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Opinions delivered by the Attorney
& Solicitor General to the Lords Commis-
sioners of His Majesty's Treasury, in
the year 1772, on the two following
questions

- 1st Whether any, & which of the
Laws for prohibiting the ex-
portation of the Coin of the
Kingdom to foreign parts,
are now in force?
2. How far it is advisable
that orders should be given
to enforce the execution
of such Laws upon this
subject, as may appear
to be in force

To the Right Hon. The Lords
Commissioners of His Majesty's
Treasury

May it please your Lordships

In obedience to your Lordships
Command signified to Mr. Solicitor General
& myself by Mr. Robinson in his letter of
the 20th of March last, informing us that
your Lordships having been given to under-
stand that more than ordinary quanti-
ties of the Coin of this Kingdom have been
exported, in consequence of the great dif-
ference between the price of Bullion at the
Market & the value of the Money by tale,
by which a traffic is carried on detri-
mental to all who are obliged to bring
Bullion to the Mint for the purpose of
Coinage, & in diminution of the Coin of this

Kingdom: And that your Lordships having been very earnestly pressed in that account to give direction for enforcing the execution of the Laws for prohibiting the exportation of the Coin of this Kingdom to foreign parts, our opinion is desired, whether any of which of the said Laws for prohibiting the exportation of the Coin of this Kingdom to foreign parts are now in force, & how far we should think it advisable that orders should be given for enforcing the execution of the same

I have conferred with Mr. Solicitor General upon the Statutes which have been made against the exportation of Coin & Bullion: He differs from me in opinion for reasons which certainly deserve a great deal of attention; & the more, because his opinion, if it can be maintained, delivers the older Statutes from that want of policy, which I find myself obliged to impute to them

I therefore transmit to your Lordships the opinion which after the maturest consideration I incline to hold in a case, which is certainly far from clear

I think that the following Statutes are still in force: The ninth of Edward the Third Statute the second Chapter the first & Chapter the tenth which forbid the Coin & Bullion & give one fourth to the Searcher upon the forfeiture, & punish them severely for collusion; - subject to the exception in the Thirty eighth of Edward the Third, Statute the first Chapter the second: - the Fifth of Richard the Second, Statute the first Chapter the second, which is also very penal on the Searchers neglecting their duty: For I incline to think

9 E. 3. St. 2. C. 1. C. 10.
38 E. 3. St. 1. C. 2.
5 R. 2. St. 1. C. 2.

4 J. 1. C. 1. S. 22
2. H. 4. C. 5
4. H. 4. C. 15
2. H. 6. C. 6
19. H. 7. C. 5

14 R. 2. C. 1
C. 2
2. H. 4. C. 5
4. H. 4. C. 15
5. H. 4. C. 9
6. H. 4. C. 4
11. H. 4. C. 11
4. H. 5. C. 5
2. H. 6. C. 6
8. H. 6. C. 24
9. H. 6. C. 2
18. H. 6. C. 4
27. H. 6. C. 3
4. E. 4. C. 6
17. E. 4. C. 1
3. H. 7. C. 8
4. H. 7. C. 23
1. H. 8. C. 13
7. E. 6. C. 6

this Act against transporting Gold & Silver is not repealed by the fourth of James the first Chapter the first, Section the twenty second; although the Act therein mentioned & repealed concerning restraint of passage of His Majesty's Subjects out of the Realm is doubtless the same Act. The second of Henry the Fourth Chapter the fifth, upon which the usual informations seem to be more particularly grounded: The fourth of Henry the Fourth Chapter the fifteenth which takes away the Proviso in favour of Merchant Shippers contained in the preceding Statute. The second of Henry the Sixth Chapter the sixth, which gives one fourth to the Importer: The nineteenth of Henry the Seventh Chapter the fifth, against exporting money to Ireland & a perpetual Statute: But since there has been no Mint in Ireland, it seems impossible or wholly unfit to suffer the execution of it. The rest of it against importing Irish Coin here seems obsolete, as there is no high Coin current; & that part which prohibits the importation of Bullion from Ireland, seems perfectly unfit for the present situation of the two Countries

These Statutes are further enforced as to Merchant Shippers by twenty Statutes of Employment, namely compelling Merchant Strangers to employ the produce of their Countries in goods of this Country, & not carrying out ~~at home~~ by Exchange or otherwise, which ~~all~~ passed between the years 1390 & 1553 inclusive; but which are now totally out of use, & inconsistent with the present condition of Trade

This offence was Felony from 1477 to 1484 - & from 1487 to 1511 - & from 1553 to 1573

The six first Statutes seem to be in full force now, as to the Coin of this Kingdom; not only because they remain unrepealed, but they have received additional countenance & authority, if that were wanting, from subsequent Acts of Parliament & actual use, & Acts of State taking notice of them

15 C. 1. C. 7. S. 12

The fifteenth of Charles the second Chapter the seventh section the twelfth allow the exportation of foreign Coin or Bullion, making entry thereof at the Custom House, upon the express purpose of keeping in & increasing the current Coin of the Kingdom: This Statute is further enforced as to molten Silver or Bullion by the seventh & eighth of William the Third Chapter the nineteenth, which requires that very particular proof should be made that such molten Silver or Bullion is foreign, & not molten from the Coin of this Kingdom or wrought Plate

74 D. 11. C. 19

The right of seizing money has been sustained by several judicial decisions, & the practice of it is in ordinary use nearly as much as the other Laws of Customs

2. H. 4. C. 5

The Informers, as has been observed, generally proceed upon the second of Henry the Fourth Chapter the Fifth; & in the name of the Crown. On the 12th day of June 1720 an order in Council was made whereby the King taking notice that the practice of exporting the Gold & Silver Coin of this Kingdom was pernicious & tended to diminish the wealth thereof, ordered the Treasury to allow a moiety to the Seizers for their Encouragement

The mischief complained of is that more than ordinary quantities of the Coin of this Kingdom, have been exported, in consequence of the great difference which has for some time subsisted between the price of Bullion at the Market, & the value of Money by Law. The only remedy which now exists applicable to that mischief is the watchful execution of the Laws above mentioned. How far that remedy is a adequate how far inconvenient, I have not information enough to decide. But

27. E. 3. C. 14

18. E. 3. S. 2. C. 5

But it seems natural to imagine that so long as the nominal value of Coin is less than its real value in the Market, it will be difficult to prevent its being melted or exported. - Unless an express & very extensive public advantage, it seems better to leave them, like other Laws, to execute themselves

The Statute of Poply in the Tenth by seventh of Edward the Third Chapter the Fourteenth gives leave to export Bullion to take English Coin for it. But that is with a proviso that no old Sterling shall be exported, nor other money except the new Coin, or such as Merchants shall bring with them & not use - and the new money thus mentioned seems to be the same as that in the Eighteenth of Edward the Third Statute the second Chapter the fifth, which nobody was bound to take, so that it was not a general allowance to export all Coin, or all Coin to be made in future, even though Bullion were imported in the place of it

all which is humbly submitted to your Lordships Consideration
D. June 1772
(signed) J. Charles

To the Right Hon. the Lords Commissioners of His Majesty's Treasury

May it please your Lordships
The reasons which induce me to entertain some doubts upon one part of the opinion transmitted to your Lordships by Mr. Attorney General are these
Before the death of Edward the Third Offices for exchange of Coin or Bullion were erected in most of the principal

Towns of England by the royal authority and all private Exchanges were strictly prohibited, from the profit of which Exchange a considerable Revenue is said to have arisen to the Crown. The object of the writs of Edward the Third seems to have been to give a legal sanction to this practice, & the Seventh Chapter of (which is left out as obsolete in the common Editions of the Statutes) provides that these offices of Exchange shall be directed in such places, as it should please the King. It is certain from the Statutes, & from the Fadera that these Exchange offices subsisted during the several reigns in which the Statutes of Employment, or those for prohibiting the exportation of Coin or Bullion have been passed.

It seems probable that the course of these Exchange Offices and the profit arising therefrom had been interrupted during the Civil Wars, occasioned by the contest between the two Houses of York & Lancaster; & it is remarkable that when Henry the 7th in the 3rd year of his Reign revived the Statute and Law of the seventh of Edward the 3rd by which the exportation of Coin, Plate or Bullion was made felony, He at the same time provided by the Sixth Act of the same Parliament that none should make Exchanges but by the Kings appointment.

It should seem then that these Ancient Statutes were framed with a view to prohibit the exportation of Coin, not upon the principle of restraining totally that Commerce, as in itself unfit, but merely for the purpose of securing the revenue arising to the King, from the profit upon the Exchange of money.

The Laws which were then enacted not only prohibit the Exchange of Coin, but also of Gold or Silver in Bullion or in Paper, & also oblige every Merchant to export in Commodities the value of the Merchandise he has imported.

Bills of Exchange are as much prohibited by that System of Law which then prevailed, as the exportation of Coin or Bullion; & it is difficult to conceive how the Statutes prohibiting the exportation of Coin should continue in force, if the Statutes of Employment are not in force at the same time, for both of them are founded upon the same principle. That principle is, I conceive, the security to the King the profit arising from the Exchange; I consider therefore the Laws prohibiting the exportation of Coin as Laws of Revenue, which cease to have any effect when the Revenue to which they relate, & for the security of which they were enacted, no longer exists.

If the Laws enacted from the ninth of Edward the Third to the seventh of Edward the Sixth were put in force, no Commerce could be carried on in this Kingdom but by the Barter, & if that System were adopted, the Mercantile Exchange Offices must of necessity be ~~revised~~ revived.

An attempt was made in the reign of Charles the First to resume that Mercantile by a grant to the Earl of Holland (which is preserved in the Fadera Vol. 18. p. 296) of the Office of Exchanges, reciting the old Statutes, but it does not appear that any use was made of a grant so improper & so dangerous.

It would be too severe a Censure upon the policy of ancient times to suppose that a total prohibition of all Exchange by means of Gold & Silver could have been enacted: But if it is supposed (as the Truth is) that the Trade of Exchange was made an Article of Revenue, the Laws prohibiting private Exchanges, & of course the unlicensed Exportation of Money, are neither absurd nor impolitic. Considered in the relation they bear to the System of Government then established, but they are totally inapplicable to the present State of things.

things; and I should upon that ground hold them to be expired Laws.

Another observation hath occurred to me upon these Laws, that from the ninth of Edward the Third to the seventh of Edward the Sixth, several Acts have passed to the same effect: now if the prior Acts were deemed to be perpetuals, & not temporary in their nature, the repetition of the Law seems to be very unnecessary. But besides this,

4.H.4.C.16 the Fourth of Henry the Fourth Chapter the Sixteenth/omitted in most of the printed Editions of the Statutes, containing no reference to prior Statutes, prohibits the Exportation of Gold or Silver without License, & is limited to endure to the next Parliaments only.

2.H.6.C.6 The second of Henry the Sixth Chapter the Fifth is in points of date the next general prohibitory Statute (excepting always the Statute of Emphy. that Act is not limited to any certain period, but by the Seventh of Edward the Fourth, it is re-enacted, the offence made Felony & the Duration of that Act is limited to seven years. That Act expired in the year 1484, & it was not till the year 1487 that the Act of the Fourth of Edward the Fourth was by the Third of Richard the Third revived & made perpetual. By the seventh of Edward the Sixth Chapter the Sixth however the Duration of this Law was limited to Twenty years, & it expired in the year 1573. From the course of these Laws I should incline to con-

clude that not only the Penalty but the Prohibition was temporary, for these Laws do not seem to be framed as Laws adding new Penalties to an offence declared by former Laws, but each distinct Law repeats the prohibition, & proceeds originally, as if there had been no Law then existing: and it may be a question upon the construction of Laws in general, whether Statutes prohibiting an Act in itself not evil nor immoral, under a heavy penalty, must not of necessity, be joyned to the prior Laws simply prohibiting the act; & whether it does not become necessary upon the expiration of that Statute, to revive the prohibition by an express Act.

Besides these doubts which have occurred to me upon the Laws in general, I conceive there are objections which might be taken to the particular Statutes, if any prosecution was commenced upon them. It might be argued that the ninth of Edward the Third was explained by the Twenty seventh of Edward the Third, Chapter the fourth, which permits the exportation of the new money of Gold or Silver, & leaves the prohibition only as to the old Sterling, which it would be truly said meant at that time a particular coin: viz. the silver penny that no longer exists. The fifth of Richard the Second, it might also be argued is repealed by the fourth of James the First Chapter the First section the Twentieth second, for the words of that Act are expressly "That every ordinance, provision

"Article or clause in the first menth
 "oned Statute shall be wholly repealed
 - and it is difficult to restrain
 these words by the recital of the let-
 ter Statute. If that Act is repealed
 the second of Henry the Fourth
 Chapter the Fifth is also repealed
 of course

But it is unnecessary to state
 any such minute Doubts as to the Exis-
 tence of these Statutes, in support of a
 Doubt, which, if it is not to be justify-
 ed by those considerations I have al-
 ready stated, ought not to weigh at
 all against what I believe hath been
 the received opinion upon the Construc-
 tion of these Statutes

I am the less diffident in sta-
 ting the grounds of my Doubt to your
 Lordships upon this part of the Case,
 because I have the good fortune to
 agree entirely with W^r Attorney General
 in the other part of it " That it is much
 better to leave these Laws (if they can
 be executed) to execute themselves,
 than to give any orders for enforcing
 them. al. Meddemburn

8 June 1772