

Eastern Steamship Lines, Inc.

Boston & Yarmouth S. S. Co., Ltd.

International Line
St. John, N.B.
Passenger Service between
ST. JOHN, N.B. and BOSTON
Fare \$10.00
S. S. GOV. DINGLEY
Leave St. John Wednesday at
9 A. M. and Saturday at 7 P. M.
(Atlantic Time)
Wednesday Sailings—Leave
Boston 1.30 P. M., Standard
Time, Lubec 2.30 P. M., Standard
Time due Boston Thursday 9 A. M.
Saturday sailings direct to
Boston, due Boston 3 P. M.
Return—Leave Boston Mon-
day and Friday at 10 A. M.
(Daylight Saving Time)
EFFECTIVE JULY 5
Direct service between St. John and Boston
will be resumed by St. Prince Arthur
Leave St. John Mondays and Fridays at
7 P. M. (Atlantic Time)
A. C. Currie, Agent, St. John, N.B.

Boston & Yarmouth Line
Freight and Passenger
Service
SIX TRIPS WEEKLY
Fare \$9.00
S. S. North Land
and
S. S. Prince George
Leave Yarmouth Daily ex-
cept Sundays at 6.30 P. M.
(Atlantic Time)
Return—Leave Boston
Daily except Saturdays at 2 P. M.
Daylight Saving Time.
J. E. Kinner, Supt.
Yarmouth, N. S.

Supreme Court

(ADDRESS OF HOWLEY, K.C., CON-
TINUED.)

Then my lord, if your lordship will refer to No. 48 in the book, which is marked J. A. McD. 238. Here is a letter written on the 5th, January 1920 to the Trust by Mr. H. D. Reid, in which, in general terms, it is suggested that when certain things are done, that the Reids are prepared to give then an option subject to prior sale, and that letter is acknowledged by No. 63 J. A. McD. 238, a letter from the Trust to H. D. Reid.

Now my lord, the case set up in the pleadings is—although in the pleadings they allege that this verbal agreement was made in the months of December 1919 and January 1920, the case which is set up in the evidence is that the actual agreement for the ten per cent. commission was made prior to December 23rd, 1919, because, if I understand the evidence, it is that the letter of December 23rd, 1919 dealt only with such matters as were not already decided upon. So I submit that the offer of an option on the project for the fixation of Nitrogen on the 5th, January, accepted by the letter of the 21st, January, is another evidence against the contention that this oral agreement for commission was made in December.

Then, my lord, on the 14th, January 1920, the option is given on the fish shares—the shares in the fish company; and the fish company project is brought to a successful conclusion somewhere in April 1920, with the result that the Reids received the price mentioned in the option, and the Trust received whatever monies or shares over and above the Reids' option price that were payable by the purchasers; and these shares and this money, did not amount to ten per cent. of what Reid received. They amounted to much more than 10% of what Reid received, and the method of remuneration was not calculated on that basis, or on a percentage basis at all.

Then my lord, we come down to April 1920, when the negotiations with Lord Rothermere in connection with the Gander began to materialise, and my lord I begin with reference to that telegram in Volume 2, No. 636, marked J. A. McD. 23, sent by Reid to Camerogot on the 22nd, April 1920, which is: "Directors suggest five per cent. commission to your Gander Rothermere negotiations. Do your con-
cur."

I must confess

that from the time that I first became acquainted with this correspondence, I repeatedly sought for some explanation as to how this telegram originated. It seems to have been launched suddenly without anything preceding it, and it is not until this morning that a solution has been afforded us, when Mr. Thomson in the box stated that the discussion which led to this sending of this telegram, resulted from some message from the Trust.

MR. EMERSON—He did not say that as a matter of fact. He said he thought it did.

MR. HOWLEY—Very well, we will take it that way. Mr. Thomson thought that that telegram resulted from a discussion which had been brought about by the receipt of a telegram from the Trust; and if there was an existing oral agreement to pay ten per cent. commission, what was the necessity for the Trust sending a telegram about the matter, what was the necessity for a discussion? What was the object, or the purpose, or the use

of the Reids sending a message suggesting a 5% commission?

In answer to Reids message on the 24th, April, comes back 639, J. A. McD. 24:

"Rothermere's deal. Trust has always been led to believe usual ten per cent. commission payable unless 'increased or decreased for some specific reason. Cable sent Thomson on 'matter'."

The answer that comes back does not make any reference to the alleged pre-existing oral agreement, or any agreement. "Trust had always been led to believe usual ten per cent. commission payable." And my lord, there is a letter here in Volume. I think it is No. 67. This is W. H. G. 16, and in that, in the last paragraph on the bottom of the page, we have the expression:

"Over and above the usual percentage for the Trust."

Now then, to what does that refer? To what does the expression in J. A. McD. 24, "Trust has always been led to believe usual ten per cent. commission payable," refer? Why this similar language refer to? I submit that it refers to the commission as defined in the message from MacDonald to Thomson, which went in evidence this morning.

If I refer once more to that 639, J. A. McD. 24, at the end of that message we see:

"Cable sent Thomson on matter," and in 648, which is J. A. McD. 29, and purports to be Minutes of Meeting of the Plaintiff's Directors held on the 28th, April 1920, it is stated: "They set forth in the exact language of the cable the message that was sent to Mr. H. D. Reid on the 24th, April, and then they go on to say that Mr. H. B. Thomson was also sent a cable to the same effect. Now Mr. Thomson stated to my learned friend this morning that this must have been the cable he refers to when he said that he thought that the discussion which led to the sending of a message about the five per cent. commission emanated from a cable from the Trust; but that could not be, because the message offering the five per cent. commission was sent on the 22nd, April, and this message was not sent until the 25th; so that is Mr. Thomson thought that there was a cable from the Trust about this matter, then there must have been another telegram on or prior to the 22nd, April.

Now my lord, according to the minute, J. A. McD. 29 the Trust cabled to H. D. Reid on the 24th, April to the effect that the Trust had always been led to believe that the usual ten per cent. commission would be paid unless increased or decreased for some specific reason; and that Mr. Thomson had been sent a cable to the same effect; and here is the cable to H. B. Thomson:

"Cannot understand cables re commissions."

The first point

that I would like to draw your attention to is this—that so far as we are aware there has only been one cable



about commissions; and that is the cable from Reid to Camerogot on the 22nd, April, which is marked J. A. McD. 23. That is the only cable that we are aware of that passed from this side to the Trust with regard to commission, and when they say: "Cannot understand cables re commission," I submit that we are forced to the conclusion that there must have been at least one other cable sent to the Trust by somebody with reference to this question of commission. Then the message goes on:

"Trust composed important business men who know ten per cent. can be asked on any such transaction."

Now my lord, is that language consistent—can it be reconciled at all with the position that the Trust at the time when they sent that message were working under an oral agreement to pay ten per cent. commission?

MR. EMERSON—I do not think you should read that part without reading the other part also. If you are dealing with that part of it—

MR. HOWLEY—You need not worry. I do not intend to omit one word of this message. There, my lord, is apparently the answer of the Trust, or at least possibly my definition is not correct; when I say answer, perhaps it is an answer or perhaps it is a direction to Thomson. Anyhow there is the position. Having received Reids' cable which says: "Directors suggest five per cent. commission to you" and apparently having received one or more other cables from somebody or other, they come back with that: "Trust composed important business men who know ten per cent. can be asked for on any such transaction," and this is the message which is the same as the message sent to Mr. Reid. I submit that under these circumstances the expression "usual ten per cent. commission" must refer to the commission which important business men. Such as those who composed the Trust, knew that they could ask on such a transaction; and certainly by no stretch of the imagination can we reconcile the language of the message by which they attempt to justify the ten per cent. commission, with the idea of an already existing agreement to pay ten per cent.

Then the cable goes on to say: "Cable Reid this sense" but they did not cable Reid this sense. They cabled Reid that the Trust had always been led to believe that the usual ten per cent. commission was payable.

"Cable Reid this sense urging protection Trust."

There is nothing in the message to Reid suggesting protection of the Trust.

"In view of future business reducing commission to Trust without giving substantial reason, will prove bad policy." "So far as Greenwood, you and myself are concerned, we of course share in three equal parts all monies received from Newfoundland business either through Trust or other channels."

That is the message which Major MacDonald sent to Mr. Thomson on the 25th, April 1920. I have no comment to make on the latter part of it at this stage. I think it speaks for itself.

Then I submit that here is a continuous succession of letter and correspondence and conduct we not alone have nothing to substantiate or corroborate the story that the ten per cent. oral agreement was made in December 1919, but we have a multitude of things which go to refute it; and take into regard all these things, and there are one or two others that I would like to refer to before I sum up on this point; and those are: Your Lordship will remember the position on the 14th, August 1920, when the famous minute of the Reid Mtd. Company, to which so much reference has been made, was passed; we had a variety of versions of what happened on that day.

We have had from Major MacDonald and from Mr. Thomson a statement that is blankly contradicted by Mr. Conroy in his evidence; but with reference to the story of Thomson and MacDonald, I would ask your lordship, if we had nothing else to substantiate our position, I think it would be sufficient—I would ask your lordship to take this into consideration.

Major MacDonald and Mr. Thomson went into the Box, and they were examined at length by my learned friend in his usual brilliant and thorough manner, and it is not until after the story has been told to Mr. Conroy, that they are recalled to tell a story almost identical in language, which if known to them and if known to their counsel at the time, should never have been omitted.

MR. EMERSON—Are you talking now about the August meeting?

MR. HOWLEY—Yes.

MR. EMERSON—As a matter of fact the stories are, diametrically opposite. Mr. Thomson does not remember such a discussion and Major MacDonald does.

MR. HOWLEY—But Mr. Thomson remembers the story exactly as Major MacDonald does.

MR. EMERSON—No he does not. He tells a different story.

MR. HOWLEY—So much the worse for you. I thought that I had to deal with a story which was sworn to by both, but it does not appear to be so.

MR. EMERSON—You are insinuating that the story was made up by MacDonald, Thomson and myself since Mr. Conroy went into the box—

MR. HOWLEY—I am not. I do not believe that if any such scheme was contemplated by any client or that my learned friend would lead himself to it for a moment. My opinion of him, I think, differs from his opinion of me in that respect.

But the position under the minute of August 14th,

speaks for itself. In that minute, which is No. 109, H.B.T. 65, on the second page, dealing with the morning meeting, it is minute:

"The Board then proceeded to discuss several questions relating to the proposed sale of certain properties through the Trust, and Mr. Thomson and Major J. A. MacDonald were present by invitation to answer any questions that might be put by the Board"

and at the afternoon session, on the next page:

"The remuneration to be paid to the Trust in connection with the various properties was discussed."

There does not appear to be any mention that when this remuneration of the Trust came up for consideration that there was any reference by anybody to a pre-existing oral agreement for commission; in fact, Mr. Conroy distinctly told us that up to this time and during this time he had never heard of such an agreement; and that again, I submit, my lord, is evidence against the existence of such an agreement.

Then my lord, if we go back to No. 67, W. H. G. 12; this is a letter from Mr. Greenwood to Mr. H. D. Reid, written in the 16th, February 1920 from London:

"Dear Mr. Reid: "As arranged, your brother R. G. conferring with us went into the question of the arrangements to be made between you and him, the Trust and ourselves. The only point for discussion was the payment towards management expenses in establishing the Trust, and handling your interests and the period of time for such payments. The option you have on the shares of the Trust as arranged in Montreal."

Now, my lord, is it not an extraordinary thing that the two matters to which reference is made are the two matters which according to the correspondence and our story, are the matters that were discussed in Montreal, and settled upon—settled upon with the exception of the period over which the £1,000 was to be distributed, and there Mr. Greenwood writes to say that the only point for discussion was the payment towards management expenses in establishing the Trust and handling your interests, and the period of time for such payments. And he says that the option on the shares is as arranged in Montreal. There is no

reference to the 10 per cent. commission either remaining over for discussion, or having been arranged in Montreal—none whatever.

Then, my lord, there is not a further convincing proof that the story of the Plaintiffs as regards the ten per cent. commission agreement has not been sustained. They have not produced to us a single report, or minute of the Trust, or anything of that kind, whereby this oral agreement was made a matter of record. If your lordship will go through the whole of this story as it appears in this printed volume you will find that on every occasion on which any matter involving monetary or other consideration to the Trust is to be dealt with, a most particular and exact minute is made; and here is this agreement which is set up as the basis of the whole claim, and we having nothing but the belated word of Mr. Thomson and the indefiniteness of Major MacDonald to sustain it, and everything, I submit, to show that it is not correct.

Then, my lord, there is just

One Other Point.

If your lordship will turn to No. 111, J.A.McD. 8—Minutes of Meeting of the Plaintiff's Company directors held on the 1st September, 1920. Present Major MacDonald and W. H. Greenwood. This meeting was held after Major MacDonald had returned to England, having participated in the conferences that led to the Minute of August 14th, 1920; and apparently he comes before this meeting to make his report as to what had transpired during his visit to Newfoundland. In that Minute it is said that Major MacDonald left London on July 21st, 1920, and arrived in St. John's on August 5th, etc. And then it says that the chief questions taken up with Mr. H. D. Reid were:

"1. Gander Pulp areas and their sale to Rothermere, or a mortgage on the property for £60,000, the amount still owing on the property."

"2. The sale and development of the Humber property to Mr. Blackstad and his associates."

"3. The policy to be adopted for the sale of the other lands containing mineral deposits."

"4. The fish claim."

"5. Electric Power Plant and St. John's Tramway Co."

"6. The payment to the Trust in commission or otherwise for services in connection with the development and sale of these properties."

That was one of the questions—one of the chief questions taken up with Mr. Reid on Major MacDonald's visit to Newfoundland in August 1920, and I ask your lordship is that consistent with the idea of an already settled and existing agreement to pay a ten per cent. commission, as alleged in paragraph 2 of the Statement of Claim; that one of the chief questions that is taken up with Mr. H. D. Reid in August 1920 was the payment of the Trust by commission or otherwise for services in connection with the development and sale of these properties. Then he goes on to say that after discussing the above matters with the gentlemen mentioned above, it was decided by Mr. H. D. Reid that a Board meeting of the Reid Newfoundland Company would be called and the agreement came to in each instance concerning the matters under immediate consideration would be for-

mally minuted and a copy of such minute handed to the Trust for their information and guidance."

Then follows the Minute of Aug. 1920.

Now I submit that here again is a position where the facts as they appear from the Plaintiffs' own story cannot be reconciled with the allegation that an oral agreement about a ten per cent. commission was made in December 1919.

Now there is one other point in connection with the argument on the oral agreement, and that is—if I might refer once more to the language of the plea—that so far as regarded services rendered in connection with sales or other dealings in respect of which the Reid Co. or its subsidiary companies should receive moneys, shares, or other securities or rights, such remuneration should be ten per cent. of the amounts received."

Let us now take the case of the St. John's Light and Power Company. It is true that a sale of the St. John's Light and Power Company was not contemplated, but a borrowing, a loan, in connection with these properties was discussed and partly dealt with, and under the oral agreement as al-

leged, I submit that if such an agreement existed, the borrowing by the St. John's Light and Power Company which was contemplated would have come within its terms; and if that borrowing had been carried out it could be claimed by virtue of that oral agreement that the Plaintiff Company was entitled to a ten per cent. commission on it; but it is admitted by the Plaintiffs right down to November 1921 that

the mode or amount of remuneration to be paid for raising the money for the St. John's Light and Power Company has never been settled, or at least as October and November, we find them writing to the defendant with a view to having settled the question as to how, or at what rate, remuneration is to be paid for services borrowing money for the St. John's Light and Power Company.

(Continued on 5th page)

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Rubbing or scrubbing without any soap will take away some dirt; by using inferior soap you can do better, but you can do best of all by using pure **Sunlight Soap**.

Don't spoil your clothes, waste your money and increase your work.

Use Sunlight Soap

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By CY HUNGERFORD