of "septicæmia," five of cerebro-spinal meningitis, sixteen of various chronic diseases, and seven of various acute diseases. Four of the cultivation experiments gave positive results, *Streptococcus pyogenes* being found in a case of cancer of the epiglottis, and one of compound fracture of the skull, *Staphylococcus pyogenes aureus* in a case of mitral and aortic stenosis, and in another of mitral regurgitation.

THE DECOMPOSITION OF BUILDING CEMENT BY BACTERIAL ACTION.—The influence of bacterial action in the destruction of cement which has been exposed to the action of water has been investigated by Stutzer and Hartlieb,* and by Geog Barth.† The former writers suggest that the decomposition of cement exposed to the action of water may be due not only to the action of dissolved carbonic acid, but partly to nitrifying bacteria. The residue of a cement which had been thus exposed for a long time was washed with sterilized water, and then added to a solution of ammonium sulphate. The presence of nitrifying bacteria was demonstrated by the appearance of nitrites in the flask after six days, whilst within fourteen days all the ammonia had disappeared. Asparagin in the same way was oxidized to nitrite, and sodium nitrite to the nitrate. Barth examined a cement which had been exposed to the action of drinking-water in a reservoir for three years, and found that the amount of calcium oxide present was only 24.23 per cent., as compared with 63 per cent. in the original Portland cement.

LAW REPORTS.

HIGH COURT OF JUSTICE.

QUEEN'S BENCH DIVISION.

February 8th and 9th, 1899.

BEFORE LAWRENCE AND CHANNELL, J.J.

ROBINSON v. MAYOR AND CORPORATION OF SUNDERLAND.

Local Government — Domestic Sanitary Arrangements — Local Authority's Notice of Insufficiency—Application to Enter Premises —Justices' Jurisdiction to Entertain Evidence of Sufficiency of Existing Arrangements—Public Health Act, 1875 (38 and 39 Vic., cap. 55), Sections 36, 268, and 305.

Upon an application by a local authority to a Court of summary jurisdiction, under Section 305 of the Public Health Act, 1875, for an order entitling them to enter a house and substitute a new water-closet in lieu of the existing sanitary arrangements—their notice under Section 36 not having been complied with, and permission to enter having been refused by the owner—Justices are not entitled, at the hearing, to review such notice, nor to receive evidence on the part of the owner as to the sufficiency of the existing sanitary arrangements.

The only appeal from an order of a local authority under Section 36 is to the Local Government Board under Section 268.

Case stated at the instance of the owner of a house, by Justices, who had made an order under Section 305 of the Public Health Act, 1875,

* *Zeit. Angew. Chem.*, 1899, 402, through *Journal of Chem. Soc.* † *Ibid.*, 489.

authorizing a local authority to enter, examine, and lay open the house for the purpose of the Act.

The authority had served a written notice dated March 30th, 1898, upon the appellant, the owner of the house, under Section 36 of the Act, requiring him within twenty-eight days from such service to provide a sufficient water-closet and an ashpit, furnished with proper doors and coverings, to the house, founded upon the report of their inspector of nuisances dated March 17th, 1898, that the house required them. The notice not having been complied with, the authority on April 28th ordered that the works specified be executed by the authority, and it became necessary for the authority to enter, examine, and lay open the house for making plans, surveys, and measurements, and executing the works.

On August 18th the borough surveyor applied to the appellant, as such owner, for permission to the authority to enter the house for these purposes. Permission was refused, and on August 19th notice in writing was given to the owner that the authority would apply to the Justices sitting as a Court of summary jurisdiction in the borough for an order authorizing the authority in that behalf.

A summons was issued under Section 305, upon the hearing of which the report of the inspector was proved; also that the appellant was the owner of the house; that the notice of March 30th was served and not complied with; that the works had been ordered by the authority, and it was necessary to lay open the house for their execution; that the appellant's permission had been applied for and refused; and that notice of application to a Court of summary jurisdiction had been served.

The appellant tendered evidence as to the condition of the house, and the sufficiency of a privy and ashpit there.

The respondents objected to the admission of such evidence on the ground that the question of the sufficiency of the privy and ashpit was a matter to be decided by the local authority under Section 36, subject only to an appeal to the Local Government Board under Section 268; and that the local authority having jurisdiction under Section 36 to give the notice in question, the Justices could not review such notice and were not entitled to receive evidence as to the sufficiency of the privy and ashpit. On their behalf *St. Luke's Vestry v. Lewis* [1862],* *Bogle v. Sherborne Local Board* [1880],† and *Whitchurch, Ex parte* [1881],‡ were cited.

The Justices were of opinion that they were not entitled to review the decision of the local authority as to the sufficiency of the privy and ashpit, and declined to hear evidence thereon.

The question for the Court was whether they were right in refusing to receive the evidence tendered by the appellant as to the sufficiency of the privy and ashpit on the premises.

Scott Fox, Q.C., and *Adair Roche*, for the appellant.—The Justices were wrong in refusing to hear the appellant's evidence. Section 36 is in its terms an empowering section, and casts a duty on the local authority. They may serve notice on the owner or the occupier of the house, who may act on it, but if it be not acted on, the authority may enter and do the work. Section 305 was introduced to meet the difficulty of the authority being trespassers when entering on premises for the purposes of the Act. Under it they may apply to a Court of summary jurisdic-

* 31 L. J., M.C., 73.

† 46 J. P., 675.

‡ 50 L. J., M.C., 41; 6 Q.B.D., 545.

tion for an order authorizing them to enter and lay open the premises ; and if no sufficient cause be shown against such application, the order may be made. That then is the opportunity for the person who objects to the entrance into his premises, and who is prepared to prove the sufficiency of his water-closet or privy, to do so. Sufficient cause against the application is shown by proving the sufficiency of the existing arrangements, and that to carry out the works in compliance with the order under Section 36 would be unreasonable. Were this otherwise, no one would be able to prevent injury and structural alteration to his property ; and a local authority could always enter without any justification and perform what works they chose. Justices have a discretion when dealing with nuisances under Section 96 and the following sections, and they must have a similar discretion under Section 305. Although Section 36 empowers the authority to give the notice, yet, upon non-compliance, it does not empower them to enter and lay open premises without the owner or occupier being heard—*Cooper v. Wandsworth Board of Works* [1863].* If there were an appeal given from the order of the local authority under Section 36 to the Local Government Board the difficulty would be got over. But the appeal to the Local Government Board under Section 263 is only in cases where all the mischief has been done and the work completed, and where the local authority have obtained an order in a summary way to recover the expenses. This being so, it is manifestly unreasonable that the owner should have no opportunity under Section 305 of proving to the Justices the sufficiency of his sanitary arrangements as they exist.

Atkinson, Q.C., and H. F. Manisty, for the respondents.—The words of the statute are not so wide as suggested. Section 305 is mere machinery for carrying into effect the duties of the local authority. Under that section the Justices cannot review the order of the local authority ; their duties are merely ministerial. *Cooper v. Wandsworth Board of Works*† is distinguishable, for in that case no opportunity was given to the person whose house was demolished of knowing what was going to be done, but here the appellant knew what was going to be done as soon as he was served with the order under Section 36. Here the only question for the Justices was whether that order had been made, and whether it had been disobeyed—*St. James's, Clerkenwell (Vestry) v. Feary* [1890].‡ *Hargreaves v. Taylor* [1863]§ is a direct authority upon a similar point under Section 129 of the Public Health Act, 1848. *Bogle v. Sherborne Local Board*|| is valuable on account of the decision of Lush, J., and *Wood v. Widnes Corporation* [1898]* for the dictum of the Lord Chancellor, as reported at p. 782 of the *Law Times Reports*, that such a decision of a local authority cannot be brought before a Court of law ; the remedy of the person who thinks himself aggrieved being by appeal under Section 263 to the Local Government Board. As to the contention that the owner shall have an opportunity to be heard, see *Att.-Gen. v. Hooper* [1893].**

Scott Fox, Q.C., replied.

LAWRANCE, J.—I think the Justices came to a right conclusion. The

* 32 L. J., C.P., 185 ; 14 C. B. (N.S.), 180.

† *Ibid.*

‡ 59 L. J., M.C., 82 ; 24 Q.B.D., 703.

§ 32 L. J., M.C., 111 ; 3 B. and S., 613.

|| 46 J. P., 675.

¶ 67 L. J., Q.B., 254 ; 77 L. T., 779.

** 63 L. J., Ch., 18 ; [1893] 3 Ch., 483.

whole difficulty has been in deciding what is meant by the words "sufficient cause" in Section 305 of the Act of 1875. It is argued on the one side that sufficient cause there is shown before the Justices when an order is required for the purpose of going upon the premises after the order has been made by the local authority under Section 36. The commencement of the whole proceedings seems to be under Section 36, which says that if it appear to the local authority, by the report of their surveyor or inspector of nuisances, that a house—which is the case here—is without a sufficient water-closet, they shall, by written notice, require the owner to provide it. Then the point arises whether the question whether the water-closet is sufficient or not can be entertained by the Justices when they are asked for an order, under Section 305, by the local authority, to go upon the premises for the purpose of putting the premises into a sanitary condition. It seems clear that that cannot be, and that Justices have no power whatever, on such an application under Section 305, to entertain evidence of the owner as to the sufficiency of the existing sanitary arrangements. The order having been made under Section 36, it having appeared to the local authority, from the report of their surveyor, that the premises are in an unsanitary condition, it is not for the Justices to enter into the question at all whether that is so or not. It would not be difficult to find many instances in which effect might be given to the words "sufficient cause." Supposing the order was so given upon the face of it; supposing they could show that there was no report from the surveyor or inspector, or anything of that kind, I apprehend that would be a case in point. That is what the local authority have to satisfy the Justices of before they are entitled to an order. I suppose that might be one of the questions which might be fitly taken before the Justices for the purpose of showing that no such order might be made. There are plenty of other reasons that might be given. One which suggests itself to me is this: The owner might say, "Well, I have nothing to say to the thing itself—the doing of the work; but my family are all ill at the present moment, and it would be fatal to them to have the drains taken up at the present time." And there are other temporary matters of that kind. But I do not think any case has been cited to us to show—indeed, I think the whole authority is the other way—that the Justices are to enter into the question of the validity of the order itself. That is to say, if the order is correct in itself, and sufficient in itself as to whether the premises are or are not in a proper state, the decision rests entirely with the local authority, by their surveyor or inspector; and when once that decision is arrived at, I think the Justices have no power to enter into the matter at all.

The only point in this case was that what was attempted to be done here was to dispute the question whether the water-closet was in a fit condition or not. In my judgment the Justices were right in rejecting that evidence, and I think they had no right, under Section 305, to entertain the matter at all.

It is said it is a case of hardship that there is no appeal. It is quite true there is no appeal, except under Section 268. If the work be done by the local authority, and the local authority then attempts to enforce the payment of the money, it seems under Section 268 that the whole matter is open as to the necessity for the work that may have been done, the manner in which it has been done, and so forth; and ample power is given to the Local Government Board to consider and to award to the person who has been aggrieved compensation for the

loss, damage, or grievance sustained by him. It seems to me that is the only appeal given by the statute. Section 305 was not intended to give an appeal from the local authority to the Justices, and the Justices were right in declining to hear the evidence that was tendered.

CHANNELL, J.—I also think that the Justices were right, and that they had no power to enter into the question of the sufficiency of the water-closet or privy.

The question turns upon the true construction of Section 305. I think that is a section for the purpose of providing machinery under which the local authority can enter upon premises under an alleged statutory right. The words of the section are, "Whenever it becomes necessary for a local authority to enter, examine, or lay open any lands or premises" for such and such purposes, in this particular case "for the purpose of making . . . works." I think the section may be read thus: "Whenever it becomes necessary for a local authority to enter into premises for the purpose of doing works which they have a statutory right to do." That, I think, is the most that can be read into it in favour of the appellant in the present case. Supposing that be read into it, the result is that the Justices who have to inquire whether the preliminary matter in this section has been complied with—that is to say, whether it is a case where it has become necessary for the local authority to enter for the purpose of doing works which they have a right to do—may inquire into the necessity of the entry, and may inquire into the purpose of entry to see whether it is for the purpose of doing something which comes within the following words: "Making plans, surveying," and so on; that is, in substance, to inquire whether it is for the purpose of doing works which they have a statutory authority to do. So far the Justices may inquire into the matter. And the section goes on to say, "if no sufficient cause is shown," because the Justices must be told for what purpose the local authority want to enter in each particular case. Turning to the case before us, the particular works the local authority have in view are the making, in the place of privies or water-closets, which they have considered insufficient, similar constructions which they consider sufficient. The question of their right to do that depends upon Section 36, which is framed in the same way as a good many of these sections are framed. It provides that if a house "appear to such authority by the report of their surveyor or inspector of nuisances to be without a sufficient water-closet," and so on. The introduction of the words "appear . . . to be" is obviously for the purpose of making the local authority the Judge. The power to put a new water-closet into a house under this section does not depend on the existing water-closet being in fact insufficient, but upon the opinion of the local authority after reading the report of their surveyor that it is insufficient. Consequently, as the right does not depend on the sufficiency or insufficiency of the sanitary arrangements, but upon the opinion of the local authority on the point, it cannot possibly (subject to the question as to the notice raised by counsel for the appellant with which I will deal) be a matter for the Justices whether the water-closet is sufficient or insufficient. What they have to inquire into in the matter is whether it is "in the opinion of the local authority insufficient." But it may be that they may also have to inquire—as on the whole I am inclined to think they have—whether the local authority have taken the proper procedure; whether they have done everything which the statute has made a condition precedent to their executing the works. I think, though I do not know

whether it is at all necessary for us to decide it, that if it appeared to the Justices that the local authority had made an order upon a person to provide a sufficient water-closet, without having a report of their surveyor that the existing water-closet was insufficient, such an order would not do. *Lewis v. Weston-super-Mare Local Board* [1888],* before Mr. Justice Stirling, was a case upon a very similar clause to this, about doing a thing on a report of a surveyor, in which that Judge held that the surveyor must be the real surveyor of the Board—a person in a responsible position—and that it was not sufficient to have a report of a mere *locum tenens* who was doing the work of the surveyor temporarily or during his absence. I think in that case it was entering for the purpose of making a sewer, and the Judge held that the condition precedent had not been performed. Something of that sort might be a matter which the Justices might inquire into. If that be so, equally if this statute has got imported into it by implication that which counsel for the appellant contends—namely, an obligation on the local authority to hear the person before they make an order upon him to make a sufficient water-closet, it may be that the Justices might have a right to inquire into that—not to hear the person themselves upon the question of insufficiency—but to let him contend that the order made on him was invalid because he had not been heard before it was made. If there is such a condition precedent to be read into the statute, the non-compliance with it would be much the same as failing to get a report of the surveyor in the first instance. Consequently, if the appellant could show that he had raised some such point as to a condition precedent, and that the Justices had declined to hear him upon it, I think he would be entitled to complain. But, so far as I can see in this case, he never did raise any such point at all before the Justices. It is, however, a point upon which I think it is right to say a word or two, independently of the question whether in point of fact it is raised formally in this case. In my opinion, the principle of *Cooper v. Wandsworth Board of Works*† does not apply to such a matter as this. There the Wandsworth Board of Works assumed to pull the man's house down, which they had no right to do except for the reason that he had failed to give them a certain notice. They began to demolish his house without having told him they thought he had not given them any notice. He asserted subsequently that he had sent a notice, and that if the local board had not received it, it must have miscarried; and, if the action of the local authority there had been justified, the house would have been pulled down without his having an opportunity of telling them that he had; in fact, sent off that notice. The Court said that that was contrary to natural justice. They proceeded upon principles of natural justice, but they never said it was necessary to have a formal hearing. They never said that Cooper was entitled to come by counsel to have a formal hearing. He did not know what was alleged against him, and he was entitled to have some opportunity of being heard, and of saying that he had made no default.

In this case the procedure is totally different from that. Here, first of all, there is to be a report of a surveyor; and although it is suggested that it may be—and I do not say it is absolutely impossible—that a surveyor may make a report upon mere hearsay and without going into the premises, it is in the highest degree unlikely, and therefore in all probability at the first stage the man would know that there was

* 58 L. J., Ch. 39; 40 Ch. D., 55.

† 32 L. J., C.P., 185; 14 C.B. (N.S.), 180.

some question about the sufficiency of his water-closet. But even if he did not know then, the order has to be made upon him and to be served upon him to furnish the proper water-closet, and he then knows what is going on. And even then it is not very much use his saying that in his opinion it is a very good water-closet indeed, nor calling any number of experts and people to say that it is, because the governing thing is not the insufficiency of the water-closet itself, but the opinion of the local authority that it is insufficient. Consequently it really is not a case where a hearing is wanted for any practical purpose. It is quite sufficient that he should have notice of the proceedings, and this it seems to me he necessarily has. That is my view of that matter, but I do not myself think that the point made by counsel is in fact raised in the case. I think that the only point really raised in this case is whether the Justices had power to consider, upon this application, whether the water-closet was sufficient or insufficient; and I am quite clear that they had no such power at all. The consideration of the sufficiency is a matter entirely for the local authority, subject, of course, ultimately to the appeal to the Local Government Board under Section 268. If that tribunal think that the water-closet was sufficient and the work done by the local-authority unnecessary, the result will be that the authority will have done at the public expense, and not at the individual expense of the appellant, something which they thought was an improvement, but which the Local Government Board does not; and the ratepayers of the district will have to pay for this improvement.

I am quite clear that the Justices came to a right conclusion, and that this appeal must be dismissed.

Judgment accordingly.

HIGH COURT OF JUSTICE.

CHANCERY DIVISION.

April 18th, 19th, and 28th.

BEFORE STIRLING, J.

NICHOLL v. EPPING URBAN DISTRICT COUNCIL.

Local Government—Insufficient Privy—Jurisdiction of Local Authority to Require Water-closet—Public Health Act, 1875 (38 and 39 Vic., cap. 55), Section 36.

Under Section 36 of the Public Health Act, 1875, the local authority has power to order the conversion of an insufficient privy into a water-closet.

St. Luke's, Middlesex, Vestry v. Lewis (31 L. J., M.C., 73; 1 B. and S., 865), applied.

The plaintiff was the owner of four cottages which were let to tenants and rated at from £3 15s. to £4 each. Each cottage had a privy attached to it.

On May 25th the defendants' inspector made reports to the defendants as to each of these cottages. It appeared that he had considered the case of each cottage separately, and the report as to each was, *mutatis mutandis*, as follows: "In pursuance of Section 36 of the Public Health