

Supreme Court

Address of Howley, K.C.
(Continued.)

I submit that the letter of September 27th, and the reference to Major MacDonald and the company that is formed, misleads the Reids, whether intentionally or not, I am not going to say, but it is misleading, inasmuch as it conveys anything but the true facts as to what has happened; but what I want particularly to point out is that here we are in the first week in October, and the only impression that we have, the only mental view of the MacDonald organisation that we can have is what is conveyed to us in these two letters, and strangely enough, when Mr. Thomson writes us for the first time about Major MacDonald and his organisation, on the 27th September, he not alone does not send us a copy of the letter which I wrote Major MacDonald on the 12th September, but he does not refer to it.

If your lordship will look at No. 28; H.B.T. x 22, you will find the letter from Mr. Thomson to Major MacDonald, dated the 12th September, in which he states that he is authorised by Mr. Reid to offer or negotiate for the sale of the following properties, and then he deals with the various properties, and he winds up that letter by saying:

"Both Mr. Reid and I realise that you and your friends are forming a syndicate with a view to the development of some of the above properties, and on the understanding that Mr. Reid gives, or procures for your syndicate the option to acquire the same. In view of these facts, I am authorised by him to state that immediately the syndicate is formed he will enter into negotiations with it with a view to its acquisition of any of the said properties on the most favorable terms possible, and that both he and I will use our best endeavours to facilitate the carrying through of such acquisition and will in every way within our power assist the syndicate in developing the properties in the most advantageous way. In particular, we will use our best endeavours to assist this syndicate in every way possible."

What that means I find it very difficult to even conjecture. It seems to be a repetition of the previous sentence, and has no meaning whatever except as such repetition.

He continues: "In the meantime, neither Mr. Reid nor I will deal with the properties in any way with any other party without first giving to your syndicate a reasonable opportunity of coming to terms."

Now here I submit, is a letter written by Mr. Thomson to Major MacDonald on the 12th September, when the only information that the Reids have to the existence of Major MacDonald is that conveyed in Greenwood's letter of the 28th June, and except in so far as Greenwood's reference to Major MacDonald's being thoroughly organised to carry on his extensive business is concerned, there is no reference at all, or no knowledge at all of "your syndicate", and the strange thing is that when Mr. Thomson writes to Mr. Reid a copy of

this letter, nor does he make any reference to this letter except in a general way.

Now, the object that I have in drawing attention to these matters, is that I wish to try to bring before your lordship what must have been the attitude of mind of the Reid people towards this "syndicate," in the fall of 1919, and we cannot escape from the conclusion that their state of mind, and their view of Major MacDonald and his syndicate must have been based on these two letters of Greenwood on the 28th June and Mr.

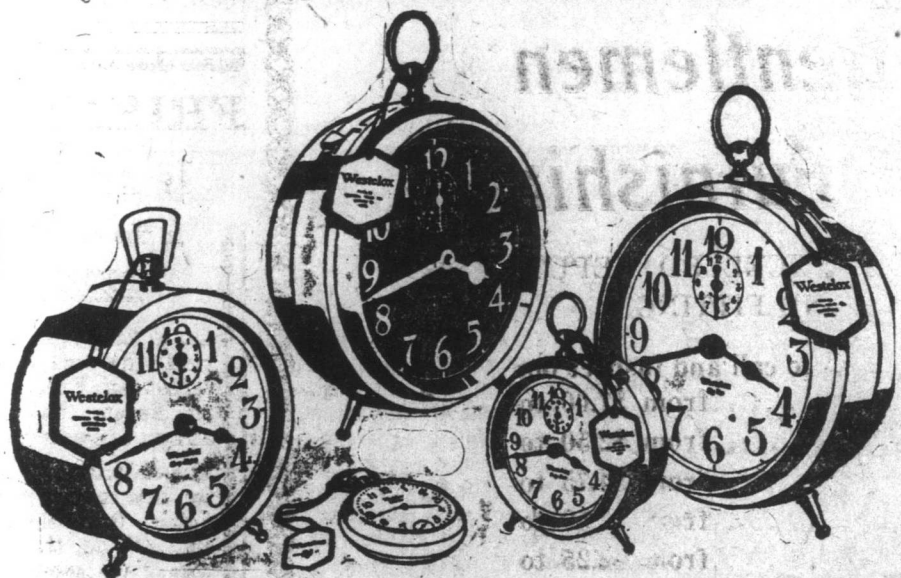
Thomson's on the 27th September, because these, and these alone, cover all the information that we have about Major MacDonald.

Then we come down to the letter of November 6th from Mr. Thomson to Major MacDonald, a letter which, strangely enough has not been disclosed, and only comes to light from the copy of the directors' report submitted to the Statutory meeting of the Trust on December 31st, 1919.

MR. EMERSON—That statutory report was disclosed.

MR. HOWLEY—Was it?

Westclox



A sure call

VARY the retiring hour if you will but the retiring hour remains the same. A likable friend or a good book at night calls for a good alarm clock in the morning.

If the name Westclox is on the dial of your clock you may be sure that it is

a good clock and that you will be called on time.

All Westclox are made to keep time and call at the hour for which they are set. The excellent material that is put into Westclox enables them to do this for more years than most people expect.

WESTERN CLOCK COMPANY, LA SALLE, ILLINOIS, U. S. A.
Makers of Westclox: Big Ben, Baby Ben, Sleep-Meeter, America, Good Morning, Jack-o-Lantern, Blue Bird, Black Bird, Glo-Ben, Pocket Ben.



"Here they are, son—the Corn Flakes with the most tempting, fascinating flavor in the world."

The speed breakfast—crisp, golden Kellogg's Corn Flakes. Just pour them from package to bowl. Add milk or cream. Delicious with fresh or preserved fruit. Sold by grocers everywhere. Served by all restaurants and hotels.

Kellogg's
CORN FLAKES

Make this comparison!

Try any ready-to-eat cereal. You won't find another that even approaches the marvelous flavor found only in Kellogg's Corn Flakes.

October 27th, 1919—to Reid St. John's from Thomson.

"Referring my letter September 27th, and your cable reply October 21st. Can I agree you will give options on properties when prices and terms are settled to your satisfaction."

And then he cites Mr. Reid's reply, which is No. 620 in the book, H.B.T. 58, October 28th, 1919, telegram to Thomson, London from Reid:

"Expect complete Gander title one month but you can agree regardless of this give options on properties subject satisfactory terms. Negotiating everything only through you."

Now, my lord, I have sought to deal with these matters, as I have said, for the purpose of trying to satisfy ourselves on what must have been the viewpoint or state of mind of the Reid Newfoundland Company directors at this period towards this MacDonald organisation, and with that I propose to deal with the alleged oral agreement of December 1919 and January 1920.

Now the Plaintiffs say in this amended Paragraph 2, that:

"It was orally agreed between the said H. D. Reid on behalf of the Reid Company with the said Henry B. Thomson and William Hamar Greenwood on behalf of the Plaintiff Company that the Plaintiff Company should act as the sole agent of the Reid Company in Europe and should receive reasonable remuneration for the services, and that so far as regarded services rendered in connection with any sales or other dealings in respect of which the Reid Company or its subsidiary companies should receive, money, shares or other securities or rights, such remuneration would be ten per cent. of the amounts received."

Now, my lord, what is the evidence in support of that allegation? Your lordship will remember that on the examination in chief of Mr. Thomson he dealt in a more or less general way and indefinitely with the letter No. 32, marked in the book as H.B.T. 25 (a). This purports to be a letter which, we are told in evidence submitted on behalf of the Plaintiffs, was written by Major MacDonald to Mr. Greenwood on the 18th November, 1919. Your lordship will recollect that I asked my learned friend if he had the original of this letter and he said—no, but he had a carbon copy of it. If we give any credence to the story told by the witnesses for the Plaintiffs that such a letter was written by Major MacDonald to Mr. Greenwood on November 18th, 1919...

MR. EMERSON—If you are questioning credibility, I would remind you that I said, not that I had a carbon copy, but that I had the duplicate original.

MR. HOWLEY—I asked my learned friend for the original, and he said he had it; and afterwards he corrected himself and said that he had a carbon copy.

MR. EMERSON—I beg your pardon. I distinctly remember that I said I had the carbon original—that is the carbon copy that was made at the time. I offered you the duplicate original and you did not take it.

MR. HOWLEY—I made a statement as to what actually happened, and you are misrepresenting the facts when you make that statement now.

MR. EMERSON—It is you who are misrepresenting the facts, not I. MR. HOWLEY—Here is the position, my lord. Here is an allegation that such a letter was written by Major MacDonald to Mr. Greenwood on the 18th October, 1919. I am not contending that such a letter was not written—I am not saying that at all, but on his main examination Mr. Thomson has said—has referred in a general and indefinite way.

To This Letter

as a letter that formed the basis of the negotiations between himself and Greenwood and the Messrs. Reid in Montreal; but at the conclusion of his examination, and at the suggestion, I think, of Mr. Reid, he was asked to examine in more detail with regard to this matter, and he specifically swore to the fact that the various clauses laid down in that letter, particularly the clauses with regard to the agency and the 10 per cent. commission agreement on sales, were assented to, and agreed to by the Messrs. Reid. Then in his opening address

An
Ingersoll
Costs Little
and
Keeps Reliable Time
—and so it is ideal for
motoring, for camping,
for use in crowds or
when playing golf or
tennis—

AYRE & SONS, LIMITED
Distributors.



BIG MARK-DOWN OF HATS

CHILDREN'S
AND
MISSSES'
HATS

Regular values to 1.80

79c.

Regular values to 1.90

1.29

Regular values to 3.00

1.79

ALL
LADIES'
MILLINERY

READY-TO-WEAR

HATS

AT

HALF

PRICE.

SPECIAL!
JUST IN

BOYS'

LINEN

HATS

49c.

LADIES' FELT SPORTS HATS

2.90 and 4.50 each.

LADIES' CREAM PANAMA HATS

2.20 and 6.50 each.

Ayre & Sons

July 10, 21

my learned friend informed your lordship that he would substantiate the existence of this 10 per cent. commission agreement, first of all by the evidence of Mr. Thomson, who was actually present and was a party to the making of the agreement, and secondly by the evidence of what Mr. R. G. Reid told Major MacDonald when he got over to London in the Spring of 1920. I submit that Major MacDonald's answers in that respect are just as vague and indefinite, if not more so, than Mr. Thomson's answers in his original examination. But be that as it may, let us take Mr. Thomson's answers to the categorical questions put to him at the close of the case, when he swore that Mr. Reid specifically agreed to that 10 per cent. commission—and that is the evidence in support of that allegation.

Now, what evidence is there against it? First of all, my lord, there is the sworn testimony of Mr. H. D. Reid, who says that no such agreement was ever made; that he never saw this letter; that the terms of this letter as they are set forth in it were never discussed with him. Then there is the evidence of Mr. R. G. Reid to the same effect.

But That is Not All, although I submit that that is more than sufficient to create the position that the Plaintiffs had failed to sustain their allegations. That is not all. You will recollect that it has been deposited by the Plaintiffs' witnesses that before Greenwood left for this side in November this matter had been discussed between himself and Thomson and MacDonald, and before Thomson left it had been discussed between himself and MacDonald; and that as a result of that discussion, Mr. MacDonald wrote this letter of November 18th to Mr. Greenwood, and forwarded a copy of it over to Mr. Thomson in Ireland. It was also agreed before Mr. Thomson left that the Trust, although it had general powers to deal with any properties, would concentrate on the Reid properties.

At this time they held Mr. Thomson's letter of November 5th written to the Trust, as from the Reid representative, and if your lordship will turn to No. 26 in the book, which is J. A. McD. 234, and which purports to be a minute of a meeting of the Plaintiffs' directors held on the 2nd December, 1919, attended by Messrs. MacDonald and Thomson, we find it minutely:

"Mr. Greenwood's departure for Newfoundland was reported. It was attention to make all investigations necessary to get the directors in possession of the facts regarding titles to properties they were dealing in and arrange with Mr. Reid the form of co-operation between himself and the Company."

Then, my lord, if you will refer to No. 37, J. A. McD. 412, (Continued on Page 16.)

Look at These Prices!



No. 8

CHIEF STOVE
\$11.00

Cast Iron Kettles

(Not Tinned Inside)

No. 8 \$1.75

No. 7 \$1.65

Wm. J. Clouston
187 Water St.

Forty-Six Years in the Service of
the Public—The Evening Telegram