

an aggregate face value of \$4,000.00 . . . from Canada to Switzerland without the authority of an Export permit . . . in violation of section 13 of the said Act . . .” and further that he did on another occasion “. . . export goods included in an Export Control List . . . namely 11 bags of Canadian silver coin having an aggregate face value of \$10,400.00 . . . from Canada to Switzerland without the authority of an Export Permit . . . and the said William Kinloch Cross did thereby commit an offence by operation of section 20 of the said Act . . .”

The grounds set out in the notice of motion before me were the following:

- (a) That the Summons herein does not disclose an offence known to the Law.
- (b) That the Order in Council . . . is ultra vires the enabling Act, . . . insofar as such Order in Council purports to affect silver coin.
- (c) That silver coin is money and therefore not “goods” and is therefore not subject to The Export and Import Permits Act, S.C. 1953-54 C. 27, which said Act may control the export and import of “goods” only.
- (d) That the said Judge has no jurisdiction to this matter (sic) because no offence has been disclosed against the Applicant.

On the argument before me, counsel for the applicant confined himself to two principal submissions. It was urged that in the first place the word “goods” does not include money and hence cannot be held to include silver coin. As an alternative to this submission it was urged that even if the word “goods” could be construed so as to include money in the form of coin in certain circumstances, it should not be so construed when considering the application of a statute penal in nature.

The second principal submission of the applicant was that even if current silver coin or money can be considered to fall within the concept of “goods”, to so include it cannot further any of the purposes set out in s. 3 of the Act and hence the Order in Council which added silver coin to the Export Control List is *ultra vires*.

I was referred to a number of cases which pointed generally in the direction taken in the first submission of the applicant, namely, that “goods” are almost invariably treated in common law countries as being something different from money. It was pointed out as well that the *Sale of Goods Act* in force virtually throughout the common law world excluded money from the definition of “goods”.

There are cases, however, which make it perfectly apparent that the Courts have from time to time recognized that those

1969 CanLII 888 (ON SC)

things which are normally used as money, for example, notes and coins, may on occasion be treated with regard to the intrinsic nature of the substances themselves and the other uses to which they may be put rather than being treated exclusively as money, simply because they were used more frequently for the latter purpose.

In my view the learned Provincial Judge was right when he stated at p. 14 of his preliminary decision as follows:

Coin is not money, therefore, when it is not used as a means of exchange or in its aspect as money. For example, antique coins that are bought and sold in retail shops are treated as wares or merchandise and are goods even within the restricted meaning of the *Sale of Goods Act*, R.S.O. 1960, c. 358.

The learned Provincial Judge goes on to set out a sentence from Funk & Wagnall's Standard Dictionary which furnishes a further example:

Bullion is either gold or silver uncoined or the coined metal *considered without reference to its coinage, but simply as merchandise*, when its value as bullion may be very different from its value as money.

(Emphasis added.)

I am therefore not prepared to say that the power given to the Governor in Council to establish a list of goods which may be placed on the control list cannot include the power to add to such list such an item as silver coin.

But the second branch of the argument is that even granting the conclusion I have reached above, no power exists in the Governor in Council to include in the Export Control List under control any article unless it is in fact necessary to control the export of such article for one of the purposes set out in s. 3 and that silver coin does not come within one of those purposes.

The answer to this submission is, in my view, that no one can say at this stage of the proceedings when no evidence whatever has been given, that silver coin cannot be "deemed capable of being converted (into munitions or military stores) or made useful in the production thereof . . .". Nor can it be said, in my view, that it is apparent that there is no need to ensure an adequate supply of silver coin in Canada "for defence or other needs".

However, in my opinion, this last branch of the inquiry need not be made because as I understand the law, under such a provision as s. 3 of the Act herein under review, if the Governor in Council "deems" that conditions such as set out in s. 3(a), (b) and (c) exist, then I doubt whether it is within