has been settled for the last 100 years. If persons in the position of the appellants, acting in the execution of a public trust and for the public benefit, do an act which they are authorised by law to do, and do it in a proper manner, though the act so done works a special injury to a particular individual, the individual injured cannot maintain an action. He is without a remedy unless a remedy is provided by statute. That was distinctly laid down by Lord Kenyon and Buller, J., and their view was approved by Abbott, C.J. and the Court of King's Bench. At the same time Abbott, C.J. observed that if in doing the act authorised the trustees acted arbitrarily, carelessly, or oppressively, the law, in his opinion, had provided a remedy. These words 'arbitrarily, carelessly, or oppressively' were taken from the judgment of Gibbs, C.J. in *Sutton* v. *Clarke* (*ubi sup.*), decided in 1815. As applied to the circumstances of a particular case, they probably create no difficulty. When they are used generally and at large, it is not perhaps very easy to form a conception of their precise scope and exact meaning. In simpler language Turner, L.J. observed in a somewhat similar case—*Galloway* v. *Corporation of London*, 10 L. T. Rep. 441; 2 D. J. & S 213, 229)—that such powers are at all times to be exercised *bonâ fide* and with judgment and discretion." Lord Macnaghten then refers to a remark of the Master of the Rolls in *Southwark and Vauxhall Water Company* v. *Wandsworth District Board of Works* (*ubi sup.*), and goes on: "In a word, the only question is, Has the power been exceeded? Abuse is only one form of excess." This was regarded as a matter of principle. If the Legislature has given powers and those powers are being used for the purpose of carrying out the work authorised and it is admitted that the mode in which they are being used is unreasonable, that is an abuse of the power so given and is therefore *ultra vires*. There is not only no authority conflicting with this proposition, but the exact point to my mind was decided by Lyndhurst, L.C. in *Coats* (*or Coates*) v. *Clarence Railway Company* (1830, 1 R. & M. 181; 32 R. R. 183), which is one of the cases referred to by the Master of the Rolls. The headnote to that case is as follows: "A railway company in exercise of the powers conferred on them by an Act of Parliament, which gave compensation to persons whose property might sustain damage from their operations, were proceeding to erect an arch over a mill-race, for the purpose of sustaining an embankment on which the railway was to be constructed; and it appeared that injury would be done to the mill if the arch were of the proposed dimensions, but that the injury would be avoided if the arch were of certain larger dimensions; an injunction was granted to restrain the company from making over the mill-race an arch of less than certain specified dimensions." The judgment is extremely short, but it appears from the argument, which is set out on p. 184, that the exact argument that has been addressed to me was there addressed to the Lord Chancellor: "But, admitting that some injury might ensue, the court had no jurisdiction. The Act of Parliament had pointed out the only remedy to which the plaintiff was entitled; it had given him a right to compensation, and had fixed the mode in which the amount of compensation was to be ascertained. He might claim that compensation, but he could not call upon the court to prevent the company from exercising the powers which the Act of Parliament had conferred on them. The case would be different if the company were proposing to do what the Act of Parliament did not authorise; but there was no suggestion to that effect: it was not even hinted that they were exceeding their powers. . . . On the other hand, it was argued on behalf of the plaintiff, that the right to compensation, given by the Act of Parliament, did not exclude the regulating and restraining jurisdiction of the court; and that nothing would be more pernicious than to hold that the large and ample powers conferred by such Acts of Parliament were not subject to any control. The company were not to be prevented from doing anything which was necessary to the due prosecution of their undertaking; but, on the other hand, they were not to prosecute it in such a manner as to do unnecessary injury to others. . . . The Lord Chancellor was of opinion that, in such a case, the court ought to interfere to protect the plaintiff; and he awarded an injunction, by which the company were restrained from making over the mill-race any arch of less dimensions than the arch recommended by the engineer's report." If an authority is needed, it seems to me that this is an express authority. The company had a perfect right to make their arch over the mill-race for the purpose of their embankment, which was one of the things they were authorised to do. The argument there was, as it is here, that it was at the company's discretion to say how they would carry out the work. The present case is clearly within the authority, and I have no hesitation in declaring that the plaintiff has a perfectly good cause of action. The costs of this application are to be the plaintiff's in any event.

Solicitor for the plaintiff, *H. A. Scott.*

Solicitors for the defendants, *Fowler, Perks,* and *Co.*

Tuesday, Dec. 9, 1902.

(Before FARWELL, J.)

Re MANN; HARDY *v.* ATTORNEY-GENERAL. (*a*)

Charity—Bequest for benefit of existing institution founded for public benefit, but used for purposes not strictly charitable—General charitable intent.

By her will E. S. M. gave 3000*l. to trustees to be applied by them for the benefit of the M. Institute, an institute founded by her for the benefit of the inhabitants of M.*

The property remained under her control during her life, was not conveyed to trustees, nor was any trust created in relation thereto. The building had been used for the benefit of the inhabitants of M.

Held, that the bequest was a good charitable gift of the 3000*l.*

IN this case the testatrix by her will, after appointing trustees and making certain pecuniary bequests, proceeded thus:

I bequeath to my trustees the sum of 3000*l.* to be applied by them in such manner as they shall consider most expedient for the benefit of the Mann Institute, Moreton-in-Marsh.

(*a*) Reported by A. W. CHASTER, Esq., Barrister-at-Law.

The testatrix died on the 30th May 1902 without revoking or altering her will, and the same was proved in due course by the executors therein named.

This summons was then taken out by the executors against the Attorney-General and the residuary legatees and devisees as defendants for the determination of the question whether this bequest of 3000*l.* took effect, and, if so, whether it constituted a good charitable bequest.

It appeared from the evidence that the testatrix some years prior to her decease had been desirous of erecting some permanent memorial to her late father, who was born and had for many years resided in Moreton-in-Marsh, in the county of Gloucester.

For this purpose she purchased a piece of freehold land, on which there were some old cottages, and had it conveyed to herself in her own name.

She afterwards had the cottages pulled down, and at her own expense erected a building on the land, to which she gave the name of the Mann Institute, and which she intended to be used in various ways for the benefit of the inhabitants of Moreton-in-Marsh, subject to her own control. She had informally nominated four persons to act as trustees or a committee of the Mann Institute, but had never conveyed the building to them, or made any rules for its management, or executed any declaration of trust.

Two of the persons nominated as trustees died in the lifetime of the testatrix, but she had never appointed anyone in their place.

The sister of one of the deceased trustees had after his death, at the request of the testatrix, acted as the representative of the committee in Moreton-in-Marsh.

The building had been formally opened at a public meeting at which the testatrix was present. A part of the building consisting of a reading-room and billiard-room was let to a working-men's club at a nominal rent of 5*s.* a year, the club agreeing to contribute to the salary of a caretaker and pay a proportion of the rates and charges for coal and lighting.

The building also contained a hall, which was let at a fixed scale of charges for concerts, lectures, and religious and other meetings. There were also certain bedrooms in the building which were reserved by the testatrix for the use of convalescents who were sent down by the Canning Town Women's Settlement in which the testatrix was interested.

During her life the testatrix had retained absolute control over the hall, subject to the agreement with the working-men's club.

J. L. Beattie for the summons.

R. J. Parker for the Attorney-General.—The Mann Institute is, we contend, subject to a charitable trust, but, whether that be so or not, there is a good gift of 3000*l.* for the purpose for which the testatrix had founded the institute. That purpose was the general benefit of the inhabitants of Moreton-in-Marsh, and that is a good charitable purpose.

Tyssen for the testatrix's residuary legatees and devisees.—The legacy is for the benefit of the Mann Institute—*i.e.*, the building—which is now the property of my clients. No charitable purpose can be inferred from the way in which the building was used, for it was not used for any such purpose. A working-men's club is not a charity. It is a mere social club, not intended specially for the benefit of its poorer members, and therefore not a charity:

Cunnack v. *Edwards*, 75 L. T. Rep. 122; (1896) 2 Ch. 679;
Re Clark's Trust, 1 Ch. Div. 497.

Again, the letting of the hall for concerts, &c., is not a charity, for a charge was always made for such letting. Whatever public benefit there was could be claimed by the wealthy as well as the needy, and therefore there was no charity.

R. J. Parker in reply.—The testatrix founded an institute for the general benefit of the village of Moreton-in-Marsh. That was a good charity, just as a gift to build a town hall is. A friendly society or a working-men's club may or may not be a charity. The test is not whether the wealthy may use the institution, but whether it is merely an association for the benefit of all its members:

Re Dutton, 40 L. T. Rep. 430; 4 Ex. Div. 54.

or an institution for the benefit of the public. If once a public purpose can be shown, it is a charitable purpose. To what uses the building has been put is immaterial. The 3000*l.* is given for the purposes for which the testatrix thought she had founded the institute. They are charitable purposes, and, if the testatrix has erred and the institute was not in fact founded, the gift nevertheless is not a bad charitable gift. In *Re Davis*; *Hannen* v. *Hillyer* (86 L. T. Rep. 292; (1902) 1 Ch. 876) a gift to the "Home for the Homeless" was held a good charitable gift although no institution of that name had ever existed.

FARWELL, J.—In this case I think Mr. Tyssen's ingenious argument has been dispelled by Mr. Parker's reply. I think Mr. Parker is well founded in saying on the evidence that the testatrix intended to found an institute to be used in various ways for the benefit of the inhabitants of Moreton-in-Marsh. Then the evidence goes on to specify the various modes in which it was attempted to attain that benefit. Now, I have to decide this question on the assumption that the testatrix did not convey the land on which the institute stood in a mode sufficient to satisfy the Statute of Frauds or the Mortmain Acts, for that question is not raised on the summons. Assuming, therefore, that this institute used as stated in the affidavits during the testatrix's life could no longer be so used against the will of her residuary legatees after her death, I find that she has by her will given 3000*l.* to trustees to be applied by them in such a manner as they may consider most expedient for the benefit of the Mann Institute in Moreton-in-Marsh. Mr. Tyssen argued that that was for the building only, but I cannot adopt that construction. That is too narrow a view. I think it is for the purposes for which the Mann Institute was founded—that is to say, for the benefit of the inhabitants. Now, that is a charitable purpose; and the two particular modes in which the building was used during the testatrix's lifetime—namely, for a working-men's club, and for a hall and gallery for concerts, lectures, and other meetings—were both public purposes for the benefit of the inhabitants, not

inconsistent with the general charitable intention to which I have already referred. Therefore I answer the question by saying that the bequest of 3000*l.*, to be applied as in the will mentioned, takes effect, and is a good charitable bequest. There must be a scheme for its application. The costs will come out of the residue of the estate.

Solicitors: *The Solicitor to the Treasury; Leslie* and *Hardy.*

Friday, Jan. 30.

(Before FARWELL, J.)

FOSTER AND DICKSEE *v.* MAYOR, ALDERMEN, AND BURGESSES OF THE BOROUGH OF HASTINGS. (*a*)

Arbitration—Engineer of council referee to determine mode of performance of contract—Power to dismiss contractors and their workmen—Implication of law that these powers should not be put in force until the arbitrators had affirmed the judgment of the engineer—Injunction.

On a motion to restrain the defendants from acting on a notice given by them or their engineer pursuant to a contract between plaintiffs and defendants from entering on or taking possession of works in course of execution under such contract and for damages, it appeared that the defendants were carrying out a scheme for a water supply, and had contracted with the plaintiffs to sink certain wells. The work was to be performed to the satisfaction of the defendant's engineer, and any dispute was to go to arbitration, and if in the judgment of the engineer sufficient dispatch was not used the council or their engineer might dismiss the contractors and their workmen. Difficulties having arisen in carrying out the work, and delay being thereby occasioned, the council gave notice dismissing the contractors and their men.

Held, that the terms of the contract were consistent as a whole, and that the reference to arbitration was engrafted upon them, and that the contractors were not bound to give up to the engineer the decision of every question. That the court ought to imply that the defendants would not act upon the summary clauses until the arbitrators had affirmed the judgment of the engineer. Injunction granted accordingly to preserve the status quo *until trial or an award should be made.*

MOTION in an action for an injunction to restrain the defendants, their officers, agents, and workmen, from acting upon a notice purporting to have been given by the defendants or their engineer on their behalf, and dated the 6th Jan. 1903, pursuant to the provisions of a contract between the plaintiffs and defendants, dated the 31st Dec. 1898, and from entering upon or taking possession of any of the works in course of execution under such contract or any subsidiary contracts between the plaintiffs and defendants in connection with the Brede Valley Waterworks in pursuance of such notice, and from interfering with the plaintiffs, their agents or workmen, now employed or being upon such works, and from taking possession of the plant or property of the plaintiffs, and for damages.

(*a*) Reported by A. W. CHASTER, Esq., Barrister-at-Law.

The defendants were carrying out a comprehensive scheme for the supply of water to the borough of Hastings from the Brede Valley.

On the 31st Dec. 1898 the plaintiffs entered into a contract with the defendants for the sinking and lining of three wells at the Brede Valley in connection with this scheme, which contract was subject to the provisions of general clauses and conditions of the specification thereto annexed, and whereby they undertook to complete the work within eighteen calendar months.

These general clauses and conditions, so far as material, were as follows:

2. The contractor is to perform and complete the whole of the works herein mentioned in a thoroughly sound and workmanlike manner, under the superintence and to the entire satisfaction of the engineer, and if any difficulty or dispute shall arise between the council or the engineer and the contractor as to the mode of carrying out the work, or the interpretation of the contract, or otherwise in relation thereto, or in settlement of the account, the same shall be referred to the arbitration of two arbitrators subject to the provisions of the Arbitration Act 1889, and no action shall be brought in reference to the matter in dispute except for the purpose of enforcing the award.

3. The contractor is to provide materials of the best description, the water required for use in the works, and all necessary implements, moulds, tackling, scaffolding, and apparatus, and a sufficient number of skilled workmen and labourers for the proper, expeditious, and complete execution of the work, and he is to supply any cartage, workmanship, and materials which, although not specially named in this specification or shown on the drawings, may be nevertheless incidentally necessary for the proper completion of the work described therein.

6. If in the opinion of the engineer or other duly authorised officer of the council the foreman, clerk, or any one or more of the workmen employed by the contractor on the works is incompetent or acts in an improper manner, the engineer or other duly authorised officer of the council shall be at liberty to discharge or order him or them to be dismissed forthwith, and the contractor shall not employ him or them on the works again without the permission of the engineer.

9. If at any time any work shall in the judgment of the engineer be executed with unsound materials or in an imperfect or unskilful manner or not in accordance with this specification, the contractor shall at his own expense rectify, reconstruct, or restore such work in such manner as the engineer shall direct, and in case the contractor or any of his agents, foremen, or workmen shall refuse or neglect to rectify, reconstruct, or restore any unsound, unskilful, or imperfect work when ordered so to do by the engineer, the engineer shall be at liberty and he is hereby empowered without prejudice to the contract to employ any other workmen and to use other materials and appliances in lieu of the same and to rectify, reconstruct, or restore any such unsound, unskilful, or imperfect work. And if any materials be brought upon the work that are unsound, inferior, or not in accordance with this specification, the engineer may forthwith cart away or remove them or cause the same to be carted away or removed to any place he may select, after giving written notice to the contractor, and may deal with the same in such manner as he may think fit. All expenses incurred by any proceedings under this clause shall be paid by the contractor, or may be deducted out of any money due or to become due to the contractor under this contract.

10. If in the judgment of the engineer the work is improperly conducted, or sufficient dispatch is not used about it, the council or the engineer shall have the power, without prejudice to the contract, upon giving to