Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Salisbury Gold Mining Company, Limited, v. K. H. Hathorn and others, from the Supreme Court of Natal; delivered 10th March 1897.

Present:

THE LORD CHANCELLOR.
LORD HERSCHELL.
LORD WATSON.
LORD HOBHOUSE.
LORD MACNAGHTEN.
LORD MORRIS.
LORD SHAND.
LORD DAVEY.
SIR RICHARD COUCH.

[*Delivered by Lord Herschell.*]

This appeal arises in an action brought by the Respondents in the Supreme Court of the Colony of Natal. They are duly registered shareholders in the Appellant Company against whose Secretary as representing the Company the action was brought. The Respondents stated in their declaration that they sued for and on behalf of themselves and all others the shareholders of the Company. The declaration alleged that an extraordinary or special general meeting of shareholders was held at Pietermaritzburg on the 9th July 1895, and that the meeting was called for the purpose of enabling the shareholders to consider and if deemed expedient to confirm a provisional agreement said to have been entered into by the

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Directors for the "flotation" of about 49 claims of the Rand Mines Limited and about 33¾ claims comprising the joint battery sites of the Appellant Company and the Jubilee Gold Company into a Company to be registered under the Limited Liability Laws of the South African Republic. The Company was to have a nominal capital of 275,000*l.* divided into 275,000 shares of 1*l.* each. It was further alleged that the circular convening the meeting said the shares would be dealt with as follows :—

(*a*) 80,000 shares shall be issued as fully paid up to the Rand Mines Company.

(*b*) 70,000 shares shall be issued as fully paid up to this Company and the Jubilee Gold Company.

(*c*) 100,000 shares shall form the working capital of the new Company the underwriting of which has been guaranteed by Messrs. Eckstein and Company at par.

(*d*) 25,000 shares will be held in reserve.

The declaration then alleged that the Chairman of Directors of the Appellant Company who presided at the meeting held on the 9th July explained that under the provision (*c*) set out above Eckstein and Company were to have the 100,000 shares allotted to them at par and that such shares would not be allotted to the public or to the shareholders of the Defendant Company who would have no opportunity of subscribing to the same whereas the terms of provision (*c*) did not bear the interpretation put upon them by the Chairman and did not authorise the action which the Directors contemplated taking in the event of the proposals being accepted.

The declaration went on to allege that a motion for the adjournment of the meeting of the 9th July 1895 until the 8th November 1895 was duly made and seconded and if put to the

meeting would have been carried but that the Chairman illegally and improperly declined to put the resolution claiming that under Article 66 of the Articles of Association of the Appellant Company no such adjournment could take place without the consent of the Chairman who thereupon put the motion for the confirmation of the provisional agreement specified in the circular which was lost on a show of hands, but a ballot being demanded the Appellant Company have assumed that the confirmation was then carried. The declaration further alleged that all proxies used at the vote by ballot must have been given by shareholders, the majority of whom reside in Europe or elsewhere beyond the borders of the Colony and whose knowledge of the agreement submitted for confirmation must have been derived from the first circular convening the meeting.

The Plaintiff claimed—

1. A declaration that the motion for the adjournment of the meeting should have been submitted to the vote of the shareholders present and that the action of the Chairman in declining to put the motion was wrong and contrary to law.
2. A declaration that the motion if duly put would have been carried.
3. An order of the Court declaring the adjournment of the meeting for a period of four months from the date of the judgment in the action.
4. and 5. That the resolutions which the Company purported to pass at the meeting after the Chairman refused to put the motion for adjournment should be declared void and invalid and be set aside and that the Company should be interdicted from treating as valid and acting upon any such resolutions.

6. That the Company should be interdicted from giving effect to any agreement by which Eckstein and Company would be allowed to subscribe for 100,000 shares at par in the intended new Company and by which the shareholders of the Appellant Company would be debarred from subscribing to any portion of such capital contrary to the meaning and intent of provision (*c*) as above set out.

The Appellant Company excepted to the declaration as showing no grounds of action in that—

(*a*) The adjournment of the meeting in terms of Article 66 of the Articles of Association was at the discretion of the Chairman.

(*b*) The provisional agreement put before and dealt with by the meeting was the provisional agreement set out in the notice and in the declaration.

(*c*) It was not alleged in the declaration nor is it the fact that the resolutions against the carrying out of which an interdict was sought were outside the powers of the meeting.

(*d*) There was no averment in the declaration that the Plaintiffs would sustain damage or that any of their rights would be infringed by the carrying out of the resolutions.

When the case came on for argument before the Supreme Court it was ordered that the Defendant Company's exceptions to the Plaintiffs' declaration should be and the same were thereby overruled. This decision was arrived at by Gallwey C. J. and Wragg J., Beaumont J. dissenting.

The Chief Justice and Wragg J. expressed the opinion that the construction placed upon the 66th clause of the Articles of Association by the Chairman was incorrect, whilst Beaumont J.

was of the contrary opinion. The Chief Justice appears to have entertained the view that the refusal to put the motion for adjournment invalidated the subsequent proceedings. Wragg J. however reserved his opinion as to the effect of the Chairman's action. An application was afterwards made to the Supreme Court for leave to appeal to Her Majesty in Council and the leave prayed for was granted by a majority of the Court, Wragg J. dissenting.

It was contended before their Lordships that it was not a case in which it was competent for the Court below to grant leave to appeal inasmuch as the order against which the appeal was brought was not a final judgment decision or sentence nor was it a rule or order having the effect of a final or definitive sentence. During the discussion of this point before their Lordships it became evident that even if the order appealed against was not a final judgment or an order having the effect of a definitive sentence, a point which had caused a difference of opinion in the Court below, and which was certainly open to doubt, the questions in controversy on the face of the pleadings were of much importance and that a determination of them might put an end to further litigation. Under the circumstances therefore their Lordships thought it right without occupying further time in the discussion of the preliminary question to recommend Her Majesty to give special leave to appeal.

It may well be doubted whether in any view of the case the declaration discloses a good cause of action, but their Lordships think it desirable to pronounce judgment upon the construction of the 66th article which it is asserted justified the course taken by the Chairman, without expressing an opinion on the validity of the objection urged, that even if the Chairman

erred in not putting the motion for adjournment the action could not be sustained.

The article is in these terms so far as material: "The Chairman may with the consent of the "members present at any meeting adjourn the "same from time to time and from place to place "in Pietermaritzburg." Before discussing the language of this article it is important to notice the provisions of the articles which immediately follow. ByArticle 67 it is provided that "Upon "all questions a show of hands shall in the "first instance be taken and the question shall "be decided by such show of hands unless upon "or immediately after such show of hands a "ballot be demanded in writing by at least five "members personally present entitled to vote "but no ballot shall be allowed on a question of "the adjournment of the meeting." The 68th article provides that when the vote is being taken by show of hands each member present shall have one vote only and proxies as such shall not be admitted to vote.

Their Lordships are of opinion that upon the true construction of Article 66 the Chairman is not bound to adjourn the meeting even though a majority of those present desire the adjournment. If the intention had been that the majority of the members present should have the right to adjourn the meeting whenever they pleased, their Lordships think the article would have been differently worded. According to the terms of Article 66 it is the "Chairman" who may adjourn the meeting it is to be his act not that of the meeting or of those present at it. He cannot it is true adjourn it of his own mere motion but the terms in which the members present are given a controlling voice strengthens the view that the adjournment is to be the act of the Chairman. It provides for the

"consent" of the members present which implies that the act is not theirs but his. It is said that there is an inherent power in any meeting to determine on an adjournment if it pleases and that it is the duty of the Chairman to put any motion for that purpose made and seconded. Whether this be so or not in a case where no such articles are to be found as those now under consideration their Lordships do not think it can be so in a case where the articles have expressly prescribed the conditions under which an adjournment may take place. It was contended for the Respondents that the construction which the natural meaning of the language used suggests would lead to unreasonable results and therefore could not have been that intended by those who framed the articles. It is true that it vests in the Chairman large powers which might conceivably be used improperly by him, but on the other hand if there were no check upon the power of those present at a meeting to adjourn it to a future date it is equally conceivable that a small minority of the shareholders might seriously prejudice the interests of the Company and defy the wishes of the majority of its members. The facts stated in the declaration of the present action will suffice to illustrate this. The meetings are to be held at Pietermaritzburg, many of the shareholders reside in Europe or elsewhere beyond the borders of the Colony. They can vote by proxy and so express their views on any proposed action by the Company that may come before a meeting for consideration, but the articles provide that proxies are not to be used on the question of the adjournment of the meeting. This being so a limited number of members resident in or near Pietermaritzburg might by carrying motions for adjournment defeat proposals which the great majority of the members thought in the interest

of their Company. It is no doubt possible that a Chairman might abuse the power which their Lordships think vested in him, on the other hand he may use it to protect the rights and interests of those who may be unable to be present. Their Lordships see no sufficient reason then for departing from what seems to them to be the plain and natural meaning of the language used.

What has been already said is enough to show that this appeal must succeed but it may be well to add that in their Lordships' opinion the fact that after the motion for adjournment was rejected by the Chairman the confirmation of the provisional agreement was declared carried can in their opinion afford no ground for complaint. The agreement which was thus confirmed was that specified in the circular convening the meeting and no gloss of the Chairman even if incorrect and no statement by him as to what was intended to be done under it could modify or affect the confirmation of the specified agreement.

Their Lordships will humbly advise Her Majesty that the appeal should be allowed. The Respondents must pay the costs of the appeal and in the Court below.