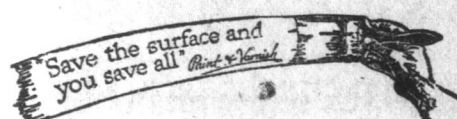


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### Supreme Court

(Continued from 4th page.)

Light and Power Company; and this of the method and rate of reparation in connection with the St. John's Light and Power Company is agreed between the Plaintiffs and the Company, and the terms which the Newfoundland Company are prepared to agree upon with regard to it set forth in the letter written by the Company on November 15th, 1921, which I think is No. 367, J.A.M.C.D. 338. All these reasons, therefore, I think that not alone the Plaintiffs have not sustained this allegation of making of the oral agreement in November 1919 and January 1920, but that there is no foundation for such a plea, and that the evidence has been given to the effect that this agreement was made will not be rejected by your lordship, but must of necessity be present to your lordship's mind in considering the

value of the evidence of those witnesses on other points.

Now, my lord, the next point to which I wish to draw your lordship's attention is a point more or less incidental, but I think it should not be passed over, and that is with regard to this question of the

#### Settlement of the Fish Claims,

and the payments made in connection with it. Your lordship will remember that in the early days of the Trust one of the matters that they had in mind was the negotiating for the adjustment of a claim existing between the Messrs. Reid personally, as distinct from the Reid Nfd. Co., and the British Government. These negotiations were begun in 1919, and must first have been placed in the hands of Mr. Greenwood before the formation of the Trust. These negotiations were continued down through 1919 and 1920, and up into the Spring of 1921, when they were finalised by the payment to Mr. Reid of the sum in the neighbourhood of \$80,000, and Mr. Reid paid \$8,000, at the rate of ten per cent. on that

settlement, and the cheque was payable to Major MacDonald. The money did not go into the Trust, and it was claimed, I understand from the witnesses for the Plaintiffs, that this was a personal transaction of Greenwood's, and that the Trust was not entitled to it. But a reference back to No. 111 shows us that when Major MacDonald arrived back in England, after his visit here in August of 1920, in making his report to the Trust at the meeting held on the 1st September, enumerated amongst the chief questions taken up with Mr. H. D. Reid "A. The Fish Claim". Now, if the fish claim was a personal matter of Greenwood's—given to him, it is true, or put into his hands before the Trust was formed, and conducted by him independently of the Trust altogether—and the evidence is quite to the contrary—but even if it was, what business did Major MacDonald have discussing it with Mr. Reid when he was out here, and why is he reporting upon it to the meeting of the directors of the Trust when he gets home in September. But the evidence is that the work in connection with the adjustment of the fish claim went on through 1920, and up to the time of its settlement in 1921; and that at that time Major MacDonald participated in it, and letters were written and work was done in the offices of the Trust by the staff of the Trust, and, as it pointed out here, the matter was entered in the minutes of the proceedings of the Trust; but when the money is received, then this matter did not belong to the Trust at all. It belongs to Greenwood, but it is paid to MacDonald, and the Trust leaves nothing about it, nor is there any credit of it made in the accounts of the Trust so far as the evidence is concerned; and this is one of the questions that appears in the dispute between the Trust directors and the preference shareholders at the time when, as your lordship has been told by one of the witnesses, we were guilty of that conspiracy to block these proceedings. MR. EMERSON—Is not that quite apparent from the telegrams? MR. HOWLEY—At this stage I think it would be of interest if we referred to

#### The Constitution of the Trust.

Your lordship will remember that evidence has been given to the effect that this was incorporated on the 1st October, 1919, under the English Companies' Acts; that it had a nominal capital of £50,000, which was divided into 45,000 one pound preference shares, and one hundred thousand one shilling common shares. Under the constitution of the Company was ordinarily one share one vote; but in the case of a poll being demanded, each preference share had one vote, and every two shares of the common stock had a vote. We have had evidence as to what extent the preference shares had been subscribed for at the time of the start of the company, or immediately after at the end of December 1919; and after the Company had been for three months in existence there is evidence that some 6302 preference shares had been subscribed for and paid for by various parties, and that each of the three directors, Thomson, Greenwood and MacDonald, had subscribed for one thousand ordinary shares, at a cost of £50. Then we had the clause in the articles, clause 16, which provided that the directors should not be less than two nor more than seven in number, and that the first directors shall be Henry B. Thomson, William Hamar Greenwood and Major John A. MacDonald, and that they should hold office until the statutory meeting in 1921. Then the clause goes on to say that the "above named first directors shall be entitled in consideration of services rendered."

So that the position was this, that from the very inception of this Company, Messrs. MacDonald, Thomson and Greenwood absolutely controlled the situation, and they controlled it by an investment of fifty pounds each for ordinary shares, plus a right acquired under this articles to call for another 25,000 shares each; and it is apparent, I submit, that at all times, from the date when the Company was incorporated, down to the conspiracy of 1922, that MacDonald, Greenwood and Thomson and MacDonald, Greenwood and Thomson alone, at all times conducted the affairs of the Company. Now, my lord, when the discussion of 1919 took place, which resulted in the letters written on the 23rd December, 1919, one of the proposals made by the Plaintiffs was that we should contribute £1,000 towards the management expenses of the Trust. I am using their own language contained in H.B.T. 27, and in our reply we accepted that proposal and forwarded the £1,000 to Major MacDonald in London. Then came the question as to what period of management expenses that should be devoted to, and when Mr. R. G. Reid went over to London with Mr. Greenwood a discussion took place. We have an account of it in No. 67, W.H.G. 12, and Mr. R. G. Reid himself has described to us what happened. "The only point," Mr. Greenwood says, "for discussion was the payment towards management expenses in establishing the Trust and handling your interests, and the period of time for such payments. Major MacDonald 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 on which expenditure was begun on behalf of the Newfoundland

development. This was considered a fair proposal by your brother, as was also that the payments towards management expenses should be at the rate of £250 per month from October 1st, 1919, to October 1st, 1921. This arrangement being understood, and agreed to, your brother cabled you, to which he received your cable confirming as follows: 'Agree your terms Trust. Reid'. The £1,000 you had sent in December 1919 was then applied under this arrangement."

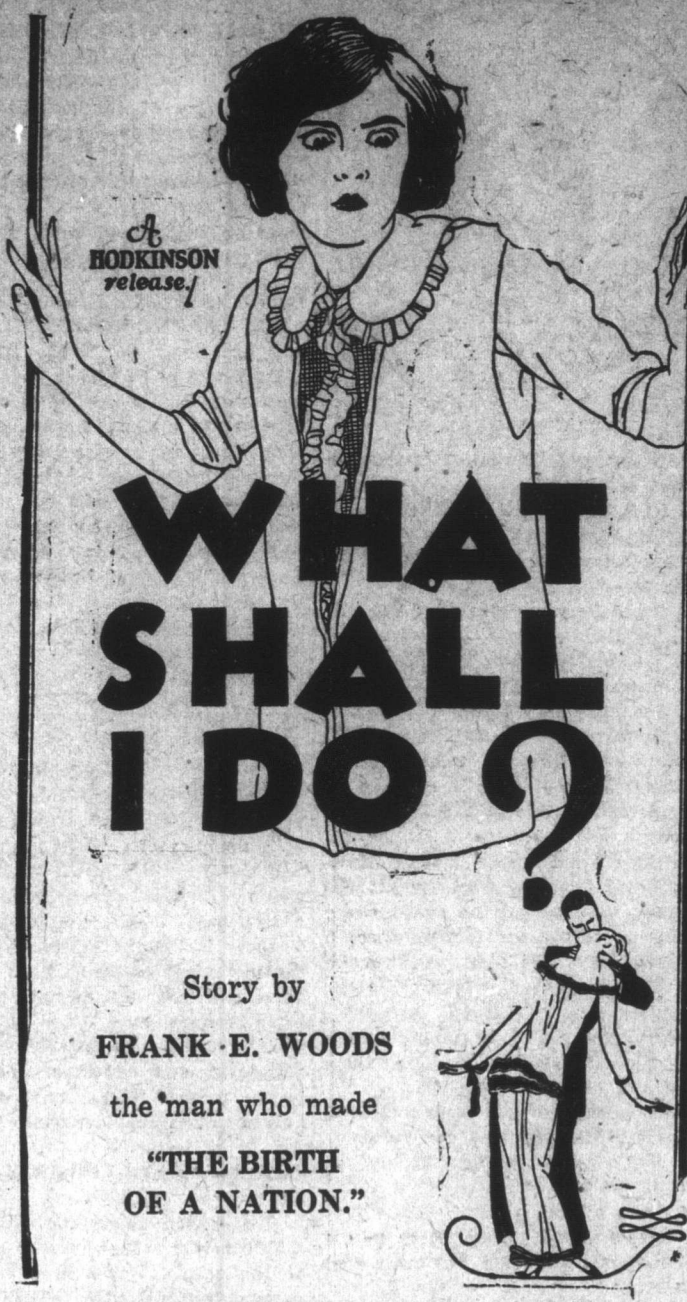
Then sometime afterwards, I think it was in March, in No. 61, Mr. Greenwood writes Mr. Reid, and he says: "I have to-day at the request of Major MacDonald put through a draft on 'you through the Bank of Montreal' for £250, carrying out the arrangements made by your brother and Major MacDonald and myself with 'you for the monthly contribution to the managing expenses of the Trust. We will handle this matter, 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. It was an oversight that this had not been done the first of the month. I was under the impression that Major MacDonald would draw, and he was under the impression that I would draw, and we delayed until this date to do what we set out to do when we wrote 'you touching the matter'."

Now, my lord, there can be no question. In the light of that correspondence, there can be no question that these monies were arranged for and agreed upon as monthly contributions to the management expenses of the Trust. They have not gone to the Trust, not one dollar of them; and the evidence is that they have gone into the pockets of Major MacDonald and Mr. Greenwood; and I submit, my lord, that the position is this: that either these men intended to deceive the Reid Nfd. Co., or intended to deceive the preferred shareholders of the Trust, or intended to deceive both of them, and I submit further, my lord, that although we did not know of this at the time, they were the managing directors of the Trust, which Trust had constituted itself to deal with the Reid properties in London, by virtue of an arrangement made with them by Mr. Thomson; this Trust, which as early as December 1919, and before Mr. Thomson left for Canada, had decided to concentrate upon the Reid properties, and which Trust had voted Greenwood and MacDonald £900 a year as its managing directors, although we did not know it at the time. We did not know that fact at that time. Why should MacDonald and Greenwood ask us to pay between them at the rate of £250 a month for doing the work which the Trust was already paying them £900 a year to do? And, my lord, the money was paid specifically for the management expenses of the Trust. What were the management expenses of the Trust? Were not the salaries that the Trust had voted to these men part of their management expenses, and in what way could they justify, without another vote, in what way could they justify the receipt on their part of sums of money belonging to the Trust. I submit, and I submit with confidence in the position which appears from the record, that those monies were arranged for as payments to the Trust on account of the Trust. It was arranged for as a payment to

HON. MR. JUSTICE KENT—Do you not think that these payments were earmarked, that even though they were indirectly through the Trust, these

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## "WHAT SHALL I DO?"

help to discharge all the expenses of the conduct of the business of the Trust, whether these expenses be the rents, or salaries, or anything else; and that Greenwood and MacDonald had no right without the authority of a minute by the Trust to appropriate these monies.

#### There is Another Point

I would like to draw your lordship's attention to for a moment. It is only in connection with this that I would like to refer to it. If your lordship will remember, when we got down to this stage of the ten per cent. personal commission agreement in the spring of 1921. That is No. 254 in

the book, H.B.T. 64, in which we have the minutes of the meeting of the Plaintiffs' directors held on the 5th April, 1921, at which MacDonald, Thomson and Greenwood were present; and after they had dealt with the Blackstad agreements that Mr. Reid had signed, were explained, we have No. 3: "Following on the report of the 'chairman that to the effect that... 'etc.' (to the end of the minute)."

My lord, there was never, so far as we know, so far as we have any evidence, there was never any minute of the Trust with regard to this £1000 towards management expenses, nor this £250 a month, and the Trust, in

so far as it can be dissociated from Messrs. MacDonald, Greenwood and Thomson, if it can be dissociated at all, never knew that Reid was contributing £250 a month towards its management expenses. The Trust, as a Trust, as I say, and in so far as it can be distinguished from these people, never knew that apart from the £900 a year, which had been voted to them as managing directors, that they were getting three thousand pounds a year more from the Reids for doing the same work; and I repeat again that there is not the slightest justification

(continued on page 12.)

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