value of the goods and fixtures was ascertained to be $77,561.50. The question at issue is whether, as apparently contemplated by the recital, the purchaser is to have $50,000 left in the company to represent its capital after making the monthly payments, that is to say, whether all that is to be paid is $27,561.50, or whether the purchaser is to be entitled to receive in instalments the whole amount, less only the two sums of $40,000 paid in cash and by the transfer of stock, that is, a net sum of $37,561.50.

It seems to me to be idle to contend that there is not some measure at least of conflict between these two clauses. It is quite obvious that, if there was to be left $50,000 of net assets after all the thousand dollar payments had been made, as stated by the first clause, the latter clause ought to have provided not for payment of the entire balance but of the entire balance less $10,000.

The whole frame of the agreement is awkward: because no matter what might be the value of the goods and fixtures the same trouble is bound to arise. If the agreement means that for the $50,000 of stock $40,000 only was to be paid, it ought to have been possible to say so in simpler language. The agreement is one for which the parties are equally responsible; it is the joint handiwork of their respective solicitors.

Mr. Holman urges that I ought to reject the preamble and act solely upon the contractual clause. Mr. Hellmuth urges that what took place afterwards indicates that the parties adopted a certain construction, and that I ought to accept and act upon it. . . .

If as a matter of law I am entitled to look at what was done, I have no hesitation in finding that all that took place shews that it was never intended that any greater sum than $67,561.50 should be paid. Mr. Glenn (solicitor for Joseph Mickleborough) was a most careful and capable solicitor, and one who would appreciate to the full the position clearly taken by Mr. McMaster (solicitor for the defendants); and, if it had not been in accordance with the real intention of the parties, no one would have pointed it out more quickly and more clearly than he.

Chief Justice Tindal, perhaps more than any one else, relied upon action under a document as the best key to its interpretation. . . .

[Reference to Doe dem. Pearson v. Ries (1832), 8 Bing. 178, 181; Chapman v. Bluck (1838), 4 Bing. N.C. 187, at p. 193; 2 Inst. 181.]