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.

(Concluded).

On October 28, 1921, while Mr. Reid and Mr. Conroy were in London and were engaged in the Armstrong negotiations, the Trust wrote Mr. Reid about the commission due to it in connection with the Light & Power Company loan. Mr. Conroy, at the request of Mr. Reid, met the Directors of the Trust on the 3rd of November and discussed with them matters then outstanding between the Trust and the Reid Company. The position as regards the Trust had not altered since Mr. Greenwood after his conversation with Mr. Conroy in St. John's, on July 4th, sent the cable to the Trust in regard to its commission, except that Mr. Greenwood had on July 21st and 22nd written Mr. Reid, suggesting that the rate of commission of the Light & Power bonds be arranged. The Trust knew at the time of the meeting with Mr. Conroy that negotiations were proceeding between the Reid Company and the Armstrong Company in relation to the Humber Project, but it did not know, nor did Mr. Conroy inform them, of the nature of these negotiations. As a result of the meeting, Mr. Conroy wrote the Directors of the Trust on the 15th of November, saying:—

"Formally acknowledging your letter No. 55 of 28th October to Mr. H. D. Reid and referring further to say my interview with your Directors on the 3rd instant, I beg to say that I have consulted my co-Directors both here and in St. John's, and am authorized to state as follows:—(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. (2) As to the Humber Valley project the position is somewhat similar; the commission payable to the Trust under the Minute passed by the Board of the Reid Nfld. Co., Ltd., when Major MacDonald was in St. John's, will not be affected merely by the fact that our negotiations with the Armstrong Co. are conducted direct instead of through the Trust. (3) As already intimated by me, your Directors on the 3rd inst., we consider that by bringing us into relations with Messrs. Armstrongs and the British Metal Corporation the Trust has performed a very useful function, but that having regard to all the circumstances we believe it would be in the interest of everybody concerned that the Trust should now go into voluntary liquidation. (4) We are, however, willing to consider the alternative course suggested by your Directors on the 3rd inst., viz., the purchase by someone representing the Reid interests of the entire share-holdings in the Trust, including the shares to which Messrs. MacDonald, Thomson and Greenwood are entitled under their option from the Trust, provided the matter could be arranged on a satisfactory basis.

"As it is quite possible that our London negotiations regarding the Humber and Power bonds may lead to nothing, and that we may have to conclude arrangements with our New York friends, the purchase of the Trust shares is in the nature of a gamble and the price would therefore have to be quite a reasonable one. Payment by instalments would have to be provided for, and first payment could not very well be made inside of three months from now.

"Perhaps your Directors would take the matter up with the shareholders and let me know what options can be obtained on the various shareholdings, so that we may be able to give the question fuller consideration."

On November 19th the Trust replied:—

"I beg to acknowledge receipt of your favor of November 15th, and am instructed by the Directors to inform you that your proposals in Clause 1 are satisfactory. The same remark applies to Clause 2.

"As regards Clause 3 of your letter, the suggestion that the Trust should go into voluntary liquidation is one that the Directors would have to give careful consideration to., as there are several phases of the situation which would tend to indicate that this procedure might not be beneficial to everyone concerned.

"As regards Section 4, the Directors are favourable to negotiations along the lines suggested; but there are several features in connection with the proposal which they would very much like to discuss with you at an early date, which they consider might facilitate the situation materially from your Company's point of view.

"To this end, I would be glad if you could notify the Trust so that the Directors could meet you as soon as possible to discuss this phase of the situation." Mr. Conroy, again met the Directors of the Trust and discussed the purchase of their shares in the Trust with Messrs. MacDonald, Greenwood and Thomson, but the shares were not bought.

The agreement made in November, 1921, was clearly intended as a settlement of the question, what, if any, remuneration the Trust was entitled to be paid for its services in respect of the Light & Power Company's loan, and the Humber Valley project? It settled that question by the Trust's accepting the proposal made in Mr. Conroy's letter of November 15th. I have already stated that the Trust was not entitled under this arrangement to be paid for its services in respect of the Light and Power loan. Now as regards the Humber projects: Mr. Conroy's proposal was that "The commission payable to the Trust under the Minute passed by the Board of the Reid Co., Ltd., when Major MacDonald was in St. John's, will not be affected merely by the fact that our negotiations with Messrs. Armstrongs are conducted direct instead of through the Trust." The commission payable under the Minute of the Reid Company, or what I have called "The Commission Agreement," was ten per cent. of the purchase price. If the negotiations with the Armstrong, Whitworth Co., that resulted in the agreement of the 12th of October, 1922, had been conducted through the Trust, it would, under the Commission Agreement, have been entitled to be paid ten per cent. on the purchase price rceived by the Reid Company on the transaction. But as a matter of fact, the negotiations with the Armstrong, Whitworth Co. were conducted by the Reid Company direct instead of thru' the Trust,—the only difference being the medium of negotiations. That being so, the Trust is entitled to be paid a commission of 10 per cent. upon the purchase price, by virtue of the settlement agreement of November, 1921, which provides that the commission payable under the commission agreement will not be effected merely by the fact that the negotiations with the Armstrong, Whitworth Company are conducted by the Reid Company direct, instead of through the Trust. This view is confirmed by an examination of what had previously happened in respect of the Trust's claim to be remunerated for its services in respect of the Humber Valley project. From the time that Mr. Conroy delivered to Mr. Greenwood in St. John's his letter of the 2nd May, 1921, notifying him that should a new agreement be made, with Mr. Blakstad, a new arrangement with the Trust in regard to commission would have to be made. The Trust throughout maintained that its agreement in regard to commission could not be altered except by consent of all parties. In July, 1921 Mr. Greenwood had an interview with Mr. Conroy on the subject and as a result of that interview he sent, on July 4th, to the Trust in London, with Mr. Conroy's consent, a cable saying "Reid declares that if he negotiates Humber with Armstrong Whitworth and Co. and finalize deals, Trust gets 10 p.c. commission." The Reid Co. at that time hoped the Armstrong Co. would take Mr. Blakstad's place in the scheme. I think Mr. Greenwood's cable of July 4th, sent with Mr. Conroy's consent, and the hope of the Reid Co. that the Armstrong Company would take Mr. Blakstad's place in the Humber scheme have an important bearing on the intention with which the settlement of November was made. It is perfectly clear that the intention was that if the Reid Co.'s negotiations with the Armstrong Co. resulted in the sale of the properties, the Trust would be entitled to be paid its commission out of the purchase money received from that sale. A sale did result from them and the Trust is entitled to be paid its commission out of the purchase price. I am unable to accept the suggestion made by Mr. Conroy in his evidence that because the negotiations going on with the Armstrong Whitworth Co. in November were directed only to making with that Company a contract to construct the works involved in the Humber scheme and to secure its co-operation in raising the money needed to pay for them, and consequently no sale was contemplated and no purchase money out of which to pay the commission. I do not think such an interpretation can be entertained for a moment. Mr. Conroy did not inform the Directors of the Trust of the nature of the negotiations the Reid Co. was then conducting with the Armstrong Co. or that they did not contemplate a sale out of the purchase price of which the Trust was to be paid its commission. It is clear that the settlement contemplated that the Trust might earn its commission as a result of the negotiations with the Armstrong Co. If Mr. Conroy did not intend the Directors of the Trust to understand that the negotiations with the Armstrong Co. might result in a sale, his whole proposal was illusive and deceptive. Mr. Conroy in his evidence says that he had at the time the settlement agreement was made in November he had in the back of his mind a hope that a sale of the property would ultimately be made through the Armstrong Whitworth Co. I think no other meaning could be placed on this settlement than that the Trust would be entitled to its commission under the commission agreement of August, 1920, if the negotiations between the Reid Co. and the Armstrong Co. resulted in a sale. I must therefore hold that the Trust is entitled to be paid a commission of 10 p.c. upon the purchase price of the Humber Valley property received by the Reid Company itself or through the Mines & Forests under the agreement of the 12th of October, 1922 with the Armstrong Co. as and when the same are received by them. Now what is the purchase price received by the Reid Co. and by the Mines and Forests as a result of this agreement? I understand purchase price to mean the equivalent received in return for what was given. In the final analysis the Reid Co. gave to the Products Co. as re-organized under the name of the Nfld. Power & Paper Co., Ltd., lands and timber and water rights and concessions it owned and held in its own name or in the name of Mines & Forests or the Products Co. and received in return the following:—

(1) 15,000, 6½ p.c. Non-Cumulative Preference Shares of the Products Co. of $100 each.

(2) 24,000 Ordinary Shares of the Products Co. of $100 each.

(3) 36,000 Deferred Ordinary Shares of the Products Co. when they are transferred to the Reid Co. under Clause 8 (2) of the agreement of the 12th October, 1922.

(4) The several royalties payable to Mines & Forests under Clause 9 of the agreement.

(5) The option given to the Reid Co. under Clause 10 of the agreement.

(6) $685,000 paid by the Armstrong Whitworth Co. for the shares transferred to it under Clause "G" of the agreement.

(7) The rights given the Reid Co. and or the Mines & Forests under Clause 11 and Clause 16 of the agreement.

I do not, however, include in the purchase price received by the Reid Co. the 75,000 6½ p.c. Preference shares transferred to the Trustee under Clause 7 (2) of the agreement because these shares were held by the Trustee, free from the rights of the Reid Co. therein, for the account and benefit of the Products Co. (that is the Nfld. Power & Paper Co., Ltd.), and not for the benefit or account of the Reid Co. as the 36,000 deferred ordinary shares were held. I do not include in the purchase price the $500,000 paid to the Reid Co. by the Products Co. in discharge of its debt for survey work, etc., because this was paid not as a part of the purchase money, but in discharge of a debt that was due it by the Products Co. It was paid by the Armstrong Co. under an agreement between it and the Products Co. and charged to the Products Co. to be repaid to the Armstrong Whitworth Co.

In addition to the specific defences to the claims made by the Trust for remuneration for its services rendered in respect of different property, the Reid Co. by paragraph 23 of the Statement of Defence, charges the Trust with wilful breach of duty and misconduct in the course of their agency, in that

(1) It entered into a transaction with Mr. Blakstad for a profit out of the Humber deal beyond that payable to them by the Reid Co.

(2) In May it requested the Bank of Montreal, whom they knew to be a creditor of the Reid Co. to bring pressure on the Reid Co. to enter into an agreement with Mr. Blakstad.

(a) To the detriment of the Reid Co.

(b) From which the Trust would derive a profit from Mr. Blakstad in addition to those they hoped to receive from the Reid Co.

(c) On or about the 8th of April, 1921 the Trust by telegram requested Mr. H. D. Reid and Mr. C. O'N. Conroy, who at that time were Directors of both the Products Co. and the Reid Co., to join with them in defrauding the Products Co. and the Reid Company.

As to the first allegation: The transaction referred to in the agreement between the Messrs. Thomson, MacDonald and Greenwood made on the 5th April, 1921, by which Mr. Blakstad undertook to transfer to each of them, personally $500,000 of the shares in the Products Co. which he would be entitled to under the Humber agreement of that date. I have already stated the facts of this transaction, I have now to say not whether these facts provided a justification of the revocation of the authority of the Trust, but whether they constituted such misconduct on the part of the Trust as to be a defence to all claim on its part to be paid for services rendered in connection with the Humber transaction. I do not pretend to justify the transaction in itself. It must be remembered, however, that Mr. H. D. Reid, President of the Reid Company, who was then in London, duly authorized for the purpose of getting through the Blakstad agreement, was informed of the transaction some days before it was completed that he and his legal adviser, Mr. E. M. MacDonald, K.C., gave their consent to the Directors of the Trust receiving these shares from Mr. Blakstad and that, when it was completed, copies of the letters exchanged between the Trust and Mr. Blakstad were given to Mr. Reid in the presence of Mr. MacDonald, K.C., and that Mr. Reid, by letter, expressed his concurrence with them. Later, after the Humber agreement with Mr. Blakstad had failed through the refusal of the Government to guarantee the issue of the bonds though the Reid Co. did not confirm the action of its President at no time, so far as the evidence discloses, was the Trust informed that its authority was drawn because of this transaction between them and Mr. Blakstad.

As regards the second allegation: This charge is stated in three different forms, all of which refer to the same matters, that is to the interview and discussions that took place between Messrs. Blakstad and Greenwood and the officials of the Bank of Montreal when they visited the Bank of their return from St. John's in April, 1921. I have already said that

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