



The Law Commission
and
The Scottish Law Commission

(LAW COM. No. 38)

(SCOT. LAW COM. No. 18)

COINAGE BILL

REPORT ON THE CONSOLIDATION OF
CERTAIN ENACTMENTS RELATING TO COINAGE

*Presented to Parliament by the Lord High Chancellor,
the Secretary of State for Scotland and the Lord Advocate
by Command of Her Majesty
November 1970*

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THE LAW COMMISSION AND THE SCOTTISH
LAW COMMISSION

COINAGE BILL

REPORT ON THE CONSOLIDATION OF CERTAIN ENACTMENTS
RELATING TO COINAGE

*To the Right Honourable the Lord Hailsham of Saint Marylebone, Lord High
Chancellor of Great Britain,*

*the Right Honourable Gordon Campbell, M.C., M.P., Her Majesty's
Secretary of State for Scotland, and*

*the Right Honourable Norman Wylie, V.R.D., Q.C., M.P., Her Majesty's
Advocate.*

The earliest of the Acts to be consolidated in the Coinage Bill, which accompanies this Report, viz the Coinage Act 1870, was itself an Act "to consolidate and amend the law relating to the coinage and Her Majesty's mint". It repealed, wholly or in part, Acts ranging from the statute 2 Hen. 6 c. 17 (c. 14 in Ruffhead) to the Colonial Branch Mint Act 1866 (29 & 30 Vict. c. 65). Comparatively few of the provisions then consolidated have been replaced by more modern legislation and some of those that remain in force clearly show their origin in times very different from the present, when gold and silver coins were a normal means of making payment and had a nominal value corresponding to their value as pieces of precious metal. Although the time may come when Parliament might want to consider whether such provisions need or should remain part of the law we do not think that a consolidation Bill affords an opportunity for doing so.

We do, however, think that a consolidation Bill should, if possible, avoid presenting as living law provisions which could not conceivably have any practical application, whatever the circumstances. There are at least two such provisions in the Coinage Act 1870 and we think that neither ought to find a place in a new consolidation Act. These provisions were ridiculed even in 1870, when the Bill for the Act was before Parliament (see Parliamentary Debates, 3rd series, vol. 199, cols. 862-866) and we are satisfied that their retention on the statute book could have no practical effect. They have, therefore, been omitted from the Bill in accordance with the recommendations set out in the Appendix to this Report. The Treasury and the Mint have been consulted and agree with our recommendations on these two provisions.

We have also recommended an additional, though small, change, namely a simplification of the Chancellor of the Exchequer's title as head of the Mint. This title was archaic in some respects in the 19th century and a century later has become even more so. The Chancellor of the Exchequer has agreed to the recommended change in his title.

LESLIE SCARMAN,
Chairman of the Law Commission.

C. J. D. SHAW,
Chairman of the Scottish Law Commission.

11th November 1970.

APPENDIX

RECOMMENDATIONS

1. Section 11(7) of the Coinage Act 1870 enables Her Majesty by proclamation to direct " that coins coined in any foreign country shall be current, and be a legal tender, at such rates, up to such amounts, and in such portion of Her Majesty's dominions as may be specified in the proclamation; due regard being had in fixing those rates to the weight and fineness of such coins, as compared with the current coins of this realm ". So far as this power may be exercisable in a British possession it does not form part of the law of the United Kingdom, with which alone the Bill is concerned. But the expression " Her Majesty's dominions " includes the United Kingdom and the section therefore appears to confer a power, not subject to any control by Parliament, to introduce foreign coins as part of the currency of the United Kingdom. It was pointed out in the debate on the Bill for the Act of 1870 that no foreign coin had ever been made legal tender in this country and that if anything of the kind were to be done it should be done by Act of Parliament and not by proclamation. We think that, whether or not section 11(7) is reproduced in a Bill extending only to the United Kingdom, it is inconceivable that a new Act of Parliament could be dispensed with if it were intended to make foreign coins legal tender in the United Kingdom.

We recommend that section 11(7) should be omitted.

2. Section 7 of the Coinage Act 1870 is as follows:

Defacing
light
gold coin.

7. Where any gold coin of the realm is below the current weight as provided by this Act, or where any coin is called in by any proclamation, every person shall, by himself or others, cut, break, or deface any such coin tendered to him in payment, and the person tendering the same shall bear the loss.

If any coin cut, broken or defaced in pursuance of this section is not below the current weight, or has not been called in by any proclamation, the person cutting, breaking, or defacing the same shall receive the same in payment according to its denomination. Any dispute which may arise under this section may be determined by a summary proceeding.

The debates on Second Reading of the Bill for the Act of 1870 show that this provision was even then regarded as a dead letter and the Chancellor of the Exchequer suggested that it might be omitted in the later stages of the Bill. It is not clear why this was not done.

The section is derived from section 7 of the Act 14 Geo. 3. c. 70, which dealt only with gold coins, and section 7 of the Act 56 Geo. 3. c. 68, which dealt with silver coins. For some reason that cannot be traced section 7 of the Act of 1870, despite its side note, is expressed as applying to all coins that have been called in by proclamation. Apart from this extension to coins of other metals the section also takes the earlier sections out of their context.

In the context of the Acts of Geo. 3 these provisions were part of a comprehensive scheme for dealing with coins which had become diminished in weight; a period during which such coins could be exchanged for new coins was fixed by proclamation and at the end of that period the coins ceased to be legal tender. A somewhat similar provision in more recent times was section 1 of the Coinage Act 1891 (repealed by the Statute Law Revision Act 1964).

It is obvious that in its present form and at the present time section 7 can have no application. However much a gold coin may have diminished in weight its value is bound to be well above its nominal value and it will not be tendered in payment. The metal value of other coins is not related to their nominal value and such coins are called in by proclamation for other reasons than loss of weight. In recent years farthings, half-pennies and half-crowns have been called in and if such coins were tendered in payment they would be refused unless the person to whom they are tendered thought they were current coins. But if he thought they were current coins he would not want to cut, break or deface them.

It was said in 1870 that a prosecution for a contravention of these provisions had never been heard of and none has been heard of since. Section 7 is listed neither in Archbold, Criminal Pleading, Evidence and Practice nor in Stone's Justices Manual.

So far as it provides for the summary determination of disputes the section also has no practical application. In Scotland the procedure provided for by sections 1(1)(c) and 14 of the Summary Jurisdiction (Scotland) Act 1954 and Part I of Schedule 2 to that Act would be available but has never been used for that purpose. Neither justices in England and Wales nor resident magistrates in Northern Ireland have power to make a declaration so that section 7 could not be resorted to there for the determination of the dispute unless the determination were incidental to the determination of a claim. Even then 2s. would have to be paid in fees for the complaint and summons (or in Northern Ireland for the summons) and the highest nominal value of any coin called in in recent years is 2s. 6d.

We recommend that section 7 should be omitted.

3. Article 16 of the Articles of Union between England and Scotland, as recited in the English Union with Scotland Act 1706 and the Scottish Act 1707, c. 7 (the corresponding Act of the Scottish Parliament), provided that the Scottish Mint should be continued in Scotland and also that the existing officers of the Mint should be continued in office. Nevertheless in 1711 the Scottish Mint ceased to make coins. It appears from an Act of 1817, 57 Geo. 3. c. 67, that the officers of the Scottish Mint continued to hold office and indeed continued to have apartments in the Mint. That Act which abolished certain sinecure offices of the Mint in England also provided in section 4 that the office of the governor of the Mint in Scotland should in future be held by the master and worker of the Mint in England for the time being and abolished the fees of the office. Section 5 of that Act went on to require the Treasury to sell the buildings of the Mint in Scotland.

The Coinage Act 1870, which was a consolidation with amendments of the existing law about coinage and the Mint, made one change in the constitution of the Mint. There was at that time a vacancy in the mastership of the Mint, the previous master having just died. Section 14 of the new Act provided that "the Chancellor of the Exchequer for the time being shall be the master, worker, and warden of Her Majesty's Royal Mint in England, and governor of the Mint in Scotland". In the meantime the Statute Law Revision Act 1867 had repealed the recital of Article 16 in the English Act of Union with Scotland, so far as it related to the Mint in Scotland and its officers. To complete the picture the Statute Law Revision (Scotland) Act 1906 made a corresponding repeal in the recital about the Mint in the Scottish Act of 1707.

It is somewhat surprising that section 14 should have continued the title of governor of the Scottish Mint, since that Mint had ceased to function operationally nearly 160 years before. Moreover the appellation "worker" was criticised in the debate on the 1870 Act as being curious (see Parliamentary Debates, 3rd series, vol. 199, col. 862). The Chancellor of the Exchequer while agreeing with the criticism (col. 866) replied that "worker" was the old style of the office, dating from the time when the holder worked as a contractor for the Government. He added that there was no longer any reason why it should be retained. However, no amendment was made to remove it from his title. Finally the 1870 Act contained another curiosity not remarked on in the debates of that year. It revived the title of warden, an office which had been abolished over half a century earlier by the 1817 Act referred to above.

The explanation for the continuation of the first two curiosities mentioned above is almost certainly that the Chancellor of the Exchequer wished to make as few changes in the law as possible (see col. 865). Nevertheless he is open to criticism on the ground that he not only kept all the existing absurdities but also revived one or two anachronisms, in particular the title of warden, which had already disappeared.

Now that there is only one Mint in the United Kingdom it seems appropriate to drop the reference to the Scottish Mint in the Chancellor of the Exchequer's title and at the same time to modernise the title in other respects.

We accordingly recommend that the title of the Chancellor of the Exchequer should be simplified. Clause 4(1) gives effect to this recommendation.

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