

force that for this purpose no solid distinction can be made between the power of attorney through which the transfer of consols is effected and the deed of transfer in the present case. Each of these instruments, it may be said, is put forward as evidence of the authority with which the person making the application professes to be clothed to request the removal of the stockholder's name and the substitution of another name in his place. But however this may be, it is enough for decision of this appeal to say that the deed of transfer was put forward as a genuine document, and the appellants were invited to act upon it as such. I am also of opinion that the authority keeping a stock register has no duty of keeping the register correct, which they owe to those who come with transfers. Their only duty (if that be the proper expression) is one which they owe to the stockholders who are on the register. This point was decided by all the learned Judges who took part in the decision of the first case of *Sim v. Anglo-American Telegraph Company* (*ubi sup.*). I will content myself with quoting the language of Cotton, L.J.—“The duty of the company is not to accept a forged transfer, and no duty to make inquiries exists towards the person bringing the transfer. It is merely an obligation upon the company to take care that they do not get into difficulties in consequence of their accepting a forged transfer, and it may be said to be an obligation towards the stockholder not to take the stock out of his name unless he has executed a transfer; but it is only a duty in this sense, that unless the company act upon a genuine transfer they may be liable to the real stockholder.” True it is that the appellants, following what is now the usual practice, gave notice of the transfer which had been brought in to the persons named as transferors, but they had no duty to do so, and it was done merely for their own protection. Experience in these cases shows, however, that it is a very poor protection. Stirling, L.J., held in this case that the mere performance of a duty imposed by law upon anyone holding a definite legal position does not constitute a consideration sufficient to support a promise to him by the person to whom the duty is owed. But, with great respect to that very careful Judge, he overlooked that this very point was involved in the decision in the case of *Oliver v. Bank of England*. Vaughan Williams, L.J., quoted and commented upon the passage from the judgment of Willes, J., in *Collins v. Evans* (*ubi sup.*) where he says—“The fact of entering into the transaction with the professed agent as such is good consideration for the promise.” And it did not occur either to the learned counsel who argued the case with great pertinacity or to any of the learned Judges in the Court of Appeal or the noble Lords in this House to question that the acting by the Bank of England on the demand of the supposed attorney was not a good consideration for the promise by him to warrant the genuineness of the power which they held to be established. Lastly, it was

said by Romer, L.J., that this is not an action on a warranty, and that a warranty and a contract of indemnity are distinct, one important difference being the period from which the statute of limitations would run. That, of course, is so, and the appellants admit that if they were suing on the warranty their action would be out of time. But I can see no legal reason why, in circumstances like those of the present case, it should not be held, if necessary, that the true contract to be implied from those circumstances is not only a warranty of the title but also an agreement to keep the person in the position of the appellants indemnified against any loss resulting to them from the transaction. And I think that justice requires that we should so hold. I agree with the Lord Chief-Justice that as between these two innocent parties the loss should be borne by the respondents, who caused the appellants to act upon an instrument which turned out to be invalid. I am therefore of opinion that the appeal should be allowed and the judgment of the Lord Chief-Justice restored with costs here and below.

LORD ROBERTSON concurred.

Judgment appealed from reversed.

Counsel for the Appellants—Danckwerts, K.C.—Eldon Bankes, K.C.—Waddy. Agents—R. F. & C. L. Smith, Solicitors.

Counsel for the Respondents—Haldane, K.C.—Radcliffe, K.C. Agents—Maples, Teesdale & Co., Solicitors.

HOUSE OF LORDS.

Monday, July 24.

(Before the Lord Chancellor (Halsbury),
Lords Macnaghten, James of Hereford,
and Lindley.)

MAYOR AND CORPORATION OF
WESTMINSTER *v.* LONDON AND
NORTH-WESTERN RAILWAY
COMPANY.

(ON APPEAL FROM THE COURT OF
APPEAL IN ENGLAND.)

Local Government—Public Health—Sanitary Authority—Statutory Power—Ultra Vires—Bona Fides—Power to Make Subterranean Lavatory—Lavatory Constructed Incidentally Forming a Subway—Rules which should Govern Public Bodies in their Exercise of Statutory Powers.

An Act of Parliament conferred upon a sanitary authority power to construct lavatories under its streets, but conferred no power to make subways.

Held that in constructing an underground lavatory with access from both sides of a street, which constituted and was in fact used as a subway, the sanitary authority had not acted *ultra*

vires, its primary intention having been *bona fide* to construct a lavatory and not a subway.

Observed by the Lord Chancellor—“That where the Legislature has conferred a statutory power to a particular body, with a discretion as to how it is to be used, it is beyond the power of any court to contest that discretion, assuming the thing done is the thing which the Legislature has authorised.”

“By Lord Lindley—I am not aware of any authority to show that the High Court can properly grant an injunction to restrain a public body, authorised to make a particular work for some public purpose, from exercising its authority on the ground that in the opinion of the Court the work being made is larger or handsomer and more costly than it need have been . . . unless the Court is of opinion that the statutory authority is a mere cloak to screen a really unauthorised work.”

By Lord Macnaghten—“A public body invested with statutory powers . . . must take care not to exceed or abuse its powers. It must keep within the limits of the authority committed to it. It must act in good faith. And it must act reasonably . . . and have some regard to the interest of those who may suffer for the good of the community.”

This was an appeal from a judgment of the Court of Appeal (WILLIAMS, STIRLING, and COZENS-HARDY, L.J.J.), who had reversed a decision of JOYCE, J.

The facts of the case are fully set forth in their Lordships' judgments.

At delivering judgment—

LORD CHANCELLOR (HALSBURY)—It seems to me that the power of the local authority to erect certain public conveniences cannot be disputed. The shape, site, and extent of them are left to the discretion of the authority in question, and as to the things themselves, which under this discretion have been erected, I do not understand that any objection can be made. The objections, so far as they assume the force of legal objections, refer to the access to them, and to the supposed motives of the local authority in the selection of the site. Assuming the thing done to be within the discretion of the local authority, no court has power to interfere with the mode in which it has exercised it. Where the Legislature has confided the power to a particular body, with a discretion as to how it is to be used, it is beyond the power of any court to contest that discretion. Of course, this assumes that the thing done is the thing which the Legislature has authorised—(see *London, Brighton, and South Coast Railway Company v. Truman*, 54 L.T.Rep. 250, 11 App. Cas. 45). It appears to me impossible to contend that these conveniences are not the things authorised by the Legislature. It seems to me that the provision of the statute itself contemplates that such conveniences should be made beneath public roads, and if beneath public roads some access underneath the road

level must be provided, and if some access must be provided it must be a measure simply of greater and less convenience, when the street is a wide one, whether an access should be provided at only one or at both sides of the street. That if the access is provided at both sides of the street it is possible that people who have no desire or necessity to use the convenience will nevertheless pass through it to avoid the dangers of crossing the carriageway seems to me to form no objection to the provision itself, and I decline altogether to sit in judgment upon the discretion of the local authorities upon such materials as are before us. I quite agree that, if the power to make one kind of building was fraudulently used for the purpose of making another kind of building, the power given by the Legislature for one purpose could not be used for another, but I have endeavoured to show that the Legislature did contemplate making subterranean works under the roadway and also access to them. Under these circumstances I think that it is a question of degree, and if there be the express provision, as I think there is, to make a tunnel under the street for the purpose of these conveniences, then I think that the question of its extent or cost is a matter with which neither a court of law nor of equity has any concern, since the thing contemplated by the statute has been done, and done in the way in which the statute contemplated that it might be done. That the public may use it for a purpose beyond what the statute contemplated is nothing to the purpose. I think that the judgment of Joyce, J., should be restored. With respect to the costs of this litigation, I cannot overlook the fact that the local authority made a blunder and interfered with the footway. That has now been put right, but in the first instance led to the litigation. Then I think that the negotiation and correspondence was not as candid as it should have been, and I think, therefore, that neither side in this controversy should have any costs.

LORD MACNAGHTEN—At the southern or lower end of Parliament Street, just before you come to Bridge Street, where in consequence of recent improvements there is a distance of about 100 ft. between the opposite buildings, the appellants as the sanitary authority of the city of Westminster have constructed public lavatories and other conveniences for the use of persons of both sexes. These conveniences are placed under the ground in the middle of the street as far removed as possible from the buildings on either side. The plan of the construction is this—On each side of the roadway there is an entrance 5 ft. 9 in. wide protected by railings and leading by a staircase of the same width to a passage or subway 10 ft. wide and 8 ft. high which runs the whole way across on a level with the underground conveniences. Out of this subway there are openings—two for men and one for women—into spacious chambers, where the usual accommodation (politely described as lavatories and cloakrooms) is provided on a

large and liberal scale. All the arrangements seem to have been designed and carried out with due regard to decency and with every possible consideration for the comfort of wayfarers in need of such accommodation. The London and North-Western Railway Company are the owners of a large and valuable block of buildings on the east side of Parliament Street, having a frontage to Parliament Street and a frontage to Bridge Street, with vaults under the pavement in Parliament Street, and a claim, for what it is worth, to the soil beneath the roadway up to the midline of the street. They took objection to the sanitary works constructed by the Corporation and sought to have them removed. They put their case alternatively as a case of trespass or of obstruction to the highway causing special damage. The Corporation relied on their statutory powers under the Public Health (London) Act 1891, which authorises them to construct such public sanitary conveniences, and vests in them for the purpose the subsoil of the road, exclusive of the footway. When the parties came to trial it was found that owing to some mistake or inadvertence the works of the Corporation had encroached on the footway. Joyce, J., before whom the case was tried, ordered the Corporation to remove the encroachment, but made no order as to costs. On appeal by the plaintiffs the Court ordered the Corporation to "pull down and remove the whole of the staircase, railings, and other works placed by the defendants upon the lands of the plaintiffs other than the conveniences in the pleadings mentioned, and such further portion of the construction as the Court" might, "upon application, sanction as a proper approach to the said conveniences." The order was to be suspended pending an appeal to this House, and the Corporation were to pay the costs of the action and of the appeal. The Corporation have acquiesced in the order of Joyce, J. Their only contention now is that the order of the Court of Appeal is wrong. There can be no question as to the law applicable to the case. It is well settled that a public body invested with statutory powers such as those conferred upon the Corporation must take care not to exceed or abuse its powers. It must keep within the limits of the authority committed to it. It must act in good faith. And it must act reasonably. The last proposition is involved in the second, if not in the first. But in the present case I think that it will be convenient to take it separately. Now, looking merely at what has been done—at the work as designed and actually constructed—it seems to me that, apart from the encroachment on the footway, it is impossible to contend that the work is in excess of what was authorised by the Act of 1891. The conveniences themselves, extensive as the accommodation is, have not been condemned by the Court of Appeal or even attacked in the evidence. Then the entrance from the roadway is only 5 ft. 9 in. wide; so is the staircase. It is in evidence that a width of 4 ft. 6 in. is "necessary" in order to enable two persons

to pass on the staircase. The witness who gave that evidence was pressed to say that "under ordinary circumstances 4 ft. 6 in. to 5 ft. would be a wide entrance for a thing of this sort." "No," he replied, "not ample. You want to give a minimum of 5 ft. if you can, and more than that. You would give 6 ft. if you had got plenty of space." So the entrance actually provided which has been condemned by the Court of Appeal, and, as I think, without evidence, is just 9 in. wider than the minimum width which the only witness examined on the point says ought to be provided, and 3 in. narrower than what he thinks should be allowed if space permits. It seems rather a strong measure to invoke the powers of the Court in so trifling a matter, especially considering that the excess, if excess there be, cannot make the slightest practical difference to the respondents. Then I come to the subway, which has not been opened to the public as yet. Now, there is not a scrap of evidence tending to show that there is anything improper or suspicious about the subway. One witness was asked if he had "ever known an approach to a convenience which was 10 ft. wide except this." He said he had not, and there the matter dropped. But then no instance could be given—at any rate, no instance was given—of a convenience so large placed in the centre of a street so wide and approached from either side. If it is permissible to construct a convenience approachable from either side of a wide street, you cannot prevent the public from using the subway as a thoroughfare. I should think it most unlikely that it would be largely used, if used at all, by persons not desirous of availing themselves of the convenience. But it is possible; Vaughan Williams, L.J., thinks it more than possible. He has "no doubt, apart from the conveniences, the subway at the present moment is a considerable convenience to pedestrians." There seems to be no experience to guide one on the point. And so the Corporation were, I think, not to be blamed for making provision in order to obviate crushing and jostling in a place where crowding is (to say the least) not convenient. I have not forgotten that there are two passages in the evidence which one of the learned Lords Justices quotes at length, and all the members of the Court appear to rely on them. It seems that the chairman of the Works Committee admitted that this tunnel (as it has been called), 10 ft. wide and 8 ft. high, was "both an approach and a subway." That seems to have been thought a very damaging admission. Of course it was a subway. It was a subway capable of being used as a thoroughfare. It would have been a subway if there had been no thoroughfare. For my part I do not quite understand all this play upon words. Then there was another passage in the evidence supposed to be more damaging still, in which a witness said that he did "not see any necessity for 10 ft." It would, he admitted, be "a waste of space and a waste of money." But if you look at the context it is perfectly clear that the learned

Lord Justice was under a misapprehension. The witness was not referring to the subway which was 10 ft. wide. He was not thinking of the subway. The questions put to him both by the learned counsel and by the Judge were addressed to the entrance and staircase, to which very different considerations apply. It was not suggested that there was any notice, or any intention of putting up a notice, directing the public to this subway as a means of crossing. The entrance, which was of the usual limited dimensions, did not of itself offer any invitation to the public to enter for the purpose of crossing the roadway. Then I come to the question of want of good faith. That is a very serious charge. It is not enough to show that the Corporation contemplated that the public might use the subway as a means of crossing the street. That was an obvious possibility. It cannot be otherwise if you have an entrance on each side, and the communication is not interrupted by a wall or a barrier of some sort. In order to make out a case of bad faith it must be shown that the Corporation constructed this subway as a means of crossing the street under colour and pretence of providing public conveniences which were not really wanted at that particular place. That was the view of their conduct taken by the Court of Appeal. "In my judgment," says Vaughan Williams, L.J., "it is not true to say that the Corporation have taken this land which they have taken with the object of using it for the purposes authorised by the Legislature. You are acting *mala fide*," he added, "if you are seeking to acquire and acquiring lands for a purpose not authorised by the Act of Parliament." So you are—there can be no doubt of that. The other learned Lords Justices seem to take the same view of the conduct of the Corporation. Now this, as I said, is a very serious charge. A gross breach of public duty, and all for a mere bad. The learned Judge who tried the case had before him the chairman of the Works Committee. That gentleman declared that his committee considered with very great care for a couple of years or more the question of these conveniences in Parliament Street. He asserted on oath that "the primary object of the committee was to provide these conveniences." Why is this gentleman not to be believed? The learned Judge who saw and heard him believed his statement. The learned Judges of the Court of Appeal have discredited his testimony mainly, if not entirely, on the ground of two letters about which he was not asked a single question—one written by the surveyor of the parishes of St Margaret's and St John's under the city engineer of Westminster, the other by a person acting for the acting town clerk. The letter of the surveyor was a foolish letter, which the writer seems to have thought clever. The letter of the temporary representative of the acting town clerk, if you compare the two letters, seems to have derived its inspiration from the same source. I cannot conceive why the solemn statement of the chairman of the committee should be dis-

credited on such a ground. I do not think that there is anything in the minutes tending to disprove his testimony. I agree with Joyce, J., that the primary object of the council was the construction of the conveniences with the requisite and proper means of approach thereto and exit therefrom. I have felt more difficulty with regard to the question whether the Corporation have acted altogether reasonably—"with judgment and discretion," as Turner, L.J., puts it in a well-known case. It seems to me that when a public body is exercising statutory powers conferred upon it for the benefit of the public, it is bound to have some regard to the interest of those who may suffer for the good of the community. I do not think it right—I am sure that it is not wise—for such a body to keep its plans secret and carry them into execution without fair and frank communication with those whose interests may possibly be prejudiced or affected. I cannot help thinking that if the engineer of the Corporation and the engineer of the Railway Company had been put into communication, some modification of plan might have been suggested which would have obviated all this litigation and expense, and all the litigation and expense yet to come if the Court of Appeal is to take upon itself, as it proposes to do, the functions of a sanitary authority and determine the precise dimensions of approaches to such a place as this. The surveyor thought it politic and not unworthy of his position as an officer of a great public body to try to throw dust in the eyes of his correspondent. I do not suppose that the officials of the Railway Company were put off their guard by the answer which he sent. I have no doubt that they knew perfectly well what the Corporation proposed to do. But still the mode in which they were met prevented anything like a free interchange of ideas between these two bodies for their mutual advantage. The result of these considerations to my mind is, that if at the trial the respondents had suggested any practical mode of altering or amending the plans that would have obviated the inconvenience which the works as executed must cause to them, I should, speaking for myself, have been disposed to think that an injunction ought to have been granted to secure that object. Unfortunately the respondents chose to stand aloof, and have given no assistance to the Court. Under these circumstances I think there is no alternative but to allow the appeal and to restore the judgment of Joyce, J. But I think there ought to be no costs either here or in the Court of Appeal.

LORD JAMES OF HEREFORD—In this case the London and North-Western Railway Company seeks by injunction to restrain the defendants, the present appellants, from maintaining a certain tunnel, staircase, and railings, and other works upon land in Parliament Street, Westminster. The facts upon which the questions in issue depend may, I think, be summarised as follows:—[His Lordship went through the

facts and evidence as set out above.] Now upon these facts it seems to me to be clear that the intention of the local authority was to construct two distinct objects, a convenience with an approach and a subway. It is true that a portion of the subway would be used as the approach to the convenience, but the subway would also be used by those who did not intend to visit the convenience, but only desired to cross free of danger from one side of Parliament Street to the other. It is also clear that in consequence of this double user the subway was made of 4 feet greater breadth than would have been necessary if only an approach to the convenience had been constructed. Such being a summary of the facts before your Lordships, it is necessary to consider with what legal powers the appellants and their predecessors were invested so as to authorise the construction of the works in question. Inasmuch as the soil of the respondents has been taken without their sanction for the purposes of the works, the appellants must show legal authority for such an act. By section 44 of the Public Health Act (London) 1891, power was conferred upon sanitary authorities to provide and maintain public conveniences, and in order to carry out the exercise of the power the subsoil of any road (required for the purpose) was vested in the sanitary authority. This is the only legislative authority under which a justification for the act done is alleged. It will be noted that there is no legislative power given to local authorities to construct subways. Now, I agree in the view that has been taken that the powers to construct a convenience under the Act of 1891 of necessity include a power to construct an approach thereto. And so the question to be solved seems to be thus formulated. Was the so-called tunnel an approach to the convenience only, or was it something more? (1) Was it a subway distinct from the approach, or (2) was it a subway in combination with the approach used for two distinct purposes? In my judgment the construction in question comes within one or other of the two latter alternatives. Possibly within the first, certainly within the second. If this finding on the facts be correct, the works, so far as they constitute the subway, are constructed without legal authority. The Legislature has not thought it right to confer on local bodies the power to compulsorily take land or impose rates for the purpose of constructing subways. In this case some land has been taken which would not have been required if the approach had not been enlarged into a subway, and an unauthorised burden has been imposed upon the ratepayers in consequence of this enlargement. Thus it is, in my opinion, that the appellants have acted beyond their powers and without justification. I have only to add that the reasons for their judgment given by the Lords Justices in the Court of Appeal appear to me to be unanswerable, and I therefore think that those judgments ought to be affirmed and this appeal dismissed.

LORD LINDLEY—By the Public Health of London Act 1891, section 44, the appellants were authorised to provide and make and maintain public lavatories and sanitary conveniences in situations where they might deem the same to be required, and they were authorised to defray the expense of providing the same, and of any damage occasioned to any person by the erection and construction thereof, as if such an expense was an expense of sewerage. Further, for the purpose of such provision the subsoil of any road, exclusive of the footway adjoining any building, was vested in the appellants. I cannot doubt that under this authority they could lawfully construct lavatories and sanitary conveniences in, on, or under any road in their district, provided that they did not interfere with any footway adjoining any building or with the soil under any such footway. No particular size or form of convenience, or mode of access to an underground convenience, is prescribed, and I see no reason why a convenience should not be made under a road, with an underground access to it on each side of the road. The size and position of the convenience and of the access are left to the discretion of the appellants, and in the exercise of that discretion the locality, the amount of traffic, and the class of people likely to use the conveniences would naturally have to be considered. The cost is left to the good sense of the appellants, and I am not aware of any authority to show that the High Court can properly grant an injunction to restrain a public body authorised to make a particular work for some public purpose from exercising its authority on the ground that in the opinion of the Court the work being made is larger or handsomer and more costly than it need have been. Still less can a mandatory injunction be properly granted in such a case. Matters of detail, of taste, and of expense in executing works authorised by statute are left to the constructing authority, and their decision on such matters is not open to review in an action for an injunction unless the Court is of opinion that the statutory authority is a mere cloak to screen a really unauthorised work. The case before your Lordships is not of that description. Whether an expense unnecessarily incurred in constructing authorised work could be disallowed by an auditor, or be thrown in some other way on the person who incurred it, is a matter which your Lordships have not to consider on the present occasion, and I say no more about it. But the foregoing observations, favourable as they are to the appellants, do not exhaust the case. Other matters have also to be considered. Where a person is authorised by a statute or by the common law to do what, apart from such authority would be unlawful, *e.g.*, to commit a trespass, and the authority is conferred for some distinct and definite purpose, and is abused by being used for some other and different purpose, the person abusing it is treated as a wrongdoer from the beginning, and not only as a wrongdoer in respect of what can be proved to have been in excess

of his authority. It is presumed against him that the abuse of his authority shows an intention from the first to commit an unlawful act under colour of a lawful authority. This general principle was established in the well-known case known as the *Six Carpenters'* case (8 Co. Rep. 146 a), on which there is an instructive comment in the first volume of Smith's *Leading Cases*. Counsel for the respondents urged that this principle was applicable to the present case, and deprived the Corporation of any defence which they might have had if they had not exceeded their authority. In one respect the appellants did clearly exceed their authority, for they interfered with the foot-pavement and the land under it—a thing which they had no right to do. This, however, was put right by the injunction granted by Joyce, J. The argument had the charm of novelty, but no authority was cited for applying the principle of the *Six Carpenters'* case to such a case as this. I never heard of, and I cannot find any instance of, an injunction being granted to restrain the completion of works authorised by statute simply because the authority which authorised them had been exceeded if the excess was abandoned, and satisfaction for the injury caused by it had been made either by payment of money or by restoration in fact. In the absence of any such authority I cannot accede to the argument of the learned counsel. The consequences would be most unjust, and contrary to settled principles of equity. Still less would it, in my opinion, be in accordance with the principles on which mandatory injunctions are granted to compel the Corporation to undo work done which, apart from the excess, can be shown to be within their statutory authority. The respondents naturally rely very strongly on the minutes of the proceedings of the constructing authority, and on the letters written by their officials, and on the evidence given by Mr Weaver at the close of his cross-examination. They contended that the sanitary conveniences were constructed in order to make a subway, which without them could not lawfully be made. But I do not think that the minutes and letters are sufficient to prove that the subway as constructed was in fact unauthorised by statute. On this part of the case I do not think it necessary to say more than that I concur in the observations of Lord Macnaghten. Having regard to those minutes and letters, I also am of opinion that the costs should be dealt with as proposed by him. Although the appellants succeed in their appeal they have only themselves to thank for the litigation which they provoked.

Their Lordships sustained the appeal.

Counsel for the Appellants—Haldane, K.C. — Hughes, K.C. — Dighton Pollock. Agents—Allen & Son, Solicitors.

Counsel for the Respondents—Younger, K.C. — Shearman, K.C. — Eustace Hills. Agent—C. De J. Andrewes, Solicitor.

HOUSE OF LORDS.

Tuesday, November 14.

(Before the Lord Chancellor (Halsbury),
Lords Robertson, and Lindley.)

MAYOR AND BOROUGH COUNCIL OF
PADDINGTON AND ANOTHER *v.*
ATTORNEY-GENERAL AND
ANOTHER.

(ON APPEAL FROM THE COURT OF
APPEAL IN ENGLAND.)

“*Building*” — *Meaning of — Prohibition against “Buildings” in Act of Parliament for Preservation of Open Spaces—Screen—What Constitutes a “Building” Depends upon Context.*

Certain Acts of Parliament whose object was, *inter alia*, to preserve open spaces for purposes of recreation prohibited the erection of “buildings” upon such open spaces.

Held that a screen erected with the object of preventing an adjoining owner from acquiring a prescriptive right to the access of light over such an open space was not a “building.”

Per the Lord Chancellor (Halsbury)—“A screen or some erection of that nature might be considered a ‘building’ with reference to some covenants, and might not be considered a ‘building’ with reference to others. The subject-matter to be dealt with and the subject to which the covenant is supposed to be applied are all to be looked at to see what the word ‘building’ means in relation to that particular subject-matter.”

Judgment of the Court of Appeal reversed.

A series of statutes, the Metropolitan Open Spaces Acts 1877 (40 and 41 Vict. cap. 35), and 1881 (44 and 45 Vict. cap. 34), the Open Spaces Act 1887 (50 and 51 Vict. cap. 32), and the Disused Burial Grounds Act 1884 (47 and 48 Vict. cap. 72), have for their object, *inter alia*, the preservation of open spaces including disused burial grounds as places of exercise, ventilation, and recreation, and the last of the Acts above mentioned provides by section 3 that it shall not be lawful except for special purposes which have no bearing on the present case to erect any “buildings” upon any disused burial grounds.

The owner of a leasehold piece of land abutting on a disused burial ground built upon it a tenement of houses with windows overlooking the burial ground. The persons in right of the burial ground gave orders for the erection of a screen on the edge of their ground with the object of preventing him from acquiring a prescriptive right to the access of light over the open space, and he thereupon brought the present action in which he sought to restrain them from proceeding with the erection of the proposed screen on the ground that it was a “building,” and therefore prohibited by section 3 of the Disused Burial Grounds Act 1884.