

*B. Sischy*, for applicant.

*N. A. Chalmers*, Q.C., for the Crown, respondent.

OSLER, J.:—This was an application for an order by way of prohibition preventing David Vanek, Q.C., Prov.Ct.J., or any other Judge of a Provincial Court from taking any further proceedings in a certain matter concerning two alleged offences set out in the information of Charles Frederick Martyn wherein it was alleged that the present applicant, William Kinloch Cross, was guilty of two offences in violation of s. 13 of the *Export and Import Permits Act*, 1953-54 (Can.), c. 27, and amendments.

The Act provides in s. 13 as follows:

13. No person shall export or attempt to export any goods included in an Export Control List or any goods to any country included in an Area Control List except under the authority of and in accordance with an export permit issued under this Act.

Under s. 19 of the Act the violation of any of its provisions is made an offence and is liable on summary conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both; or on conviction upon indictment to a fine of up to \$25,000, imprisonment for a term not exceeding five years or to both.

Section 20 of the Act provides that where an offence under the Act has been committed by a corporation, any person who at the time of the commission of the offence was a director or officer is guilty of the like offence upon proof that the act or omission constituting the offence took place with his knowledge or that he failed to exercise due diligence to prevent it.

Section 3 of the Act is in the following terms:

3. The Governor in Council may establish a list of goods, to be called an Export Control List, including therein any article the export of which he deems it necessary to control for any of the following purposes, namely,

- (a) to ensure that arms, ammunition, implements or munitions of war, naval, army or air stores or any articles deemed capable of being converted therein or made useful in the production thereof or otherwise having a strategic nature or value will not be made available to any destination wherein their use might be detrimental to the security of Canada;
- (b) to implement an intergovernmental arrangement or commitment; or
- (c) to ensure that there is an adequate supply and distribution of such article in Canada for defence or other needs.

Apparently acting under the provisions of the above section, the Governor in Council did establish an Export Control List. P.C. 1967/1122, SOR/67-288, passed on June 2, 1967, is in the following terms:

1. The *Export Control List* is amended by adding thereto, immediately after item 5665 thereof, the following item:

"5666. Silver coin; silver, wrought or unwrought; silver alloys, wrought or unwrought; silver chemicals, salts and compounds; silver and silver alloy scrap. (*All destinations including the United States*)."

The specific charges against the present applicant were that he did on one occasion "export goods included in an Export Control List . . . namely 4 bags of Canadian Silver coin having