

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
John Stanway Jackson v. James Spittall,
from the Court of the Staff of Government,
Isle of Man ; delivered 17th July 1873.*

Present :

SIR JAMES W. COLVILE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT COLLIER.

This was a suit brought by James Spittall against John Stanway Jackson to recover the sum of 1,700*l.*, on account of the deposit, calls, and money paid as a compromise in respect of 1,000 shares in the South Barrule Slate Quarry Company, which he alleged that Jackson had agreed to take. The Deemster's Court gave two Judgments, (one upon review) whereby execution was awarded for the sum of 1,700*l.* with interest and costs, and that Judgment was affirmed upon appeal by the Court of the Staff of Government of the Isle of Man. From the last of those decisions this appeal has been preferred to Her Majesty in Council, and the question depends entirely upon the construction of the agreement of the 24th of June 1864, and of the arrangement which was come to between the parties in 1869.

The contract is certainly very ambiguously worded, but, giving the best consideration to the case, their Lordships are of opinion that there was an obligation on the part of Jackson to take one half of the 2,000 shares at some time or another, and that it was not intended by the parties that he should have the right to take the shares if the

business should turn out to be a profitable one, or to reject them if it should turn out to be unprofitable.

The question then arises at what time Jackson was to be liable to be called upon to take the shares. Their Lordships think that, looking at the whole of the contract, he would have been liable if the company had gone on and Spittall had paid up the whole of the calls. The contract says that the shares are to be equally divided between Mr. Jackson and Mr. Spittall at any time when it may be convenient to Jackson. "In the meantime I, that is Spittall, will pay the calls thereon, the shares all being registered in my name as security, and whenever called upon by you or your executors I will transfer half the number allotted to you or them, you or they repaying to me all that I have paid on account of the shares so to be transferred, with interest on all such payments at the rate of 5% per centum per annum."

The Company was wound up, and it then became a matter for the parties to consider whether the offer on the part of the liquidator to take 400% in lieu of the full amount remaining to be paid up on the shares and which amounted to 1000%, should be accepted. Jackson was willing to consent that that amount should be paid, but he did not wish to alter his legal liability, and he stipulated as follows: "By a proposal from the liquidator of the Barrule quarry, the said shares may be relinquished by payment of 4s. per share, Jackson to consent to such relinquishment, and such consent not to be construed into an admission of his liability." This document was signed by Jackson. The meaning their Lordships think was, that the arrangement was not to be an admission of Jackson's liability to take the shares, but that his liability should depend upon the contract. Their

Lordships consider that the matter having been finally settled by the payment, with Jackson's consent, of the sum of 400*l.* by way of compromise, Jackson became in the position in which he would have been, if the transaction had been closed by Mr. Spittall's paying the full amount of the calls.

Under these circumstances their Lordships will humbly recommend Her Majesty to affirm the decision of the Lower Court, with the costs of this Appeal.

With reference to the petitions, their Lordships think it was stated at the time the petition was granted, that the costs should be costs in the cause. The costs therefore will be referred to the taxing officer, and it will be for him to determine whether the costs of the first petition as well as the costs of the second petition are fairly included in the terms of the order.

