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COMPLAINT.

(Filed February 7, 1924.)

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

10

EDWIN S. DICKERSON, *Plaintiff*, v. WILKES-BARRE AND HAZLETON RAILROAD COMPANY, *Defendant*.	Action at Law. Complaint.

Plaintiff, of the Borough of Merchantville, County of Camden and State of New Jersey, says: 20

FIRST COUNT.

1. On the 15th day of May, 1901, defendant made, executed and delivered, under its corporate seal, a certain bond numbered 757, known as a first collateral trust mortgage fifty-year five per cent gold bond.

30

2. In and by the said bond, the said defendant, among other things, promised and agreed to pay interest thereon at the rate of five per cent per annum from May 15, 1901, payable semi-annually on the 15th day of November and the 15th day of May,

in each and every year and until the payment of the principal sum of the said bond.

3. That annexed to the said bond were certain instruments commonly known as coupons, a copy of one of which said coupons is as follows:

On the 15th day of ($25)
MAY 1915
WILKES-BARRE AND HAZLETON
10 RAILROAD COMPANY

Will pay to bearer at the office of Guaranty Trust Company of New York, in the City of New York, N. Y., TWENTY-FIVE DOLLARS, United States Gold Coin of the standard existing May Fifteenth, 1901. Without deduction for taxes, being six months' interest then due on its five per cent gold Bond. NO. 757

N. C. Yost
($25) Treasurer 28

20

4. That attached to the said bond were three certain other coupons, identical in form with the coupon above set forth, except that the last mentioned coupons were payable on the 15th day of November, 1915, the 15th day of May, 1916, and the 15th day of November, 1916.

5. The said plaintiff is the holder of the said coupons above mentioned.

30

6. The said coupons remain due and unpaid to the plaintiff with interest from their due dates.

7. The venue hereof is laid in Camden County.

SECOND COUNT.

1. On the 15th day of May, 1901, defendant made, executed and delivered, under its corporate seal, a certain bond numbered 758, known as a first collateral trust mortgage fifty-year five per cent gold bond.

2. In and by the said bond, the said defendant, among other things, promised and agreed to pay interest thereon at the rate of five per cent per annum from May 15, 1901, payable semi-annually on the 15th day of May and the 15th day of November, in each and every year and until the payment of the principal sum of the said bond. 10

3. That annexed to the said bond were certain instruments commonly known as coupons, a copy of one of which said coupons is as follows: 20

On the 15th day of ($25)
MAY 1915
WILKES-BARRE AND HAZLETON
RAILROAD COMPANY
Will pay to bearer at the office of Guaranty Trust Company of New York, in the City of New York, N. Y., TWENTY-FIVE DOLLARS, United States Gold Coin of the standard existing May Fifteenth, 1901. Without deduction for taxes, being six months' interest then due on its five per cent gold Bond. NO. 758 30
N. C. Yost
($25) Treasurer 28

4. That attached to the said bond were three certain other coupons, identical in form with the coupon above set forth, except that the last mentioned

coupons were payable on the 15th day of November, 1915, the 15th day of May, 1916, and the 15th day of November, 1916.

5. The said plaintiff is the holder of the said coupons above mentioned.

6. The said coupons remain due and unpaid to the plaintiff with interest from their due dates.

10

7. The value hereof is laid in Camden County.

THIRD COUNT.

1. On the 15th day of May, 1901, defendant made, executed and delivered, under its corporate seal, a certain bond numbered 759, known as a first collateral trust mortgage fifty-year five per cent gold bond.

20

2. In and by the said bond, the said defendant, among other things, promised and agreed to pay interest thereon at the rate of five per cent per annum from May 15, 1901, payable semi-annually on the 15th day of May and the 15th day of November, in each and every year and until the payment of the principal sum of the said bond.

3. That annexed to the said bond were certain in-
30 struments commonly known as coupons, a copy of one of which said coupons is as follows:

On the 15th day of ($25)
MAY 1915

WILKES-BARRE AND HAZLETON
RAILROAD COMPANY

Will pay to bearer at the office of Guaranty Trust Company of New York, in the City of

New York, N. Y., TWENTY-FIVE DOLLARS, United States Gold Coin of the standard existing May Fifteenth, 1901. Without deduction for taxes, being six months' interest then due on its five per cent gold Bond. NO. 759
N. C. Yost
($25) Treasurer 28

4. That attached to the said bond were three certain other coupons, identical in form with the coupon above set forth, except that the last mentioned coupons were payable on the 15th day of November, 1915, the 15th day of May, 1916, and the 15th day of November, 1916. 10

5. The said plaintiff is the holder of the said coupons above mentioned.

6. The said coupons remain due and unpaid to the plaintiff with interest from their due dates. 20

7. The venue hereof is laid in Camden County.

FOURTH COUNT.

1. On the 15th day of May, 1901, defendant made, executed and delivered, under its corporate seal, a certain bond numbered 760, known as a first collateral trust mortgage fifty-year five per cent gold bond. 30

2. In and by the said bond, the said defendant, among other things, promised and agreed to pay interest thereon at the rate of five per cent per annum from May 15, 1901, payable semi-annually on the 15th day of May and the 15th day of November, in

each and every year and until the payment of the principal sum of the said bond.

3. That annexed to the said bond were certain instruments commonly known as coupons, a copy of one of which said coupons is as follows:

On the 15th day of ($25)
MAY 1915

WILKES-BARRE AND HAZLETON
10 RAILROAD COMPANY

Will pay to bearer at the office of Guaranty Trust Company of New York, in the City of New York, N. Y., TWENTY-FIVE DOLLARS, United States Gold Coin of the standard existing May Fifteenth, 1901. Without deduction for taxes, being six months' interest then due on its five per cent gold Bond. NO. 760

N. C. Yost
($25) Treasurer 28

20

4. That attached to the said bond were three certain other coupons, identical in form with the coupon above set forth, except that the last mentioned coupons were payable on the 15th day of November, 1915, the 15th day of May, 1916, and the 15th day of November, 1916.

5. The said plaintiff is the holder of the said coupons above mentioned.

30

6. The said coupons remain due and unpaid to the plaintiff with interest from their due dates.

7. The venue hereof is laid in Camden County.

Judgment will be demanded on the first count for the sum of $100.00, with interest thereon from the

due dates of the several coupons; and on the second count for the like sum with interest as aforesaid; and on the third count for the like sum with interest as aforesaid; and on the fourth count for the like sum with interest as aforesaid.

D. T. Stackhouse,
Attorney for Plaintiff.

10

ANSWER.

(Filed February 8, 1924.)

NEW JERSEY SUPREME COURT.
Camden County.

20

Edwin S. Dickerson, *Plaintiff,* v. Wilkes-Barre and Hazleton Railroad Company, *Defendant.*	Action at Law. Answer.

Defendant, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, and having its principal office in the City 30 of Jersey City, County of Hudson and State of New Jersey, answering the complaint of the plaintiff, says that:

Answer to First Count.

1. Paragraphs 1, 2, 3 and 4 are admitted.

2. Defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraphs 5 and 6 of the first count, and leaves the plaintiff to his proof thereof.

3. Paragraph 7 is admitted.

Answer to Second Count.

10

1. Paragraphs 1, 2, 3 and 4 of the second count are admitted.

2. Defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraphs 5 and 6 of the second count, and leaves the plaintiff to his proof thereof.

3. Paragraph 7 is admitted.

20

Answer to Third Count.

1. Paragraphs 1, 2, 3 and 4 are admitted.

2. Defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraphs 5 and 6 of the third count, and leaves the plaintiff to his proof thereof.

30

3. Paragraph 7 is admitted.

Answer to Fourth Count.

1. Paragraphs 1, 2, 3 and 4 are admitted.

2. Defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraphs 5 and 6 of the fourth count, and leaves the plaintiff to his proof thereof.

3. Paragraph 7 is admitted.

First Separate Defense to First, Second, Third and Fourth Counts. 10

The causes of action alleged in the complaint, if they ever accrued, did not accrue within six (6) years next before the commencement of this action, and are, therefore, barred by the statute in such case made and provided.

Katzenbach & Hunt,
George Gildea,
Attorneys for Defendant.

20

30

REPLY.

(Filed May 21, 1924.)

NEW JERSEY SUPREME COURT.

10

EDWIN S. DICKERSON, *Plaintiff*, v. WILKES-BARRE AND HAZLETON RAILROAD COMPANY, *Defendant*.	Action at Law. Reply.

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20 Plaintiff denies the first separate defense to the first, second, third and fourth counts of the complaint.

D. T. STACKHOUSE,
Attorney for Plaintiff.

Consent is hereby given to the filing of the above as of time.

KATZENBACH & HUNT,
Attorneys for Defendant.

30

TESTIMONY.

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY CIRCUIT.

10

EDWIN S. DICKERSON, *Plaintiff,* v. WILKES-BARRE AND HAZLETON RAILWAY COMPANY, *Defendant.*	Action at Law.

December Term, 1924.

20

APPEARANCES:
For the plaintiff, D. T. STACKHOUSE, ESQ.
For the defendant, KATZENBACH & HUNT, ESQS., and GEORGE GILDEA, ESQ.

Before DONGES, J.

30

Mr. Stackhouse opens the case for the plaintiff to the Court as follows: For your Honor's information, I would say that this is a suit upon four sets of coupons which were detached from certain first

mortgage collateral bonds of the Wilkes-Barre & Hazleton Railway Company, first collateral trust mortgage fifty-year five per cent gold bonds, which are held by the plaintiff, Edwin S. Dickerson, numbers 757, 758, 759 and 760 respectively. The coupons in question are coupons which were detached from those bonds and are due in May, 1915, November, 1915, May, 1916, and November, 1916, respectively, the coupons being for twenty-five dollars 10 each. There are four coupons from each bond, making a total of one hundred dollars in coupons on each bond, the suit being for four hundred dollars and interest.

The Court: And it is a fact that those coupons were all due more than six years before the action?

Mr. Stackhouse: There seems to be no question of that, because they are all dated not later than 20 November of 1916, and the action was commenced at a comparatively recent date, January of 1924.

The Court: There can be no question as to that. Do you want to add something to the record, Mr. Gildea?

Mr. Gildea: I think, if the Court please, perhaps for the sake of keeping the record straight I should move for a judgment for the defendant on the plaintiff's opening on the ground that it appears from 30 the opening that the cause of action accrued more than six years before the suit was instituted.

The Court: You move for a judgment of nonsuit?

Mr. Gildea: I suppose that is about all I can ask for on an opening.

The Court: I should think so.

Mr. Gildea: I might state off the record that I haven't any objection to having the motion held until the bonds are put in, if your Honor thinks that would make a better record.

The Court: I think so.

Mr. Gildea: That is the defense raised by the answer, that the suit is barred by the statute of limitations. The answer admits the making and issuing of bonds of the kind mentioned in the complaint, but the defendant alleges that it has no knowledge or information as to the ownership of any of those bonds by the plaintiff, so that on that point we would ask for proof, and if the bonds are held by the plaintiff and the coupons are owned by the plaintiff, then we contend that we are entitled to a judgment because the action is barred by the six years statute of limitations, there being no allegation either in the opening or in the complaint that the coupons are sealed instruments.

Mr. Stackhouse: It is probably a conclusion of law, I should think, whether they were or were not. I offer in evidence first collateral trust mortgage fifty-year five per cent gold bond of the Wilkes-Barre & Hazleton Railway Company, No. 757, and ask that it be marked Exhibit P1.

The Court: Is that payable to bearer?

Mr. Stackhouse: It is payable to bearer; they are not registered bonds.

(Said paper is marked Exhibit P1.)

The Court: I do not suppose you require formal proof of the ownerships, do you?

Mr. Gildea: No, sir. I think production is proof enough.

Mr. Stackhouse: I understood Mr. Gildea when he made his opening that he would require formal proof.

10

The Court: Well, they are made payable to bearer.

Mr. Stackhouse: And in the possession of his attorney.

Mr. Gildea: There is no proof that they are our bonds. We admit we made an issue of bonds, but we do not admit that these bonds are part of the
20 issue. However, I will admit it now.

The Court: So that it has boiled down to the single question whether the statute of limitations is a good defense to this action.

Mr. Stackhouse: That is the only question. I also offer a similar bond No. 758, and ask that that be marked Exhibit P2.

30 Mr. Gildea: Mr. Stackhouse, are the coupons upon which you are suing attached to this bond?

Mr. Stackhouse: They are detached; I will offer them separately. I also offer in evidence similar bond of the Wilkes-Barre & Hazleton Railway Company No. 759, and ask that it be marked Exhibit P3.

(Said bond is so marked.)

Mr. Stackhouse: I also offer in evidence similar bond of the Wilkes-Barre & Hazleton Railway Company No. 760, and ask that it be marked Exhibit P4.

(Said bond is so marked.)

Mr. Stackhouse: I offer in evidence four coupons detached from bond No. 757, due November 15, 1915 —pardon me, due May 15, 1915, November 15, 1916, May 15, 1916 and November 15, 1916, for twenty-five dollars each, these coupons having been detached and presented for payment, detached from the bonds bearing the corresponding numbers, and I will ask that these be marked as exhibits following the sequence of the numbers. 10

(Said coupons are marked Exhibits P5 to P8 both inclusive.) 20

Mr. Stackhouse: I also offer in evidence a similar series of coupons presented for payment and detached from bonds No. 758 and ask that those be marked as exhibits.

(Said coupons are marked respectively Exhibits P9 to P12 both inclusive, for the plaintiff.)

Mr. Stackhouse: A similar series of coupons which were attached to bond No. 759 and detached and presented for payment. 30

(Said coupons are marked respectively Exhibits P13 to P16.)

Mr. Stackhouse: And a similar series of coupons originally attached to bond No. 760, and detached and presented for payment.

The Court: They may be marked.

(Said coupons are marked respectively Exhibits P17 to P20 both inclusive.)

10 PLAINTIFF RESTS.

DEFENDANT RESTS.

Mr. Gildea: I move for the direction of a verdict in favor of the defendant upon the ground which was the basis for the motion for non-suit on the plaintiff's opening, namely, that the plaintiff's
20 proofs show that the coupons which are the basis of the suit became due more than six years before the action was instituted, and the coupons themselves show that they are not under seal, and upon the further ground that this very question has been presented to the Supreme Court on a motion made by the plaintiff to strike out the answer of the statute of limitations, and the Supreme Court has ruled that the answer is good and that the statute of limitations is a bar to an action of this kind.

30

The Court: I think that, following the Supreme Court in this case, which Court follows the Court of Errors and Appeals in the case of Fidelity Trust Company v. Wilkes-Barre & Hazleton Railway Company, reported in 120 Atl. 734, in which this very question was passed upon, being a suit by another holder of similar bonds and coupons attached, in

which the Court of Errors held that the statute of limitations was a bar, I am bound to grant the defendant's motion.

Mr. Stackhouse: Do I understand that that takes the form of a judgment of non-suit?

The Court: Mr. Gildea's motion was a verdict for the defendant upon the whole case; he rested his case upon your proof and moved for a direction of verdict for the defendant, and I presume he is entitled to that. 10

Mr. Stackhouse: (After argument. His original motion on my opening was for a judgment of non-suit; then he stated that he was willing to have that held until the conclusion of the case.

Mr. Gildea: (After argument.) Very well, I make a motion for non-suit then. 20

The Court: The motion of non-suit is granted for the reasons stated before.

(Exception noted for the plaintiff.)

30

EXHIBIT P1.

Number 757 $1000 — Number 758 $1000

UNITED STATES OF AMERICA
WILKES-BARRE and HAZLETON
RAILROAD COMPANY

10 First Collateral Trust Mortgage 50 year 5% Gold Bond. Know all men by these presents, That Wilkesbarre and Hazleton Railroad Company, a corporation, hereinafter called the "Railroad Company," for value received, promises to pay to the bearer, or if registered, to the registered holder of this bond

—ONE THOUSAND DOLLARS—

in the gold coin of the United States of America on the 15th day of May, 1951, at the office of the Guar-20 anty Trust Company of New York, in the city of New York, N. Y., and to pay interest thereon at the rate of five per cent per annum from May 15th, 1901 payable semi-annually, at the said office, in like gold coin, on the 15th day of May and the 15th day of November in each and every year until the payment of said principal sum, but only upon presentation and surrender as severally they shall mature, or the coupons therefor annexed hereto; such United-States Gold Coin in every case to be of the standard 30 of weight and fineness as it existed May 15th, 1901.

Both the principal and the interest of this bond are payable without deduction for any tax or taxes which the Railroad Company may be required to pay or to retain therefrom under any present or future law of the United States, or of any State or County or municipality therein.

This bond is one of a series of Five Per Cent Gold bonds of the Railroad Company, issued and to be issued for an aggregate principal sum not exceeding Two million five hundred thousand dollars at anyone time outstanding, under and in pursuance of and all equally secured by a collateral trust mortgage or deed of trust dated May 15th, 1901, executed by the Railroad Company to the Guaranty Trust Company of New York, as Trustee, pledging all of the shares of the capital stock and bonds now owned 10 or hereafter acquired by the Railroad Company which have been or shall be delivered to the Trustee pursuant to said mortgage or deed of trust to which reference hereby is made for a statement of the property mortgaged, the nature and extent of the security, the rights of the holders of said bonds under the same, and of the terms and conditions upon which said bonds are issued and secured and are to be used; the officers, directors and stockholders of the Railroad Company being expressly 20 exempted, relieved and absolved from any and all personal liability in respect of said bonds, all such liability being hereby expressly waived.

This bond shall pass by delivery until registered, but after registration of ownership on books kept for that purpose by the Trustee no transfer except on said books, shall be valid unless the transfer be to bearer and this bond shall continue subject to successive registrations or transfers to bearer at the option of the holder. The coupons annexed to 30 this bond shall always be transferable by delivery.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate hereon endorsed, of the Trustee under said mortgage or deed of trust.

(Corporate Seal) In Witness whereof, said Wilkesbarre and Hazleton R. R. Company has caused these presents to be signed by its President and its corporate seal to be hereunto affixed, and to be attested by its Secretary and coupons for such interest, with the engraved signature of its Treasurer, to be
10
attached hereto, this 15th day of May, 1901.

Wilkesbarre and Hazleton Railroad Company
Attest E. S. DOUD By D. MARSCH
Secretary $1000 President

(Exhibits P2, P3 and P4 are identical with above Exhibit P1, except that they are numbered 758, 759 and 760 respectively.)

20
(Exhibits P5 to P20 inclusive, being the coupons annexed to the bonds, are set forth in the complaint.)

30

JUDGMENT OF NON-SUIT.

NEW JERSEY SUPREME COURT.

EDWIN S. DICKERSON, *Plaintiff*, v. WILKES-BARRE AND HAZLETON RAILROAD COMPANY, *Defendant*.	Action at Law. On Postea. Judgment of Non-suit. Katzenbach & Hunt and George Gildea, Attorneys.

10

Judgment entered this sixth day of February, A. D. nineteen hundred and twenty-five in favor of defendant and against the plaintiff for the sum of forty-six dollars and ten cents costs. 20

Costs $46.10

WM. S. GUMMERE,
C. J.

A true copy.
EDWARD J. KELLEHER,
Clerk.

30

NOTICE OF APPEAL.

NEW JERSEY SUPREME COURT.

10

EDWIN S. DICKERSON, *Plaintiff,* v. WILKES-BARRE AND HAZLETON RAILROAD COMPANY, *Defendant.*	Action at Law. Notice of Appeal.

To Katzenbach & Hunt, Esquires, Attorneys for the Defendant in the Above Cause:

20

Take notice that the plaintiff appeals to the Court of Errors and Appeals, of the State of New Jersey, from the whole of the judgment entered in this cause, upon the following ground:

1. The trial Court directed a judgment of nonsuit against the plaintiff in favor of the defendant when thereunto moved by counsel for the defendant, whereas said Court should have denied said motion
30 and should have rendered judgment for the plaintiff for the amount of his demand.

D. T. STACKHOUSE,
Attorney for Appellant.

[ENDORSED]

Service of the within Notice of Appeal is hereby acknowledged this 18th day of January, 1926.

Edward L. Katzenbach,
Attorney for Appellee.

10

Consent is given to the filing of the within notice of appeal as of time.

Edward L. Katzenbach,
Attorney for Appellee.

20

30

59 MAY.T.1926

New Jersey Court of Errors and Appeals

Edwin S. Dickerson,
Plaintiff-Appellant,
v.
Wilkes-Barre and Hazleton Railroad Company,
Defendant-Respondent.

On Appeal from Supreme Court.

BRIEF FOR APPELLANT.

The parties in this brief will be referred to by their original designation of "plaintiff" and "defendant;" and the parenthetical references are to the State of the Case.

I.

An action was brought by the plaintiff against the defendant to recover on sixteen coupons which were annexed to four sealed bonds of the defendant, the amount of the coupons being for $25.00 each. The coupons are identical in form, differing only in their numbers and due dates. A copy of the coupons will be found incorporated in the copy

of the complaint (p. 2), and a copy of the bond will be found on page 18.

To the complaint the defendant interposed as a defense that the causes of action alleged in the complaint did not accrue within six years next before the commencement of the action (p. 9).

The matter came on before Circuit Judge Donges, without a jury; and at the close of the case a motion for a non-suit was granted upon the strength of the above defense (p. 17).

None of the facts in the matter were in dispute. The action was brought more than six years after the due dates of the coupons, and thus the sole question which is presented for consideration to this Court is whether an action is barred upon the coupons after a lapse of six years from their due dates, or whether they fall within the protection of the sixteen year limitation applying to sealed instruments.

II.

This question has never been directly presented to this Court until the present case; but the law has been expounded in various other jurisdictions and in the United States Supreme Court to the effect that coupons detached from the bonds to which they were formerly annexed retain the same nature and character and do not thereby become simple contract debts; and as to the period of limitation, are governed by the same statute as other sealed instruments.

25 *Cyc.*, 1035;
Smythe v. New Providence, 253 F. 24;
Rialto Irr. Dist. v. Stowell, 246 F. 294;
Prescott v. Williamsport &c. R. Co., 159 F. 244;
Bertman v. Koshkonong, 4 F. 373;

Kershaw v. Handcock, 10 F. 541;
Nash v. ElDorado Co., 24 F. 252;
Huey v. Macon Co., 35 F. 481;
Kenosha v. Lampson, 76 U. S. 477;
Clark v. Iowa City, 20 Wall. 583;
Amy v. Dubuque, 98 U. S. 470;
Lexington v. Butler, 14 Wall. 282;
MacDowell v. North Side Bridge Co., 251 Pa. 585; 97 A. 97;
Kelly v. 42d St. &c. R. Co., 55 N. Y. S. 1096.

In the case of *Clark v. Iowa City*, *supra*, the United States Supreme Court laid down the rule as follows:

> "Coupons, when severed from the bonds to which they were originally attached, are in effect equivalent to separate bonds for different installments of interest, and the same limitation (as that of the bond) must on principle apply."

In the case of *Smythe v. New Providence*, *supra*, Judge Haight stated:

> "It has been settled by a line of decisions of the United States Supreme Court that as respects the usual statutes of limitations, ordinary interest coupons attached to negotiable bonds are to be considered as the same grade of contract as the bonds, or in other words, that the same provision of the statute of limitations as is applicable to the bonds is applicable to the coupons, except that the statute begins to run from the date of the maturity of the coupons respectively and not from the date of the maturity of the bonds to which they have been respectively attached, and this irrespective of whether the coupons have been detached from the bonds or remain attached thereto."

In the case of *Kenosha v. Lampson, supra*, the coupon read as follows:

> "The City of Kenosha, Wisconsin, will pay to the bearer $25.00 on the first day of September, 1860, at the Peoples Bank in the City of New York on presentation of this coupon, being the interest due on that day on the bond of said city numbered 1.
>
> Dated this 1st day of September, 1857."

The Court, in making reference to this, stated:

> "There was but one contract, and that evidenced by the bond, which covenanted to pay the bearer $500.00 in twenty years with semi-annual interest at the rate of 10% per annum. The bearer has the same security for the interest that he has for the principal.
>
> The coupon is simply a mode agreed on between the parties for the convenience of the holder in collecting the interest as it becomes due. Their great convenience and use in the interest of business and commerce should commend them to the most favorable view of the Court; and even without this consideration, looking at their terms, and in connection with the bond of which they are a part, and which is referred to on their face, in our judgment it would be a departure from the purpose for which they were issued, and from the intent of the parties to hold, when they are cut off from the bond for collection that the nature and character of the security changes and becomes a simple contract debt instead of partaking of the nature of the higher security of the bond which exists for the same indebtedness.
>
> Our conclusion is that the cause of action is not barred by lapse of time short of twenty years."

The general rule is set out in 17 R. C. L., 728; and is evidently founded upon the concensus of opinion in the various courts:

> "Statutes of limitation which apply to bonds generally apply to coupons attached thereto, when such coupons are for interest to become due on the bonds. The coupon is simply a mode agreed upon between the parties for the convenience of the holder in collecting the interest as it becomes due; and their character as such is not changed when they are severed from the bond. They do not thereby become simple contract debts, but continue to partake of the nature of the higher security of the bond which exists for the same indebtedness."

III.

The same question which is presented to this Court for consideration was presented to Justices Minturn and Lloyd sitting for the Supreme Court, upon a motion made in this case to strike out the defense as frivolous.

Dickerson v. Wilkes-Barre & Hazleton R. Co., 2 Misc. 578; 124 A. 512.

It was held in that case that the protection of the seal of the bond did not extend to the coupons, in applying the operation of the statute of limitations. The Justices rested their decision upon the strength of *Fidelity Mutual Life Insurance Co. v. Wilkes-Barre and Hazleton Railroad Co.,* 98 L. 507; 120 A. 734, in which Justice Minturn, speaking for this Court, decided that the bond and the coupons are not parts of one debt, but are separate debts and may be held by different persons, and suit on the one should not bar suit on the other, citing

Jones Co. v. Guttenberg, 66 L. 666; 51 A. 276;
Mack v. American Telephone Co., 79 L. 109; 74 A. 263.

IV.

It thus becomes necessary to consider whether the declaration of this Court can be reconciled with what other Courts have stated to be the law.

Referring to the form of the bond, it will be found that it agrees to pay to the bearer (the bonds under consideration not being registered) $1,000.00 on the fifteenth day of May, 1951, and to pay interest thereon at the rate of 5% per annum, semi-annually on the fifteenth days of May and November; but only upon presentation of the coupons annexed to the bond; the latter further providing that it should pass by delivery until registered, but that the coupons should always be transferable by delivery.

As it has been expressed by some of the authorities, the coupon system was devised to obviate the necessity for the holder of the bond to present his bond each time that he wished to collect his interest.

V.

It is quite evident, however, in the instant case that the bond and the coupon are very closely related because the bond makes reference to the coupon and the coupon makes reference to the bond. It would probably be difficult to convince this Court that the bond and the coupon are part of the same debt, in the face of the previous decision of this Court to the effect that they are not. What we do contend, however, is that its statement of the law

is not unreconcilable with the decisions in other jurisdictions, as to the effect of the statute of limitations.

VI.

In *Jones Co. v. Guttenberg, supra,* this Court stated that the bonds and the coupons *may* be held by different persons; and in the case of *Mack v. American Telephone Company, supra,* this Court stated, "A *detached,* defaulted coupon is a separate cause of action independent of the bond."

In the instant case, however, the bonds and the coupons were held by the same person; and the fact that the coupons were detached from the bonds does not, we submit, affect the question at issue. Really, what the Court is called upon to decide is, first, whether, so long as the coupon remains undetached from the bond, does it have the character of a sealed instrument; and, second, whether the mere physical act of detaching the coupon from the bond deprives it of that character?

VII.

Suppose that the holder of these bonds instead of detaching the coupons, chose to present the bond with the coupon attached for the payment of the interest to the Guaranty Trust Company, would the coupons as presented in that form be instruments under seal, or would they be simple contract obligations? Carrying this still further, suppose that when presented, the holder of the bonds and coupons permitted the coupons to be detached from the bond by the trust company; and the latter then, for some reason, after detaching the coupons, re-

fused to pay the interest represented thereby? Would this purely mechanical act of detaching the coupon convert it from a specialty to a simple contract debt; or, taking another step along the line of reasoning, suppose that the bond with the coupon attached was presented for the payment of the coupon to the trust company and payment thereof was refused and suit was entered upon the coupon, still attached to the bond, would it then be regarded as being deprived of the protection of the seal on the bond?

VIII.

As we view it, the declaration of this Court as to the coupon forming a separate indebtedness, is not unreconcilable with the declarations of other high Courts, and notably with those of the highest Court in our country, that coupons still retain their character as specialties; and the fact that they do constitute separate causes of action is not in conflict with drawing around them the protection of the seal of the bond.

IX.

It is submitted that the judgment of non-suit should be reversed.

D. TRUEMAN STACKHOUSE,
Attorney for and of Counsel with Plaintiff-Appellant.

39 MAY.1.1926

New Jersey Court of Errors and Appeals

EDWIN S. DICKERSON, *Plaintiff-Appellant,* vs. WILKES BARRE & HAZLETON RAILROAD COMPANY, *Defendant-Respondent.*	ON APPEAL FROM SUPREME COURT

BRIEF FOR RESPONDENT

This appeal brings to this court for review the action of Circuit Judge Donges in granting a non-suit in a suit brought to recover the face value with interest of coupons for interest which became due more than six years before the institution of suit.

Judge Donges had before him, and based his decision upon, an opinion rendered in this case by Mr. Justice Minturn and Mr. Justice Lloyd upon a motion made by the plaintiff to strike out the defense of the statute of limitations. The opinion is printed in 2 N. J. Misc. 578, 124 Atl. at page 512. The reason for the joint opinion was that another suit was brought in the Hudson Circuit against the defendant by the holder of other coupons at about the same time that Mr. Dickerson instituted his suit. Motions to strike out the defense of the statute were made in both cases, and the Justices before whom the motions were made, upon learning that both motions involved the same question, collaborated and filed one opinion.

Thereafter, in this case, notice of trial was served and at the trial a non-suit was granted.

In the case of *Larison v. Lambert,* 12 N. J. L. 247, it is held that a plaintiff may be non-suited if he fails to show that his cause of action arose within six years before the institution of suit in a case where the six-year limitation applies. The appellant does not contend that some other judgment than a non-suit should have been entered, the argument advanced for reversal being that the coupons, because detached from sealed instruments, could be sued upon at any time within sixteen years.

ARGUMENT

In this State, interest coupons form independent simple contracts to which the six-year provision of the statute of limitations applies.

This position is so ably and clearly expounded in the opinion filed by Justices Minturn and Lloyd that we feel nothing can be added to what they said. Their opinion is not officially reported, so we quote it in full.

> "LLOYD, J. These two cases were submitted together and involve the same question, viz., the legal sufficiency of the plea of the statute of limitations. Both plaintiffs are holders of detached coupons formerly annexed to bonds issued by the defendant. The coupons were all due and payable more than six years before the present suits were commenced and are in form, except as to number, as follows:
>
> 'WILKESBARRE AND HAZLETON RAILROAD COMPANY
>
> On the 15th day of May, 1915, ($25)
>
> Will pay to bearer at the office of Guaranty Trust Company of New York, in the city of New York, N. Y., TWENTY-FIVE

DOLLARS, United States Gold Coin of the Standard existing May fifteenth, 1901.

Without deductions for taxes being six months' interest then due on its five per cent. gold bond No. 757.

($25) N. C. Yost, (28)
Treasurer.'

The statute of limitations being pleaded it is contended by the defendants that the right of action accruing more than six years before suit the plaintiff is barred from recovery.

The coupon is a simple contract wherein the defendant, by its treasurer, promises to pay a certain sum of money at a certain time and place therein named. If it stood alone and wholly disconnected from any other obligation the holder would, by virtue of the statute of limitations, be obliged to commence his action within the statutory period of six years. It is contended, however, that the provision of the statute applicable to bonds applies, and that the limitation is sixteen years because of the fact that the coupon was, when executed, attached to a bond under seal. The relation of the coupon to a negotiable bond has been a fruitful source of consideration in the courts. The general trend of authority has been to hold that the detached coupon, when negotiable in form, is free from the conditions and limitations contained in the bond itself. 9 Corp. Jur. 50. And in this state that they form a distinct and independent contract. Jones Co. v. Guttenberg, 66 N. J. L. 666; Mack v. American Tel. Co., 79 Id. 109; and finally in a case arising upon a coupon of this same issue of bonds (Fidelity Trust Co. v. Wilkesbarre and Hazleton Railway Co., 120 Atl. Rep. 734), the Court of Errors and Appeals declared it to be a 'separate and distinct indebtedness in the hands of a bona fide hol-

der, and may be sued on regardless of the mortgage provision concerning the payment of the mortgage indebtedness.' In that case the defendant sought the protection afforded the company by the bond itself in which it was provided that suit could only be maintained by the trustee. The defense was held to be unavailable because of the independent status of the detached coupon. In this it must be observed that the independent status of the coupon is based not upon the construction of the bond nor upon the intentions of the parties resulting from such construction, but upon the absolute divorcement of the contract. If, therefore, the detached coupon constitutes in the hands of the holder a distinct and independent contract, represents a distinct and independent indebtedness, is free from the restrictions and limitations contained in the bond to which it was attached, it would be both illogical and unjust to attach to the coupon for the benefit of the holder the protection of the seal of the bond when considering the application of the statute of limitations, while denying to the maker the advantage of its protective feaures. No amount of discussion can make the pronosition clearer than the plain statement. The plaintiff must come under the provisions of the bond in their entirety or be free from them all. The court of last resort has placed him in the latter class; the coupon stands by itself, is a simple contract obligation of the defendant to pay, and to it the statutory limitation of six years applies

The motion to strike out the answer must be denied in both cases."

All of the cases cited in the appellant's brief as holding contrary to the opinion of the Supreme Court in this case are based upon the decision of the United States Supreme Court in *Kenosha v. Lamp-*

son, 76 U. S. 477, 19 L. Ed 725, and were discussed in the arguments before Justices Minturn and Lloyd. The Federal Supreme Court gives two reasons for its position:

> (1) *"The coupon is not an independent instrument,* like a promissory note for a sum of money, but is given for interest thereafter to become due upon the bond, which interest is parcel of the bond, and partakes of its nature. * * * These coupons are substantially but copies from the body of the bond in respect to the interest.* * *"
>
> (2) "And any decision that would have the effect to lessen or impair the higher security for the interest as found in the bond, by the use of these coupons, would necessarily, to that extent, defeat the purpose for which they were designed."

Our Supreme Court refused to follow the Kenosha case because our courts have taken a different view of the nature of interest coupons. The attitude of our courts is set forth by Mr. Justice Trenchard in the case of *Mack v. American Telephone Co.,* 79 N. J. L. 109, where he said:

> *"The detached defaulted coupons are separate causes of action independent of the bond,* * * * . It follows that the unpaid detached coupons in question are not still a part of the bond from which they were detached so as to make the holder thereof a bondholder within the meaning of the conditions of the bond."

The same conclusion was expressed by the Court of Errors and Appeals in the case of Fidelity, etc. Co. against the present defendant-respondent in an opinion by Mr. Justice Minturn. This was a suit upon coupons from bonds of the same issue as those now in question. It was held in both of these cases that

the holders of detached coupons cannot be hampered in the collection of the coupons by provisions contained in the bond and mortgage, and in both cases the coupons were still in the hands of the holders of the bonds, as is the situation in the present case.

The idea of the New Jersey courts as to the status of an interest coupon seems to us to be more reasonable than that of the United States Supreme Court. Unless a coupon is a separate instrument the suit for interest should be brought upon the bond and not upon the coupon, in which event the plaintiff would be bound by all the conditions of the bond and, by reference, by those of the mortgage. Interest, even though there are no coupons, can be recovered by suit for interest alone where the interest matures before the principal. In such a suit certainly the plaintiff would be held to a compliance with all of the conditions precedent contained in the bond and mortgage.

If coupons are to be held to support an action apart from the bond such a suit should be founded strictly on the coupon which is a promise not under seal. To say that a coupon is a separate bond does not accord with the truth, because if it is anything it is a separate instrument not under seal, and is merely attached to the bond for convenience.

The second reason upon which the United States Supreme Court bases its opinion is simply that court's idea of what is necessary to encourage this convenient method of paying interest upon securities. Apparently it was thought that if the court took the contrary view bondholders would be less willing to accept coupon bonds. If such consideration was important in the year 1870, when the case of Kenosha v. Lampson was decided, we do not think

it is important now, and if a bondholder ever intends bringing a separate suit for his interest six years is certainly a reasonable period within which to sue. In practice the only bondholders who sue for interest are those who refuse to enter into an agreement to extend the time of payment. Suspension of interest payments invariably means an extension agreement or a receivership.

In this State compound interest is not allowed unless there is an express agreement to pay it. Yet, in the case of Fidelity Mutual Life Insurance Company against the respondent, supra, involving coupons from bonds of the same issue as those now sued upon, interest upon interest coupons was allowed. This can only be justified upon the ground that a coupon is a separate instrument, given for interest to fall due upon a bond. If the suit were upon the bond or a part of it, compound interest could not have been given as there was no agreement to pay it.

For all of these reasons we think it is apparent that the position taken by our Supreme Court is the only consistent position the courts of this State can take, and therefore the judgment should be affirmed.

Respectfully submitted,

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