1945

*May 29
*June 20

GATINEAU POWER COMPANY (DEFENDANT) ..... APPELLANT;

AND

CROWN LIFE INSURANCE COMPANY (PLAINTIFF) ..... RESPONDENT;

AND

THE ROYAL TRUST COMPANY (MISE-EN-CAUSE).

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC

Companies—Bonds—Redemption before maturity—Payment in American or Canadian funds at the option of holder—Redemption date—Date of presentation—Exchange rate not same on those dates—Rate at which bonds are payable.

Where, in conformity with a trust deed, a company (appellant) elects to redeem, prior to maturity, some of its outstanding bonds on June 1, 1939, such bonds being payable in United States or Canadian funds at the holder's option and the holder (respondent) does not present the bonds on that date when the rate of exchange was 13/64th of 1 per cent. but later forwards them to New York where, on September 20, 1939, the rate of exchange being 11 per cent., they are presented to a paying agent, an American bank, with a demand that the amount be paid in American currency, but payment is refused by the bank under instructions from the appellant company, the holder (respondent) is entitled to bring an action in Quebec asking that the appellant be ordered to pay in Canadian funds an amount sufficient to purchase the required United States funds at the rate of exchange current on September 20, 1939.

The privilege of receiving payment in two currencies was not limited to the day of maturity of interest or principal.

The obligation of the appellant company, under the bonds, was not only to be ready and willing to pay the debt on the day fixed but to maintain that readiness until the debt was discharged. On the other hand, there was no duty upon the holder (respondent) to present the bonds for surrender on any particular day, and, consequently, there was no default by the latter through failure to act until September 20th, 1939.

Judgment of the appellate court (Q.R. [1944] K.B. 700) affirmed.

APPEAL from a judgment of the Court of King's Bench, appeal side, province of Quebec (1) reversing the judgment of the Superior Court, Demers Philippe J.

*PRESENT.—Rinfret C.J. and Hudson, Taschereau, Rand and Estey JJ.

(1) Q.R. [1944] K.B. 700.

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GATINEAU POWER CO. v. CROWN LIFE INSURANCE CO.

The respondent company claimed from the appellant company the sum of $177,322.50, being the alleged value in Canadian currency of 150 $1,000 bonds issued by the appellant company plus premium and interest. After the institution of the action, but before pleading, the appellant company paid the respondent company a sum of $159,750 in virtue of a special agreement between the parties, thus leaving in issue the sum of $17,572.50, such amount representing an 11 per cent. premium of exchange of United States funds over Canadian funds which the respondent company claimed to be entitled to receive in addition to the amount paid by the appellant company. The trial judge maintained the respondent company's action for $330 only; but the appellate court maintained it for the full amount claimed.

L. A. Forsyth K.C. and *Hazen Hansard K.C.* for the appellant.

Aimé Geoffrion K.C. and *F. J. Laverty K.C.* for the respondent.

The judgment of the Court was delivered by

RAND J.—This action was brought on bonds, the covenant in which was in the following terms:

> Gatineau Power Company (hereinafter called the "Company"), for value received hereby promises to pay to the bearer hereof * * * on the first day of June, 1956 * * * dollars in gold coin of the Dominion of Canada of or equal to the June 1, 1926 standard of weight and fineness at the office or agency of the Company, at the holder's option, either in the city of Montreal, province of Quebec, or in the city of Toronto, province of Ontario, or, at the holder's option, in gold coin of the United States of America, of or equal to the June 1, 1926, standard of weight and fineness at the office or agency of the Company, at the holder's option, either in the Borough of Manhattan, city and state of New York, or in the city of Boston, Commonweath of Massachusetts, and to pay interest thereon from June 1, 1926, until fully paid, at any one of said places, at the holder's option, in like gold coin as aforesaid at the rate of five per cent (5%) per annum semi-annually on the first days of December and June in each year, but only upon presentation and surrender of the respective coupons hereto attached as they severally become due.

They were of a series due in 1956 and were subject to redemption on any interest date prior to maturity at the election of the company. The redemption price was to be the principal plus a premium of four per cent. The company elected to redeem as of June 1st, 1939. In case of

redemption, upon funds being provided by the company to the trustee, the bonds were to cease to bear interest; and they were to be surrendered upon payment. On the day fixed, the company had made provision for funds of appropriate currencies in the four cities mentioned. On that day, the premium on American funds was 13/64ths of one per cent. The respondent presented its bonds at New York on September 20th, when the premium was officially at eleven per cent., but the company declined to pay their face value in American funds. Some time later it proposed to pay such sum in American funds as then represented the amount of Canadian currency payable as of June 1st, i.e. on the exchange rate of 13/64ths of one per cent., or the sum of $917.09 in American funds on each thousand dollar bond. An offer of $22.04 in American funds, calculated on the same basis, was made on the interest coupon for $25 due June 1st, 1939. These offers the respondent declined to accept and this action was brought in Quebec.

Two contentions are made by the appellant. It is said first that the clause dealing with the several currencies and places contemplated primarily a Canadian currency and place of payment at Montreal; secondarily, an option in the holder to receive payment in American funds at either New York or Boston but limited in time to the precise day named for redemption. The second point was that, assuming the option continued after the maturity date, nevertheless, for the purposes of judgment in Canadian currency, the date as of which the conversion rate must be determined was the date of maturity, June 1st, 1939.

It would, I think, be rather astonishing to purchasers to be told that the privilege of receiving payment in two currencies and at four places of payment, obviously provided in the bonds as an inducement to their sale, was one that was strictly limited to the day of maturity of both interest and principal. There is in the clause no such express limitation and to imply one would be to adopt a construction, having regard to the continuing debt, utterly at variance with the plain and ordinary meaning of the language. Nor is there anything in the circumstance that payment is to be made on redemption or at maturity upon surrender of the bonds that gives support to, much less requires, such an implication.

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Rand J.

The appellant's position is in fact vitiated by a fallacy at the bottom: it assumes the word "option" to have the technical signification it carries in, say, an "option" to purchase. It is treated as an incidental or collateral privilege of which time is a condition. One day's delay in presenting an interest coupon at either Boston or New York would render it payable only at Montreal in Canadian funds: such a consequence, in the absence of language compelling it, needs but to be mentioned to be rejected. The word is not used in any such sense. It is used, in relation to an alternative mode of payment, to put the choice in the holder of the bonds rather than in the debtor. So interpreted, the provisions of the bonds and of the trust indenture are not only consistent but free from commercial absurdity.

The second ground is that the date of conversion into Canadian funds is the date of the maturity of the obligations and that this was on June 1st, 1939. In the application of the authorities relied on, this date of maturity is confused with the date of a breach. In the ordinary case of a debt payable at a certain time, the date of payment becomes, in case of non-payment, the date of the breach or default; but here the obligation to redeem had, as a concurrent condition, the surrender of the bonds. The obligation of the company, under the bonds, was not only to be ready and willing to pay the debt on the day fixed but to maintain that readiness until the debt was discharged. On the other hand, there was no duty upon the holder to present the bonds for surrender on any particular day. There was consequently no default by the respondent through failure to act until September 20th. Nor was there any default on the part of the company until that day, when payment according to the tenor of the bonds was refused. It is on the cause of action arising from that refusal that this proceeding is brought.

In such a case, the rule laid down in *The Custodian* v. *Blucher* (1) and in *S.S. Celia* v. *S.S. Volturno* (2), is that conversion into the currency of the forum is to be made as of the date of the breach and that rule was followed in

(1) [1927] S.C.R. 420. (2) [1921] 2 A.C. 544, at 528.

the Court of King's Bench. But even if we were to take the date of judgment as controlling, the amount recoverable would be the same.

The appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Montgomery, McMichael, Common, Howard, Forsyth & Ker.*

Solicitors for the respondent: *Laverty, Hale & Laverty.*