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.

BUCKLEY, J., dismissed the action, but his judgment was reversed by the Court of Appeal (VAUGHAN WILLIAMS, ROMER, and COZENS-HARDY), which pronounced an order prohibiting the erection of the screen.

On appeal to the House of Lords their Lordships at the conclusion of the arguments gave judgment as follows—

LORD CHANCELLOR (HALSBURY)—I confess that I should have been better satisfied if the parties had thought fit to come to some agreement in this case, but of course they have a right to have the judgment of the House; and while on the one hand certainly there are public rights involved, on the other the question, as it is raised here, is a question between a private speculator who wants to make the best of his buildings, and a public body whose only interest is to preserve that which is committed to their charge in as unencumbered a position as that in which they received it. Now, in the first place, I think it necessary to consider what is the meaning of the prohibition contained in the Act referred to. I am of opinion that it meant what it said that the space was to remain unbuilt upon. It is no longer to be used as a burial ground, but it is not to be used as building ground. That is the meaning of it; and it appears to me that anything that approaches to the character of a building, whether temporary or permanent, is obviously within the prohibition. I entirely agree with Buckley, J., that in the books there may be found a great variety of cases where, with reference to the subject-matter of the covenant and the meaning of what was in question between the parties, 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 in order to see what the word "building" means in relation to that particular subject-matter. It is impossible to give any definite meaning to it in the loose language which is used in some cases. Anything which is in the nature of a building might be within one covenant, and the same erection might not be a building with reference to another covenant. I think that the observation of Buckley, J., was very well founded. But now I have to look at the word "building" here with reference to this subject-matter and with reference to what this Act of Parliament was doing. It is very obvious, I think, that what it was intended to do was to keep this disused burial ground from being used as building ground, to keep it as a place of exercise, ventilation, and recreation, and what not; to prevent anything from being done in the nature of building which would interfere with or restrict the free and open use of these spaces as constituted under the statute. But when I look at the question here I am bound to say that I look at it under more difficulty, because I have not only to consider whether a screen is a building, but I have to consider whether an undescribed screen, of which neither the size nor the nature has been specified, would be a building within the meaning of the Act of Parliament. All I can say at present is that if the proposition is put in the abstract in that way without any reference to any concrete facts, it must be put thus, that any screen is a "building" within the meaning of the Act of Parliament. I am not prepared to affirm that proposition, and I think that Buckley, J., was perfectly right. I think that it is not a building; and that decision, that it is not a building, appears to go to a great part of the argument, because the only mode in which it has been suggested that this injunction should be maintained, namely, that the ground should not be used for any other purpose than that which the Act of Parliament provides, seems to me to add nothing whatever. Any other purpose than what? Any other purpose than open ground, than as a place for recreation, enjoyment, or what not. I find nothing in the letters which have been referred to which indicates the slightest restriction of any one of these purposes in the use of this ground. If we look at what is the real substance of the matter, it is obviously this, that this public body was doing what every private proprietor would do under the circumstances, because every private proprietor would prevent certain rights from being acquired over this space which would both prejudice the value and prevent the full use of it in the future. If this particular space can be built round, and rights acquired, whatever use might be made of it hereafter, you might have it so completely surrounded by houses of such height that the light and even the ventilation itself might be very seriously interfered with by the rights acquired by twenty years' use. Under these circumstances it appears to me that this public body was perfectly entitled to prevent this from being done in order to protect that which is under their guardianship. They may, perhaps, be commended for not having actually erected the screen, but having raised the question on a mere threat, because, of course, where the object is simply to prevent the acquisition of a right, it is convenient first of all to test the question of law; and although, as I have pointed out, it is rather inconvenient to have to pronounce judgment upon a hypothetical screen, as to which the learned counsel has indulged his imagination and has pictured a screen going completely round a space of about a quarter of a mile, yet I think, perhaps, that it was the most convenient form, not to put the screen itself into operation, but to try the question of law whether any screen of any sort or kind would be admissible for the purpose of preventing prejudicial rights from being acquired. Now, I must say that I am sorry that the parties should not have arrived at an agreement between themselves about this matter; but, looking at the whole question, looking at what the meaning of the statute is and at the condi-

tion of things that now exists between the parties, I am of opinion that the judgment of the Court of Appeal is unsound. The learned Lords Justices appear to me to assume a state of things which I do not find to be established here. I think that the judgment of Buckley, J., is perfectly right, and under the circumstances I move your Lordships that the judgment appealed from be reversed.

LORD ROBERTSON—I agree with the Lord Chancellor that the case was rightly decided by Buckley, J. I think that there is great force in his initial observation that it would be an extraordinary proposition that because an open space has been made available to the public for enjoyment in an open condition free from building, the result should be to give immediately, or by the unavoidable operation of the Prescription Act, to the circumjacent owners, as a matter of right, an easement of light which theretofore they had not enjoyed. When the sections are examined I find it impossible to trace the bringing about of that extraordinary result. In the first place, I think that the vicar has never been ousted of his proprietorial rights, and when I turn to the administration of the body which is charged with preserving the place as an open space, it seems to me that, so far from being extraneous to the scope of that administration, what it is proposed to do is completely within it. I think that the erection of a screen is, or may be, entirely consistent with the purpose of maintaining this place as an open space for public enjoyment, and in furtherance of that purpose. No one can say that a recreation ground surrounded by flats seven storeys high and looked into by all the windows of those buildings is necessarily as good a recreation ground as one more open to the sun and less overlooked. Accordingly, just as Cozens-Hardy, L.J., says that these administrators could erect a toolhouse, that being in furtherance of the primary purpose of the administration, so I think that this erection is within that purpose. Of course I do not imply that it is the duty of all administrators of open spaces to surround their open spaces with screens; all that I say is that it is within the rights which have never been taken away from the proprietors and administrators of these grounds, and it may be a step to be taken in furtherance of the purposes with which they are charged. I need hardly say that what I have said bears relation directly to the argument of Cozens-Hardy, L.J., which indeed was adopted at your Lordships' Bar. On the other question, as to whether any screen is necessarily a building, which, as has been pointed out, is the condition of the argument, I can only say that proposition seems to me to be entirely inconsistent with the most obvious physical facts. On these grounds I think that the judgment of the Court of Appeal was wrong, and the judgment of Buckley, J., right.

LORD LINDLEY—I am entirely of the same opinion. The injunction granted by the Court of Appeal, to my mind, goes a great deal too far. There is not the slightest evidence to warrant the notion that the defendants or any of them intended to erect a building on this land, and accordingly the Court of Appeal have put in words which would cover building or screen. Screens are of all sorts and kinds, and I can imagine screens which obviously are not buildings, and would obviously be justified by the statutory powers conferred upon these public bodies. This open space may be preserved, and primarily ought to be preserved, as a place of recreation, and more or less as a garden. Now, just fancy an injunction to restrain these defendants from planting good sized trees in front of these windows which would interfere with already acquired rights of light. How could it be possible to maintain an injunction to restrain them from such planting? That shows that the Court of Appeal has gone too far. I entirely adopt the view taken by Buckley, J. I think that he has put the true construction on the Acts, and I agree that the appeal ought to be allowed with costs here and below.

Order appealed from reversed.

Counsel for the Appellants—Haldane, K.C. — Terrell, K.C. — Nash — Montague Barlow. Agent—John H. Horton, Solicitor.

Counsel for the Respondents—Astbury, K.C. — M. Romer. Agents — Cheston & Sons, Solicitors.

HOUSE OF LORDS.

Tuesday, November 21.

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

ASHTON GAS COMPANY *v* ATTORNEY GENERAL AND OTHERS.

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

Revenue—Income Tax—Gas Company—Maximum Rate of Dividend Provided by Statute—Payment of Dividend Free of Income Tax.

The Special Act of a gas company provided that the profits of the company to be divided among the ordinary shareholders in any year should not exceed a specified rate.

Held that in calculating the rate of dividend income tax ought to be included.

This was an appeal from a judgment of the Court of Appeal (VAUGHAN WILLIAMS, ROMER, and COZENS-HARDY, L.JJ.), who had affirmed a judgment of BUCKLEY, J.

The Act of Parliament under which the Ashton Gas Company was incorporated provided as follows:—"Except as in this Act provided, the profits of the company to be divided among the shareholders