

THE SECRETARY OF STATE OF }
CANADA } PLAINTIFF;

1924
Nov. 5.

AND

GREENSHIELDS LIMITED DEFENDANT.

Constitutional law—Order in Council—Retroactive effect—Treaty of Versailles—Vesting order.

Held, that the Order in Council dated 14th April, 1920, and passed for the purpose of carrying out and giving effect to the Treaty of Versailles was not retroactive, and did not, in any way, affect rights acquired under a vesting order, made under the provisions of the Consolidated Orders respecting Trading with the Enemy, 1916, and obtained from a court of competent jurisdiction on the 21st May, 1919.

2. Held further, that both by the Treaty of Versailles and the Order in Council above mentioned rights acquired under such vesting orders and directions made thereunder are confirmed and remain in full force and effect.

ACTION by the Custodian under the terms of the Treaty of Peace (Germany) Order 1920 against the defendant under the Order in Council of the 14th April, 1920, passed to give effect to the Treaty of Versailles.

Montreal, October 30, 1924.

Case now heard before the Honourable Mr. Justice Audette.

R. Taschereau, K.C. for plaintiff,

J. W. Cook, K.C. and *J. A. Mann, K.C.* for defendant.

The facts are stated in the reasons for judgment.

AUDETTE J., now this 5th day of November, 1924, delivered judgment.

This is a case arising out of the Great War in respect of trading relations with the enemy.

The defendant firm, at the time of the declaration of war by Germany, on the 4th August, 1914, was carrying on business in Canada and was indebted to one L. S. Mayer, of Berlin, Germany, an enemy, in a sum of 8.107.65 marks and interest.

Acting in pursuance of the Consolidated Orders respecting Trading with the Enemy, 1916 (exhibit 3) the Secretary of State of Canada, on the 21st May, 1919, obtained from the Superior Court of the province of Quebec, District of Montreal, an order which, *inter alia*, vested the said debt in the Minister of Finance and Receiver General of Canada,

1924
 THE
 SECRETARY
 OF STATE
 OF CANADA
 v.
 GREEN-
 SHIELDS
 LIMITED.
 Audette J.

as Custodian appointed by the said Consolidated Orders respecting trading with the Enemy, 1916. Among the directions contained in this Order of the 21st May, 1919, permission was granted the defendant Greenshields Limited, to pay over to the Custodian, if called upon to do so, any amounts payable in marks at the current rate of exchange on the date of payment.

The defendant, upon demand of payment being made upon him (exhibit No. 4) tendered the sum of 8.107.65 marks with interest, from the 5th August, 1914, at the rate of exchange current at that date, namely, 33.66 marks to the dollar. That was the rate of exchange in force at the time of the tender, as admitted both by the Statement of Claim, and at bar by plaintiff's counsel.

That tender was refused by the Custodian who contended that the payment must be made, at the rate of exchange of 4.1901 marks to the dollar, as fixed by subsection 2 of section 24 of the Order in Council of the 14th April, 1920—that is varying the amount as payable under the judgment of the Superior Court rendered more than one year before.

This judgment bears date the 21st May, 1919. The Treaty of Peace between the Allied and Associated Powers and Germany bears date 28th June, 1919, and was ratified on the 10th January, 1920, thereby proclaiming the termination of war.

On the 10th November, 1919, by 10 Geo. V, ch. 30, an Act was passed for carrying into effect the Treaty of Peace between His Majesty and Germany,—and on the 14th April, 1920, an Order in Council reciting the above facts, was passed for the purposes of carrying out and for giving effect to the Treaty and for performing the obligation of Canada arising thereunder, and by subsection 2 of section 24 thereof the rate of exchange, for the payment of any enemy debt, was fixed at 4.1901 marks to one dollar in Canadian currency and the plaintiff relies upon that section to ignore the judgment of the Superior Court rendered one year before and to claim at that rate, instead of the rate mentioned in the judgment.

The Exchequer Court of Canada is given jurisdiction to hear the present case, under the provisions of sections 26 and 41 of the Order in Council of the 14th April, 1920, passed under the War Measures Act, 1914,—the subject-matter coming within the power and attribute of the

Executive—the effects of war conditions still obtaining and remaining. *Re Francis Pulp & Paper Co. v. Manitoba Free Press Co.* (1).

What the plaintiff now seeks is to give retroactive effect to the Order in Council of April 14th, 1920, and thereby find authority to ignore the judgment of the Superior Court. Any legislation to retrospectively affect any substantive right previously acquired, being in the nature of a law of exception, requires to bear that meaning either by an explicit, unequivocal and distinct enactment disclosing that intent or by an unmistakable implication. This Order in Council as I read it neither expressly nor by any irresistible implication has such retroactive effect. If the enactment of the Order in Council was to prevail in preference to the judgment of a court of competent jurisdiction, the defendant's liability would also become ever so much more onerous. The case was brought before the Superior Court under the Order in Council of 1916 and not that of 1920 and had the payment been demanded and made at the date of the judgment, the payment would have been obviously final. This judgment was rendered after hearing both parties and thereby became a judicial contract between the parties and has never been either appealed or set aside.

However, on reference to both the Versailles Treaty and the Order in Council of the 14th April, 1920, we find that the rights acquired under vesting orders and directions made thereunder, are safeguarded, confirmed, and remain in full force and effect. Section 1 of the Annex of the Versailles Treaty, reads as follows:

In accordance with the provisions of Article 297, paragraph (2) the validity of *vesting orders* and of any *other orders, directions, decisions or instructions* of any court or any department of the Government of any of the High Contracting Parties *made or given, or purporting to be made or given, in pursuance of war legislation with regard to enemy property, rights and interest is confirmed.* The interests of all persons shall be regarded as having been effectively dealt with by any *order, direction, decision or instruction* dealing with property in which they may be interested, whether or not such interests are *specifically mentioned* in the order, direction, decision or instruction, etc., etc.

See also subsection (d) of subsection 4 of Article 296 of the Versailles Treaty.

1924
 THE
 SECRETARY
 OF STATE
 OF CANADA
 v
 GREEN-
 SHIELDS
 LIMITED.
 Audette J.

1924

THE
SECRETARY
OF STATE
OF CANADA
v.
GREEN-
SHIELDS
LIMITED.

Audette J.

Section 34 of the Order in Council of the 14th April, 1920, in almost similar language, validates and confirms all such vesting order and orders giving directions, etc., and directs that such order is to be considered as final and binding upon all persons.

For these considerations to which I have just adverted, I find comfort in arriving at the conclusions, which breathe the spirit of justice, that the vesting orders and directions, etc., given thereby have been fully confirmed both by the Treaty and the Order in Council, and remain in full force and effect, and to order and adjudge that the defendant pay to the Custodian the debt in question at the exchange rate of 33.66 marks to the dollar, in Canadian currency, and furthermore, that the action be dismissed. In compliance with the agreement of counsel at bar, it is further ordered that there will be no costs to either party.

Judgment accordingly.

Solicitors for plaintiff: *Perron, Taschereau, Vallée & Genest.*

Solicitors for defendant: *Cook & Magee.*