## Supreme Court

### NFLD. BANKING & TRUST CORP. VS. REID NFLD. CO., AND OTHERS.

THURSDAY, July 9.
AFTERNOON SESSION.

(Continued)

MR. HOWLEY (Continued)—In connection with that defence it is necessary for me here to make reference to the position of the directors, MacDonald and Greenwood particularly, and also Thomson for the matter of that, to the Trust. I think it is necessary for me to point out that, having regard to the nature of the constitution of the Trust, and authority exercised by the Directors of the Trust, particularly by the managing directors, who were there on the spot all the time, that is it utterly impossible for us to make a distinction between the Trust as a Trust, and the Trust as merely the trading name in which Messrs. MacDonald, Greenwood, and Thomson were carrying on this business. Ordinarily, we have the position that the Trust as an incorporated body is a separate and distinct legal entity which has to be recognized as such, and has to have its rights and obligations decided upon independent of the actions or conduct of third parties; but here we have a state of affairs wherein it is utterly impossible to distinguish what is the action of the Trust, what is the right of the Trust, what is the right of Greenwood, Thomson and MacDonald, what are the liabilities of the Trust ,and what are the liabilities of Greenwood, Thomson and MacDonald in so far as concerns of the Reid Newfoundland Company. In so fas as concerns the Reid Newfoundland Company, Thomson, Greenwood and MacDonald are the Trust for all practical purposes; and in so far as the Trust itself is concerned, if we for a moment consider it as a separate entity, or in so far as the interests of the other shareholders of the Trust are concerned—the other shareholders have bound themselves to the constitution of the Trust; they have submitted themselves and allowed themselves and the company in which they hold shares to be entirely in the hands of Thomson, Greenwood and MacDonald, and it is utterly impossible when dealing with the mutual rights and obligations of this concern in its dealings with the Reid Newfoundland Company, to point to any one transaction, and say "This is a Trust transaction, and that is a separate transaction, a personal transaction of Thomson, Greenwood and MacDonald. And, my Lord, that this is so, and that it was ever and always in the minds of the Reid Newfoundland Company in their dealings with those people that the Trust was one with Thomson, Greenwood and MacDonald, the frequent cross references all through the correspondence to the Trust and to Thomson, Greenwood and MacDonald show, and it is impossible to distinguish them. We cannot escape the position that when reference is made to Thomson, Greenwood and MacDonald, it is a reference to the Company that is called the Trust; and in that respect, I wish to submit in the first place that all monies paid by the Reid Newfoundland Company, whether in the name of a payment to the Trust, or whether paid in the name of a payment to MacDonald and Greenwood ;and whether paid under any arrangement specifically set forth, as we have here in December, 1919, and January, 1920, with regard to the £1,000 and £250 a month, and as we have later in April, 1921, with regard to the £175 per quarter rent, and the £400 a month; that

**These payments were made to the Trust by Reid;**

they were paid by Reid to the Trust, on behalf of the Trust and into the Trust, although possibly indirectly to the Trust; but they were payments for which, in taking an account of the position of affairs between the Trust on the one side and the Reids on the other side, the Reids must get credit for.

Then, my lord, we have this position with regard to this £1,000 paid on the 23rd December, 1919, and the following payments of £250 a month, it transpires that these payments came directly into the hands of MacDonald and Greenwood; it transpires that not one of these payments ever appeared on the books of the Trust as payments by Reid for any purpose; and not one of these payments or any portion of them ever appeared on the books of the Trust as a payment out to MacDonald or Greenwood; but what happened—the actual fact was that the first £1,000 which had been sent to MacDonald was divided up, and half of it was taken by Greenwood, and half of it was taken by MacDonald, and the same course was proceeded with in respect of the monthly drafts for £250 each, which were drawn on Reids by either MacDonald or Greenwood ,and honoured by the Reid Newfoundland Company as they arrived.

Now, a reference to the correspondence once more is almost unnecessary, we are so familiar with this section of it, but if your Lordship will permit me to refer to No. 40, which is H.B.T. 27, and which is the letter from Thomson to Reid, dated the 23rd December, 1919, we have ,amongst other proposals, proposal No. 2, which is:

"That you remit to Major J. A. MacDonald the equivalent of £1,000 as a "contribution towards paying management expenses during the next four months."

And then we have No. 41, which is W.H.G. 9, which is a message from Greenwood to the Trust, on the same day, the 23rd December, 1919, and which says:

"Thousand pounds contribution "towards paying management ex"penses during next four months."

And then in No. 2, which is H.B.T. 28, in reply to Mr. Thomson's letter of the same date, Mr. Reid says:

"Referring to your letter of to-day's "date relative to the payment of the "£1000, which has already been for"warded to Major MacDonald. . . . "I beg to say we accept this proposi"tion."

And it is interesting here to note that here we have evidence of all three directors of the Trust being aware of the nature of this £1000 payment. We have first Thomson's letter suggesting it as a contribution towards management expenses. That fixes Thomson's knowledge, of the nature of the proposal. We have, secondly, Greenwood's message: "£1000 contribution towards paying management expenses"; that fixes Greenwood's knowledge of it; and that message was addressed to Camergot, London, and Camergot, London, at that time was Major J. A. MacDonald, and that fixes his knowledge of it. Then we go on to No. 57. But first of all we have No. 50, which is a letter written by Mr. H. D. Reid to MacDonald on the 9th January, 1920, in which he says:

"This was sent you after Mr. Thom"son and Mr. Greenwood had had a "conference with my brother and my"self on the message you sent to Mr. "Thomson of January 7th, relative to "your objections to Mr. Thomson's "letter, and to my letter of December "23rd pertaining to the option to pur"chase ordinary shares in the Home "and Overseas Trading Trust, Ltd., "and to the remittance of £1000 to "apply on management expenses for "four months."

Then we come to No. 57, and 57 is a letter which Greenwood writes to H. D. Reid on the 16th February, 1920, and is marked W.H.G. 12:

"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 establish"ing the Trust, and handling your "interests and the period of time for "such payments. . . . Major Mac"Donald offered the suggestion that "the payment towards management "expenses should be given from the "beginning of the Trust's operations "which was Oct. 1st, 1919, as that was "the date upon which expenditure was "begun on behalf of the Newfound"land development. This was consid"ered a fair proposal by your brother, "as was also that the payments to"wards management expenses should "be at the rate of £250 a month from "Oct, 1st, 1919, to Oct. 1st, 1921. This "arrangement being understood and "agreed to, your brother cabled you, "to which he received your cable con"firming as follows: 'Agree your "terms Trust. Reid.' The £1000 you "had sent in December, 1919 was then "applied under this arrangement."

And then, my lord, we come to No. 61, which is W.H.G. 15, London, March 13th, 1920 from Greenwood to H. D. Reid:

"I have to-day, at the request of "Major MacDonald put through a "draft on you through the Bank of "Montreal for £250, carrying out the "arrangements made by your brother "and Major MacDonald any myself "with you for the monthly contribu"tion to the management expenses of "the Trust. We will handle this mat"ter, if it is satisfactory to you, in the "same way every month, and I will "note on the back of the draft that it "refers to MacDonald and Greenwood ". . . . . etc."

Now my lord, how, in the light of that correspondence, can we put any other construction upon the payment of that £1000 and upon the subsequent payments of £250 a month, but that they are payments to the Trust, or payments for the Trust; and how can the Plaintiffs explain to your lordship's satisfacton that, if these payments were understood and agreed to be personal payments to MacDonald and Greenwood, how can they account for the language used right throughout that whole series of correspondence, commencing with their own letter of December 23rd, 1919, from Thomson to Reid, continuing with Greenwood's message of the same date to Camergot, continuing down in February in Greenwood's letter to H. D. Reid, telling him of what had been concluded between MacDonald and R. G. Reid and himself when R. G. Reid was in London; and continuing into this letter of March 13, when the first of the £250 a month drafts is drawn; how can they reconcile the suggestion that these were personal payments to MacDonald and Greenwood, and had nothing at all to do with the Trust, and the letters that we find at this time dealing with these payments? I ask your lordship, how can it be reconciled with the language of these letters; how can it be reconciled with the express wording that originates with the Plaintiffs themselves and was carried right through?

And then there is another view of it, and that is this: How can it be a contribution towards management expenses if it is not for the Trust?

HON. MR. JUSTICE KENT—In whose name were the drafts?

MR. HOWLEY—The drafts were drawn by Greenwood right down to the period when the new arrangement was made in April, 1921. I am speaking subject to correction. The original payment of £1000 was a payment made to MacDonald.

MR. EMERSON—Not to Greenwood?

MR. HOWLEY—No, it was not paid to Greenwood. I think, as a matter of actual fact there must have been some question of it being handed to Thomson, because in the account as we have it, it is headed "H. B. Thomson expenses." That is in our voucher, but it is acknowledged by all that it is not a personal payment to Thomson, that it refers to this £1,000; and whether it was transmitted direct by Reid to MacDonald, or whether it was given to Thomson to transmit to MacDonald, it went away to MacDonald, and it was received by MacDonald long before Greenwood got over to London.

Here was the position—by the evidence which the Plaintiffs themselves have given, this company was formed on the 1st October, 1919, with very wide powers. Its memorandum of association, as is usual, contained very broad powers, although it may not have been the intention of the Company ever to exercise some of them, certainly not to exercise them to the extent that was contained in the memorandum; but it is evident also from the evidence, that although they incorporated the Company with these very wide powers, which they had in their minds at the time was to deal with the Reid properties, and as early as December, 1919, and before Thomson and Greenwood went to Canada, we are told that they had decided to concentrate on the Reid Newfoundland Company properties alone; and on the 3rd December, 1919, they voted to MacDonald and Greenwood as the managing directors of the Trust, an annual salary of £900 each.

Now, if MacDonald and Greenwood were managing directors of a company formed and being carried on for the specific purpose of dealing with the Reid Newfoundland Company properties ,and were being paid a salary for that purpose, how can they justify the position that they received these further monies from the Reid Newfoundland Company ,and particularly that they received them under the guise of being contributions to the management expenses of the Trust, which they never accounted to the Trust for, which they put into their own pockets, and which so far as we have any evidence before us, the Trust, as a Trust distinct from MacDonald and Greenwood, never heard of until it came out in the progress of this suit.

You see, my Lord, it is not suggested in the correspondence anywhere that this £250 a month is a contribution to personal expenses. It is not suggested that MacDonald and Greenwood, in the pursuance of their duties as directors of the Trust were incurring a lot of personal expenses that could be properly chargeable to the Trust, and therefore, that it was only fair for the Reid Newfoundland Company to subscribe to such expenses. It is generally defined

**As a contribution to management,** and the only management that can enter into the thing is the management of the Trust ,and if the money had gone to the Trust, and then had been formally voted to the Trust by MacDonald and Greenwood, either as further salary, or as extra remuneration for special services, or something of that sort, it would probably be quite in order, but there is no suggestion of anything of the sort; there is no suggestion that the Trust, as independent from Greenwood and MacDonald, ever got a cent of it, ever got the benefit of it, or ever knew anything about it, and it brings us I submit to consider another reason why it is impossible to distinguish MacDonald and Greenwood from the Trust.

Now then, my Lord, with regard to the payments arising out of the arrangement made in February, 1921, I would like to draw your Lordship's attention to No. 169, J.A. McD. 9, which is a minute of meeting of the Plain-

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