

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.)

Under the arrangement made in December, 1919, and January, 1920, the Reid Company, through its President and Vice-President, became interested in and closely associated with the Trust, and Mr. Greenwood and Mr. MacDonald were enabled to give their exclusive services to the business. Further, the Reid Company had secured the existence in London of an organization through which, though he was not prepared to enter into a general agreement of agency, and business needing attention in London could be transacted; in fact, the Trust did later become the centre of the Reid activities in England and to be referred to by them as the "London office."

This arrangement made no real difference in the nature of the relations that had previously existed between the parties. It gave stability and permanency to the Trust and its relations with the Reid Company. Each party retained its freedom of dealing with the other, the Trust was free to take options from the Reid Company, or co-operate with others in doing so, and the Reid Company was free to sell them to the Trust or to dispose of them to others with or without the intervention of the Trust. There was no special agreement of agency between them or any binding contract as to the sale of any of the property. The proposals made by Mr. Thomson on behalf of the Reid Company in his letter to the Trust on November 5th, 1920, seem to have remained unaffected by this agreement. These proposals were not really options binding the proposer to sell, but mere offers to sell some of the properties on stated terms and to negotiate terms of sale of others when the parties were ready to do so. It is not material to enquire whether these proposals were acted upon by the Trust or not, as the ques-

tion in this case is what, if any, remuneration the Trust is entitled to for services rendered in these transactions, in which it acted as agents for the Reid Company. So far as the properties in connection with which these services are alleged to have been rendered, the position in January, 1920, did not differ materially from that in which they were when Mr. Thomson went to London in April, 1919; the Reid Company still owned or controlled the Humber Valley and the Gander Valley and other properties and assets of great potential value awaiting development and it expected the Trust, instead of Mr. Thomson, would obtain the capital required for their development.

On January 7, 1920, Mr. Reid wrote to the Trust renewing the offer made through Mr. Thomson on November 5th of an option on the Humber Valley property for the purpose of a scheme for the fixation of nitrogen. He says: "When the question falls to be decided upon as to which of the powers will be selected we are prepared to give you an option subject to prior sale . . . when the sale is further advanced."

In the summer of 1919 the Reid Co. contemplated grouping its properties and placing them before investors as a whole, but Mr. Thomson advised them against doing so, as he thought it better to deal with each property separately as originally intended. The Reid properties naturally fell into separate groups each forming a unit for the purpose of development. The properties to which the claim made in this case relates are distinguishable as follows:—

- (1) The Humber Valley property, consisting of water powers on the Humber River with timber and pulp lands on the West Coast.
- (2) Gander Valley property consisting of water powers on the Grand River with pulp lands surrounding.
- (3) Little Bay and Tilt Cove mines held under option by Messrs. H. D. and R. G. Reid.
- (4) St. John's Light and Power Co. which owned the hydro-electric plant at Petty Harbour and operated the St. John's Street Cars and the electric light and power activities of the city.

In February, 1920, Mr. Greenwood returned to London, accompanied by Mr. R. G. Reid, Vice-President of the Reid Company, and of the Products Company. Mr. Thomson went to British Columbia in connection with his own business affairs but he promised Mr. Reid that on his return he would come to Newfoundland and assist the Reid Company to solve the difficulties and disputes outstanding between the Government and the Reid Company under the Railway operating contracts. Mr. Thomson came to St. John's in March, 1920, and remained until December. He attended to his duties as a director of the Reid Company, particularly to the dispute with the Government.

As a result of Mr. Thomson's visit an arrangement was made that the Government take over and operate the Railway for one year, from June 30, 1920. The Reid Company was thereby temporarily relieved from its obligations to operate the Railway. The Reid Co. paid Mr. Thomson a fee of \$25,000 for his services in that matter, and no claim is made in connection therewith in this action.

In 1920 the Reid Company put into effect plans it had been considering for some time of dividing up its properties by divesting the Reid Company of such as were not connected with the operation of the railway and transferring them to subsidiary companies to be promoted by it for that purpose. The facts of this transaction are according to the evidence as follows:—

In 1901 the Reid Company, under its charter, took over the railway operating contract of 1898 between the late Sir Robert Reid and the Government together with the franchises and assets held by him in connection therewith. The Charter provided also for the merger in the Reid Company of the following companies, namely, of the St. John's Street Railway Company which had been incorporated by legislative charter in 1898 and which owned the Electric Light and Power business as well as the Street Railway services in St. John's, the Reid Land Company, Ltd., which was incorporated by Sir Robert Reid in 1900 and owned the lands granted to Sir Robert Reid under the Railway operating contracts and the Reid Steamship Co., Ltd., also incorporated by him in 1900 which owned the coastal steamers; so that all these various properties vested in the Reid Company.

In 1918 Mr. Conroy, K.C., who was then a Director and legal adviser of the Reid Company, drew the attention of the President, Mr. H. D. Reid, and the Directors to the inconvenience of this consolidation of all the Company's assets in a single company and advised that the assets should be segregated from the Railway and should be managed through other companies to be formed for that purpose. In May, 1919, Mr. Conroy at the request of Mr. Reid, gave his opinion in writing upon the power of the Reid Company to carry out this scheme of the segregation and the method by which he thought it could be carried out. Nothing had been done to accomplish this segregation prior to Mr. Thomson's visit to St. John's in the summer of 1918.

When the Trust was formed in October, 1919, and the question of taking options upon the various properties of the Reid Company was under consideration, the question of separating from the Reid Co. its properties other than the railway properties was regarded as necessary to facilitate the realization of the plans for development of those properties. The Trust recognized that the questions at issue between the Reid Company and the Government in relation to the Railway were an undefined menace to the titles of those properties so long as they remained vested in the Reid Company which would prevent the investment of capital in these developments, and thought it advisable to separate them from the Reid Company.

In January and February, 1920 the matter was discussed by Mr. Thomson and Mr. Reid, and it was decided to organize subsidiary companies and to transfer these properties to them as advised by Mr. Conroy in May, 1918.

About this time the Bank of Montreal, which already held a mortgage on four of the Reid Company's steamers, requested a further mortgage on its remaining four steamers. Sir William Reid, a large shareholder of the Reid Co., was antagonistic to the other directors, and they and the other shareholders believed that he would oppose giving this mortgage to the Bank of Montreal. The charter of the Reid Company required that a two-thirds majority in value of the shareholders present, in person or by proxy, at a meeting, to authorize the mortgage, but if Sir William Reid voted against it the required majority could not be secured. To meet this contingency Mr. Conroy suggested that a Bill embodying a Company's Clauses Act, which would provide amongst other matters that a bare majority vote be sufficient for such resolution in the Companies incorporated by charter be prepared for presentation to the Legislature. He considered such an Act necessary to the proper functioning of such companies. On his suggestion Mr. Elliott, the solicitor in Montreal of the Reid Co., drafted the Bill. The Reid Company believed that the Government then in power in Newfoundland was hostile to it and would not facilitate the passing of the

Act through the Legislature if it knew of the Reid Co.'s connection with it. The draft bill was sent through Mr. Thomson to Major MacDonald in London with instructions to hand it to the Trust's solicitor in London, Mr. Barker, to be sent by him to the Attorney General of Newfoundland, intimating to him that the legislation was necessary to obtain British capital for investment in Newfoundland and to request the enactment during the then approaching session of the Legislature. These instructions were carried out by the Trust and Mr. Barker; but the bill was not submitted to the Legislature as the Attorney General did not have time to give it proper consideration.

In the meantime on the suggestion of Mr. Conroy the Attorney General in 1920 put through the Legislature an amendment to the Companies Act by inserting therein those parts of the English Company's Act, 1906, that enabled a company incorporated by charter by a majority vote of its shareholders to register as a Company under it. In November the Reid Company registered as the Reid Newfoundland Company, Ltd., under the Companies' Act as amended. In December it promoted three subsidiary companies, namely the Mines and Forests (Nfld.) Ltd., St. John's Light & Power Co., Ltd., and the Newfoundland Dockyard, Ltd., and entered into contracts with each of them; with Mines and Forests for the sale of 100 shares in the Reid Company; with the St. John's Light & Power Co. for the transfer to it of the Light and power plant including the St. John's Street Railway business; with the Newfoundland Dockyard Company for the transfer to it of the Dock and premises in St. John's Harbour. In return for the transfer of these properties the Reid Co. received from each company the allotment to it or its nominee of its entire share capital. In this way the Reid Company carried out its plan to segregate its assets and to give the Bank of Montreal the first mortgage it required. The Reid Co. did not ask the Trust to do anything in working out these proposals except the request through Mr. Thomson to hand Mr. Elliott's draft of the proposed Companies' Clause Act to Mr. Parker with instructions as to what he was to do with it. This constitution it gave to the question of the separation of those properties from the Reid Co., was incidental to its own work, not at the request of the Reid Company. So far as Mr. Thomson was concerned, he was at that time a Director of the Reid Company and his connection with these matters was in that capacity. I think therefore that the Trust is not entitled to any remuneration in connection with this subject of the separation of the assets, but it is entitled to be paid for the work it did in connection with the draft legislation sent over from Montreal by Mr. Elliott. I have no means of estimating the value of these services, but I allow the Trust an amount to be assessed hereafter.

In February and the following months of 1921, the Reid Co. endeavoured to procure the English Capitalists who would take over the Railway and operate it under a new contract to be arranged with the Government. Nothing, however, came of these negotiations. The Trust rendered some services in London to the Reid Co. in furthering this project. I think the Trust is entitled to be paid for these services. These services had, in my opinion, nothing to do with the Company of June 8, 1923, under which the Government bought the Railway, Steamship and other properties of the Reid Company, or to the negotiations which led up to that agreement, further I am of the opinion that the Trust took no part in the negotiations which led up to that contract or with the contract itself. I therefore disallow all claims made by the Trust in connection with them.

I shall now consider the claim of the Plaintiff to have transferred to it by the Reid Company \$141,166 fully paid shares in the Company formed to acquire the Little Bay Mines. The Reid Company, as such, had no interest in this mine. It was a personal interest of Mr. H. D. and Mr. R. G. Reid and Mr. Forbes as partners. It is clear from the Minute of the Reid Company passed on August 14, 1920, referred to as the "Commission Agreement" that it was the intention that the Little Bay Mines would, with the ungranted mineral rights in the lands of the Reid Company be transferred to an Exploration Company to be formed for that purpose. This Minute so far as it is at present material says: "It was VOTED to offer for sale through the Trust to an Exploration Company to be formed the Messrs. Reid's options on Little Bay Mines and Tilt Cove Mine, in conjunction with the ungranted

mineral rights over all the Reid Newfoundland Company's lands, the capitalization of such an Exploration Company and the terms at its development operations to be settled later."

This programme was not carried out. If it had, it might be contended that the Reid Company was obliged to pay or procure the payment of the remuneration of the Trust for any services it might have rendered. Paragraph 17 of the Statement of Claim says:—"The sale of the Little Bay and Tilt Cove Mines which was contemplated, at the time of the making of the Commission Agreement was not affected, but in January, 1921, the Reid Company agreed with the Plaintiff Company that the Plaintiff Company should receive ten per cent. commission upon the amount to be received by the Reid Company upon the sale of its interest in the Little Bay Mine. An agreement was subsequently made for the sale of such mine under which the Reid Company received \$141,166 in shares. The Reid Company has not transferred to the Plaintiff Company the proportion of such shares to which it is entitled as aforesaid or any part thereof."

There is no evidence of the agreement alleged to have been made by the Reid Co. in January, 1921, or that the Reid Co. was a party in any other agreement in relation to this property than that set forth in the Minute of August 14, 1920. It seems to me that in this transaction, Mr. Reid and his partners, and not the Reid Company were the clients of the Trust. The commission to which it became entitled is upon the amount received by the partners. The Reid Company received no return from the sale. The Trust evidently took this view of the matter when it wrote Mr. Forbes on May 26, 1921, in a reply to his letter of May 10th saying "At a meeting of the Board of the Trust to-day, the understanding came to, namely, a commission of 10 per cent. of the amount received by Mr. H. D. Reid, yourself and partners for the sale of Green Bay and North Flame Bay, was confirmed." I am asked to make an order directed to the Reid Company to transfer these shares to the Trust. I am unable to make such an order directed, but I understand that the present holders of these shares are prepared to transfer to it the 10 per cent. the Trust now claims to be entitled to.

As regards the claims by the Trust to be paid for services rendered by it to the Reid Company in connection with the St. John's Light & Power Co., Ltd., one of the subsidiaries of the Reid Co., appears that in August, 1920, when Major MacDonald, representing the Trust was in St. John's, Mr. Reid, on behalf of the Reid Company spoke to him about raising \$1,000,000 for the use of the St. John's Light & Power Co., to be expended in improvements and extensions of that Company's business. When Major MacDonald returned to London, he interviewed financial firms in London, including Messrs. Armstrong-Whitworth Company, on the subject. Very little, however, was done until the beginning of the year 1921, when negotiations were conducted by the Trust to raise the money. A considerable amount of work was done by it in this connection, in collecting information and negotiations with the Armstrong-Whitworth Company and others on the subject. Before any definite results were reached the authority of the Trust was terminated by the Reid Company under circumstances to which I shall refer later. There had been no express agreement regarding the remuneration of the Trust for its services in the matter, but there was an unexpressed understanding that it would be paid by commission out of the amount received through its efforts. When Mr. Conroy and Mr. Reid were in London in November, 1921, after the Trust had ceased to act for the Reid Company the subject of remuneration for these services was discussed by Mr. Conroy with the Directors of the Trust, and on November the 15th an agreement was made which was embodied in a letter from Mr. Conroy to the Trust and accepted by the Trust on November 19th. This letter says:—

"(1) As to the proposed bond issue of St. John's Light & Power Co., Ltd., we confirm that should the money be obtained through Messrs. Sir W. G. Armstrong-Whitworth & Co., Ltd., or other parties introduced by you, commission will be payable to the Trust at a rate to be determined by agreement, or, in default of agreement by arbitration, notwithstanding that the definite negotiations resulting in the sale of the bonds will have been conducted by us directly and not through the Trust."

By this agreement, the terms upon which the Trust was to be remunerated were settled. It was to be paid a commission only in the event of the money being obtained from parties introduced by it. The money was not so obtained. In fact, it does not appear that the money was raised at all by the Reid Co., but that the whole property was later disposed of to another concern. It seems to me that under the agreement, the right of the Trust to remuneration was conditional and that condition has not been fulfilled and that therefore the Trust is not entitled to be paid the amount of its claim on this head.

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Director of the "Daily Mail." He talks with him in a general way about the proposal of the Reid Company to develop the properties on the Gander and Humber Rivers. Mr. Burton offered to interest his financial friends and paper mills in England in the matter. On February 15, 1920, Lord Rothermere, with whom Mr. P. Burton was associated, wrote Mr. Reid saying, "A few of my friends here are desirous of taking a hand in a paper making proposition. Are your Humber River lands for sale? If so, will you send particulars of price, I understand the River, if this is so, will you also send me particulars of this. My friends have a fair amount of money, but before committing themselves will require an option for three or four months so as to enable them to enquire into any proposition they will consider."

Whether this letter was resulted of Major MacDonald's interview with Mr. Burton does not appear. Mr. Reid replied by cable saying, "I immediately send your representative to see your London organization, Home and Overseas Trading Trust Company," he also called the Trust that he had done so. Mr. John Cowley, Lord Rothermere's representative, called on the Trust on March 22nd in regard to the Humber and Gander properties. He discussed them with Major MacDonald, Mr. Greenwood, and Mr. R. G. Reid, who was then in London. He thought it was Lord Rothermere's intention to buy outright one or other of the properties. After some negotiations in relation to both properties, Lord Rothermere's interest finally centred on the Gander Valley properties. In April negotiations were confined to the Gander property and on the 4th of June an agreement was arrived at between Mr. R. G. Reid, representing the Reid Company as vendor, and Mr. John Cowley, representing Lord Rothermere as purchaser, whereby it was agreed in consideration of £2,000 balance purchase money to be paid on March 31st. Will undertake also purchase operations on or before March 30th, 1921. Syndicate will be formed immediately consisting ten financially powerful. Power and pulp to be developed first, electrical smelting chrome and production nitrate after they investigate. Buying price would likely be half cash the remainder in shares of parent company. In quoting price cost moving railroad must be remembered in water-power development. Price to be given for Humber including pulp water powers, minerals and Town-ites.

Negotiations on the proposal were conducted by the Trust with Mr. Blackstad in London, and the Reid Company was kept informed by cable of their progress until Major MacDonald,

on behalf of the Trust, visited Newfoundland in August, 1920 to discuss with the Reid Company matters connected with the business of the Trust. During his visit he discussed with the Directors of the Reid Co. the various matters then being handled by the Trust and the relations between it and the Reid Company. The result of these discussions was embodied in the following minute of the proceeding of a meeting of the Directors of the Reid Company held on August 14, 1920:—

"Meeting reconvened on Saturday, August 14th, 1920, at 11 a.m., the full Board being present.

"1. Upon the consideration of the advantage to the Company to be derived from the establishment in London of the Newfoundland Banking & Trust Corporation, Ltd., whose principal business is to assist in promoting the sale or other disposition of the Company's lands and in forwarding projects launched by the Company, and of the desirability of having adequate representation on the Board of the Corporation. (Voted by Messrs. Powell, Conroy and Forbes, the other Directors not voting) that steps be taken to procure the election of Messrs. H. D. Reid and R. G. Reid as Directors of the Nfld. Banking and Trust Corporation, Ltd., and that this Company provide them with the shares necessary to qualify them as such Directors, and that all the profits accruing to them from the said shares in the Corporation be for the account of this Company.

"The Messrs. Reid intimated their consent to become Directors of the Corporation on these terms.

(To be continued.)

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