

BETWEEN :

HIS MAJESTY THE KING, on the
Information of the Attorney General
of Canada

PLAINTIFF,

1943
May 12
Aug. 10

AND

LLOYD CAMERON WILLIAMS ... DEFENDANT.

*Crown—Foreign Exchange Control Order P.C. 7378, of December 13, 1940
—Gold Export Act 22-23 Geo. V. c. 33—Generalia specialibus non
derogant—Action for forfeiture of gold under Foreign Exchange
Control Order dismissed.*

Defendant was a salesman employed by the Williams Gold Refining Company of Canada Limited, a company carrying on the business of gold refiners in Canada. He attempted to export a certain quantity of fine gold, the property of the aforementioned company, from Canada without having obtained a licence to do so from the Foreign Exchange Control Board. The gold while in defendant's possession was seized and detained by an inspector of the Foreign Exchange Control Board. The present action is brought under the provisions of Foreign Exchange Control Order, P.C. 7378, of December 13, 1940, for a declaratory order that such gold should be forfeited to His Majesty the King.

Held: That the principle underlying the maxim *generalia specialibus non derogant* should be applied.

- 2. That the general term "property" as defined in s. 2(1)(t) of the Foreign Exchange Control Order should be construed as "silently excluding" gold of the kind in question herein since the prohibition of the export of such gold is dealt with by the Gold Export Act, Statutes of Canada, 1932, c. 33, and the regulations made thereunder.

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3. That the provisions of the Foreign Exchange Control Order, including those relating to forfeiture, have no application to the facts in this action and in the absence of any provisions for forfeiture contained in the Gold Export Act and regulations made under it the action must be dismissed.

INFORMATION exhibited by the Attorney General of Canada for a declaratory order that a quantity of fine gold be forfeited to His Majesty the King, under the provisions of the Foreign Exchange Control Order of December 13, 1940.

The action was tried before the Honourable Mr. Justice Thorson, President of the Court, at Ottawa.

Robert Forsyth, K.C., for plaintiff.

R. B. Law, K.C., for defendant.

The facts and questions of law raised are stated in the reasons for judgment.

THE PRESIDENT now (August 10, 1943) delivered the following judgment:—

These proceedings were taken under the provisions of the Foreign Exchange Control Order enacted by Order in Council, P.C. 7378, dated December 13, 1940, as amended, for a declaratory order of this Court that certain fine gold, which the defendant had attempted to export from Canada, without a licence from the Foreign Exchange Control Board, should be forfeited to His Majesty the King.

The facts are not in dispute. The defendant is a resident of Fort Erie, Ontario, and at the time of the attempted export he was a salesman in the employment of the Williams Gold Refining Company of Canada Limited, a company carrying on the business of gold refiners at Fort Erie, Ontario. On December 10, 1942, he presented himself at the Customs Port of Fort Erie with the intention of going to the United States by crossing over the Peace Bridge to Buffalo in the State of New York. He had in his possession two envelopes containing fine gold, having an aggregate weight of 46 oz., 19 dwt., 10 gr., of the value of approximately \$1,808, which he intended to take with him into the United States, without having obtained an export licence from the Foreign Exchange Control Board

under the Foreign Exchange Control Order. The gold which he was thus attempting to export from Canada into the United States was the property of the company in whose employment he was and was part of the monthly allowance of 300 oz. of gold allowed by the Royal Mint of Canada to the company for the purpose of its business. While the gold was in the defendant's possession it was seized and detained by an inspector of the Foreign Exchange Control Board. The defendant was subsequently prosecuted on a charge laid under the Foreign Exchange Control Order and was convicted and fined \$1,250 and costs which he paid. The claim is now made that the gold is liable to forfeiture to His Majesty the King under the provisions of the Foreign Exchange Control Order. By way of defence to the plaintiff's claim the defendant relies upon the maxim *generalia specialibus non derogant* and contends that the export of gold is excluded from the operation of the Foreign Exchange Control Order altogether by reason of coming within the provisions of the Gold Export Act, Statutes of Canada, 1932, Chap. 33, and the regulations made under it and that under this Act and its regulations there is no provision for the forfeiture of gold even where there has been an illegal attempt to export it.

The Foreign Exchange Control Order was enacted under and by virtue of the provisions of the War Measures Act, R.S.C. 1927, Chap. 206, by Order in Council, P.C. 7378, dated December 13, 1940, and has been amended on a number of occasions by subsequent Orders in Council. The present proceedings are brought under the provisions of subsection (2) of section 42 of the Order, which reads as follows:

42 (2). Any currency, securities, foreign exchange, goods or property of any kind which any person exports or attempts to export from Canada or imports or attempts to import into Canada contrary to this Order, or which any person buys or sells or in any way deals with or attempts to buy or sell or in any way deal with contrary to this Order, or which any person fails to declare as required by this Order, may (in addition to any other penalty which may have been imposed on any person, or to which any person may be subject, with relation to such unlawful act or omission, and whether any prosecution in relation thereto has been commenced or not) be seized and detained and shall be liable to forfeiture at the instance of the Minister of Justice upon proceedings in the Exchequer Court of Canada or in any Superior Court subject, however, to a right of compensation on the part of any innocent person interested

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in such property at the time it became liable to forfeiture or who acquired an interest therein subsequent to such time as a bona fide transferee for value without notice, which right may be enforced in the same manner as any other right against His Majesty.

Counsel for the plaintiff relied upon a number of other sections of the Order. Subsection (1) of section 24 provides:

24 (1). No person shall, without a licence from the Board export any property from Canada or import any property into Canada.

And subsection (1) (h) of section 40 says:

40 (1). Every person shall be guilty of an offence who

(h) Attempts to commit, or does any act preparatory to the commission of, an offence under this order.

“Property” is defined for the purposes of the Order by paragraph (t) of subsection (1) of section 2 as follows:

2 (1). In this Order, unless the context otherwise requires,

(t) “Property” means and includes every kind of property, real and personal, movable and immovable, and in the case of any property which, under these regulations, is subject to any restriction as to its use or as to dealing therewith or is subject to forfeiture, the same shall be deemed to include any property into which the property subject to restriction or forfeiture aforesaid has been converted or exchanged and any property acquired by such conversion or exchange whether immediately or otherwise.

Counsel for the plaintiff contended that “gold” was “property” within the meaning of the Order, that the defendant had illegally attempted to export it from Canada contrary to the provisions of the Order, and that it was, therefore, liable to forfeiture to His Majesty. There seemed to be a clear case for the declaratory order of forfeiture that was being claimed.

Counsel for the defendant, on the other hand, contended that the export of fine gold was not covered by the Foreign Exchange Control Order at all and that it had no application to the facts before the Court. He argued that the case was governed exclusively by The Gold Export Act, Statutes of Canada, 1932, Chap. 33, and the regulations made under it which were in effect on December 10, 1942, and that under this Act and its regulations there were no provisions for forfeiture; that the maxim *generalalia specialibus non derogant* applied, meaning that a general act does not abrogate a special one unless it specifically so provides; that the Foreign Exchange Control Order was a general act and The Gold Export Act a special one within the

meaning of the maxim; and that under the authorities the term "property" as defined in the Foreign Exchange Control Order must be read as "silently excluding" the subject of "gold" leaving gold and its export exclusively within the ambit of The Gold Export Act, with no provision for forfeiture of the gold even where there has been a breach of the regulations in effect prohibiting its export. If this contention on behalf of the defendant is sound in law the Court has no option other than to dismiss the plaintiff's action.

The Gold Export Act contains only 4 sections reading as follows:

1. This Act may be cited as *The Gold Export Act*.
2. The Governor in Council may prohibit, from time to time and for any period or periods, the export of gold, whether in the form of coin or bullion, from the Dominion of Canada, except in such cases as may be deemed desirable by the Minister of Finance and under licences to be issued by him: Provided that no such licence shall be issued to other than a Canadian chartered bank.
3. (1) The Governor in Council may make such regulations as he deems necessary or expedient to ensure the carrying out of the provisions and the intent of this Act, and to define from time to time as occasion may require what shall be deemed to be included within the expression "bullion" for the purposes of this Act.
 (2) Every regulation made by the Governor in Council in virtue of this Act shall have force and effect only after it has been published in the *Canada Gazette*.
4. Whenever a regulation made under the provisions of section three of this Act is in force any person who, without a licence issued by or on behalf of the Minister of Finance, as aforesaid, exports or attempts to export, carries or attempts to carry out of Canada any gold, whether in the form of coin or bullion, shall be liable upon summary conviction to a penalty not exceeding one thousand dollars or to imprisonment for a term not exceeding two years, or to both fine and imprisonment.

The Act was amended in 1935 by striking out the proviso at the end of section 2 and substituting the following:

Provided that no such licence shall be issued to other than a Canadian chartered bank or the Bank of Canada.

The first regulations under the Act prohibiting the export of gold were passed by Order in Council, P.C. 1150, dated 17th May, 1932. The regulations were thereafter continued in force from year to year by Orders in Council passed on the report and recommendation of the Minister of Finance. The last one with which we are concerned is Order in Council, P.C. 9131, dated November 26, 1941, and published in the *Canada Gazette* in the issue of December 6,

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1941, (*Canada Gazette*, Vol. 75, p. 1946). This provided that the regulations first passed by Order in Council, P.C. 1150, dated May 17, 1932, and last continued in force and effect until December 31, 1941, by Order in Council, P.C. 7246, dated December 11, 1940, should be continued in force and effect until December 31, 1942. The prohibition of the export of gold, enacted by these regulations, was therefore in force and effect on December 10, 1942, when the defendant attempted to export the gold in question.

Maxwell on the Interpretation of Statutes, 8th Edition, at page 156, has the following to say with regard to the maxim, *generalia specialibus non derogant*:

It is but a particular application of the general presumption against an intention to alter the law beyond the immediate scope of the statute to say that a general Act is to be construed as not repealing a particular one, that is, one directed towards a special object or a special class of objects. A general later law does not abrogate an earlier special one by mere implication. *Generalia specialibus non derogant*, Having already given its attention to the particular subject and provided for it, the legislature is reasonably presumed not to intend to alter that special provision by a subsequent general enactment unless that intention be manifested in explicit language, or there be something which shows that the attention of the Legislature had been turned to the special Act and that the general one was intended to embrace the special cases provided for by the previous one, or there be something in the nature of the general one making it unlikely that an exception was intended as regards the special Act. In the absence of these conditions, the general statute must be read as silently excluding from its operation the cases which have been provided for by the special one.

These general propositions thus stated by Maxwell are amply supported by the authorities. The principles are well known and have frequently been applied; reference need be made only to the two decisions cited by counsel for the defendant.

In *The City of Vancouver v. Bailey* (1) the question before the Supreme Court of Canada was whether a certain general Act, applicable to the City of Vancouver, should be held to nullify a special Act also applicable to the said City. The special Act incorporating the City of Vancouver was the "Vancouver Incorporation Act, 1886." Subsection 8 of section 127 of that Act was amended by the British Columbia Statutes, 1893, Ch. 63, s. 7, so as to read as follows:

(1) (1895) 25 Can S.C.R. 62

Upon receiving the returns for the several wards the city clerk shall add up the names; and if it shall appear from such returns that the total number of votes cast for such by-law be three-fifths of the votes polled, the city clerk shall forthwith declare such by-law carried, otherwise he will declare the by-law lost.

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Previously the requirement for carrying a by-law requiring the approval of the ratepayers had been a majority of votes. The general Act was the "Municipal Act, 1892," which applied to cities and other municipalities generally. It gave to municipal councils, by section 104, powers to pass by-laws. Section 119 of this general Act was amended by the British Columbia Statutes, 1893, Ch. 30, s. 33, to read as follows:

No by-law to which the assent of the electors is necessary before the final passing thereof, shall be valid or of any effect unless the vote polled in favor thereof be that of a majority of the persons who shall vote upon such by-law.

Previously the requirement for carrying such a by-law was "at least three-fifths" of the voters. Both amending statutes of 1893, namely, chapters 63 and 30 were passed on the same day. A by-law authorizing a sum of money to be raised by debentures for supplying electric light in the city was voted on by the ratepayers of the City of Vancouver on October 3, 1894, and passed by the council on October 8, 1894. At the polling a majority of the ratepayers voted in favour of the by-law, but the total votes cast for the by-law did not amount to three-fifths of the number of votes polled. The Supreme Court of British Columbia, reversing the judgment of Mr. Justice Drake, quashed the by-law. From this an appeal was taken to the Supreme Court of Canada, the appellants contending that the by-law required only a majority vote and that the "Municipal Act, 1892," as amended in 1893, overruled the provisions of the "Vancouver Incorporation Act, 1886," as amended in 1893. The appeal was unanimously dismissed, notwithstanding the following provision of section 21 of the Municipal Act, 1892, Amendment Act, 1893:

The powers granted by this section 104, and its subsections, are hereby conferred upon the municipal councils of the cities of Vancouver and New Westminster, and the said section and its subsections shall apply to the said cities, notwithstanding anything in the special Acts relating to the said cities which may be inconsistent with or repugnant to, the provisions of the said subsections.

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Sedgewick J., speaking of the Act amending the special Act, and making a three-fifths vote necessary, said, at page 67:

Is that amending statute to have no effect because, in a general Act passed in the same session, made applicable throughout the province, there was an express provision that by-laws of that character should require the assent of only a majority of the voters. I cannot hold that such an intent can be imputed to the legislature. The principle contained in the maxim *generalia specialibus non derogant*, forcibly applies here. A general later statute (and *a fortiori* a statute passed at the same time), does not abrogate an earlier special one by mere implication; the law does not allow an interpretation that would have the effect of revoking or altering, by the construction of general words, any particular statute where the words may have their proper operation without it.

And then, at page 68, he gave approval to a statement as contained in Maxwell, 2nd edition, p. 213, substantially the same as the one already quoted from the 8th edition, including the words "the general statute is read as silently excluding from its operation the cases which have been provided for by the special one."

In *Barker v. Edgar* (1) the Judicial Committee of the Privy Council also approved and applied the general principle of the maxim. This was an appeal from a judgment of the Court of Appeal of New Zealand. In that case certain proceedings were pending in the Native Land Court under a specially enabling Act called the New Zealand Poututu Jurisdiction Act, 1889. In 1893 a new court was established by the Validation Act, in which there was a general provision that the commencement of proceedings in the Validation Court should operate as a stay of proceedings in any other court in respect of the same matters. There were other questions involved in the appeal but on this point Lord Hobhouse, who delivered the judgment of their Lordships, said, at page 754:

The general maxim is, "*Generalia specialibus non derogant.*" When the Legislature has given its attention to a separate subject, and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject matter and its own terms. This case is a peculiarly strong one for the application of the general maxim.

The Privy Council on this point held that the proceedings in the Native Land Court were not stayed by the commencement of proceedings in the Validation Court, notwithstanding the general provisions in the Act establishing the latter court.

Counsel for the plaintiff relied upon subsection (1) of Section 1 of the Foreign Exchange Control Order which reads:

1. (1) These provisions may be cited as the Foreign Exchange Control Order and shall have effect on and after December 16, 1940. In the event of any conflict between this Order and any law in force in any part of Canada the provisions of this Order shall prevail.

In view of provisos of a similar nature in the cases which have been referred to, I am unable to see how this subsection prevents the application of the maxim. There is nothing in the Foreign Exchange Control Order that can be regarded as shewing a clear or explicit intention that it should supersede the regulations passed under the Gold Export Act prohibiting the export of gold except under certain conditions. Indeed, these regulations were continued in force by Order in Council, P.C. 9131, dated November 26, 1941, after the Foreign Exchange Control Order was enacted by Order in Council, P.C. 7378, dated December 13, 1940. That the purposes of the two enactments may be different is immaterial. Likewise the fact that the Foreign Exchange Control Order provides for forfeiture can have no bearing if "gold" is to be excluded from "property" as defined in that Order. Counsel for the defendant argued that the Governor in Council cannot be presumed to have confided control over the same subject matter to two different authorities. Export permits under the Gold Export Act and its regulations are issued by the Minister of Finance, whereas licences to export under the Foreign Exchange Control Order come from the Foreign Exchange Control Board. It was also argued that if gold were included in "property," as defined in the Foreign Exchange Control Order, there might be conflict in administration and that the Governor in Council must be presumed to have intended both the Gold Export Act with the regulations under it and the Foreign Exchange Control Order as capable of administration without the possibility of any conflict of authority.

There is, in my opinion, no escape from the contentions put forward on behalf of the defendant. The only way in which effect can be given both to the Gold Export Act and the regulations made under it and to the Foreign

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Exchange Control Order is to read the latter as “silently excluding from its operation” the subject matter of gold export, since that has been specially provided for by the Gold Export Act and its regulations. This would be so even if the Foreign Exchange Control Order had been later in date than the date of the last regulations made under the Gold Export Act. The case for the defendant becomes all the stronger by reason of the fact that the last regulations under the Gold Export Act were continued in force after the date of the enactment of the Foreign Exchange Control Order.

The principle underlying the maxim *generalia specialibus non derogant* should be applied to the facts of this case. The general term “property,” as defined in section 2(1)(t) of the Foreign Exchange Control Order should be construed as “silently excluding” gold of the kind in question in this action, since the prohibition of its export is dealt with by the Gold Export Act and its regulations. Consequently, the provisions of the Foreign Exchange Control Order, including those relating to forfeiture, have no application to the facts now before the Court. In the absence of any provisions for forfeiture of gold contained in the governing special Act, the Gold Export Act, and the regulations made under it, there is in the present case no legal authority for ordering the forfeiture to His Majesty of the gold which the defendant attempted to export and the plaintiff’s action must, therefore, be dismissed with costs.

Judgment accordingly.