

BETWEEN :

1961
Mar. 27
Apr. 13

WORLD WIDE AIRWAYS INC. SUPPLIANT;

AND

HER MAJESTY THE QUEEN RESPONDENT.

Practice—Contested inscription on confession of judgment—Exchequer Court General Rules and Orders, rule 104.

Held: That judgment may be entered according to a confession of judgment filed under rule 104 of the General Rules and Orders of this Court only if such confession has been accepted by the plaintiff. The so-called confession is nothing more than an offer to confess judgment, which upon the plaintiff's refusal becomes of no avail and works no change in the ordinary mode of procedure.

MOTION to inscribe judgment for that part of the suppliant's claim confessed to under Exchequer Court General Rules and Orders, rule 104, without prejudice to suppliant's right to proceed against the respondent for the balance claimed in the Petition of Right.

The motion was heard before the Honourable Mr. Justice Dumoulin at Montreal.

J. M. Schlesinger for the motion.

P. M. Ollivier contra.

DUMOULIN J. now (April 13, 1961) delivered the following judgment:

A twofold motive impels me to depart from the customary practice of summarily deciding motions such as the instant one without adding any notes.

Firstly, the matter of opposing an inscription on confession of judgment has very seldom if ever arisen before this Court.

Secondly, when hearing the argument raised by respondent's counsel, I expressed, in somewhat unambiguous terms, serious doubts concerning its legal soundness. A subsequent analysis of rule 104 leads me to a different conclusion.

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Briefly put, suppliant having sued the Crown in an amount of \$110,195.30, was served, on respondent's part, with the following confession of judgment:

The Deputy Attorney General of Canada, on behalf of Her Majesty the Queen, the Respondent herein, confesses judgment for the sum of \$5,495.56, together with the costs of an action of that amount, to be taxed. Ottawa, this 13th day of February A.D. 1961.

E. A. Driedger,
 Deputy Attorney General.

Within the fortnight prescribed by rule 104, suppliant notified respondent that the confession of judgment was refused, filing on February 21 an inscription for judgment in the amount confessed, viz: \$5,495.56, without prejudice to its right to proceed for the balance.

Apparently, the learned counsel for suppliant interpreted the relevant rules of this Court as identical with those of the Quebec *Code of Civil Procedure*, specially the fourth paragraph of Article 530, reading:

When the confession is not accepted, the plaintiff, without waiting for the result of the trial, may nevertheless obtain judgment for the amount mentioned in the confession, and may proceed to the execution of such judgment within the legal delays, and the action for the balance is proceeded with in the ordinary manner.

Under this procedural system a confession of judgment even though refused is final, irrevocable, beyond the trial judge's amending reach. I previously indicated my initial, albeit guarded impression, that our particular rules were of like effect. In the light of Rule 104, such an opinion now appears untenable and I quote:

104 The defendant may at any stage of the proceedings in an action, file in the office of the Registrar a confession of judgment either for a part or the whole of the plaintiff's claim; and the plaintiff may, at any time within fifteen days after he has received notice of such confession, file a statement in writing of his acceptance or refusal of such confession of judgment, *and in the event of acceptance the Court or a Judge may order that judgment be entered accordingly* (italics are mine throughout).

In the event of the plaintiff giving notice within the time limited to the defendant of his refusal of *the offer to confess judgment* the case shall proceed to be heard and determined in the ordinary way.

In the latter context, two propositions are clearly set out: (a) that judgment may be entered according to the confession of judgment only if the latter has met with plaintiff's acceptance, and,

(b) the so-called confession, far from having any degree of finality, is nothing more than "an offer to confess judgment", which upon plaintiff's refusal, becomes of no avail and works no change in the ordinary mode of procedure.

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For the reasons above the inscription is dismissed with costs against suppliant in all issue of the case.

Judgment accordingly.