1947
*May 5, 6
*Dec. 22

HIS MAJESTY THE KING (RESPONDENT) ..... APPELLANT,

AND

THE ROYAL BANK OF CANADA (THIRD PARTY) ..... APPELLANT

AND

MARIE E. RACETTE (SUPPLIANT) ... RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

*Crown—War Loan Bonds—Registered as to principal only—Alleged transfer by owner—Signature of registered owner guaranteed by bank—Owner denying having executed transfer—Liability of the Crown—Liability of the bank—As to the principal—As to the interest or coupons.*

The respondent sought to recover the principal and the interest of nine $100 bonds of the *Dominion of Canada* which were registered as to principal in her name. These bonds, maturing in 1937, were purchased in 1917 and were left in custody of a friend, *Father Cotter*. In November, 1921, in consequence of a form of transfer purporting to have been signed by the respondent, witnessed by *Father Cotter* and guaranteed by the *Royal Bank of Canada*, the bonds were made payable to bearer. The respondent alleged that her name appearing on the transfer was a forgery. Judgment was given in the respondent's favour for the sum of $900 with interest at 5½ per cent per annum from November, 1921, to the date of maturity in 1937.

*Held*, varying the judgment of the Exchequer Court of Canada, that the respondent is entitled to receive from *His Majesty* the sum of $900, but that the interest of 5½ per cent per annum, represented by the coupons attached to the bonds, is not recoverable from *His Majesty*.

*Held:* There can be no dispute that the document accepted by the *Bank* as a transfer of the registered bonds was not signed by the respondent and that the signature thereon does not purport to be made by a person acting for her. Neither does the evidence support the contention that the purported signature must be presumed to have been written under her authority.

*Held:* The interest on these bonds was payable by coupons which could have been cashed by anyone. It is impossible to hold that the loss of the interest represented by the coupons was a result of the *Bank* or *His Majesty* acting on the alleged transfer.

*Held:* No other interest may be allowed against the *Crown* unless there is a statute or agreement providing for it, *Hochelaga Shipping and Towing Co. Ltd.* v. *The King* [1944] S.C.R. 138.

*Held:* The clause in the judgment *a quo* for recovery by *His Majesty* from the *Royal Bank of Canada* of the principal directed to be paid by the former to the respondent should remain.

*Present: Kerwin, Taschereau, Rand, Kellock and Estey JJ.

APPEAL from the judgment of the *Exchequer Court of Canada, Angers J.*, awarding to the respondent the sum of $900 with interest at 5½ per cent per annum from November 25, 1921, to the date of maturity in 1937. The judgment also directed the *Royal Bank of Canada* to pay *His Majesty the King* the amount of the principal and interest that the latter was to pay the respondent.

*Roger Ouimet, K.C.* for the appellant: *His Majesty the King.*

*Hazen Hansard, K.C.* for the appellant: *The Royal Bank of Canada.*

*J. P. Charbonneau, K.C.* for the respondent.

KERWIN J.: The suppliant, Marie E. Racette, sought to recover the principal of certain bonds issued by the Dominion of Canada and interest thereon and registered as to principal in her name. Her petition of right was dismissed with costs by the Exchequer Court, and the third party proceedings against the Royal Bank were dismissed without costs. That judgment was set aside by this Court (1) and a new trial directed. His Majesty the King was directed to pay the suppliant her costs of that appeal, but the costs of the abortive trial were left to be disposed of in the discretion of the judge at the new trial.

Such new trial was held and it was adjudged that the suppliant was entitled to recover from His Majesty the principal sum of the bonds, $900.00, and interest thereon at the specified rate of 5½ per cent per annum from November 25, 1921, the date of an alleged transfer of the bonds, to December 1, 1937, the due date of the principal. The third party, The Royal Bank, was directed to pay His Majesty the King the amount of the principal and interest that the latter was to pay the suppliant. It was ordered that there should be no costs to any party by virtue either of the earlier or later judgment.

His Majesty the King and The Royal Bank now appeal. There can be no dispute that the alleged transfer of the bonds was not signed by the respondent but it was con-

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tended that her purported signature should be taken to have been written by her authority. The evidence, all of which is detailed in the reasons for judgment in the Court below, does not support that contention and the Exchequer Court was therefore right in deciding in favour of the suppliant. However, judgment was not only for the principal of the bonds but also for interest at the designated rate from the date of the alleged transfer. While the bonds were registered as to principal in the name of the suppliant, interest thereon was payable by coupons which could have been cashed by any one. The evidence is clear that the suppliant never saw the bonds but left them in a savings deposit box to which she and another had access and no question was raised by her until July 27, 1936, when she inquired if the Department of Finance had any bonds registered in her name. It is impossible to hold that the loss of the interest represented by the coupons was a result of The Royal Bank or His Majesty acting on the alleged transfer and interest may not be allowed against the Crown unless there is a statute or agreement providing for it: *Hochelaga Shipping and Towing Company Limited* v. *The King* (1). The judgment should therefore be varied by declaring that the suppliant is entitled to receive from His Majesty the sum of $900.00.

The trial judge did not allow the suppliant any costs. In view of this and of the fact that the petition of right is dated July 30, 1938, and notwithstanding that the present appeal succeeds in part, there should be no costs in this Court to any party. The clause in the judgment *a quo* for recovery by His Majesty from The Royal Bank of the principal directed to be paid by the former to the suppliant should remain.

TASCHEREAU J.: L'intimée Marie Racette réclame de l'appelant Sa Majesté le Roi, la somme de $900.00 et intérêts au taux de 5½% à compter du 25 novembre 1921. Elle allègue dans sa pétition de droit que depuis le 1er décembre 1917, elle était la propriétaire enregistrée quant au capital seulement, de neuf débentures de $100.00 chacune du Dominion du Canada, avec coupons attachés,

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et que les dites débentures ont été transférées hors sa connaissance. Elle aurait été ainsi privée à échéance de cette somme.

Une première défense de Sa Majesté le Roi a été accueillie par la Cour d'Echiquier, mais rejetée par cette Cour.(1) Elle était à l'effet que la garantie de la signature de l'intimée par la Banque Royale du Canada, validait le transfert. Cette Cour (1) a décidé que comme conséquence de cette garantie, Sa Majesté le Roi n'était pas exempt de responsabilité dans le cas de faux, mais qu'il conservait son recours contre la Banque Royale du Canada. Le dossier a donc été retourné à la Cour d'Echiquier avec instructions de disposer de l'action au mérite, et avec recommandation de permettre aux parties de compléter l'enquête, si nécessaire. Après la ré-audition, M. le Juge Angers, tout en émettant des doutes sérieux sur la véracité du témoignage de l'intimée, en est arrivé à la conclusion qu'elle n'avait pas signé le transfert, qu'elle n'avait autorisé personne à le faire pour elle, et a en conséquence maintenu la pétition de droit, non seulement pour la somme capitale de $900.00, mais aussi pour les intérêts représentés par des coupons attachés aux dites débentures.

La preuve révèle qu'en effet, dès 1917, l'intimée était la propriétaire enregistrée de ces débentures, mais le 25 novembre 1921, comme résultat d'un transfert, supposé signé par l'intimée, elles ont été faites payables au porteur. C'est cette signature de l'intimée qui est garantie par la Banque Royale, et attestée par le Révérend Père Cotter, qui depuis 1914 voyait dans une certaine mesure à l'administration des biens de l'intimée. Le Père Cotter quitta Montréal en 1921 pour aller résider à Fort William, et décéda dans le cours de l'année 1936.

Il avait apparemment placé ces débentures dans un coffre de sûreté de la Banque Royale du Canada, dont il avait donné à l'intimée un double de la clef. L'intimée ne reçut jamais les intérêts, et elle dit dans son témoignage, qu'elle ne s'en préoccupa jamais, vu qu'elle désirait les laisser accumuler jusqu'au moment de l'échéance du capital.

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A tout événement, elle n'a reçu ni capital ni intérêts, et ce n'est qu'après la mort du Père Cotter qu'elle a commencé à s'inquiéter et à s'informer auprès de l'appelant. Elle écrivit à l'endroit où le Père Cotter était décédé, elle se rendit à la Banque Royale du Canada, s'informa au bureau du trésor, et c'est là qu'elle aprit que ses débentures avaient été faites payables au porteur en 1921, et on lui fournit même un photostat du document dont s'était autorisé le gouvernement pour effectuer le transfert.

Il semble surabondamment prouvé, comme d'ailleurs le dit M. le Juge Angers, que l'intimée n'a jamais signé ce transfert. Elle le jure positivement, un expert en écriture confirme sans hésitation son témoignage, et d'ailleurs l'examen du document démontre clairement l'absence complète de similitude entre la signature qui y est apposée, et celle qui est véritablement la sienne. L'appelant n'a apporté aucune preuve pour contredire celle de l'intimée, et la seule conclusion possible est celle à laquelle est arrivé le juge au procès.

Mais on prétend que si c'est le Père Cotter qui a ainsi signé le nom de l'intimée, il était autorisé à le faire par l'intimée elle-même. Cette prétention me paraît inadmissible, et rien dans la preuve ne peut la supporter. Il est vrai que l'intimée et le Père Cotter ont ouvert un compte conjoint à la Banque de Montréal, que ce dernier a ouvert pour l'intimée un autre compte à la Banque Royale du Canada, et qu'il a acheté les débentures avec l'argent de Mlle Racette. Mais je ne vois rien dans ces faits qui puisse être interprété comme une autorisation au Père Cotter de signer le nom de l'intimée sur un document, afin de rendre payables au porteur, des débentures enregistrées au nom de l'intimée, et déposées dans un coffret de sûreté, où tous les deux avaient accès. D'ailleurs, si véritablement le Père Cotter avait l'autorisation que l'on prétend, pourquoi aurait-il déguisé sa propre signature? Il lui eût été facile de dévoiler cette autorisation que la Banque Royale, d'après le témoignage de son comptable, n'aurait pas mise en doute. Cet effort évident pour décevoir n'est sûrement pas l'acte d'un mandataire autorisé expressément ou même tacitement.

Mais, la situation me paraît différente, en ce qui concerne les intérêts. Les débentures étaient enregistrées quant au capital, mais les coupons d'intérêts étaient payables au porteur, et je ne crois pas que l'acte de l'employé du gouvernement qui s'est basé sur un document forgé pour opérer le transfert des débentures, ait été la cause de la perte des intérêts. En payant ces coupons au porteur, le gouvernement était libéré.

Le jugement rendu par la Cour d'Echiquier doit donc être modifié en ce sens que l'intérêt au taux de 5½% représenté par les coupons annexés aux débentures, doit être retranché. Aucun autre intérêt ne peut être accordé à l'intimée depuis 1937, vu la décision de cette Cour dans la cause de *Hochelaga Shipping* v. *The King* (1). Devant cette Cour, chaque partie paiera ses propres frais.

RAND J.: It is not disputed that the document accepted by the bank as a transfer of the registered bonds was not signed by the respondent, and the signature does not purport to be made by a person acting for her. The Crown argues that, in the circumstances, the signature must be presumed to have been written under her authority. But the evidence gives no support to that contention.

The judgment in the Exchequer Court, however, includes interest from the date of the so-called transfer. The bonds were registered only as to principal and the interest coupons were payable to bearer; and even if the bonds were surrendered in 1924 in exchange for others of larger denomination, it cannot be said that the consequence of acting on the forged transfer was the loss of that interest.

The principal of the judgment below will, therefore, be reduced to $900.00. There will be no costs in this Court.

The judgment of Kellock and Estey JJ. was delivered by

KELLOCK J.: The respondent alleged that she was the owner of nine $100.00 bonds of the Dominion, maturing in 1937, which she had left in custody, in Montreal, of the Reverend Father Cotter, and which were not forthcoming at his death in May, 1936. The bonds had originally been registered as to principal in the name of the respondent but on November 25, 1921, in consequence

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of a form of transfer purporting to have been signed by respondent, witnessed by Father Cotter and guaranteed by the appellant bank, they were made payable to bearer. Respondent alleged that the name "Marie E. Racette" appearing on the transfer was a forgery. The apparent signature of the respondent on the form of transfer was found by the learned trial judge to have been forged, although he disbelieved the respondent's evidence on certain other specific matters as to which he found her guilty of wilful perjury. In the result judgment was given in the respondent's favour for the sum of $900.00 with interest at 5½ per cent from November 25, 1921, to the date of maturity in 1937.

It appears from the evidence that Father Cotter undertook to handle the financial affairs of the respondent for her and that in fact he did all her business from 1914 until 1921, when he moved away from Montreal to Fort William. The bonds were always in his custody from the time she gave him the money to buy them for her in 1917. After 1921 respondent says she looked after her own affairs and although she corresponded with Father Cotter until his death, she had never asked him for the bonds.

There is no ground in my opinion upon which the finding that the signature on the form of transfer is a forgery can be successfully attacked. No witness says the signature is genuine. The officer of the appellant bank who authorized the guarantee of the signature has no recollection of the matter and says in his evidence that at the relevant period he would have acted on the assurance of Father Cotter that the matter was regular. From a mere comparison of the disputed signature with the genuine signatures on other documents, including that on the note, Exhibit R-3, taken with the denial of the respondent, it is obviously impossible for the court to find the disputed signature to be genuine. It must be taken therefore that the appellants have failed on this branch of the case.

It is next contended for the appellants that the learned trial judge should have found that Father Cotter, by whose hand, according to the evidence submitted by the respondent, the respondent's name was in fact placed upon the

transfer, had been authorized by the respondent to do so. The burden of establishing this is upon the appellants.

The evidence of the respondent is to the effect that she entrusted Father Cotter with the money to invest for her and was subsequently told by him that he had bought Victory Bonds for her, (which was the fact) and had lodged them in his safety deposit box to which he gave her a key, which she says she never used and in fact lost. She says she never asked him either for the bonds or the interest.

There is no inference as to the principal from the authority to receive the interest, taking that fact by itself. The other facts in evidence that are relied upon do not advance the matter. Father Cotter opened a bank account for the respondent in the Royal Bank and the two of them had a joint account in the Bank of Montreal and he retained the bank books in his possession. None of these facts, separately or together, however, would permit of the assumption on the part of the appellants, or either of them, that Father Cotter had authority from the respondent to deal with the principal of the bonds.

The respondent, on her examination for discovery explained her failure to enquire from Father Cotter as to the interest on the ground that he had told her to allow the interest to accumulate until her old age. At the trial, however, she said the reason was that she was waiting for the bonds to mature. Even if it be now assumed that neither explanation is the true one, none of this has any bearing on the question of authority to deal with principal and no inference with regard thereto can be drawn from the respondent's conduct however much suspicion it may arouse. Further, nothing in the nature of estoppel can be raised by either appellant. They knew nothing about any arrangements between the respondent and Father Cotter. In my opinion therefore the appeal must fail as to the principal.

The learned trial judge gave judgment in favour of the respondent not only for the principal of the bonds but also for interest at the contract rate from the date of the forged transfer. It is to be borne in mind that the bonds, while registered as to principal, had bearer coupons attached

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covering the interest. Whether, therefore, the respondent believed the interest was accumulating until her old age or until the maturity of the principal is immaterial. Had it been established that the particular bonds with coupons had been surrendered to the Crown and new bearer bonds with coupons issued therefor on the strength of the forged transfer, it might have been necessary to consider whether the appellant could take the position that in paying the coupons attached to the substituted bonds it had paid the original coupons. The evidence however is not in my opinion sufficient to raise the point and I mention it so that nothing herein may be taken as deciding anything in reference to such a case should it arise.

The coupons here in question, being payable to bearer, the respondent has not established that, as to any one of them, payment was, as against her, made improperly; *Young* v. *MacNider* (1); *Connolly* v. *Montreal Park and Island Railway Co.* (2); *Edelstein* v. *Schuler* (3). The respondent's notice of her loss in 1936, while before the due date of the last coupon, was ineffective. I think therefore that the judgment below is erroneous with respect to the coupon interest. Had any interest other than that covered by the coupons been claimed, *The King* v. *Roger Miller & Sons* (4), would have been an answer.

The appeal must therefore be allowed and the judgment reduced to the amount of the principal of $900.00 only. As success is divided there should be no costs in this court.

*Appeal allowed and judgment varied; no costs to any party.*

Solicitors for the appellant: His Majesty the King: *Roger Ouimet.*

Solicitors for the appellant: the Royal Bank of Canada: *Montgomery, McMichael, Common & Howard.*

Solicitors for the respondent: *Charbonneau, Charbonneau & Charlebois.*

(1) 25 S.C.R., 272.
(2) 20 S.C. (Que.) 1.
(3) (1902) 2 K.B., 144.
(4) (1930) S.C.R., 293.