

1916
 March 27.

IN THE MATTER OF THE PETITION OF RIGHT OF
 JOSEPH L'HIRONDELLE, AN INDIAN HALF-BREED,
 SUPPLIANT;
 AND
 HIS MAJESTY THE KING.....RESPONDENT.

Indian lands—Scrip—Gift—Estoppel—Infant.

The suppliant, when a minor of 18 years of age, gave to his father a scrip in satisfaction of half-breed claim arising out of the extinguishment of Indian Title, which was issued to him in November, 1900. In 1913, he filed his petition of right to recover the scrip which in due course had found its way back into the hands of the Crown after location, and failing the Crown to return the same he asked the value thereof.

Held, that although an infant he had full power to dispose by gift of this scrip to his father. The gift might be voidable but not void. He could for cause, repudiate within a reasonable time after having attained majority. A period of 10 years having elapsed since then he is now estopped by his laches having acquiesced by his conduct in all that has 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 19, 1916.

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

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

The suppliant brought his petition of right seeking to have returned to him, by the Crown, Scrip Certificate No. 2292, issued to him on November 3, 1900, in satisfaction of half-breed claims 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 asks that failing by the Crown to return the same that it should pay the value thereof.

This case is practically identical with that taken by his brother Antoine in this Court under No. 2443, in which

Antoine L'Hirondelle is suppliant and His Majesty The King, respondent,¹ and in which judgment has also been delivered this day. All that is stated in the reasons for judgment in the case under No. 2443 is to be taken, *mutatis mutandis*, and so far as applicable, to form part of the present judgment.

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The only material difference between the present case and that under No. 2443, is that Joseph L'Hirondelle, was only 18 years of age when his father took his scrip, the suppliant not objecting to it, but acquiescing. The father also sold it to McDougall & Secord.

The suppliant became of age in 1903 and did nothing whatsoever in respect of this scrip until 1905, when he was asked to sign the transfer to McNamara filed as Exhibit C herein, and a patent was subsequently issued.

As in the other case, there is some contest as to whether or not he did actually sign an application to locate in 1905, but that has nothing to do with this case, as already stated in case No. 2443.

Although an infant, the suppliant had full power to dispose by gift of this scrip to his father: 17 *Halsbury's Laws of England*, 78. The property of this chattel, because this scrip was nothing but a chattel, passed when he gave it to his father. The most that can be said is that it was voidable but not void. It was indeed subject to his repudiation. However, he became of age in 1903, and the present petition of right is filed in 1913, ten years after he became of age. He could repudiate within a reasonable time after attaining the age of twenty-one; but he did not do so, and he is now estopped by his laches, having acquiesced by his conduct in all that has taken place.

This case, like the case of his brother Antoine, is nothing but the result of tardy afterthought.

In arriving at my conclusions in the present issues, I rely with more satisfaction upon the unreported case of *MacKay v. Secord*, decided by the Appellate Division, of the Supreme Court of Alberta, on September 23, 1913; because in the *MacKay* case, as in the present one,

¹ Ante, p. 193.

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the half-breed parted with his scrip under similar circumstances and was only 18 years of age.

Taking in consideration what has just been said above and the reasons for judgment in the case (No. 2443) of *Antoine L'Hirondelle v. The King*,¹ I have come to the conclusion that the suppliant cannot succeed in the action as framed and the suppliant is declared not entitled to 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.*

¹ Ante, p. 193.
