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Supreme Court

(Continued from page 7.)

McD., 116", which is a letter from Major MacDonald to Mr. Reid, dated the seventh of September, 1920. It reads:

H. B. & T. Co., Ltd.,
London,
7th September, 1920.

H. D. Reid, Esq.,
Reid Newfoundland Co.,
St. John's.

Dear Mr. Reid, Gander Area.—As you were advised by cable on the 3rd inst., Mr. Cowley was interviewed on this matter last Friday and was expected to make an appointment for a continuation of the discussion after he had seen Lord Rothermere. Instead of hearing from Cowley, H. J. Crowe called at the office at 6 p.m., after we had left, and afterwards got on the house phone. He had been seen on Saturday by Mr. Greenwood and myself when Gander was discussed for a few minutes. He had previously discussed Gander with Lord Rothermere and we gathered rather fully from his knowledge of the price on the option, etc. We informed Mr. Crowe that we were going on with the sale of the property independently of Lord Rothermere, but before finally closing we would follow your wish to ask Lord Rothermere for a final offer if he cared to make it. We would like to effect a sale to Lord Rothermere but could not afford to consider his last offer for part of the property and thereby lose a great proportion of the financial interest in the remaining areas in consequence of its unsaleability apart from water power.

Mr. Crowe in his conversation stated that he had occasion to discuss the matter with Lord Rothermere and informed His Lordship of our determination to go forward in the present independent negotiations for sale if a decision was not arrived at this week. Mr. Cowley was brought into the discussion and instructed to take up negotiations with us to lay. We are awaiting a call.

Mr. Crowe further informed me that Lord Rothermere told him he had had a cable from Mr. Coaker asking if he intended buying Gander, to which Lord Rothermree replied that he could not purchase as he had not got the money. Mr. Crowe asked that any offer made by Lord Rothermere be not turned down until he had a chance of seeing Lord Rothermere. From our point of view we concluded that Mr. Crowe and Lord Rothermere have a perfect understanding on the matter and we feel that any offer made should be in the form of a firm offer with a substantial payment this month.

In order to save time and guard against a refusal to purchase by Lord Rothermere, Mr. Foster of Messrs. Morgan & Co., paper makers and manufacturers, was spoken to and affirmed his willingness to discuss purchase. We are making an appointment to see him this afternoon.

Strangely enough, when we were talking to Grant Morden yesterday he asked if we had pulpwood for sale as his newspaper interests were dependent upon purchasing their supplies from dealers, and we gathered without any guarantee of quantity. We are lunching with him one day next week to take this matter a step further so see if he is seriously inclined, but will do nothing without reference to you.

I am sending you this letter in order that you may be fully aware of the various steps in negotiations. The negotiations, you will agree, have reached a delicate state and will require careful handling. I hope we shall be able to worry through them successfully.

Yours sincerely,
J. A. MacDONALD.

Now, my lord, with regard to that letter, which was written on September seventh, not so very long before the actual signing of the option of October first and still less time from the date when apparently the agreement to take the option of October first had been decided upon, if your Lordship will remember, that negotiations which led to the agreement for the option apparently materialised about the 21st or 22d of September, because it was on the 22nd that Mr. Cowley wrote this letter stating what he expected to do if the cruisers' report was satisfactory. But here on the seventh of September we have the point, first of all, that the

Rothermere Interests Were Still Nibbling at the Gander.

We have the evident fact that all through this year 1920, from the time that Rothermere first wrote out to St. John's to Mr. Reid in February, 1920, the Rothermere people had their eyes on the Gander property. It is apparent that, although they had their eye on the Gander property as a whole, in the early part of the summer they were contemplating that for their present purposes it would suit them to obtain possession or control over the Reid blocks without bothering about the Timber Estates blocks, and here in September we find that Rothermere is informed through Crowe that other purchasers for this territory are in sight, and that Rothermere at this time in response to an enquiry from Mr. Coaker as to what was going to be done on the Gander—I do not know that it has any material bearing that Mr. Coaker equired, but probably there was an election on and he wanted to issue a manifesto or something of that sort—but, be that as it may, what Rothermere replied to Crowe was that he could not purchase because he had not the money. Then, my Lord, within a fortnight, within two weeks from this date, the second Gander option has been negotiated. The document to which I would like to refer your Lordship is

No. 764, marked "J. A. McD. 129,"

and written on the 14th September, 1920, by Major MacDonald to Mr. H. D. Reid. It reads:—

N.B. & T. Co., Ltd., London, 14th September, 1920.

H. D. Reid, Esq.,
Reid Nfld. Co.,
St. John's.

Dear Mr. Reid,—

Gander.

On Saturday last we had an interview with Lord Rothermere at the Savoy, and discussed Gander from various points of view. The material points arising out of the meeting were that Lord Rothermere declared himself to be a buyer on terms, and that he would require a detailed description of the property offered for sale. We accordingly cabled you as follows:

"Conferred Rothermere to-day who intends to make offer, but wants to state clearly what you are selling. Telegraph a full description total area including Reid lot numbers. Must have reply here by Monday morning.
CAMERGOT."

Your replies as per copies attached reached us in time for the meeting yesterday when we paragraphed your cables and made a table as attached. We did not make an offer on your terms stated as we had negotiated for an offer from Lord Rothermere knowing that to be the best way to test his sincerity and his intention to come anywhere near a price you could accept. At the meeting yesterday, I met Sir Alexander Caird, Director of the Anglo Newfoundland Development Co. who was conversant with Gander limits from reports made by one Gilmore. After discussing the reduction of the area from that previously offered, Lord Rothermere asked if 8| an acre for the total would be considered, I said there was not the slightest chance. He then said he would make a firm offer on Wednesday but as in the former interview he suggested that payment might be made by the issue of notes that could be immediately negotiated. The result of the last meeting was a promise of his Lordship that a definite offer would be made provided he could get a reply as to why the areas had been reduced and a clear indication of where the timber estates acreage that had been dropped from the offer was situated, also regarding small power at Glenwood. A cable as follows was accordingly sent:

"Saw Rothermere who will make offer Wednesday provided that full information can be secured concerning which part timber estates excluded and why. Can Glenwood Power be included in sale, if not, why not. What is the estimate of wood pulp and timber on properties offered for sale? Rothermere serious purchaser but feeling of apprehension prevails on account of decreased acreage. Urgent have information meeting Wednesday.
CAMERGOT.

The general discussion centered around the probability of a block of 100,000 acres of the best portion of Gander being taken out of the deal I assured them this was improbable and that a satisfactory answer to their questions as above referred to would be forthcoming. They persisted, however, in the view that there was every probability of some of the best land being taken out of the area first under option and that there would be every likelihood of their demanding a short time to inspect the portion now on offer. I informed them that any offer containing this condition could not be considered if the period asked for was a lengthy one, and I thought when they were given the area melted from the offer, they with their present knowledge could quickly decide. The railway facilities were then touched upon and the meeting then terminated with the assurance from Lord Rothermere that he was a serious buyer and that the Anglo Development Co. were prepared to join him. The meeting was characterized by the most cordial relations. If no exception is taken to the elimination of the small power at Glenwood there is little doubt an offer will be made for purchase which we will try to improve as far as possible and then inform you of the terms by cable. Crowe, whom, by the way, we are seeing this morning, has, we understand, stated to Lord Rothermere that the great value of Gander lies in the possession of the small power which can be cheaply harnessed and which would provide a plant with power to produce 100 tons of pulp per day, and being near the railway would be Lord Rothermeres best source of supply to act as a reserve to his paper mills at Grand Falls. We are arranging for Mr. Warren to meet Lord Rothermere and fulminate on Southern Harbor or Fortune Bay. He is most anxious to do this as it affords him a good opportunity of conforming to his election pledges in connection with railway facilities for his constituents. Mr. Warren is also keen on Humber developments and has seen Blackstad and will meet him again to urge development on national lines that would include the co-operation of the Government.

Yours sincerely,
J. A. MacDONALD.

Now, my Lord, here is the position, that on the 14th of September Rothermere is representing himself as ready to make a firm offer, that here is Sir Andrew Caird, a director of the Anglo Newfoundland Development Company and an associate of Lord Rothermere and actually one of the parties to whom the option of October first was granted, who was conversant with the Gander limits from reports made by one Gilmour. Now, so far as the Gander limits are concerned, and so far as any knowledge of the limits is concerned, we have this position, in No. 734, "W.N.G.78," we have the statement that "Rothermere was in a different position from any other man we can approach in London because he has the opinion of his man Scott in Newfoundland as to the Gander area," and then in this "J.A.McD. 129" to which I have just referred, No. 764, we have a statement that Sir Andrew Caird was "conversant with the Gander limits from reports made by one Gilmour." So that I submit, my Lord, that the question as to the quantity of timber on the Gander limits, insofar as Rothermere and Sir Andrew Caird were concerned, must have been settled to such an extent that another cruise by a third party, no matter how high his reputation and experience were, would not have affected their minds necessarily, certainly would not have affected their minds conclusive on the subject, because here they were, Rothermere with the opinion of his man Scott, a former official of the Rothermere interests at Grand Falls, the head officer out there, and Caird with the knowledge derived from Gilmour's report, Gilmour being Scott's successor and at that time high in the office and in the confidence of the Harmsworth people; so that both Lord Rothermere and Sir Andrew Caird at this time not alone must have had knowledge of the contents of the Gander property, but must have had knowledge that they had no doubt of, knowledge upon which they relied to an extent greater than they would rely upon knowledge obtained from anyone else, because they had this knowledge direct from their two principal leading men out here. Then, my Lord, if with that knowledge they accept an option on a property alleged to contain a quantity of timber they either must have known, their knowledge must have told them, that that quantity of timber was there, or, if they understood from that, that that quantity of timber was not there, then they had no intention to buy. In other words, the representation contained in the option as to the quantity of timber that was there, irrespective now as to whether that representation was correct or was not correct, that representation did not mislead Rothermere or his representatives who took this option. That representation could not mislead Rothermere because he would not rely on it. The natural thing for him to do was to depend upon what he had been told by his own men. Then I submit, my Lord, we are forced to this conclusion that either his own men had reported to him a quantity of timber agreeing with the amount named in the option, or if it was otherwise that he either never intended to exercise the option as it stood or expected to modify that option and reduce the price. And, my Lord, this latter view

Clause II in the Option.

of it to my mind is borne out by Clause II in the option itself. I have sought to reconcile the inclusion in that option of Clause II with the position apparently created by the letter that Cowley writes on the 22nd of September, and the only way by which I can reconcile it is that nobody was misled by the figures of quantity of timber that were contained in the option of October first, but that everybody, including the Rothermere interests, had the idea in their minds, "This is only an option. This is not an obligation on us to buy. If this timber is there we have a right to say we will buy it and the right to reject it. If investigation shows that this timber is not there or that there is any doubt as to what quantity is there we want to still have a string on this property so that we can negotiate for a purchase at a lower figure." Or there might be the other position, my Lord, that Rothermere had never, not even when he took the option of October first, departed from what apparently was his pet idea, to get hold of the Reid Company lots and thereby isolate the Timber Estates lots, and put them in the position that they were practically in the scrap heap and could be bought for whatever he liked to offer for them. I am not finding any fault with the Lord Rothermere interests for that idea at all. From their viewpoint I suppose it was good business. But that seems to me to be the position.

Mr. Turner's Evidence.

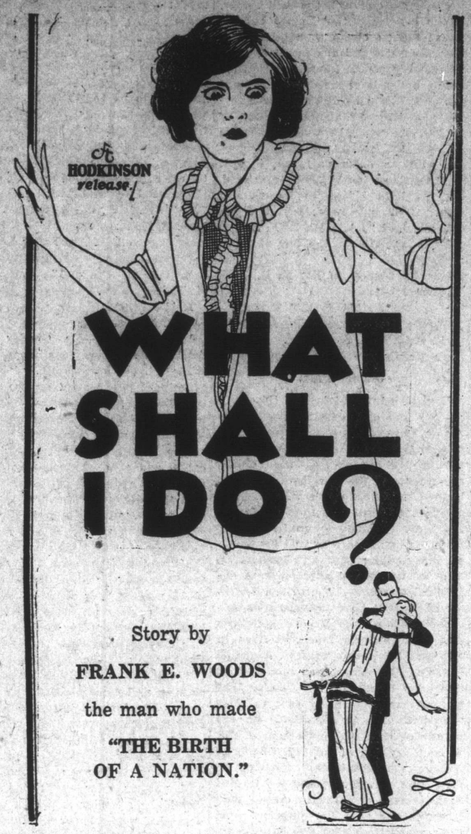
I would ask your Lordship next to refer to No. 775, which is marked "J. A.McD. 136," and is a message from the Trust to Reid dated September 22nd, 1920. Now, my lord, on this date, which, curiously enough, is the very date of the letter from Cowley to the Trust telling them that they intended to purchase if the amount of timber was there, on this date here is the position, that information in the possession of the Rothermere people states that "Half of the Timber Estates area is waste and many times burnt over and the price is assessed accordingly. Sir Andrew Caird and Cowley declare this best and final offer," etc. Now, my Lord, if the information in the possession of Rothermere is that the Timber Estates area is half of it waste and many times burnt over, surely the information in the possession of the Rothermere people must have indicated to them the quality of wood on the property, and, surely, if, as Mr. Turner has told us, he could not find any more than somewhere in the neighbourhood of 700,000 cords of wood on the property—at least this is what he reports—as against the 2,700,000 which is spoken of in the option of October first, surely with such a discrepancy as that the Rothermere people would not have accepted the option of October 1st. Here is the position on the 22nd of September: Rothermere and Caird have the information from Scott and Gilmour, whatever it is, we do not know. Then with this information in their possession they come down and negotiate the terms of an option, and when they finally negotiate the terms of this option, price and so on, they arrive at that figure; that figure is reduced because they make allowances for what their information tells them is waste and burnt lands, and at the same time they write a letter stating that if the quantity of timber is there, or the value of timber is there, they will purchase. Might I point out, my Lord, a peculiar wording of Cowley's letter of September 22nd which had not occurred to me before, "that the long interview which Sir Andrew Caird and I had with you yesterday." Taking this, in conjunction with the telegram No. 775, to which I have just referred, that apparently is the time when the Trust learnt that Rothermere people had information stating that half the Timber Estates area was waste and many times burnt over and the price was assessed accordingly, and he says, "After the long interview Sir Andrew Caird and I had with you yesterday it will be only failure on the part of our friends in Newfoundland that will prevent the deal being made." Now, my Lord, having regard to the fact that this interview of yesterday settled the value of the lands, not the quantity of timber on the lands but the value of the lands, having the information they had with regard to waste and burnt lands the price was assessed accordingly, Cowley writes that it would be only failure to prove the value—and if that means anything, I submit it means the price that had been assessed at the meeting the day before—that would prevent them from exercising the option. Now what have they done? At the very most—if we give Mr. Turner's evidence its full effect—at the very most it is a proof of the quantity of timber on the lands and no reference whatever has been made to the value of the lands so far as their value in pounds, shillings and pence is concerned. And even if the information that Cowley and Caird had when they entered into this agreement, the information that they had from Scott and the information that they had from Gilmour, was to the effect that the quantity of wood on the lands was the quantity reported by Turner or thereabouts, then the point that they had in their minds when they entered into this option was not how many thousand or how many million cords of wood were there on this land, but that the lands such as they were, with waste and with burnt territory and everything else, were worth £220,000, the price named in the option, and there has not been one tittle of evidence adduced by the Plaintiffs to show that value, greater or less or equal, to that mentioned in the option they set upon these lands or the cruise determined for these lands.

Now, my Lord, the next letter to which I would like to refer your Lordship is No.

849, which is marked in the book "J. McD. 445."

This is a letter written by Major MacDonald to Mr. Conroy on the 9th December, 1920, and after the Rothermere people had declined to exercise the option, and in the last paragraph of that letter he says, "I cannot but think, however, that the bad times which have suddenly fallen upon us is a very strong factor in regard to the decision of his people" (that is, the Rothermere people) "to break off negotiations for the purchase." Now, my Lord, what I would like to submit for your consideration in connection with this view of the Gander is, that having regard to all this correspondence, the reason for the non-exercise

(Continued on page 9.)



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