1916
March 27.

IN THE MATTER OF THE PETITION OF RIGHT OF

ANTOINE L'HIRONDELLE, AN INDIAN HALF-BREED, SUPPLIANT;

AND

HIS MAJESTY THE KING..... RESPONDENT.

*Indian lands—Scrip—Disposal of—Gift—Recovery—Laches.*

On October 20, 1900, a scrip, in satisfaction of half-breed's claim arising out of the extinguishment of Indian title, was issued to the suppliant who gave it to his father. The latter sold the same for consideration, and the scrip, after acreage had been located, apparently in due form, found its way into the hands of the Crown, and the suppliant now, 13 years after, sues the Crown to have the scrip certificate returned to him and that failing to do so, he asks to recover the value thereof.

*Held*, as there was no covenant running with the scrip and the suppliant having parted with the same, there was no privity as between the Crown and himself, and furthermore he is barred by his laches having, by a period of 12 to 13 years, acquiesced in what had taken place.

PETITION OF RIGHT to recover from the Crown certain scrip or the value thereof.

The case was heard before the Honourable Mr. JUSTICE AUDETTE, at Edmonton, January 17 and 18, 1916.

*E. B. Edwards*, K.C., for suppliant; *H. L. Landry*, for Crown.

AUDETTE, J. (March 27, 1916) delivered judgment.

This suppliant brought his petition of right seeking to have returned to him, by the Crown, Scrip Certificate No. 2070, issued to him on October 20, 1900, in satisfaction of half-breed's claim arising out of the extinguishment of Indian title, entitling him to 240 acres of Dominion Lands, under the provisions of the Act 62–63 Vict. ch. 16. He further alleges that the Crown is in possession of this scrip, which he values at $6,000, and he asks that should the Crown fail to return the same, it should pay the value thereof.

As appears by Exhibit A, on October 20, 1900, Antoine L'Hirondelle, son of Jean Baptiste L'Hirondelle, then 22 years of age, received from the Half-Breed Com-

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mission, the original Certificate No. 2070, entitling him to the 240 acres of Dominion Lands, as above mentioned.

His father asked him to give him this scrip to pay a debt he owed Messrs. McDougall & Secord, and the suppliant gave it to him. The father, Jean Baptiste L'Hirondelle, then sold it to McDougall & Secord for $150, the price that was being paid for such scrips at the time. The father then owed about $500 to McDougall & Secord, who gave him credit *pro tanto*.

Jean Baptiste L'Hirondelle sold the scrip with guarantee —that is he undertook to locate when necessary. McDougall, who was dealing extensively in his purchase and sale of scrip at the time says that while he purchased with guarantee, he sold without any warranty.

The suppliant testified he expected to get something when locating. Witness McDougall says they were in the habit of giving $10 and sometimes they gave as high as $15 but never more, to the half-breed who would locate, with the object of compensating him for travelling, and displacement, etc. But there was no legal claim to any such money, the scrip had been sold at a given sum with guarantee of location.

Under a transfer of the suppliant's rights to the 240 acres and an application to locate, both dated on July 11, 1902, and purported to be signed by the suppliant, a patent was issued. The suppliant contends he never signed these two documents, and whether he did or not has no effect upon the issues of the case. The documents are filed as exhibits and respectively marked B and C. He therefore, in 1913, by the present petition of right, asked for the return of his scrip or the value thereof, which he places at $6,000.

Now from the above it appears clearly that the Crown discharged all duties cast upon it, when it delivered the scrip certificate or the scrip notes. It did not give such scrip with any warranty or further obligation attached to it. After the suppliant did obtain his scrip, he gave it to his father to discharge part of a debt due by him (the father) to the firm of McDougall & Secord. The suppliant therefore parted with his interest in the scrip and the father used it in the manner agreed upon between them.

There is now no interest in the scrip which the suppliant could claim. He parted with it when giving it to his father and there is now no privity as between the Crown and the suppliant in respect of this scrip, in which now he has no legal interest,—*Donner et retenir ne vaut* (*You cannot give and retain*) according to the French legal maxim. It is true the scrip has now found its way into the hands of the Crown, but it did so find its way in due course after the suppliant had parted with all his interest in it. After it so came in the possession of the Crown in due course, it was duly cancelled and is now non-existent, or has no value whatsoever in its present state.

The suppliant obtained his scrip in 1900 when he gave it to his father, and now comes 12 or 13 years after to make a claim in respect of the same. The least that can be said is that he is barred by his laches, having acquiesced for so long a period in what has taken place. He cannot annul his gift of this scrip to his father after this long failure to assert his rights, if he had any. The action appears like a tardy afterthought.

If there had been any wrongful conversion of the scrip, it would however be prescribed by 6 years, and the Crown could not be charged with wrongful conversion and is not liable in tort. See the unreported case of *MacKay v. Secord*, decided in a similar action by the Appellate Division of the Supreme Court of Alberta, on September 23, 1913, and produced as part of the argument.

The suppliant cannot succeed in the action as framed, and he is declared not entitled to any portion of the relief sought by his petition of right. The action is dismissed with costs.

*Petition dismissed.*

Solicitor for suppliant: *E. B. Edwards.*

Solicitor for respondent: *H. L. Landry.*