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Supreme Court

(Continued from page 8.)

held that position for almost ten years, and that after the early part of 1921 he had knowledge of the negotiations which his firm had with the Reid Newfoundland Company. His firm is described as engineers and contractors and shipbuilders. He thinks that negotiations affecting the property of the Reid Newfoundland Company first came under his notice in 1920, but he could not say definitely, and as the matter stood when he first became acquainted with it, he says: "A proposal was made that the Trade Facilities Committee should be approached with the object of asking them to guarantee debentures towards the cost of carrying out the 'Corner Brook scheme.' The Corner Brook scheme he defines as the installation of hydro-electric power and the erection of a paper mill. Then he tells us that the Trade Facilities proposed guarantee was not intended to cover the entire cost of the construction, but only a portion of it, and that there was a proposal or suggestion that the Government of Newfoundland should guarantee the balance. Then he was asked what interest the Armstrong Whitworth Company had in the proposals at that stage, that in February, 1922, three months after Mr. Conroy's letter was written, and he says that they were only interested as contractors who were anxious to secure the contract. (Reads evidence of Mr. Harrison from "The construction, Yes" to "Up to that stage they were contractors? Absolutely.") Now, my Lord, on that Commission was also examined Mr. Douglas Spencer who is the commercial manager of Armstrong Whitworth's hydro-electric department. (Evidence of Mr. Spencer read. Now, my Lord, the other witness was Mr. Waite, and without wishing to delay the matter say more than is necessary, my Lord, would say, Mr. Waite describes how he came out here in the spring of 1921, with the primary object of examining the Humber scheme on the spot and reporting as to its feasibility to the Armstrong Whitworth Company. He says, "I was instructed to report on the engineering side of the contract" (Evidence read down to reference to his arrival at Port aux Basques.) He arrived at Port aux Basques and proceeded from there to the Humber. He was on the West Coast examining the property for about a fortnight. He thinks it was about the 20th of May when he arrived in St. John's. Now, my Lord, I submit that the evidence of these three gentlemen taken together gives us a complete unbroken chain of the connection of the Armstrong Whitworth Company with this Newfoundland proposition from the time when in July, 1920, it was first brought to their notice as contractors down to the time when in the late spring of 1922 they were forced by the requirements of the Government to acquire an interest in the Reid properties for the purpose of getting the guarantee that made it possible to get the finance to pay them for this contract. But it is evident, and it must be evident, that at no time during 1920 or 1921 and covering the period of the Minute of August, 1920, and the period of the letter of the 15th November, 1921, had there been any thought or idea or suggestion that the Armstrong Whitworth Company were interested in this proposition in any other capacity but as contractors seeking to get a large and profitable contract.

KENT, J.—After the Blakstad collapse and up to the time the Armstrong Whitworth people came in to participate in the scheme, was there any suggestion of Armstrong Whitworth taking up the Blakstad contract? MR. HOWLEY—No, my Lord, I understand that in the evidence of Mr.

Conroy he has stated, if my memory serves me right, after the collapse of the Blakstad scheme and after Blakstad and Greenwood had left the country, and later, towards the end of May, after Waite had come to town and had expressed a favourable opinion as to the engineering possibilities of the scheme, Conroy had in his own mind the idea that possibly the Armstrongs would take up the Blakstad matter. Beyond that there does not appear to have been any idea at all, suggested or thought or discussed with anybody, and it is evident that—

KENT, J.—To try and secure the construction contract and finance. MR. HOWLEY—Yes, my Lord, if I understand it rightly, Mr. Conroy had the idea that they might take up the Blakstad scheme and conclude it, that in addition to the construction contract which it was proposed they would also undertake the things that Blakstad had undertaken, which would include the payment to Reids of the considerations set forth in the April 5th agreement. But, my Lord, I think that there will be no difficulty in the world in deciding that up to November and in November and at the time that Conroy wrote to the Trust on the 15th of November, and, in fact, down to the same date that the earliest was as late as the end of February or the first of March, 1922, there was never a thought or suggestion that Armstrongs should be anything else but contractors, and the evidence—

MR. EMERSON—How could they take Blakstad's place if they were only to be contractors. MR. HOWLEY—The idea of their taking Blakstad's place, Conroy tells us, is an idea which he formed in his own mind as a possibility, when the Blakstad business had collapsed and when he had heard that Waite, Armstrong's engineer, was favourably impressed, but that idea does not appear to have developed in any way, because it is quite apparent from the evidence of all parties who were in a position to give evidence on the matter, and from the minutes of the meetings in London, that all the discussions with Armstrongs at that period were with Armstrongs, the contractors, and I will go this much further and say,

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with Armstrongs the contractors who were desirous of assisting in getting the guarantee and who were desirous of assisting in placing the guaranteed issue after the guarantee had been got. And, my Lord, that position is corroborated and confirmed by the fact that at the end of November, at the end of these discussions Armstrongs sent Waite out here. For what purpose? They sent Waite out here to explain to the Government the soundness of the proposition with the object of securing from the Government a guarantee, with the object of eliminating from the minds of the Government that there was any risk in giving the guarantee, or possibly I should say with the idea of eliminating or reducing in the minds of the Government the amount of risk they would be incurring, or would be making the Colony liable for, in giving the guarantee. And that was the position, therefore, my Lord, that the letter of the 11th November, so far as it has reference to the Humber proposition, is not capable of the construction which the Plaintiffs put on it in their allegation in the amended Paragraph 18. I submit that the letter is not on undertaking to pay a commission to which the Plaintiffs are not up to then entitled to. I submit that the letter means, and means only, that what ever commission in connection with this Humber business you have become entitled to under the Minute of August 14, 1920, not necessarily limiting that Minute to a specific deal with Blakstad, whatever commission you have earned under that Minute and through the work or services that you have rendered since then, will not be affected by the fact that we are now dealing direct with Armstrongs, and I submit, my Lord, that, as a matter of fact, at this stage the Trust had not earned any commission under the Minute of August 14, 1920, because the Blakstad proposition had collapsed and because they had not either at the time that Armstrongs were first injected into this business, nor at any time from that date down to the 15th of November, they had not dealt with Armstrongs, they had not contemplated dealing with Armstrongs, as anything else but a contractor; they had not introduced Armstrongs, nor had they dealt with him, as a prospective purchaser, nor had anything that they had done after the original introduction and down to this date operated to change the status of Armstrongs from a contractor to anything else. On the 15th of November, 1921, Armstrongs were exactly in the same position as they were on the 5th of April, 1921, namely, a contractor anxious to get a contract, and, in his anxiety to get the contract, ready to help in any way he could in placing the matter with financial houses.

KENT, J.—Suppose, Mr. Howley, instead of the Blakstad the Reid Newfoundland Company introduced another person to do exactly the same as Blakstad, after this letter of November, and made exactly the same agreement as they made with Blakstad, though the party had not previously been introduced by the Trust, would the Trust be entitled to a commission under this letter. Supposing Mr. Jones, or Mr. Smith was introduced by the Armstrongs or Mr. Reid met them himself and conducted the negotiations with them, and ultimately reached a similar agreement as the Blakstad agreement, in view of this letter, do you contend that the Trust would not be entitled to a commission on that?

MR. HOWLEY—Most decidedly I do, my Lord. It is only in case negotiations were resumed with Blakstad and the original agreement revived that they would be entitled to a commission under this head.



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So far as regards the negotiations with Armstrong Whitworths, my Lord, irrespective now as to whether they had been conducted by the Trust or by the Reids direct, my submission is this. That the original introduction of Armstrong Whitworths into the matter by the Trust in the capacity of contractors did not entitle the Trust to a commission, but if at any future time the Armstrongs became converted into purchasers instead of contractors, or as well as contractors, whichever alternative we wish to view it in, that if that had been brought about by any action of the Trust, if the Trust had contributed in any way to bring about that change of status that made Armstrongs a purchaser or a prospective purchaser, when I think the Trust would be entitled to a commission.

KENT, J.—They could not do that under that letter because the negotiations were taken out of their hands. MR. HOWLEY—Yes, my Lord, we had reached a stage where they had ceased to have the right to negotiate, but if, during the period they had the right to negotiate, if during the period before their authority terminated they had done anything which had resulted in changing the status of the Armstrongs, or had done anything which resulted in finding another purchaser and introduced him to us, then I submit that they would be entitled to their commission, and I go further and say that if before the termination of their agency they had brought us into touch with a purchaser as a purchaser and that the purchase did not materialize until after the termination of the agency, that even then they would be entitled to be considered for a commission.

Your Lordship will remember that I deferred the question of a right to a commission on the sale of the railway, so far as such right might be based upon its being connected with or arising out of these Humber negotiations, until I had dealt with the Humber. I do not think that there is any necessity to waste very much time over this point. It is evident from the correspondence and the negotiations that took place with the Newfoundland Government after the execution of the agreement with the Armstrong Whitworth Company in October, 1922, and up to the time when the Government guarantees were provided for by the Legislature in, I think it was June, 1923, that the question of the fate of the railway became a matter that was considered side by side with this Government assistance in the financing of the Humber scheme. I think we will find in some of the earlier correspondence—when I say "earlier correspondence" I mean the correspondence prior to 1922—some indication in letters that at some period there had been in the minds of the parties an

idea of selling the railway or financing it in some way through financial houses outside this Colony. Strange to say, that has not been referred to specifically at any stage of the case or by any of the witnesses, but I think your Lordship will notice somewhere in some of the correspondence some reference to such a proposition, but it was an entirely different and distinct proposition and was in no way connected, even remotely, with the actual sale of the railway which did take place to the Government of Newfoundland in the spring of 1923, and except insofar as the exigencies of the moment appealed to the Reids or to politicians in power at the time as being a favourable opportunity to bring the various disputes and various difficulties with regard to the railway contracts and the operation of the railway to a head, I submit that there is nothing in the evidence to show that the arrangements for the sale of the railway and the arrangements that we know ordinarily as the Railway Settlement Act were a part of the Humber negotiations or were a part of the Humber transaction which took place between the Armstrong Whitworth Company and the Reids, and the claim of the Plaintiffs for a commission of ten per cent. on the sale of the railway to the Government. If based on any such grounds as its connection with the Humber or the Humber scheme or the Armstrong Whitworth business, is so absolutely remote and disconnected that there is no need for me to waste time in arguing it. I have already dealt with the possible position of the claim for a commission on a sale of the railway being founded upon the oral agreement which the Plaintiffs have set up and sought to prove as entered into in December, 1919, and I think that has already been fully covered, my Lord.

Now, my Lord, there are two other points to which I wish to refer in connection with the commission agreement percentage before I proceed to deal with the question of a claim for services rendered and other questions that arise under the Pleadings, and these are (1) the claim with regard to the St. John's Light & Power Company, and (2) the claim with regard to Little Bay Mines. I shall take the St. John's Light & Power Company first.

It is apparent from the correspondence that the Plaintiffs were engaged by the Reid Newfoundland Company to undertake or participate in an effort to raise a bond issue for the purpose of the Light & Power Company, and it is also apparent that at some stage of the proceedings in the year 1921 that the Plaintiffs had brought this matter under the notice of the Armstrong Whitworth people, but there is no specific agreement, no agreement at all in fact, as to the method in which the Plaintiffs are to be remunerated for the services that they might render in this connection until we get down to November, 1921. It was not dealt with in the Minute of August 14, 1920, and during the summer of 1921 a question as to the manner and method of the remuneration comes up for discussion, and is brought up by the Plaintiffs, and is finally settled by Mr. Conroy's letter of November 15, 1921, which provides that a commission at a rate to be determined by agreement, or in default of agreement, by arbitration, shall be paid. Now, my Lord, incidentally, and I think I have mentioned this before, this transaction and this agreement with regard to a commission on the Light & Power Company deal at this time is a further item of evidence against the alleged oral agreement of December, 1919. But, be that as it may, and apart altogether from that, the position is that whatever services the Plaintiffs were asked to undertake with regard to the St. John's Light & Power Company, and whatever services they rendered with regard to the St. John's Light & Power Company, have an agreed compensation or method of compensation provided for in the first paragraph of Conroy's letter of November 15th, and that is by a commission at a rate to be determined by agreement, or in default of agreement, by arbitration. Now it is not contended, and, as a matter of fact, it is not the fact, that the financing of the Light & Power Company was the result of any services performed by the Plaintiffs at all. There is no evidence that the Light & Power Company was ever financed at all. It is not in evidence, but it was financed and it was financed in a different quarter, altogether, remote entirely from the Plaintiffs or from Armstrong Whitworths. My learned friend corrects me when I use the expression "financed." In November, 1921, the idea was to finance it by a bond issue. What actually did take place after was that there was an absolute sale which was conducted, with parties in

either with the Armstrong Whitworth people or with anyone else, and therefore I submit that insofar as there be any claim for commission under this agreement of November 15, 1921, there is no justification for such a claim. So far as any claim for services rendered is concerned, I shall deal with that when I come to that phase of the situation. Now the only other matter, my Lord—

KENT, J.—Was there any demand for arbitration or any demand for other consideration to the Reids has resulted from the efforts of the Trust,

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Canada who were in no way connected—

MR. EMERSON—Are you giving evidence on that?

MR. HOWLEY—I am merely stating a fact. There is no evidence any way on that, if we have to be exact. There is no evidence, nor has it been suggested that either a financing by a bond issue or sale or any other dealings with the Light & Power assets which resulted in bringing money or other consideration to the Reids has resulted from the efforts of the Trust,

either with the Armstrong Whitworth people or with anyone else, and therefore I submit that insofar as there be any claim for commission under this agreement of November 15, 1921, there is no justification for such a claim. So far as any claim for services rendered is concerned, I shall deal with that when I come to that phase of the situation. Now the only other matter, my Lord—

KENT, J.—Was there any demand for arbitration or any demand for other consideration to the Reids has resulted from the efforts of the Trust,

MR. HOWLEY—No, my Lord, except that, as your Lordship will remember, at a certain stage of the proceedings some correspondence between a Mr. Jackson, who was a shareholder of the Trust, was put in evidence from another standpoint altogether, and in some of that correspondence it would appear as if Mr. Jackson and his associates, shareholders of the Trust, or somebody, had been making enquiries as to what would be a proper rate of commission (Continued on page 10.)