

There are two aspects under which we can consider money: the instrument of exchange and the matter of which the instrument is constituted. As an instrument of exchange there is a great difference between a \$1 bill and a \$1,000 bill. But as between the paper of these two bills, there is no difference in value, or at least no significant difference in value. Similarly, the instrument of exchange constituted by this \$1 bill is worth four times the instrument of exchange which is constituted by a 25¢ piece. But as between the substances which constitute these instruments of exchange, the value of the metal in the 25¢ piece is greater by far than that of the paper in the \$1 bill.

I am led to think that if we are concerned with them as instruments of exchange, Behm is right in his submission that coins are not goods. Money is what we give as the price for goods which we obtain. But if we are concerned with the substance of which money is constituted, it seems clear to me that this substance is a "good". The Nouveau Larousse dictionary (in two volumes, 1949) defines "marchandises" (goods) as "tout ce qui se vend et s'achète" (all that can be bought and sold). Metal and paper are objects which can be bought and sold.

We must therefore seek to find under which aspect the Governor in Council considers coins in the present Order. The first thing I notice is that the only coins mentioned are "silver coins", that is, coins made of metal which we call "silver". Why be limited to silver coins if it is the export of money which is to be regulated since it is possible to conveniently export amounts infinitely more considerable in paper money? Also, I notice that all other objects the export of which the Order seeks to regulate are related to money as a metal and not as an instrument of exchange.

I therefore conclude that the Governor in Council has regulated the export of silver as a metal and that this metal is a "good" and an article within the meaning of the *Export and Import Permits Act*.

Secondly, Behm claims that the Order did not meet any of the purposes included in s. 3 of the *Export and Import Permits Act*.

We can at once say that the record does not reveal the purpose sought by the Governor in Council. But the Act authorizes him "to regulate the export of any article which he deems it necessary to control for any of the [mentioned] purposes". The Legislature entrusts the matter to the Governor in Council and not to the Courts.

In *Reference re Regulations (Chemicals) under War Measures Act*, [1943] 1 D.L.R. 248, 79 C.C.C. 1, [1943] S.C.R. 1, which dealt with the validity of an Order adopted in relation to the *War Measures Act*, R.S.C. 1927, c. 206, authorizing the Governor in Council to "make . . . orders and regulations, as he may . . . deem necessary or advisable for the security, defence, peace, order and welfare of Canada", Duff, C.J.C., wrote (pp. 255-6) :

The enactment is, of course, of the highest political nature. It is the attribution to the Executive Government of powers legislative in their character, described in terms implying nothing less than a plenary discretion, for securing the safety of the country in time of war. Subject only to the fundamental conditions explained above (and the specific provisions enumerated), when Regulations have been passed by the Governor-General in Council in professed fulfilment of his statutory duty, I cannot agree that it is competent to any Court to canvass the considerations which have, or may have, led him to deem such Regulations necessary or advisable for the transcendent objects set forth. The authority and the duty of passing on that question are committed to those who are responsible for the security of the country — the Executive Government itself, under, I repeat, its responsibility to Parliament. The words are too plain for dispute: the measures authorized are such as the Governor-General in Council (not the Courts) deems necessary or advisable.

Rinfret, J., on that same occasion stated [pp. 261-2] :

That Act conferred on the Governor in Council subordinate legislative powers; and it is conceded that it was within the legislative jurisdiction of Parliament so to do. In fact, delegation to other agencies is, in itself, one of the things that the Governor in Council may, under the Act, deem "advisable for the security, defence, peace, order and welfare of Canada" in the conduct of the war. The advisability of the delegation is in the discretion of the Governor in Council; and once the discretion is exercised, the resulting enactment is a law by which every Court is bound in the same manner and to the same extent as if Parliament had enacted it, or as if it were part of the common law — subject always to the conditions already stated. For a Court to review the enactment would be to assume the role of legislator.

The Governor in Council enacted the Order in Council, the validity of which Behm challenges, because, in his opinion, it fulfilled one of the purposes contained in the Act. It was to his judgment and not that of the Courts that Parliament has confided that matter. It is possible that if Behm demonstrated clearly that the purpose sought by the Governor in Council is foreign to those contained within the Act, we would be bound to intervene, but this is not the case. Quite to the contrary, I am able to conceive that money as a metal has a strategic value or that the aim sought is "to implement