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## Supreme Court

(continued from page 5.)

ing the necessary minute of the Board, resolved that two representatives of the Reid Company should accompany Turner on his cruise; and they did not do it.

Apparently a man named Palmer, of whom we know nothing, spent a few days in Turner's camp. He never did any cruising, in fact, if my recollection of the evidence is accurate, he hardly left the camp. These figures of Turner's were sent from Grand Falls to England, and a copy of the report was sent to the Reids here. There is no evidence that they made any effort whatever to check the figures in Mr. Turner's reports, either from the information they had previously to the signing of the option or by information that they had or ought to have had after the signing of the option.

Here is this huge area which has been practically condemned by Lord Rothermere's cruisers, because of the small quantity of timber; here is an area which the Reids value at millions, and we have absolutely no evidence that any attempt was ever made to check up Turner's figures.

Now, are those figures accurate? My learned friends have suggested that Mr. Turner did not cruise properly, but it is abundantly clear that he cruised in the manner in which he has experienced cruiser, taught by Mr. Gilmore, another experienced cruiser, had been cruising similar areas in this country for the purpose of purchase by his principals; and he described to your Lordship how he performed this survey. He, what

they call, "strip cruised"; and in strip cruising the area, I think he told us that the lineal length of his strips aggregated over one hundred miles. He would run a length of 50 many hundreds or thousands of yards, and count the trees on each side of the main line, and then he would work transverse lines, or lines across and on that average it up. I do not see what more he could have done, except my learned friends expected him to count every tree on the area. I do not know. I cannot imagine, nor have my learned friends suggested any more accurate method than that which Mr. Turner used.

MR. HOWLEY—He only did that on part of the area.  
MR. EMERSON—He did that on nearly the whole of the area—he did that on the whole of the area, except for two lots, and on these lots which were burnt and barren, and there was no necessity for him to strip cruise it. Now there were two lots that he did not cruise, and those were 243 and 244. 238, it is true, was not specifically strip cruised, but 238 is in the 1867 burn, and it is included in the description of the total area which that burn covers.

Now, the total acreage of 243 and 244 is 44,369 acres. I had a calculation here which is not quite accurate, but I will check it up as I go along, and your Lordship will read it in the report. In the Turner report your Lordship will find that the highest cordage in the whole area is to be found in lot 75, which is a very small lot of only 3600 acres—about six square miles, and on the 6 square miles it works out at about

16 Cords to the Acre, a Very High Average.

Now, if we allow that these two areas, lots 243 and 244, contain the very highest average that Turner found on the whole of this area, we find that to his total of 614,620 cords must be added 709,834 cords; and that gives us a total of 1,324,454 cords, to which must also be added the 128,000 cords of young growth, which we will give them, so that they will have the full benefit of everything that is in the report.

MR. HOWLEY—I do not wish to interrupt my learned friend, but what about the islands of wood in the burnt area?

MR. EMERSON—Those have not been proved to exist. The report only said that there might be such islands. Now, my Lord, the absolute figure that can be deduced, by giving Reids the benefit of everything that is on the area, is 1,533,354 cords. That, as against the representation that there were 2,700,000 cords, plus 250,000,000 f.b.m. or saw logs, the equivalent of about 250,000 cords, or let us say altogether three million cords—and under the most favourable circumstances we cannot find more than one and a half million cords.

Now, my Lord, there are not entitled in connection with those two areas to the 16 cords an acre. I submit that it would be reasonable to give them the average that was found by Mr. Turner under his strip cruise, and the average works out at about nine cords per acre. Now, if we give them nine cords per acre on these two lots instead of the 16 cords; instead of the 709,834 cords we have 399,321 cords. I may say, my Lord, that I am not an expert at arithmetic, and if I find that my calculations are wrong I will tell your Lordship. That 399,321 cords added to the Turner total—as I say, 399,321 added to 1,452,000 and 128,000, gives us a grand total of 1,141,841 cords. And I submit that under the most favourable circumstances your Lordship cannot find that they are entitled to a consideration of any greater amount than that; but even if they are, the absolute maximum to which your Lordship is entitled to go is 1,452,354, and that is under half of the amount that they represented.

Now, I would like to refer your Lordship to the evidence of Mr. Cowley on commission taken in London, on page 21 of his evidence. (Reids evidence.) There we have Mr. Cowley saying—you may take it from me, if our cruise of the territory proves quite satisfactory to us, we shall be prepared to complete the contract. I think that explains the indefinite language that appeared in some of the messages. (Continues reading evidence.) And that was the end of it, and they never had anything more to do with it afterwards.

I think it is abundantly clear that the Gander failed because of the Reid's misconduct in connection with the representations, and we were deprived of our commission because of these representations, which were, I submit, or would be considered in different circumstances as being a fraudulent statement in that it was made recklessly, and without regard as to whether it was true or false. Suppose, instead of being an option it had been an agreement for sale and purchase, under which the Reid Company made a representation that there were 2,700,000 cords of pulpwood on this property, and it was proved afterwards that that representation was as false as we now know it to be, and Rothermere used for rescission of the contract and obtained a judgment, would we not be entitled to our commission? I do not think that your Lordship will have any difficulty whatever, after I have referred you to the authorities

on the subject, in finding that that is the correct position. That if this had been an agreement for sale containing a representation such as is contained in this option, and Rothermere had sued for rescission, we would have obtained our commission, even though he was successful.

MR. HUNT—Does not clause 11 particularly refer to the matter?  
MR. EMERSON—It particularly refers to a claim under the option. It says that there shall be no claims as between Rothermere and Reid under the option because of the failure to make good the representation as to the cordage.

MR. HUNT—And that there may be further negotiations.  
MR. EMERSON—Yes. I could never quite understand the argument that was opened by Mr. Hunt and followed by Mr. Howley that the parties agreed that they could negotiate further, and that the position was affected by that—there was nothing to stop them negotiating further whether that provision was in the option or not. It strikes me as a particularly foolish provision to have in any document.

MR. HUNT—It was put in by Messrs. Parkers and Hammond.

MR. EMERSON—It was put in at the request of Budd, Johnson and Co.

MR. HUNT—Well, they are both English solicitors.

MR. EMERSON—Well, I have no brief for English solicitors, I don't think they are any better than ourselves. I do not think I have any more to add to the facts in connection with the Gander, and I would ask that I might leave my authorities over until the morning, and I will probably then get through more quickly than if I started now.

The Court adjourned until Tuesday, June 14th, 1925, at 10.30 a.m.

TUESDAY, July 24.

MORNING SESSION.

MR. EMERSON—My Lord, before I go on to the legal aspect of the Gander claim, I find from my notes that there are one or two matters to which I feel that I should refer and which I omitted yesterday. They will not take any length of time.

The first is that Mr. Howley, in his argument on the October option, stressed considerably the statement in that option that representations in regard to cordage and acreage are believed to be true—or to be substantially true, I

think are the exact words—and he argued from that that the Reids were not making an absolute representation. Now, it is an elementary principle, I submit, that all contracts were a representation is made which is believed to be true, that belief must be founded upon a reasonable set of facts which have been ascertained into by the representor. The representation must not be made recklessly, and must not be made without having some regard to the real facts. Now, the mere belief by the Reid Company that these representations are true is not sufficient unless the belief is founded upon some information and they have—I was going to say failed to produce anything to justify their belief—I think I could put it in this way, they have almost refused to produce anything which in any way justifies their statement that they believed this representation to be substantially true. If this were a contract for sale and their representation was put in, even accompanied by the words "The Grantor believes these representations to be true," and an enormous difference between the representation and the true facts were found to exist, there is no question but that the Court would term it a fraud as being a statement made recklessly and without regard to whether it was true or false. There is, therefore, nothing in the document in regard to this representation which at all protects the Reid Company from the consequences of its untruth.

Now, my Lord, my learned friend also expressed some wonder to why this claim on the Gander is not founded upon those cables which passed in April, 1920, where the Directors of the Reid Company suggest that we get five per cent. and the Trust replies and insists upon its ten per cent. Well, my Lord, I think that he has almost indicated to me what the reply is, and it is this, that at this time we were operating under the oral agreement, and we repudiated the idea. The cables show in themselves that there must have been some commission agreement, because otherwise why should the Reid Company, without any introduction of the matter, suddenly send forward the message to the Trust of offering five per cent. commission, when we were supposed to be operating under an option. Then my learned friend pointed out that no claim was made for this for months after the option terminated. Surely that has no value as an argument. At the same time the option went off and for months afterwards we naturally expected that an

other opportunity would arise of earning this commission. The relationship between the parties were quite friendly; in the ordinary course of events negotiations would probably have been begun, and were, in fact, begun, with other parties, but when the matter was taken out of our hands and when relationships are broken off and all the agreements made with us have been terminated wrongfully, then we ask for our legal rights. It does not then become a question of carrying on in the hope that we may sell the property at another time, and, in fact, had the friendly relationships continued and had the opportunity arisen to sell the property again, it is quite on the cards that in view of the fact that our work has twice come to nothing, owing to the default of our principal, we would have insisted upon an increase in the commission to which we would be entitled on a sale, but the mere fact that because friendly relationships continued and it was anticipated that an opportunity to sell the property again would arise does not, I submit, take away our right to sue when the defendant companies have broken their agreement in connection with it.

The final point that I raised yesterday to which I would like to refer is the reference which Mr. Howley made to the correspondence to show, in an argument which I submit was exceedingly strained, that we expected that Rothermere would not exercise the option, and reference is made to various letters in which we point out that we are keeping, as it were, several strings to our bow; if the Rothermere negotiations go off we will see Mr. Morgan or Mr. Grant Morden or somebody else. Surely that is only evidence that we were active and intelligent agents, that we were prepared for the emergency if the Rothermere negotiations go off, but there is absolutely nothing in any of the correspondence which shows that at this time we anticipated that the Rothermere negotiations would not bring results.

Now, in the course of my arguments yesterday, my Lord, you referred me to the letter of September 25th, 1920, from Cowley to MacDonald, in which he speaks about

The value of the property.

I would just like to say, my Lord, in case there should be any misapprehension, that it has to be borne in mind when we talk about the value of the property that, so far as the Reids are concerned, the value of the property is the value of the timber on the property. So far as the Reids' lots are concerned, it is true that he was buying the freehold, but it was the freehold without the minerals. In regard to the Timber Estates, which was a very large proportion of the Gander Deal, he was only buying the right to cut timber under Crown leases and had no right to the land at all. I submit, then, that the real meaning of the Cowley letter is that the failure of the Reid Company to show the quantity of timber will be the only thing which could interfere with their exercising the option, and that it was the report on the timber which decided them is amply proved by his own evidence.

Now, my Lord, the legal aspect of the Gander has to be looked at from several points of view. In the first place we have to bear in mind what the Trust was at this time, and I think that my learned friend has completely missed the point which his authorities were quoted to prove when he does not consider that we were not in the position of, say, a house agent to whom a house has been given to sell. It is true that we have a great many of the attributes applicable to such an agency, but we are far more than that. In the cases which have been quoted by my learned friend a property has been handed over to a stranger—that is to say, a stranger so far as the principal is concerned—he is an agent, as it were by profession, and this property which is referred to in the various authorities, is simply one of the many instances in his business, and the question arises in these cases as to whether, under the circumstances of this particular contract dealing with a particular party, handed over to his general agent, who is not the particular agent of the principal, as to whether the transaction, as viewed in the light of the contract, was one which entitled the agent to a commission when the sale did not result from his efforts; and, another thing, all these cases are simply cases of the Court giving a construction to a particular contract, and in none of them is there any principle laid down for which my learned friend has contended, that under all circumstances where a property is handed over to an agent for sale that the agent must of necessity make a sale before he is entitled to his commission. No such principle has been laid down, and certainly no principle has been laid down, that the agent loses his right to his commission when the going off of the sale is due to the default of the principal. Now, my Lord, the Gander is only one of several assets which had been handed to us to deal with, and the handing to us of those several assets to deal with was more than the mere appointment of a commission agent. Mr. Reid himself in his correspondence generally and specially has laid it down that the Trust

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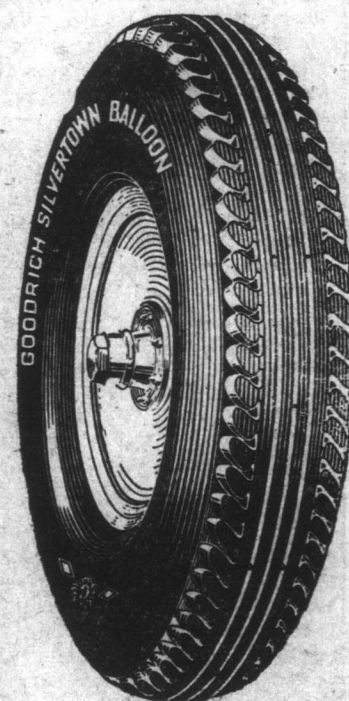
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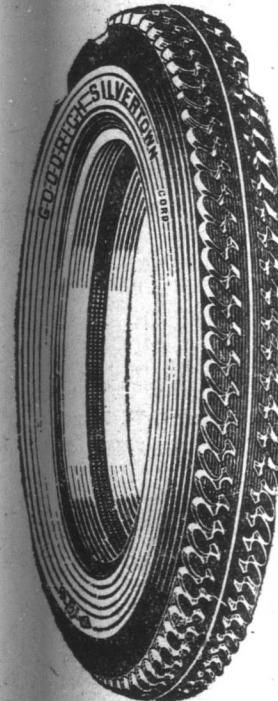
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in this case admit that the Trust is an organization whose principal business is the handling of the Reid properties. The Trust, therefore, is not in the position of an independent party a party independent of the Reids, which has been given a particular asset for sale, it is an organization, if not created by the Reids, adopted by the Reids and made part

of the Reid outfit and for all practical purposes to do nothing else but Reid's work; it is in the combined position of agent and servant. That this position is correct is shown by Mr. Reid's letter to Sir Frederick Williams Taylor, which I think has been put in "J. A. McIl, 222." It is a long letter that is not in the volumes. It is dated the 7th February, 1921 and in that letter, on

Page 3 of my copy, he says, "Having succeeded in getting the assets separated from the Reid Newfoundland Company . . . the next step was 'to prepare our different properties for sale or bonding. To this end I established the Newfoundland Banking and Trust Corporation, Ltd., London, which works closely with me' (Continued on 9th page.)



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