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ten days notice, are required to sell at public auction to the highest bidder the materials of any house or houses which it is necessary to remove and also the residue of any lot thus surrendered by its owner.

There are two provisos to this Section. The first is but a repetition of other provisions in the Section limiting its operation to cases where in the judgment of the Commissioners the taking of a part of the lot and improvements would destroy the use of the whole lot or improvements for the purposes for which they are being used or for building purposes.

The second proviso reads as follows:

"And provided, further, that in all cases where there are sheds or other obstructions lying and being in beds of streets, lanes, roads or alleys, in process of opening or widening, where the same will not, in the judgment of the Commissioners for Opening Streets, sell by public auction for the amount of the expenses of said sale, then the said Commissioners for Opening Streets may, and they are hereby authorized, to sell the same at private sale."

In my judgment, Messrs. Field and Poe gave a wider application to this second proviso than is justified by the rules of statutory construction. They seem to have considered it as granting powers and imposing duties upon the Commissioners in all cases of street openings by condemnation. The proviso should be construed in connection with the Section of which it forms a part. Properly it is limited in its application to those instances where the Commissioners acquire the whole of the lot and improvements and proceed to sell the materials of the house, houses, sheds or other obstructions which it is necessary to remove and also the residue of the lot that is not needed for the construction of the bed of the street. The proviso authorizes the Commissioners to sell the material in such houses or other obstructions at private sale, if the same will not, in the judgment of the Commissioners, "sell by public auction for the amount of the expenses of said sale".

The general language of the proviso - to wit, "in all cases where there are," etc. - if read dissociated from the context and general purview of the Section, furnishes some color for the contention that the Commissioners may act under the proviso independent of the other provisions of the Section; but such contention is too broad. It is sometimes said that a proviso in a statute cannot confer a power.