

1944
*March 15.
*May 15.

HIS MAJESTY THE KING, ON THE
INFORMATION OF THE ATTORNEY-GEN-
ERAL OF CANADA (PLAINTIFF).....

}

APPELLANT;

AND

LLOYD CAMERON WILLIAMS (DE-
FENDANT)

}

RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Statutes—Construction—Attempt to export gold without licence—Gold Export Act (Dom. 1932, c. 33) and regulations thereunder—Foreign Exchange Control Order (P.C. 7378, made under War Measures Act, R.S.C. 1927, c. 206)—Conviction of attempt to export gold, and fine paid—Proceedings for declaration of forfeiture of the gold—Forfeiture provided for in Foreign Exchange Control Order but not in Gold Export Act—Right to forfeiture—Applicability of provisions of Foreign Exchange Control Order—Applicability of maxim Generalia Specialibus non Derogant.

*PRESENT:—Rinfret C.J. and Kerwin, Hudson, Taschereau and Rand JJ.

Respondent was convicted, on a charge laid under the *Foreign Exchange Control Order*, P.C. 7378, made on December 13, 1940, under and by virtue of the *War Measures Act* (R.S.C. 1927, c. 206), of having, on December 10, 1942, attempted to export fine gold from Canada without a licence from the Foreign Exchange Control Board, and was fined and paid the fine. An information was then laid against him claiming a declaration that the gold be forfeited to the Crown. Thorson J., [1943] Ex. C.R. 193, dismissed the information, holding that, since the prohibition of the export of gold of the kind in question is dealt with by *The Gold Export Act*, Dom., 1932, c. 33, and regulations made under it, the principle underlying the maxim *generalialia specialibus non derogant* should be applied; that the general term "property" as defined in the *Foreign Exchange Control Order* should be construed as "silently excluding" gold of the kind in question; and therefore the provisions of that Order had no application in the case; and, there being no provision for forfeiture of gold in the governing special Act (*The Gold Export Act*) and the regulations made under it, there was no legal authority for ordering the forfeiture. The Crown appealed.

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The *Foreign Exchange Control Order* provides (*inter alia*) that "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"; that no person shall, without a licence from the Board, export any property from Canada; that "property" means and includes "every kind of property, real and personal, movable and immovable * * *"; that every person shall be guilty of an offence who attempts to commit an offence under the Order; and for prosecution; and for forfeiture (in addition to any other penalty imposed) of any property which any person attempts to export contrary to the Order.

The Gold Export Act gives power to the Governor in Council to prohibit export of gold, whether in the form of coin or bullion, "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 or the Bank of Canada"; and to make regulations; and the Act provides for prosecution and for penalty (which does not include forfeiture of the gold) against any person who, whenever a regulation made under the Act is in force, without a licence from the Minister exports or attempts to export gold. A prohibitory regulation was made in 1932, worded like and in conformity with the power given, which regulation was continued in force by orders in council, the last of which, so far as concerned the present appeal, was P.C. 9131, dated November 26, 1941, whereby the regulations of 1932 were continued until December 31, 1942.

Held (Rand J. dissenting): The Crown's appeal should be allowed and it should be declared that the fine gold in question be forfeited.

Per The Chief Justice, and Kerwin and Taschereau JJ.: Even assuming there is a conflict of legislation, the reason of the maxim *generalialia specialibus non derogant* does not apply: the powers conferred respectively by *The Gold Export Act* and by the *War Measures Act* (under which the *Foreign Exchange Control Order* was made) were for different purposes; also *The Gold Export Act* and the regulations

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under it affect every one (including respondent, even though he could not have secured a licence thereunder, since a licence was to be issued only to a bank); further, the *Foreign Exchange Control Order* states explicitly that, in the event of conflict, its provisions are to prevail. In truth there is no conflict; the provisions can stand together; there is no reason why a licence should not be required under the *Foreign Exchange Control Order* as well as under *The Gold Export Act* and its regulations where that Act and its regulations are applicable; nor is the conclusion warranted that it was not the intention to embrace within the prohibition and the subjection to forfeiture of the Order an individual such as respondent who, *ex hypothesi*, would not be able to secure a licence.

Per Hudson J.: There is no repugnancy between the enactments in question. Two measures were passed for different purposes and were to be enforced through different organs of the Government. There could not properly be implied, from the existence of *The Gold Export Act*, an intention to exclude fine gold from the comprehensive terms of the *Foreign Exchange Control Order*.

Per Rand J. (dissenting): The argument for appellant proceeds on the assumption that the export of gold is on the basis of leave from both the Minister of Finance (under *The Gold Export Act*) and the Foreign Exchange Control Board (under the *Foreign Exchange Control Order*), as distinguished from leave only from the Board for other property; but, in relation to respondent, that assumption is false. What *The Gold Export Act* does is to enable the Governor-in-Council to prohibit absolutely the exportation of gold, subject only to exportation by a bank acting under a licence from the Minister; but to no one else is that licence available. It is not, then, a situation of export subject to two licences that can stand together. The *Foreign Exchange Control Order* necessarily contemplates an exportation which, under existing law, is possible; and there cannot be attributed to that Order the issue of a licence to respondent by the Board for an exportation which rests under an absolute prohibition by the terms of another existing law; such a licence would be wholly futile and abortive, and there should not be ascribed to the scope of the Order a subject-matter that would bring about such a result in its application. S. 24 (1) of the Order (prohibiting export without licence) should be held not applicable to a case in which a licence from the Board could never, in any proper sense, have effect, in which, in fact, the issue of such a licence would be *ultra vires* of the Board. The absence of a licence from the Board is an essential ingredient of an offence under the Order and that presupposes a power to issue it. The Order's entire prohibition is conditioned in licence. The penalty under *The Gold Export Act* cannot be considered as supplemented, or the offence thereunder duplicated, by an Order, made under other powers and with a different object, when its language is inappropriate and its assumption inapplicable.

APPEAL by the Crown from the judgment of Thorson J., President of the Exchequer Court of Canada (1) dismissing the appellant's action for an order declaring that

certain fine gold which the respondent attempted to export from Canada on or about December 10, 1942, without a licence from the Foreign Exchange Control Board, contrary (so the appellant contended) to ss. 24 (1) and 40 (1) (h) of the *Foreign Exchange Control Order*, enacted by Order in Council P.C. 7378, dated December 13, 1940, as amended, be forfeited to the Crown. The proceedings were brought under s. 42 (2) of the said Order. The respondent contended that, as the export of gold is the subject-matter of an Act of Parliament dealing specifically with the export of gold, namely, *The Gold Export Act*, Statutes of Canada, 1932, c. 33, and the regulations made under it, which were in effect on the date of the alleged offence, the export of gold is governed exclusively by the special Act and that the word "property" as used in the *Foreign Exchange Control Order* does not include gold—that commodity having been specially dealt with by *The Gold Export Act* (which contains no provision for forfeiture). Thorson J. held that, since the prohibition of the export of gold of the kind in question is dealt with by *The Gold Export Act* and regulations made under it, the principle underlying the maxim *generalia specialibus non derogant* should be applied; that the general term "property" as defined in the *Foreign Exchange Control Order* should be construed as "silently excluding" gold of the kind in question; and therefore the provisions of that Order had no application in the case; and, therefore, there being no provision for forfeiture of gold in the governing special Act (*The Gold Export Act*) and the regulations made under it, there was no legal authority for ordering the forfeiture.

R. Forsyth K.C. and *W. R. Jakkett* for the appellant.

R. B. Law K.C. and *S. S. MacInnes* for the respondent.

The judgment of the Chief Justice and Kerwin and Taschereau JJ. was delivered by

KERWIN J.—This is an appeal from a judgment of the Exchequer Court dismissing an information by the Minister of Justice of Canada against Lloyd Cameron Williams claiming a declaration that a certain quantity of fine gold be forfeited to His Majesty the King.

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The facts are not in dispute. Williams resided in Fort Erie, Ontario, and was an employee of The Williams Gold Refining Company of Canada, Limited, which carried on business there. On or about December 10th, 1942, Williams presented himself at the customs port of Fort Erie and attempted to export from Canada 46 oz., 19 dwt., 10 gr., of fine gold, valued at approximately \$1,808, without a licence from the Foreign Exchange Control Board. The gold was seized and detained by an inspector of the Board. Williams was charged under the *Foreign Exchange Control Order* of December 13th, 1940, with the offence of attempting to export the gold from Canada without a licence from the Board. He was convicted and fined \$1,250 and costs, which he paid, and the information followed.

The Board was established by the *Foreign Exchange Control Order*, made and promulgated by an Order in Council P.C. 2716 of September 15th, 1939, under and by virtue of the provisions of the *War Measures Act*, R.S.C. 1927, chapter 206. That Act was first enacted in 1914. A proclamation was duly issued thereunder as to the existence of the present state of war, and the provisions of sections 3, 4 and 5 thereof came into force in 1939. The *Foreign Exchange Control Order* of 1939 and amendments were consolidated by Order in Council P.C. 7378 on December 13th, 1940. No question is raised as to this Order or as to the *War Measures Act* and a mere recital of the applicable provisions of the statute and Order is sufficient to show that, *primâ facie*, the declaration asked by the Minister of Justice should be granted.

Section 3 of the Act authorizes the Governor in Council to make the Order, paragraph 1 whereof states:

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.

Paragraph (1) of clause 24 provides:

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

"Property" is defined by clause 2 (1) (t) as follows:

(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.

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By clause 40:

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.

Clause 42 provides for the prosecution of a person charged with an offence under the Order, and also for the forfeiture, *inter alia*, of any property which any person attempts to export from Canada contrary to the Order.

Section 4 of the *War Measures Act* provides that the Governor in Council may prescribe the penalties to be imposed for violations of orders made under the Act, with a limitation as to the maximum fine and imprisonment. It might also be noted in passing that, while section 8 provides for the forfeiture of any goods, wares or merchandise dealt with contrary to any order under the Act, the claim for the declaration of forfeiture in this case is made under the *Forèign Exchange Control Order*. However, it was not contended on behalf of the respondent that if that Order applied, judgment should not go as asked by the appellant. What was urged, both before the Exchequer Court and this Court, was that a Dominion statute of 1932, known as *The Gold Export Act*, as amended, and the regulations made under it, were in force at the date of the offence and that, in view of their provisions, the maxim *generalia specialibus non derogant* applied so as to render inapplicable the provisions of the *Foreign Exchange Control Order*. The President of the Exchequer Court agreed with that submission and on that ground dismissed the information.

In construing statutes and orders in council, the courts have, from time to time, adopted particularized rules and maxims but these must not be used in such a manner as to lose sight of the fundamental object, which is to ascertain and give effect to the intention of Parliament and the Governor in Council. The particular maxim relied upon has been discussed in many judgments, two of which are referred to by the learned President, *City of Vancouver v.*

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Bailey (1), and *Barker v. Edger* (2). In addition to these, counsel for the respondent referred to the judgment of the House of Lords in *Seward v. The Owner of the "Vera Cruz"* (3)—also cited in the appellant's factum.

Before discussing these, an earlier decision of the House of Lords in *Garnett v. Bradley* (4) should be noted,—not only because of the result arrived at but also because of the reasons of Lord Blackburn, who sat in that case as well as in the subsequent one of the *Vera Cruz* (3). What was decided in *Garnett v. Bradley* (4) was that an Order made under the authority of the *Judicature Act* of 1875, and which Order was made part of the Act by virtue of a section thereof, repealed the Statute of 21 Jac. I, chapter 16, so far as the action for slander was concerned. By the *Judicature Act* it was declared that all statutes inconsistent therewith were to be repealed but, as Lord Blackburn pointed out at page 965:

An Act saying that all statutes inconsistent with itself shall be repealed, really goes no farther than the general law, but it becomes a question, upon which there is a vast quantity of authority in different ways, as to what shall be the inconsistency which shall cause the repeal of an earlier statute or an existing general rule.

He was there dealing with a prior general statute and on that basis concluded that the two provisions, so far as concerned the costs in an action for slander, were absolutely inconsistent. He proceeded to state that he should not entertain any doubt on the point but that there was another rule which he thought was a good rule, if properly applied, and then gave the substance of the maxim at present under consideration. At page 970 he continued:

That it should be taken that the object of the Legislature is not, by mere general words, to repeal special laws, is a perfectly true, good, and sound canon of construction, and if this was a case of special laws giving a privilege, or a property, or a right, to a particular class, the canon would be applicable, but it is not applicable when that special law affected every one of Her Majesty's subjects, just in the same way as the general Statute of *Gloucester*, giving costs to all persons who were Plaintiffs who recovered damages in a real action, applied to all His Majesty's subjects, and not to any particular class. I think, therefore, that the reason of the rule does not apply in this case.

In the *Seward* case (5), the actual decision was that the *Admiralty Court Act*, 1861, which by section 7 gave the

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

(3) (1884) 10 App. Cas. 59.

(2) [1898] A.C. 748.

(4) (1878) 3 App. Cas. 944.

(5) (1884) 10 App. Cas. 59.

Court of Admiralty "jurisdiction over any claim for damage done by any ship", did not give jurisdiction over claims for damage for loss of life under Lord Campbell's Act. It was in the course of coming to such a conclusion that Lord Chancellor Selborne stated at page 68:

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Now if anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so.

and that Lord Blackburn observed, at page 72:

The legislature in using such general words as those [damage done by any ship] cannot have had in contemplation all the numerous and important subjects which, had they been considering Lord Campbell's Act, they would have had.

In *Barker v. Edger* (1), the Privy Council found the case

a peculiarly strong one for the application of the general maxim. The Legislature found an area of land comparatively small in extent to be the subject of intricate disputes in which both Europeans and natives took part. Some of those questions fell within the scope of the Native Land Court and others did not. It was for the benefit of all parties that a single tribunal should adjudicate on the whole group of questions. Therefore, as Williams J. has stated, a new authority was given to the Native Land Court as regards both land and matters of account. It would require a very clear expression of the mind of the Legislature before we should impute to it the intention of destroying the foundation of the work which it had initiated some four years before, and to which the Court has ever since been assiduously addressing itself.

I think it will be found upon examination that the *Vancouver* case (2) also was "a peculiarly strong one for the application of the general maxim".

A word might be added as to the quotation from the 8th edition of Maxwell on *The Interpretation of Statutes* at page 156, the conclusion of which is: "In the absence of these conditions, the general statute is read as silently excluding from its operation the cases which have been provided for by the special one." It should be noted that one of these conditions appears in the last leg of the previous sentence,—“or (unless) there be something in the nature of the general one making it unlikely that an exception was intended as regards the special Act”.

(1) [1898] A.C. 748.

(2) (1895) 25 Can. S.C.R. 62.

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Bearing in mind the considerations to be applied, we might now turn to *The Gold Export Act* and the regulations thereunder. The Act, as amended in 1935, reads as follows:

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts 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 or the Bank of Canada.

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 first regulations were adopted by Order in Council P.C. 1150, dated May 17th, 1932, whereby:

1. The export of gold, whether in the form of coin or bullion, from the Dominion of Canada, is hereby prohibited, except in such cases as may be deemed desirable by the Minister of Finance, and under licences to be issued by him. No such licence shall be issued to other than a Canadian chartered bank.

Provision was also made for the form of the licences and for instructions to be given to various officers. The regulations were continued in force from year to year by orders in council, the last one of which, so far as concerns this appeal, was P.C. 9131, dated November 26th, 1941, whereby it was provided that the regulations of May 17th, 1932, should be continued in force and effect until December 31st, 1942.

I think it can make no difference that this last order in council under *The Gold Export Act* was passed subsequent to the *Foreign Exchange Control Order* of 1940. What the

Order in Council of 1941 was doing was continuing in force the provisions of the 1932 regulations. If there were any conflict between the 1932 regulations and the *Foreign Exchange Control Order*, I would treat it as one between a general enactment and a prior special enactment. *The Gold Export Act* and the earlier regulations passed under it were peacetime measures, although it was thought advisable to continue the regulations in time of war. The authority under the *War Measures Act* may be exercised in time of war only. The powers conferred are for different purposes and that a more serious view is taken of an infraction of the *Foreign Exchange Control Order* than of the Gold Export Regulations is shown by the fact that the maximum fine and imprisonment imposable under the former are greater than under the latter, and that it is only under the former that a declaration of forfeiture may be made. The Gold Export Act Regulations affect every one, including the respondent, even though he could not have secured a licence thereunder since the latter was by the Act and regulations to be issued only to a bank. If one assumes a conflict, I would say that the reason of the maxim does not apply.

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In truth there is no conflict. The proper approach to the determination of conflict or no conflict is set forth by Lord Halsbury in *Tabernacle Permanent Building Society v. Knight* (1), and by Duff and Anglin JJ., as they then were, in *Toronto Railway Company v. Paget* (2).

In the former case Lord Halsbury stated that the two Acts there under review might "stand together and both operate without either interfering with the other" and that, therefore, there was no inconsistency or conflict. In the latter case, by section 5 of the *Ontario Railway Act* of 1906, the provisions of the statute were to apply to every railway company incorporated under a special Act "but, where the provisions of the special Act and the provisions of this Act are inconsistent, the special Act shall be taken to override the provisions of this Act, so far as is necessary to give effect to such special Act". By another section of the Railway Act a passenger on a railway train or car who refused to pay his fare might be ejected by the

(1) [1892] A.C. 298, at 302.

(2) (1909) 42 Can. S.C.R. 488.

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conductor, but by a section of the Toronto Railway Company's Special Act, a passenger, in such circumstances, was liable to a fine only.

At page 491 of the report, Duff J. stated:

There seem to be two possible views of the effect of section 5 of the "Railway Act of Ontario" where you have a provision in that Act and a provision in a prior special Act dealing with the same subject-matter in diverse ways. One possible view is that in such cases the provision in the general Act is to be wholly discarded from consideration; the other is that both provisions are to be read as applicable to the undertaking governed by the special Act so far as they can stand together, and only where there is repugnancy between the two provisions and then only to the extent of such repugnancy the general Act is to be inoperative.

At page 499, Anglin J. said:

It is not enough to exclude the application of the general Act that it deals somewhat differently with the same subject-matter. It is not "inconsistent" unless the two provisions cannot stand together.

These two cases are referred to by the present Chief Justice of this Court in *City of Ottawa v. Town of Eastview* (1).

I am unable to convince myself that there is any reason why a licence should not be required under the *Foreign Exchange Control Order* as well as under *The Gold Export Act* and its regulations where the latter Act and regulations are applicable. Nor can I conclude that it was not the intention of the Governor in Council to embrace within the prohibition and the subjection to forfeiture of the *Foreign Exchange Control Order* an individual such as the respondent who, *ex hypothesi*, would not be able to secure a licence under the Order. Paragraph (1) of the *Foreign Exchange Control Order* has already been quoted but the last sentence might be repeated: "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." I have already expressed the view that no conflict arises but, even if it does, *The Gold Export Act* and its regulations comprise a law in force in Canada, and the Order states explicitly that its provisions are to prevail.

There remains only to be added that it can make no difference even if the Order in Council of November 26th, 1941, under *The Gold Export Act*, continuing in force and effect until December 31st, 1942, the regulations of May 17th, 1932, be considered as a law enacted subsequent to

the *Foreign Exchange Control Order* of 1940. This is quite different from a provision such as the one to which Lord Blackburn referred, that all statutes inconsistent with an Act shall be repealed, and I can find no reason why the words in the *Foreign Exchange Control Order*, "any law in force in any part of Canada", should be restricted to something anterior.

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I would allow the appeal and grant an order declaring that the 46 oz., 19 dwt., 10 gr., of fine gold which the respondent attempted to export from Canada on or about December 10th, 1942, be forfeited to His Majesty the King, with costs throughout.

HUDSON J.—Williams, the respondent, attempted to take a quantity of fine gold out of Canada without having first obtained a licence so to do from the Foreign Exchange Control Board. He was stopped at the border, the gold was seized and he was prosecuted for breach of the order of the Board prohibiting such export. He pleaded guilty, was fined and paid his fine. Thereupon, the Attorney-General for Canada laid an Information in the Exchequer Court, claiming a declaration that the gold above referred to should be forfeited to the Crown. The learned President of the Exchequer Court dismissed this application with costs, and from his decision this appeal is brought.

The Foreign Exchange Control Board was created under the *War Measures Act* and no question arises as to its powers. All that is here involved is the interpretation of the Board's order, that is, whether it extends to gold or not. The material provisions of the order are as follows:

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

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.

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

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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 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.

Clause 2, paragraph (t), defines the word "property" as follows:

(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.

Clearly gold would fall within the definition of the word "property".

The respondent contends, however, that by reason of the provisions of *The Gold Export Act* and the Order in Council made thereunder dealing with the export of gold coin and bullion, the word "property" in the *Foreign Exchange Control Order* should be read as excluding gold. This contention was upheld by the learned President.

The Gold Export Act is chapter 33 of the Statutes of Canada, 1932. It provides:

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 [An amendment in 1935 (c. 21) added "or the Bank of Canada"].

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.

Under the authority of this Act an Order in Council was enacted on the 17th May, 1932, providing that the export of gold in the form of coin or bullion from the Dominion of Canada

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is hereby prohibited, except in such cases as may be deemed desirable by the Minister of Finance and under licences to be issued by him. No such licence shall be issued to other than a Canadian chartered bank.

By Order in Council dated 26th November, 1941, the provisions were continued until December 31st, 1942.

This Act was passed in peace time with the object of maintaining the status of Canadian currency during the then world-wide financial depression.

It appears from the language of the last-mentioned Act and the orders made thereunder that the respondent might have been convicted and punished for an offence thereunder. This does not in itself mean that he might not be convicted on the same facts under some other law. Such a situation arises not infrequently and has been recognized by Parliament and the possibility of the imposition of both penalties guarded against by the *Criminal Code*, section 15, which follows earlier English legislation to the same effect.

What must be decided here is whether it should be implied from the existence of the provisions of *The Gold Export Act* that the Governor in Council in passing the *Foreign Exchange Control Order* intended to exclude fine gold from its provisions. The maxim *generalia specialibus non derogant* is relied on as a rule which should dispose of the question, but the maxim is not a rule of law but a rule of construction and bows to the intention of the legislature, if such intention can reasonably be gathered from all of the relevant legislation.

In 31 Halsbury, at page 526, para. 687, it is stated:

Where in the same or a subsequent statute a particular enactment is followed by a general enactment, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment is operative, and the general enactment is taken to affect only those other parts of the particular enactment to which it may properly apply; * * * The earlier and the later, whether custom or statute, must be reconciled if possible, though an intention to the contrary, if manifest, is operative.

688. A statute giving a new remedy does not of itself, and necessarily, destroy previously existing rights and remedies to which it does not refer. It may, however, appear from the statute that Parliament did not intend the two rights to exist together.

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There is a full discussion of the maxim in the judgments delivered by this Court in the case of *Toronto Railway Company v. Paget* (1). It was there held that in the case of two such enactments, only where there is repugnancy between them, and then only to the extent of such repugnancy, is the general Act inoperative.

In the present case there is no repugnancy. Two measures were passed for different purposes and are to be enforced through different organs of the Government. The *Foreign Exchange Control Order* is very comprehensive, covering the whole field of currency, securities and commodities. I do not think that the Court could properly imply an intention to exclude from "currency" gold coins and from "commodities" fine gold, which nominally determines the value of all currency and monetary obligations.

It is difficult to imagine the Foreign Exchange Control Board issuing a licence to export gold but, if by some mischance, such licence were issued, it would not in itself supply a defence to a prosecution under *The Gold Export Act*.

I conclude that the Crown is entitled to the relief asked for in the Information and would allow the appeal with costs.

RAND J. (dissenting).—In this case an information was filed in the Exchequer Court by the Attorney-General of Canada against the respondent for a declaration of forfeiture of certain fine gold which the respondent was charged with having attempted to export from Canada without a licence from The Foreign Exchange Control Board. The proceedings were based upon the provisions of an order in council dated December 13th, 1940, section 24 (1) of which provided that:

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

By section 40 (1) an attempt to export likewise became an offence; and under section 42 (2) the property was liable to forfeiture.

If this order had stood alone, there would be no question of the validity of the proceedings now before us. There was in effect at the same time, however, an order in council under *The Gold Export Act* enacted in 1932 by

which the export of gold, except by a chartered bank or by The Bank of Canada acting under a licence issued by the Minister of Finance, was prohibited. The original order under this Act was passed on May 17th, 1932, and by subsequent orders, the last of which was published in the *Canada Gazette* on December 6th, 1941, the prohibition was continued to the end of 1942. The act with which the respondent is charged took place on December 10th, 1942, and was, therefore, within the period of that prohibition.

The President of the Exchequer Court held that the rule *generalia specialibus non derogant* applied, that the Exchange Control order was general legislation and that there was nothing in it to indicate that it was to override or supersede the order under *The Gold Export Act*. He, therefore, dismissed the information and the Attorney-General now appeals.

There is no doubt that the two orders have different objects in view. *The Gold Export Act* is peace-time legislation which has as its purpose the management of gold in relation to the country's currency and international settlements. The Exchange Control order is a temporary war measure to ensure the receipt in Canada of the value of Canadian products and services and to control, in the interest of Canadian requirements, the export and import of capital in any form. It is, therefore, urged by the Attorney-General that there is no conflict, that in substance the subject-matters are different and that licences under the two orders operate on parallel lines with equal and cumulative validity.

This argument in fact proceeds on the assumption that the export of gold is on the basis of leave from both the Minister of Finance under *The Gold Export Act* and the Exchange Control Board under the Exchange Control order as distinguished from leave only from the Board for other property; but, in relation to the respondent, that assumption is false. What *The Gold Export Act* does is to enable the Governor-in-Council to prohibit absolutely the exportation of gold, subject only to exportation by a bank acting under a licence from the Minister: but to no one else is that licence available. The question could arise upon an export by a bank under the Minister's licence whether a further licence from the Foreign Exchange Board

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was necessary; but in no other case would that be so. It is not, then, a situation of export subject to two licences that can stand together.

For that reason, I do not think it necessary to resort to the maxim to determine the question presented to us. The order of the Exchange Control Board necessarily contemplates an exportation which, under existing law, is at least possible, or, viewed from another angle, a licence which either absolutely or conditionally is to be effective. It is not suggested that the Exchange Control order has overridden the Gold Export Act order so as to permit, with leave of the Exchange Control Board, the export of gold regardless of the Gold Export Act order, nor would such a position be tenable. But how can we attribute to the Exchange Control order the issue of a licence to the respondent by the Board for an exportation which rests under an absolute prohibition by the terms of another existing law? Such a licence would be wholly futile and abortive and I am unable to ascribe to the scope of the order a subject-matter that would bring about such a result in its application. In my opinion, section 24 (1) of the Exchange Control order does not apply to a case in which a licence from the Board could never, in any proper sense, have effect, in which, in fact, the issue of such a licence would be *ultra vires* of the Board.

The Gold Export Act provides for fine and imprisonment in case of violation but not for forfeiture. The substantial effect of the Exchange Control order would be to add forfeiture to the penalty of that statute. Whether, under the *War Measures Act*, it might be competent to make that addition, it is unnecessary to determine; for that is neither the purpose nor the purport of the order. If, again, the order by general words prohibited, *simpliciter*, the export or attempted export of gold under penalty of forfeiture, thus creating a duplication of offence, the question of the applicability of the maxim would arise; but the absence of a licence from the Board is an essential ingredient of an offence under the order and that presupposes a power to issue it. It is not suggested that this information could be supported by an allegation, merely, that the respondent attempted to export gold. The order in no case prohibits export absolutely; its entire prohibition is con-

ditioned in licence. Its general language, therefore, cannot be held to include cases of both absolute and conditional prohibition which might permit us here to treat the reference to the licence as surplusage. We must assume that the penalty provided by the Gold Export Act order was considered ample for the purpose of enforcement but, whether that is so or not, we are not at liberty to treat an order made under other powers and with a different object as either supplementing the penalty or duplicating the offence, when its language is inappropriate and its assumption inapplicable. The appeal, therefore, should be dismissed with costs.

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Appeal allowed with costs.

Solicitor for the Attorney-General of Canada: *F. P. Varcoe.*

Solicitors for the respondent: *Raymond, Spencer & Law.*
