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C. J. CARILL, Manager for Newfoundland, Office for St. John's

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In the Supreme Court of Newfoundland.

Between Newfoundland Banking & Trust Corporation, Limited, Plaintiff and The Reid Newfoundland Company, Ltd., Mines & Forests (Newfoundland) Limited and Newfoundland Power & Paper Company, Limited, Defendant.

JUDGMENT OF MR. JUSTICE KENT.

(Continued.)
On the same day, Mr. Reid again wrote to Mr. Thompson a supplementary letter on the same subject in which he says:

"Relative to our letter of even date. We appreciate your interest in this matter and it is understood that if a satisfactory investment of capital is secured and paid in, that you are able to receive as your return,

- (1) 25% of Cash received and
- (2) 25% of the Common Stock received, issued in connection with the new investment of capital proposed."

Mr. Thompson went to London about the second week in April, 1919, principally on behalf of the Canadian Government as Mr. Reid knew. He was kept busy with official business, but managed to give some time to Mr. Reid's affairs. In view of the difficulties in which the Reid Company found itself, Mr. Reid was anxious to accomplish his purpose as quickly as possible. In June he sent Mr. W. Hamar Greenwood, who had been associated with Mr. Thompson in Canada over to London to assist Mr. Thompson with his work and to keep Mr. Reid informed of any progress that might be made. Shortly after he arrived in London, Mr. Greenwood met Major John A. MacDonald who was then connected with the War Office and was shortly afterwards demobilized. He introduced Major MacDonald to Mr. Thompson and through him, Mr. Thompson got in touch with some Belgian Capitalists with whom he held some fruitless negotiations for the disposal of the timber lands and water powers in the Gander River Valley. Major MacDonald, through Messrs. Thompson and Greenwood learned of the mission entrusted to them by Mr. Reid and his Companies. Major MacDonald had intended, on his demobilization, to undertake as a business, the acquisition of undeveloped lands such as were owned by the Reid Company and prepare them for sale. His intention had been to organize a private company through which his business would be conducted. He explained his

purpose in this respect to Mr. Thompson and they agreed that such an organization would be helpful to them in carrying out the Reid Company's purposes in regard to its properties. Then accordingly, with Mr. Greenwood, organized a Company which was registered under the English Companies Act under the name of the "Home and Overseas Trading Trust Co., Ltd.," which later they changed into the "Newfoundland Banking & Trust Co., Ltd.," the Plaintiff in this action. The objects of this Company were to acquire and prepare undeveloped properties and sell them to larger companies to be promoted by it and to act as agents and other like purposes.

The Company was controlled by Messrs. MacDonald, Thompson and Greenwood; under the articles of the association they became its first Directors and were given an option to call for the allotment at par to each of them or their nominees within two years from its formation of twenty-five thousand ordinary shares of a nominal capital of one hundred thousand ordinary shares as a return for services rendered. The objects of the Company were general, but it was decided to devote its services at first exclusively to handling the Reid properties which had been tentatively offered to them by Mr. Thompson before the Company was registered.

In August, 1919, Mr. Thompson was made a Director of the Reid Co. He thought the properties could best be handled through the newly created Trust. He accordingly wrote to Major MacDonald, September 12th, 1919, before the Trust was formed, but after its formation had been decided upon, a letter in which he says: "I am duly authorized by Mr. H. D. Reid, President of the Reid-Newfoundland Co., St. John's, Newfoundland, to state that he is in a position to offer or negotiate for the sale of the following properties." He then enumerates the Humber and the Gander Valley properties, and some coal and some mineral properties and proceeds: "Both Mr. Reid and I realize 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 authorized 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 favourable 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 possible 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 the syndicate in every possible way.

"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."

This letter was the result of previous discussions between Messrs. Thompson, MacDonald and Greenwood and as, I think, the principal inducement to the formation of the Trust Company at that particular time and to the decision of the Trust to devote itself exclusively, at first, to the Reid Company's properties. It has not been proved that at this time Mr. Reid knew of the projected formation of the Trust, or of the existence of this letter of Mr. Thompson's, yet, it is clear from the evidence that the proposals made in it might well have been considered by him to be within the authority given him by Mr. Reid. It was a cautious offer. It brought Mr. Reid under no definite obligation to the Trust but left everything open to be settled with his concurrence after the Trust had been formed. If Mr. Reid did not then know the objects and personnel of the Trust, he certainly became aware of them very shortly afterwards and accepted them as facts in all his subsequent dealings and relations with the Trust. Mr. Reid at this time was anxious to secure the exclusive services of Mr. Thompson for his Company. On September 7th he wrote Mr. Thompson saying: "You will duly receive the Secretary's notice of your appointment as a Director of the Company. I hope the time will not be long distant till you are free to give your whole time to the Company's interests." Mr. Thompson replied on September 27th:

"My idea in not immediately accepting your offer of being closely identified and associated with the activities in Newfoundland was largely because I saw the necessity of linking up over here with the people who would be inclined to go to work and develop some of the industries in question. In order to do this, as you know, I will have a strong French connection through General Bruntin. In addition to this, an old personal friend of Greenwood's, Major J. A. MacDonald, formerly of Toronto, who has had fifteen years' experience in financial operations in London and finding money for development propositions before the year of the war, and during the war, he was in charge of all the aliens and neutrals visiting this country and their movement in different parts of Europe; he had 3,000 Secret Service men under him, and had autocratic charge of all ports in England. This gave him a wonderful connection with the leading men of the country, and in order to crystallize his situation, he has organized a Company for the purpose of developing just such projects as you have. It has been registered as 'The Home & Overseas Trust & Trading Company,' and has taken offices in Clock House, Arundel Street, London, W.C."

"Through him and others we have got in touch with a number of people to whom the different projects are attractive in their own individual line. His Company would secure information and get the different projects up to a point where a development syndicate would be formed to carry them out."

On receipt of this letter, Mr. Reid cabled Mr. Thompson, Oct. 21st, saying:

"Your letter 27th September just received, very satisfactory." "The Trust was formed on October 1st, and before going further into matters cabled Mr. Reid on October 27th, saying:

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

Mr. Reid replied on the 28th October: "Expect complete Gander title one month but you can agree regardless of this to give options on properties subject satisfactory terms negotiating everything through you."

On November 6th, Mr. Thompson wrote the Trust:

"Relative to prices and options upon the various properties in Newfoundland owned or controlled by Mr. Reid and his associates, the following is the situation." He then states the position in regard to each property. He gives the terms and prices of options on coal and various mineral properties, also the Cold Storage Plant in St. John's. As regards the Humber valley property he says:

"Detail surveys and plans and estimates on installation and reports have been made on the various water powers—some 100 in number. These reports are contained in two volumes herewith. These reports and the engineering work entailed, I am told, an expenditure of \$100,000.

"The features of this undertaking are the linking up of the best process and the most suitable water power and selected plant sites. When a conclusion has been arrived at as to the most economic process, and a financial scheme worked out and power and site selected, an option can be secured upon these, but it would be of no service at the present time to secure an option en bloc of all the water powers and available sites."

As regards the Gander River property he says:

"Pulp Lands—The first area we have opened negotiations upon were at Gander River, an area of about 588,000 acres according to maps, plans and reports herewith, and the price asked by the Vendor is \$1.50 per acre.

"Reported to contain 800,000 feet of merchantable timber and 3,380,000 cords of pulp wood.

"An option upon this property is hereby given at the above-named price."

The price here mentioned was fixed by Mr. Reid in a letter to Mr. Thompson in Canada, written on the 17th day of March, 1919. Mr. Thompson concludes his letter, saying: "This clearly indicates the attitude of Mr. Reid and in addition to the option on the properties as above granted, it is hardly wise to grant you options on terms and prices on the other properties until the individual proposals are more crystallized and a better idea of their value arrived at. Options will, however, be granted you when you are open to negotiate."

The policy contemplated at this time by Mr. Reid and the Reid Companies was to give the Trust options on them separately. Under this policy, no question can arise as to whether the Trust was the Agent of the Reid Company or not, or as to whether or not it was entitled to remuneration. Several properties were offered to it on fixed terms or on terms to be settled, but whether the Trust exercised the options and acquired the properties or not, no question of remuneration arises.

This was the position when Mr. Thompson and Mr. Greenwood met Mr. Reid in Montreal in the month of December, 1919. It is alleged by the Plaintiff that at this time an agreement, which is referred to as the "Oral Agreement," was made, defining the relations between the Reid Company and the Trust and the terms upon which the Trust would deal with the properties. Paragraph 2 of the Statement of Claim alleges, "In the month of December, 1919, and January, 1920, it was orally agreed between the said H. D. Reid on behalf of the Reid Company and the said Henry B. Thompson and W. Hamar Greenwood on behalf of the Trust that the Plaintiff Company should act as the sole agent for the Reid Company in Europe and should receive reasonable remuneration for its 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 subsidiaries should receive moneys, shares or other securities or rights such remuneration should be ten per cent of the amounts received."

The Plaintiff supports the allegation by a letter written by Major MacDonald on November 18th, 1919, and Mr. Greenwood had left England for Newfoundland to report to Mr. Reid and to get information regarding the properties. Mr. MacDonald sent a copy of this letter to Mr. Thompson who was then in Ireland. Mr. Thompson brought his copy to Canada with him. The Plaintiff says this letter was shown to Mr. Reid during their discussions in Montreal in December and formed the basis of the alleged oral agreement. Mr. Thompson in his evidence confirms this. Mr. H. D. Reid and Mr. R. G. Reid, both of whom were present, at these discussions, said they had never seen the letter, that it was not produced and that they had no knowledge of it. Mr. H. D. Reid further said that no such agreement as that alleged by the Plaintiff was made or even discussed. I think the letter was not made the basis of any agreement. It is likely Mr. Thompson has this letter of instruction in mind during his interviews with Messrs. Reid, but I do not think he actually produced it. I am perfectly satisfied that Mr. Reid, on behalf of his Companies, did not accept the proposals made in that letter. I must hold that the oral agreement stated in paragraph 2 of the Statement of Claim was not made. I think it was decided, though not formally agreed, that in any case, in which the Trust would act as Agents,

the terms of the agency would be fixed at the time.

I think the agreement come to in Montreal in December, 1919, is perfectly clear from the following correspondence. On the 23rd December, 1919, Mr. Thompson wrote Mr. Reid saying:

"Referring to our conversation this afternoon along with Mr. Greenwood relative to the Trust Company in London which we formed to put your properties and proposals in shape, in order to place them before investors.

"The expenses in starting this, and up to date have been borne by Greenwood, MacDonald and myself, and the Trust Company give us the option for two years of purchasing 25,000 each of the 100,000 (one shilling) shares at par in all 75,000 shares out of the 100,000 ordinary shares of the Trust Company.

"The total capital of the Company is fifty thousand pounds (Sterling) made up of forty-five thousand one pound shares and 100,000 one shilling shares.

"Our proposal is that you and your brother, Mr. R. G. Reid, should join with us in the participation of the profits of the Trust Company in the selling or flotation of the Newfoundland properties, and would suggest to you the following:—

"(1) That the Trust Company should be agents in Europe for the sale of the various properties.

"(2) That you remit to Major J. A. MacDonald the equivalent of one thousand pounds as a contribution towards paying management expenses during the next four months.

"(3) That the 75,000 shilling shares upon which we have the two years' option be divided into four and H.D. and R. G. get the right to purchase 1/4 of this amount, Greenwood, Thompson and MacDonald having the right to purchase 1/4 of the 75,000 each.

"(4) The Trust Company to undertake to procure ten thousand pounds by sale of preferred ordinary shares, at one pound each for the carrying on of the work." Mr. Reid replied on the same day: "Referring your letter to-day's date relative to the payment of the one thousand pounds which has already been forwarded to Major J. A. MacDonald, and the right for us to purchase 1/4 interest jointly of the seventy-five thousand one shilling shares for a period of ten years according to the arrangement with Messrs. Thompson, Greenwood, MacDonald and the Trust Company, I beg to say we accept this proposition."

Mr. Reid therefore accepted suggestions 2 and 3 of Mr. Thompson's letter, but did not accept suggestions 1 and 4.

Mr. Greenwood cabled the substance of this arrangements to the Trust in London saying:—

"Thousand pounds contribution towards paying management expenses during the next 4 months. Reid pays later for quarter interest. Instruct me future action."

Mr. Thompson sent copies of the letters of Mr. Reid and his own to Major MacDonald who, after receiving them, cabled Mr. Thompson January, 1920:—

"Consider fair agreement Reid pay MacDonal, Greenwood one thousand pounds each yearly for two years terminable six months notice by Reid. If agreement terminated under year we have option repurchased quarter interest if Reid has exercised his option otherwise option to lapse."

Mr. Reid replied:— "Referring your cable Thompson relative option purchase shares according letter December twenty-third we agree after this and make arrangement satisfactory to you upon my brother's arrival London beginning February. If Humber or Gander Pulp negotiated here will protect Trust for commission."

Mr. R. G. Reid went over to London towards the end of January and settled with the Trust the outstanding terms and the result was given by Mr. Greenwood to Mr. H. D. Reid in a letter dated February 16, 1920, saying:—"The option you have on the shares of the Trust is arranged in Montreal namely, two years from October 1st, 1919 at par, the same terms as those H. B. Thompson and ourselves hold an interest in the Trust. Major MacDonald offered the suggestion that the payment towards management expenses should be given from the beginning of the Trust's operations which was October 1st, 1919, as that was the date upon which the expenditure was begun on behalf of the Newfoundland Development. This was considered a fair proposal by your brother as was also that the payment towards management expenses should be at the rate of two hundred and fifty pounds per month from October 1st, 1919 to October 1st, 1921. This arrangement being understood and agreed, your brother cabled you to which he received a cable confirmation as follows:—

"Agree your terms Trust."

"The one thousand pounds you had sent in December, 1919 was then applied under this arrangement." Mr. Reid did not attempt the pro-



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pany and Mr. Reid. I do not think that the Reid Company can now recover these amounts from the Trust in this action, or claim that they were made in satisfaction of the services rendered by it in regard to the sale or development of the properties. (to be continued.)

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