Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Palmer (Official Assignee of the Estate of M. Lamrock) v. Moore, from the Supreme Court of New South Wales; delivered 2nd March 1900.

Present at the Hearing:

LORD HOBHOUSE.
LORD MORRIS.
LORD DAVEY.
SIR RICHARD COUCH.

[*Delivered by Lord Davey.*]

This is an Appeal by the Official Assignee of the estate of McAusland Lamrock (bankrupt) against the decree of the Chief Judge in Equity of the Supreme Court of New South Wales dated the 15th September 1897.

The facts of the case may be shortly stated. A lease dated the 25th July 1893 for the purpose of gold mining was granted by the Crown to Maguire Lamrock and Moore (the Respondent). On the 24th November 1893 the Department of Mines and Agriculture served notice on the lessees to show cause why the lease should not be cancelled for non-observance of the conditions thereof. Before receiving the notice Moore had sent a notice in writing to Lamrock (which was not produced) and in reply he received a letter from Lamrock which Moore had lost or mislaid and was unable to produce at the trial. But he stated the contents of it in the following words:—

"He (Lamrock) said he was unable to con-
"tribute anything towards the expenses of the

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" mine that I (Moore) and Maguire could do " what we liked with it and I distinctly " remember the words he added 'I am out " ' of it.' "

The learned Judge in the course of his judgment says that the Respondent appeared to him to be as straightforward and honest a witness as he had ever seen and he accepted the Respondent's statement of the contents of the letter as true. Lamrock was not called by the Appellant and in these circumstances the contents of the letter are as well proved for the purposes of the suit as if the letter had been produced.

The Respondent received another letter dated the 4th January 1894 from Lamrock in the following terms:—

" Enclosed I forward you a notice which I " have received from the warden *re* our lease. " The people here will not do anything in the " matter and I am not able to do anything so " that it will rest with you and Maguire. The " only defence you can make will be that the " work was done on the adjoining lease which " stands in my name and you thought such work " was sufficient to meet the requirements of the " conditions."

The Respondent appeared before the warden and succeeded in avoiding the cancellation of the lease. Neither Maguire nor Lamrock appeared. The Respondent thenceforward found all the money for working the mine. Lamrock never contributed a shilling towards it.

The result was that the Respondent was in October 1895 able to sell the mine to the trustees of a company for a considerable sum. By arrangement the purchasers retained 1,200*l.* out of the purchase money in consequence of a claim made by the Appellant (Lamrock having become bankrupt in March 1894) to participate in the purchase money. Maguire had previously been settled with by the Respondent.

It should be mentioned that on the 5th March 1894 a summons was issued by the Warden at the instance of the Respondent to recover 13*l.* for Lamrock's share of working expenses in connection with the lease from 6th December 1893 to 3rd March 1894. This summons was not proceeded with in consequence of Lamrock's bankruptcy. Evidence was given by the Respondent to show that the 13*l.* was in fact Lamrock's share of expenses up to the time of his abandonment and the summons was inaccurately filled up by the officer of the Court without his knowledge. The learned Judge believed this evidence and no reliance was placed on the issue of the summons by the Appellant's Counsel.

On the 22nd April 1897 the Respondent commenced the present action against the Appellant and the purchasers of the mine. By his Statement of Claim he alleged that Lamrock by his first letter written in December 1893, formally disclaimed and abandoned all interest in and claim to the mine and he claimed a declaration that at the date of the sequestration of his estate Lamrock had no beneficial interest in the lease and was merely a trustee for the Respondent of his legal interest (if any) therein and for payment by the purchasers of the sum of 1,200*l.* retained by them as already mentioned.

The learned Judge held on the evidence before him that Lamrock had totally abandoned his interest in favour of his coadventurers and made an order in favour of the Respondent.

Their Lordships agree with the decision of the learned Judge and with the grounds upon which it was founded. It was argued before their Lordships by the learned Counsel for the Appellant that the equitable doctrine as to the effect of standing by and laches laid down in such cases as *Norway* v. *Rowe* (19 Ves. Junr. 143) *Senhouse* v. *Christian* (19 Beav. 356 note) and

Prendergast v. *Turton* (1 Y. & C. Ch. 98) had no application to a case where the claimant had an executed legal interest in the property. Their Lordships however do not think it necessary to resort to the equitable doctrine referred to in the present case. It is a question of the effect of the evidence. Did Lamrock abandon all his beneficial interest in the lease and license Moore and Maguire to continue the adventure if they thought fit to do so at their own risk and for their own profit? In *Clarke* v. *Hart* (6 Ho. Lds. Ca. 633 at p. 656) Lord Chelmsford commenting on the cases of *Pickard* v. *Sears* (6 Ad. and El. 469–474) and *Freeman* v. *Cooke* (2 Exc. Rep. 654) says, "So that I apprehend, where there is a "vested right or interest in any party, the "principle of law as now firmly established is, "that he cannot waive or abandon that right "except by acts which are equivalent to an "agreement or to a licence." Their Lordships think there was sufficient evidence of such an agreement or licence in the present case. It was argued that there was no evidence of the Respondent's acceptance of Lamrock's proposal. But the Respondent acted on Lamrock's letter furnished the money required for working the lease thenceforward out of his own resources and made no claim upon Lamrock for contribution. If the Respondent had made any such claim Lamrock would have replied with justice that he had withdrawn the Respondent's authority to incur expenditure on his behalf.

Their Lordships will therefore humbly advise Her Majesty that the Appeal be dismissed and the Appellant will pay the costs of it.