*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Laughton* v. *Griffin and others, from the Supreme Court of Natal; delivered 24th November* 1894.

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Present:

THE EARL OF SELBORNE.
LORD WATSON.
LORD HOBHOUSE.
LORD MACNAGHTEN.
LORD MORRIS.

[*Delivered by Lord Macnaghten.*]

This is an appeal from a judgment of the Supreme Court of Natal, dismissing an action in which the Appellant was Plaintiff. The Appellant, who is a solicitor and advocate in the Colony of Natal, was a member of an association formed there in December 1888 for the purpose of buying and selling gold-mining shares as a speculation. By his declaration he claimed relief in respect of certain dealings and transactions on account of the association in which he alleged that he had been treated unfairly. The members of the association, or syndicate as it seems to be the fashion to call an association of this sort, were nine in number—the Appellant, the six Respondents who were Defendants in the Court below, and two persons who for some reason or other were not made parties to the action.

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Gold mining at the time was all the rage in Natal. Speculation in mining shares was rife and rather wild. "Booms," when people flocked to buy, alternated with periods of depression, or "slumps" as they were termed, when everybody was in a hurry to sell. Booms themselves according to the evidence had their "ups and downs." In the fluctuations of the market there was money to be made by those who were more or less behind the scenes and who were not too nice or too scrupulous to take advantage of the greed and folly of the public.

The Syndicate which was the subject of the action was known as No. 4 Syndicate. It was apparently the first enterprise of the kind in which the Appellant was concerned. The other members with one exception had all been engaged more or less deeply in a series of ventures of the same description some of which had been wound up already leaving a good profit, while others were still running with every prospect of a similar result.

The first of the series was a venture in which the only persons concerned were the Respondents W. H. Griffin and H. Bale. Mr. Bale was a solicitor in Maritzburg. Mr. W. H. Griffin was a general merchant and storekeeper there, and he was also a leading broker and Secretary to several Gold Mining Companies. "His office" as one of the witnesses says "was a busy centre "for gold transactions." In the next venture a share was taken by the Respondent Henry Griffin, the father of Mr. W. H. Griffin, who is said to have been the most successful floater of companies in the Colony. By degrees the Syndicates were extended. New members came in and the money at stake was increased. "My "transactions with all these Syndicates" says Mr. W. H. Griffin, speaking of the time when No. 4 Syndicate was started "were very large

" indeed. In December 1888 we had transactions " to 212,000*l*. The effect of my transactions on " the market would often depress or lift the " market as I desired."

The mode of operation was the same throughout. The funds required were obtained by way of overdraft from a Bank on the joint and several guarantee of the persons who had agreed to be members. The overdraft was in favour of Mr. W. H. Griffin in every case. No formal agreement was made between the members. It was understood that profits and losses were to be shared equally. But there was nothing in writing except the guarantee to the Bank. The operations of the Syndicate were left in the hands of Mr. W. H. Griffin aided by such suggestions as might be made from time to time by any of the other members. There were no minutes kept. There were no regular meetings of the members. The only record of what was done was to be found in the books of Mr. W. H. Griffin. He bought and sold for each and all of the Syndicates and managed their affairs as he thought best. At the same time he and the other members of any particular Syndicate were perfectly free to deal in the very shares in which the Syndicate was trafficking and to buy and sell as they pleased on their own private account without regard to the interests of their associates.

No. 4 Syndicate was formed on precisely the same lines as those which preceded it. At the outset however it was intended that a Committee of Management should be appointed. It appears that at an informal meeting of some of the members it was proposed that the Respondent Parker should take charge subject to Mr. Bale's supervision. Mr. W. H. Griffin seems to have been under the impression that this arrangement was carried out, and he asserts that in con-

sequence he did not personally take any part in the management of No. 4. Mr. Parker and Mr. Bale both allege that they refused to take upon themselves the management of the Syndicate though Mr. Parker at the beginning appears to have had more to do with its affairs than any of the other members. As a matter of fact the Syndicate was managed in Mr. W. H. Griffin's office, and the purchases and sales on its account were made at first by a Mr. Brown who was Mr. W. H. Griffin's clerk and a licensed broker and afterwards by Mr. Blumlein who succeeded him and held the same position in the office. During a considerable part of the period covered by No. 4 Syndicate Mr. W. H. Griffin was in England.

The Appellant was brought into No. 4 through Mr. Bale who was an intimate friend of his. Mr. Bale told him about these Syndicate speculations and the profits to be made by the business. He was taken with the idea and begged to be allowed to join in the next venture. Accordingly when No. 4 was projected Mr. Bale put his name down and got him accepted as a member in spite of no little opposition on the part of some of the associates and some objection on the part of the Bank. The Appellant was content to take his place with the rest. He made no inquiries. He made no stipulations of any kind. He had no communication with any one except Mr. Bale on the subject of the Syndicate. When he was admitted he joined in signing a guarantee to the Standard Bank for 15,000*l*. But he took no active part and apparently very little interest in the practical work of the Syndicate. Indeed his hands were pretty full at the time. Besides his professional engagements, whatever they were, he was a busy man. He speculated largely in mining shares. He conducted a syndicate

himself at Johannesberg in conjunction with a large number of Maritzburg people until it was stopped by a "slump," and he was local Director of at least two Gold Mining Companies. In the early days of the Syndicate he once asked Mr. Bale how the Syndicate was going on. He was told that the members were each about 1,000*l.* to the good. "I rested quite satisfied" he says "and mentally placed to my credit "1,000*l.*" Afterwards he was called upon to sign an additional guarantee for 5,000*l.* in consequence of over speculation on the part of the Syndicate. He signed the document with some grumbling. Then in April 1890 at Mr. Bale's request he joined in a formal application to the Bank to release the Respondent Parker from his guarantee on payment by him to the Bank of the sum of 384*l.* 4*s.* 11*d.*, being his share of the Syndicate liability to the Bank at that time. Matters drifted on till May following, when the Manager of the Bank pressed for re-payment of the guaranteed overdraft. The accounts were made up. The Appellant was informed that his proportion of the loss was 272*l.* 9*s.* 6*d.*, against which there stood to his credit certain shares apparently of little or no value. The other members paid up their quota. The Appellant refused to pay until he had seen the accounts. The accounts were shown to him after some delay and demur on the part of Mr. W. H. Griffin and then he insisted upon over-hauling them all and having every voucher produced. The Bank Manager was urgent. To avoid trouble and the worry of litigation the other members who were liable to the Bank thought it best to make up the Appellant's share among themselves and say no more about it. They imagined that that would be an end of the matter. He took their action amiss supposing that there was something behind, and

so he persuaded himself that instead of his being a debtor to the Syndicate the Syndicate was a debtor to him.

Then followed some correspondence, and attempts were made to bring about a settlement. Ultimately in November 1892, after Mr. W. H. Griffin's books had been investigated by an accountant on the Appellant's behalf, the Appellant commenced his action against the Respondents. He claimed 1,750*l.* as due to him. In the event of his not being held entitled to relief in that form he asked that accounts might be taken between himself and the Respondents with consequential relief.

The action came on to be tried before the Supreme Court in March 1893. The trial lasted 14 days. All the members of the Syndicate were examined and cross-examined at great length, with the exception of a Mr. Ryan, who does not seem to have taken any part either in the operations of the Syndicate or in the subsequent disputes. All the accounts in the books of Mr. W. H. Griffin relating to the affairs of the Syndicate were minutely investigated with the assistance of accountants on both sides. The Court consisting of Gallwey C. J. Wragg J. and Turnbull J. were unanimously of opinion that the Appellant had not made out any case of fraud or unfair dealing as far as he was concerned on the part of the Respondents or any of them. The Chief Justice and Wragg J. were of opinion that the Appellant was not entitled to any relief upon the merits. Turnbull J., differing in this respect from the rest of the Court, held that the members of the Syndicate had been engaged in an enterprise savouring of illegality. His view was that that objection was sufficient to disentitle the Appellant to relief and he based his judgment on that ground.

Whatever may be thought of the objects of

the Syndicate or the means by which those objects were pursued their Lordships are unable to accept the view taken by Turnbull J. It does not appear to their Lordships that there is anything in the law of the Colony which makes it illegal for any person or for any body of persons to buy shares with the view of selling them again and making a profit by the transaction.

As their Lordships agree in the conclusion at which the Supreme Court arrived that the Appellant has failed to establish any case of fraud or unfair dealing on the part of Mr. W. H. Griffin or any of the other members of the Syndicate, it will only be necessary to refer very briefly to the principal objections which were taken to the accounts.

The first objection was that Mr. W. H. Griffin ought not to have been allowed brokerage. But as Wragg J. observes it would seem absurd to expect that Mr. W. H. Griffin should give his associates the benefit of his skill and employ a broker and keep all the accounts of the Syndicate in his office without some remuneration. It seems that from the first brokerage was charged in all these Syndicates and everybody or everybody except the Appellant understood it.

The next point was this. No. 4 Syndicate when it was first started over-purchased largely. It bought a quantity of shares called "Nigels" for which it had not the money to pay. The Bank guarantee was extended. But that was not sufficient. So certain members of the Syndicate, the only members who took the trouble to attend to its affairs, thought it best to transfer to another Syndicate the shares bought in excess. They were transferred at cost price and No. 4 Syndicate was thus relieved of the difficulty in which it was placed without any payment or any loss whatever. It is tolerably clear that if these shares had been thrown upon the market

suddenly the loss would have been considerable. It turned out that while they were in the hands of the transferees they improved in value. The Appellants sought to charge the Respondents with this improved value. Their Lordships agree with the Supreme Court in thinking the claim not well founded.

Then there was a loan of 2,000*l.* from No. 4 Syndicate to one of the other Syndicates to which exception was taken. No doubt that was an improper transaction. But as the money was repaid with interest exceeding the amount which the Bank was charging for interest it is difficult to see what the Appellant has to complain of.

The chief objection on which Mr. Gore insisted in his very able argument was that No. 4 Syndicate bought from and sold to other Syndicates in which Mr. W. H. Griffin and some but not all the other members of No. 4 were interested. It was not contended that this was done with the deliberate intention of throwing an undue proportion of loss on the Appellant or giving an undue proportion of gain to the other members of the Syndicate. But it was said that this result was the necessary consequence of the Appellant's position, and that having regard to the fact that he was interested only in No. 4, all the dealings of that Syndicate ought to have been in the open market, or at any rate with outsiders only. It is not clear upon the evidence what the actual result of the dealings between the Syndicates was. But assuming that it was disadvantageous to the Appellant and advantageous to some of the other members of No. 4 their Lordships are not prepared to hold that under the circumstances of this case the Appellant is entitled to relief on this head. Having regard to the nature of the enterprise in which the Appellant was concerned and the knowledge which must be imputed to him and his co-adventurers their Lordships do not think

that the transactions in question were beyond the scope of the authority which must be taken to have been committed to Mr. W. H. Griffin as manager and plenipotentiary.

There is one other point which calls for observation. There are some instances in which it appears from the accounts that No. 4 Syndicate bought from and sold to a so-called Syndicate described as "Princess Syndicate." In reality this was not a Syndicate at all but a mere entry in the books made by Mr. Blumlein during Mr. W. H. Griffin's absence in England and intended to designate certain accounts in which Mr. W. H. Griffin was alone interested. The Supreme Court dealt with this matter perhaps rather lightly. They held Mr. W. H. Griffin not responsible for it because it was done in his absence and without his cognizance. But it seems to their Lordships to be clear that such a transaction, whether done by Mr. W. H. Griffin himself or by his clerk in his absence and without his knowledge, could not possibly stand if it were challenged by a person having an interest in challenging it. Looking however at the amount involved in these transactions it is evident that the proportion which on the most favourable view would be credited to the Appellant must fall considerably short of the sum with which he was charged as his share of the general loss and consequently as he has not paid his quota there would be nothing coming to him if the account were opened.

On the whole therefore their Lordships are of opinion that the Supreme Court was right in refusing any relief to the Appellant. The Appellant failed to make out a case to the specific relief claimed by him in his action or to any part of that relief. In their Lordships' opinion after the accounts had been so thoroughly investigated

in open Court it would have been idle to have granted a decree for an account even if the action had been properly framed for that purpose.

Their Lordships will therefore humbly advise Her Majesty that the appeal ought to be dismissed with costs.