

### Supreme Court

BANKING & TRUST CORP.  
REID V. YLID. CO. AND  
OTHERS.

THURSDAY, July 9.  
AFTERNOON SESSION.

(Continued)

Court having resumed its sitting this afternoon session, MR. Justice Day presided. May it please your Lordship, the first point that I have to deal with in connection with the claim for services rendered, is as I stated before, whether any of the various disbursements made by the defendant, as I stated before, in such matters as are covered by the agreement to pay a certain amount of money, or if I may use the words, "Results," the general services rendered is excluded from the claim. I shall deal more particularly with this point when I reach the question of your Lordship's permission to substitute the authorities upon the points of law that arise in connection with the various matters, but for the present I would draw attention to the fact that the principle is referred to, clearly in that same case of *Re Isaacson*.

At the immediate moment I propose to confine myself to a statement of the facts of the case, and to have come within the scope of the various commissions, and, of first of all, my Lord, that if your Lordship should find that there was a commission set up as alleged made between the plaintiff and the defendant in 1916—of the content of course, as there is a report that there was such agreement—but if your Lordship should find that there was an agreement, then the agreement as alleged in the case is general in its terms that in every single transaction in which the Trust participated, when I say "general" I mean with regard to the business of the Reid people, and if any such claim can be made by any chance he suggests, by your Lordship's holding, that every single one of the different varieties of business projects of the Reid Newfoundland Company, with which the Trust was in any way connected, are covered by the agreement to pay a certain amount of money, and in accordance with the principle of law, from your Lordship's commission, and in the nature of the case, my Lord, I merely state this, because I feel quite confident that the agreement alleged to have been made, or to be made, by your Lord, we come down to the payment of the bills sent by the Reid Newfoundland Co. to the Trust, on the 24th April, 1921, and the bill for a few days later, and the bill for the 14th August, 1920, may have reference to the Humber and the other lands and whatever claim for commission or for services, may have accrued down to August, 1920, is satisfied and discharged in the express agreement of the 14th August, and in so far as it refers to the Humber, the other lands of the Reid Newfoundland Company, we have, we have to lay aside, any claim or understanding with regard to these properties prior to this date, and we have to consider as settled and discharged any claims under the agreement, or understanding, or agreement, in regard to any of these services or claims prior to the date, and we begin on the 14th August, 1920, so far as the Reid Newfoundland and the Gander and the min-

eral lands, with the express agreement set forth in that minute of the 14th August, communicated to the Trust and assented to and accepted by them; and that agreement, the agreement created by that minute and its acceptance is a complete and an express agreement for the remuneration on the basis of a ten per cent. commission on results; and the rule excluding any consideration of quantum meruit or services rendered or payment which results do not ensue, applies in the full extent in excluding from your Lordship's consideration any such claims.

Then, my Lord, in regard to the claim for services rendered in connection with the Reid Newfoundland and Power Company, the same rule applies, because of the existence of an express agreement to pay on a commission basis, as settled by the letter which was written by Mr. Conroy on the 15th November, 1921, and accepted by the Trust; and that leads me to the consideration of the second line of defence which I have suggested to the claim for services rendered; and that is that any services rendered for which the plaintiffs are entitled to be paid, have been paid for by the payments already made.

That leads me on in the first place to a consideration of the claim of the plaintiffs and disbursements. Your Lordship will remember that there is an account of the claim for services rendered and disbursements made and expenses incurred by the plaintiffs on behalf of the defendants, aggregating £2,171.44. This, my Lord, is entirely exclusive of the claim for £700 under the arrangement to contribute to the expenses of rent, and office expenses of the Trust, with which I shall deal separately.

This claim for £2,171.44 is made up as follows: £200 for cables; £375 for expenses of Major MacDonald in coming to Newfoundland in 1920; £375 for expenses of Mr. Greenwood coming to Newfoundland in 1921; £1209.13.4 for solicitors bills paid to Messrs. Parkers and Hammond; and £11.11.0 for fees paid for assays. There are two receipts, two vouchers, for the claim for fees paid for assays. One is for £5.5.—the other is for £6.0. I shall take these smaller items first—these claims for payments made for assays. In the first place, this £5.0 is evidenced by a bill, a receipted bill put in evidence by Mr. R. O. Hughes—and attached to and forming part of E.G.W. 3.6, and this is a bill dated October 29th, 1919; "Messrs. the Home and Overseas Trading Trust, Ltd., Clock House, Arundel Street, W.C. 2," and it is a charge for an analysis of two samples of magnetite ore, for iron, etc. Now my Lord, on Oct. 29th, 1919, the position so far as the evidence indicates was that all that the Trust had in connection with the Reid Newfoundland Co. and their various properties which were under discussion, including this magnetite property was Mr. Thomson's letter of September 12th, the letter from Thomson to MacDonald. The second letter which more or less formally agrees to give options is not sent, or at least, is not dated until November 5th; and we have no evidence as to how far the arrangements outlined in Thomson's letter of November 5th had been settled or discussed up to October 27th, when this analysis was made, except that it is evident from the correspondence that as far back at any rate as September 12th Thomson was dealing with Major MacDonald on behalf of this syndicate that MacDonald was going to incorporate, with regard to these Reid properties; and on September 12th Thomson wrote to MacDonald stating:

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Indigestion, no matter how slight, is a nuisance. It can ruin the good nature of the most genial of us.

If you are troubled this way, you'll be glad to know a simple way to avoid it.

Just try eating a few pep-o-mint Life Savers after meals.

It's wonderful how these little mint circles relieve that heavy, loggy feeling after eating.

Probably that's why our grandfathers so often had their bulky little bags of peppermints handy in their pockets.

Life Savers are grand-dad's bag of peppermints up to date.

Six flavors displayed at all good stores so you may help yourself!

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GERALD S. DOYLE, Agent.

And then in the letter of November 5th magnetite iron is also referred to: "There are two deposits of magnetite iron at Bay St. George's... an option is hereby granted at the prices and terms named," and then he goes on lower down to say: "To sum up the situation in short, I wrote to Mr. Reid referring to all of the above properties in September 27th, 1919, and in reply received the following cable: 'your letter twenty-seventh September just received. Very satisfactory.' stop in order to clear up the situation as regards Mr. Reid's attitude towards granting options, I cabled him on October 27th, etc."

Now my Lord, here we have evidence that Mr. Thomson, on October 27th writes to Reid in order to clear up the situation as to Reid's attitude towards granting options; and I think it is a fair deduction for me to submit to your Lordship, that in the light of that state of affairs, that when on the 27th October, the same date that that message was sent, the plaintiffs incurred a liability of £5.0.0 for an analysis of a sample of magnetite ore, that liability was incurred for themselves, under an option which was projected at the time, and for which a formal agreement was made about nine days later, when Mr. Thomson wrote this letter of November 5th; and that there is nothing in the relationship that existed between the Reid Newfoundland Company on the one side, and the Plaintiff Company on the other side, that justifies the plaintiffs in demanding now that we should reimburse them for the expense that they incurred in getting that analysis. In other words, that analysis was not obtained for us, it was obtained for themselves, for their own use, and benefit and information in dealing with the property on which they were then negotiating an option.

The same remarks apply to the bill for £6.0.0 for analysis of a sample of ore. This bill is dated March 9th, 1921, and curiously enough, although the bill is dated March 9th, 1921, it is marked below as having been paid on the 25th February, 1921; and it is a charge of £6.0.0 for an analysis of a sample of ore, and over it is written in lead pencil, by I do not know whom, the words "Chrome Iron." There is no date given to indicate when the analysis was made, but it can only refer, I submit, to the property described in Thomson's letter of September 12th, and his letter of November 5th, as Chrome Iron. In the letter of September 12th, he described the chrome iron property:

"Chrome Iron: In an area of 12 square miles important discoveries of chrome have been made and from the reports at hand there is little doubt, with economic and careful development work, a very important property would in all probability be opened up which would add largely to the world's chrome supply, particularly within the British Empire."

And then in his letter of November 5th he makes further reference to it under the heading of Chrome. (Read reference in letter of November 5th). Now my Lord, the only evidence which we seem to have with reference to these properties are these references in the letters of Thomson and MacDonald on the 12th September, 1921, and the 5th November, 1921, and in both cases, both the magnetite iron and the chrome iron ore, there is a specific undertaking to give an option at the price named; and we have no claim for services in connection with either of these properties incorporated in the claim which the plaintiffs have presented against us in this suit; and I submit, therefore, that in the case of both these claims for disbursements for analysis, that it is clear that the disbursements were not made for or on account of the Reid Newfoundland Co. They were not made in connection with the handling of the Reid Newfoundland Co.'s properties under any agency agreement or anything of that kind, they must have been made and made only by the Trust for their own benefit, in connection with whatever proposition or plan that they may have had in their minds at the time for realizing upon the options that had been promised to be given to them, with regard to these two properties.

"I am duly authorized by Mr. H. D. Reid, President of the Reid Newfoundland Company, St. John's, Newfoundland, to state that he is in a position to offer or negotiate for: "sale of the following properties: "and the third property he mentions is: "Magnetite Iron: Discoveries have been made of magnetite iron, two out-crops of which show one quarter of a million tons five miles from the 'water carrying a high percentage of metallic iron and low in sulphur and phosphorus. From indications this should show up on development to be 'a very valuable property."

"And then in the letter of November 5th magnetite iron is also referred to: "There are two deposits of magnetite iron at Bay St. George's... an option is hereby granted at the prices and terms named," and then he goes on lower down to say: "To sum up the situation in short, I wrote to Mr. Reid referring to all of the above properties in September 27th, 1919, and in reply received the following cable: 'your letter twenty-seventh September just received. Very satisfactory.' stop in order to clear up the situation as regards Mr. Reid's attitude towards granting options, I cabled him on October 27th, etc."

Now my Lord, here we have evidence that Mr. Thomson, on October 27th writes to Reid in order to clear up the situation as to Reid's attitude towards granting options; and I think it is a fair deduction for me to submit to your Lordship, that in the light of that state of affairs, that when on the 27th October, the same date that that message was sent, the plaintiffs incurred a liability of £5.0.0 for an analysis of a sample of magnetite ore, that liability was incurred for themselves, under an option which was projected at the time, and for which a formal agreement was made about nine days later, when Mr. Thomson wrote this letter of November 5th; and that there is nothing in the relationship that existed between the Reid Newfoundland Company on the one side, and the Plaintiff Company on the other side, that justifies the plaintiffs in demanding now that we should reimburse them for the expense that they incurred in getting that analysis. In other words, that analysis was not obtained for us, it was obtained for themselves, for their own use, and benefit and information in dealing with the property on which they were then negotiating an option.

And, my Lord, in No. 111, which is H. A. McD. 8, and which consists of a minute of Meeting of Plaintiff's Directors Held on September 1st, 1920,

we have an account of the report which Major MacDonald makes to the Trust, upon his return to England as to the business with which he dealt in Newfoundland. It says that he left England on July 1st, 1920, and so on arrived here on August 5th; that on arrival here matters of interest to the Trust were discussed with a number of the directors; and then it goes on to say:

"The Chairman also intimated that 'he had an opportunity of seeing 'Humber Valley, Deer Lake and the timber for a distance of about fifty miles by train and also a portion of 'Gander and was particularly impressed with the appearance of the 'Humber Valley and the possibilities 'for development on the lines agreed upon by all concerned. The chief 'questions taken up with H. D. Reid 'were:

"1.—Gander pulp areas and their sale to Rothmere or a mortgage on the property for £60,000 the amount still owing to the property."  
"2.—The sale and development of 'Humber property to Mr. Blakstad and 'his associates."  
"3.—The policy to be adopted for 'the sale of the other lands containing mineral deposits."  
"4.—The fish claim."  
"5.—Electric Power Plant and St. John's Tramway Co."  
"6.—The payment of the Trust in 'commission or otherwise for services 'in connection with the sale and development of these properties."  
"7.—The formal election of H. D. Reid and R. G. Reid as directors of 'the Trust."

Now then, my Lord, we have further the actual voucher for the payment of this £375, which is dated the 19th July, 1920, and this is a receipt signed "J. A. MacDonald, Major," and which sets forth as follows:

"Received from the Newfoundland Banking and Trust Corporation the sum of £375 on account of travelling and other expenses in connection with my visit to Canada and Newfoundland and on behalf of the 'Trust."  
"Not 'on behalf of the Reid Newfoundland Co., but 'on behalf of the Trust."  
"And exactly the same state of affairs arises with regard to the Claim for £275 Paid to Greenwood in the spring of 1921.  
"If your Lordship will refer to No. 344, H. B. T. 97; that purports to be a copy of the minutes of a meeting of the Plaintiff's directors, held on the 31st March, 1921:  
"The Humber area development 'scheme was now at an advanced 'stage and Mr. Blakstad, who is interested in the development leaves 'on April 8th, next, for Newfoundland to go into further details on the spot. 'It was thought that these matters 'had progressed satisfactorily and it 'was pointed out that no time should 'be lost in getting everything ready 'for the issue of the various schemes 'in final form. The Board considered 'it advisable at the present stage, that 'a director from London who was conversant with all the negotiations on 'this side should come to Newfoundland."

The next item in this statement of disbursements, my Lord, is the item of £275 paid by the Trust to Major MacDonald, on the occasion of his visit to Newfoundland in the summer of 1920; and I submit that this is not a payment that the Plaintiff Company is entitled to recover against the Reid Newfoundland Co. In this action, because I say first that it is not a payment that was made on account of the business of the Reid Newfoundland Company; it was a payment that was made on account of the business of the Newfoundland Banking and Trust Corporation.

If your Lordship will refer to No. 38, which is H. B. T. 66, you will find there a minute of meeting of the Plaintiff Company's directors, held on the 12th July. There were present W. H. Greenwood and J. A. MacDonald and it is minuted:

"Correspondence which had passed between Messrs. H. D. Reid and H. B. Thomson and the Trust was read, 'in which the necessity for Major MacDonald to visit Newfoundland in connection with the business of the 'Trust was emphasized. Having regard to the emphatic terms in which 'the request was made and the necessity for further information, relative 'to the business in hand and pending, 'being obtained at once, it was unanimously resolved that Major J. A. MacDonald should proceed to Newfoundland at the earliest opportunity, on behalf of the Trust, and the 'Secretary was ordered to draw a 'cheque for £250 in favor of Major 'J. A. MacDonald for expenses in connection with the journey to Canada and Newfoundland and return. It 'having been duly resolved that this 'cheque be drawn."

Now, my Lord, what was the business that was transacted when Major MacDonald came to St. John's. Apparently the business transacted was that which is described in the minute of the 14th August, and that business consisted first of all of a formal authority to and engagement of the Trust to proceed with the sale, or the proposed sales of the various properties, and a fixing of the rate of remuneration for the Trust for its services in connection with this business that was being entrusted to them.

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we have an account of the report which Major MacDonald makes to the Trust, upon his return to England as to the business with which he dealt in Newfoundland. It says that he left England on July 1st, 1920, and so on arrived here on August 5th; that on arrival here matters of interest to the Trust were discussed with a number of the directors; and then it goes on to say:

"The Chairman also intimated that 'he had an opportunity of seeing 'Humber Valley, Deer Lake and the timber for a distance of about fifty miles by train and also a portion of 'Gander and was particularly impressed with the appearance of the 'Humber Valley and the possibilities 'for development on the lines agreed upon by all concerned. The chief 'questions taken up with H. D. Reid 'were:

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Now then, my Lord, we have further the actual voucher for the payment of this £375, which is dated the 19th July, 1920, and this is a receipt signed "J. A. MacDonald, Major," and which sets forth as follows:

"land immediately to direct the final negotiations there and to keep both sides in full accord so as to avoid any delay in arriving at final conclusions for the various issues and especially in connection with the Humber Area scheme. It was proposed and unanimously decided that Mr. W. H. Greenwood would proceed to Newfoundland on the 6th April 'next to act in this capacity and that 'a sum of £275 be voted to him for 'travelling expenses."

And we have the evidence of an exhibit put in on the evidence of Mr. Hughes as Secretary of the Plaintiff Company, which is a receipt signed by Mr. Greenwood, dated April 4th, 1921:

"Received from the Newfoundland Banking and Trust Corporation, Ltd. 'the sum of £275 being for expenses 'in connection with visit to Newfoundland on business of the Trust."  
"But, my Lord, there is another aspect of the capacity in which Mr. Greenwood came to Newfoundland at this time, which I do not think ought to be overlooked at this stage; and that is that detailed to us in the evidence of Mr. Blakstad taken on commission. Your Lordship may remember that in Blakstad's evidence he described that Mr. Greenwood accompanied him to Newfoundland in the capacity of a private secretary or something like that; and if I remember his words exactly, he informed us that Greenwood had to do the listening and Blakstad would do the talking; and apparently from the evidence that has been given here, Greenwood fulfilled the duties, which Blakstad described as being his duties, to the letter; and I do not think that anybody can by any stretch of the imagination come to the conclusion that Greenwood discharged the duties which, according to this minute of the Plaintiff Co., of the 31st March, were imposed upon him. Let me repeat the wording of the minute:

"The Board considered it advisable 'at the present stage that a director 'from London who was conversant 'with all the negotiations on this side 'should go over to Newfoundland immediately to direct the final negotiations there and to keep both sides 'in full accord so as to avoid any delay 'in arriving at final conclusions for 'the various issues, and especially in 'connection with the Humber area 'scheme. It was proposed and unanimously decided that Mr. W. H. Greenwood should proceed to Newfoundland on the 6th April next to 'act in this capacity."  
Now, I think it is abundantly clear from the evidence that is before the Court as to what occurred whilst Blakstad and Greenwood were in Newfoundland in April, 1921, from the date of their arrival here on the 19th April, 1921, to the date of their departure on the 6th May, 1921, it is abundantly clear that Greenwood did not do the listening and Blakstad did the talking; that he did not in any regard discharge the duties or perform the work which the minute of the Trust company indicates as the object for which he came to Newfoundland; and, as if to add insult to injury, we are asked to pay £275 to reimburse the Trust for the expenses incurred by Greenwood in coming to Newfoundland as Blakstad's secretary, and performing the part of listener while Blakstad did all the talking. I shall have more to say on that point at another stage, but I submit that in neither of these two cases—of the case of MacDonald in 1920 nor of the case of Greenwood in 1921, is there any justification whatever in charging it to us, or calling upon us to reimburse the Trust for it. In both instances it is a payment by the Trust, for the purposes of the Trust; and in the case of Greenwood, I do not think it would be unfair to suggest that it is capable of being construed as a payment by the Trust for the purposes of Blakstad.

The next item in the Solicitors Bill aggregating £1209.13.0, and these bills have been put in evidence of the secretary of the Plaintiff Company. The first bill is a bill for costs, charges and expenses of and incidental to the negotiations relating to the option agreement for the sale of the Gander River Timber properties to Mr. Cowley and Sir Andrew Caird; and it extends from March 29th, 1920, down to March 1st, 1921, and amounts to £135.1.6.

I submit, my Lord, that this bill is a necessary incident of the expenses which the Plaintiff company incurred when it accepted the agreement of August 14th, 1920, and undertook to proceed with the sale of these properties on the basis of a ten per cent. commission on the purchase price, as and when received; that the bill, insofar as it refers to services rendered prior to August 14th, 1920 was merged

(Continued on Page 6.)

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The coat of bright color and bias velvet is smart for sports wear.

Supreme Court  
BANKING & TRUST CORP.  
REID V. YLID. CO. AND OTHERS.  
THURSDAY, July 9.  
AFTERNOON SESSION.  
(Continued)  
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