newington, St. Mary	Joseph Douglass Mathews	1874
51	St. George-in-the-East, St. Botolph without Aldgate, and St. Paul, Shadwell	Samuel Stenton Markham	1863
52	St. George, Hanover Square, North	Thomas Henry Watson	1875
53	St. George, Hanover Square, Belgrave and Pimlico Division	William Alfred Large	1882
54	St. Giles-in-the-Fields and St. George, Bloomsbury	Charles Forster Hayward	1871
55	St. James, Westminster	Robert Kerr	1862
56	St. Margaret and St. John-the-Evangelist, Westminster, and the close of the Collegiate Church of St. Peter	Edward Dru Drury	1870
57	St. Martin-in-the-Fields and St. Anne, Soho	Robert Walker	1875
58	St. Marylebone	Arthur Ashbridge	1885 1891
59	St. Pancras, East	Vincent John Grose	1878 1894
60	St. Pancras, West	Frederick Wallen	1878
61	St. Saviour, St. George-the-Martyr (part) and Christ Church, Southwark, and the Northern Division of Lambeth	Edwin Richard Hewitt	1882
62	Streatham, East, and Brixton	John Salmon Quilter	1880

* DISTRICTS.

38. Consisting of that part of the parish of Lewisham lying north of a line drawn along the centre of London Road and along the eastern side of the Brighton Railway till it approaches the end of Stanstead Road, and then following the centre of that road and Catford Road and southward of the churchyard to Cock Shed Lane, and thence to the eastern boundary of the said parish.

40. Consisting of that portion of Lambeth to the southward of Leigham Lane, Norwood Road, Lancaster Road, and the boundary of the detached portion of Streatham.

42. Consisting of that portion of Newington eastward of Walworth Road, and that part of St. George-the-Martyr contiguous thereto on the east side.

43. Consisting of that portion of the parish of Newington westward of Walworth Road, and also such portion of the parish of Lambeth as is bounded on the west by Kennington Road, and Clapham Road as far as Holland Street; on the south by Holland Street, Vassall Road, Camberwell New Road, and Wyndham Road; and thence along the boundary of the parish of Newington to Walworth Road; on the east by Pitman Street; and on the north by the boundary of the parish of Lambeth and Lambeth Road, and including also an outlying angular portion of the parish of Lambeth at the junction of Camberwell New Road with Denmark Hill.

49. Consisting of that part of Camberwell situate north of the Grand Surrey Canal and east of the Old Kent Road.

SURVEYORS.—*Continued.*

District Office	Office Hours	Residence
63 Lewisham Road, S.E. . .	daily from 9 A.M.	45 Blackheath Road.
586 Commercial Road East, E. .	10 to 4	4 Bromfield Gardens, Onslow Road, Richmond.
5 Station Villas, Knight's Hill Road, S.E.	10 to 4	Provost Lodge, Provost Rd., Haverstock Hill.
13 Grafton Street, Mile End Rd., E.	10 to 4	80 Alexandra Rd., St. John's Wood.
67 New Kent Road, S.E. . .	9.30 to 5, Saturday 9.30 to 2	35 Queen Victoria Street.
7 Kennington Park Road, S.E. .	10 to 4	Anglebay, Woodchurch Rd., West Hampstead.
20 Warwick Crescent, P'dington, W.	10 to 4	25 Glo'ster Crescent, Bishop's Rd.
Vestry Hall, Anerley Road, S.E. .	10 to 4	95 Cannon Street.
30 Conduit Road, Plumstead .	10 to 4	Park House, Court Road, Eltham.
136 High Street, Poplar, E. . .	10 to 4 and by appointment	9 Highgate Rise.
Frampton Lodge, Clarendon Road, Putney, S.W.	9 to 5	Frampton Lodge, Clarendon Road, Putney.
111 Deptford Lower Road, S.E. .	10 to 4	76 St. George's Rd., Warwick Sq.
169 Church St., Stoke Newington, N.	10 to 4	78 Highbury New Park.
180 High Street, Shadwell, E. .	10 to 4	The Quarries, Pk. Hill Rd., Croydon.
9 Conduit Street, Regent Street, W.	10 to 4	9 Nottingham Place, W.
82 & 83 Chester Sq., Pimlico, S.W.	10 to 4	345 Clapham Road.
47 Museum St., Bloomsbury, W.C.	10 to 4	47 Museum Street.
22 Old Burlington Street, W . .	10 to 4	22 Old Burlington Street.
25 Queen Anne's Gate, Westminst'r, S.W.	10 to 4	Hendra, Upper St. John's Park, Blackheath.
10 St. Martin's Place, Trafalgar Square, W.C.	10 to 4	85 Marquess Road, Canonbury.
10 Upper Baker Street, N.W. .	9.30 to 5, Saturday 9.30 to 2	Chigwell Hurst, Pinner.
12 Great College Street, N.W. .	10 to 4	Hillside, Devonshire Road, Forest Hill.
96 Gower Street, W.C. . . .	10 to 4	96 Gower Street.
182 Blackfriars Road, S.E. . .	10 to 4	36 Hilldrop Road, Islington.
135 Streatham High Road, S.W. .	10 to 4	1 and 2 Adam Street, Adelph

* DISTRICTS.

52. Consisting of that portion of the parish situate north of Piccadilly, together with that part of such parish situate between the west side of St. James's Street and the boundary of the parish of St. Martin-in-the-Fields, on the east side of the Green Park.

53. Consisting of the remaining portion of the parish, or the Belgrave and Pimlico division.

59. Consisting of that portion of the parish bounded on the north by the Tottenham and Hampstead Junction Railway, on the west by the eastern boundary of district No. 60, and on the south by Lismore Road, Lismore Circus, and the Midland Railway.

60. Consisting of that portion of the parish lying south of Lismore Road, Lismore Circus, and the Midland Railway; and west of Kentish Town Road, High Street, Camden Town, Eversholt Street, Seymour Street, Upper Woburn Place, and Tavistock Square.

61. Consisting of that part of the parish of Lambeth lying north of the 'northern' boundary of the districts Nos. 36 and 43.

62. Consisting of that part of Streatham (including the detached portion) situate to the eastward of the centre line of Brixton Hill, Streatham Hill, and Upper and Lower Streatham, and that portion of Lambeth bounded on the north by the centre line of Leigham Lane, Norwood Road, and Lancaster Road, and on the west by the centre line of Brixton Road.

App. VI.

LIST OF DISTRIC

—	District *	Name	Date of Appointment
63	Streatham, West	Daniel Robert Dale . .	1880
64	Sydenham	James Tolley . . .	{1866 / 1870}
65	Wandsworth, East, and Tooting Graveney .	George Aitchison . .	{1861 / 1882}
66	Wandsworth, West	Thomas Roger Smith .	{1875 / 1882}
67	Whitechapel, St. Mary, Christ Church, Spitalfields, the Hamlet of Mile End New Town, and the Tower Liberty	Arthur Crow . . .	1891
68	Woolwich	Alfred Conder . . .	1882

* DISTRICTS.

63. Consisting of that part of Streatham situate to the westward of the western boundary o district No. 62.

64. Consisting of that part of the parish of Lewisham lying south of the Lewisham district.

65. Consisting of the portion of the parish of Wandsworth to the eastward of the Londo and South Western Railway, together with the parish of Tooting Graveney.

SURVEYORS.—*Continued.*

District Office	Office Hours	Residence
10 Harberson Road, Bedford Hill Road, Balham, S.W.	10 to 4	The Chestnuts, Havelock Road, Addiscombe, Surrey.
4 Dartmouth Rd., Forest Hill, S.E.	all reasonable hours	Grote House, Blackheath.
The Larches, Trinity Road, Upper Tooting, S.W.	10 to 4	150 Harley Street.
118 High Street, Wandsworth, S.W.	10 to 4	7 Gordon Street, Gordon Square.
18 Great Prescot Street, E. . .	9.30 to 5, Saturday 9.30 to 2	49 Clova Road, Forest Gate.
Parson's Hill, Woolwich . . .	10 to 4	9 Bridge Street, Westminster.

66. Consisting of that portion of the parish of Wandsworth which lies to the westward of the London and South Western Railway.

67. The Tower Liberty consists of—1st, Her Majesty's Tower Ground, called the Old Artillery Ground, near Spitalfields; 2nd, the parish of Holy Trinity, Minories; 3rd, the Liberty and Precinct of Old Tower without; and 4th, Wellclose Precinct, which includes Wellclose Square.

* DISTRICTS.

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