Privy Council Appeal No. 25 of 1949

John Lavington Bonython and others - - - - - *Appellants*

v.

The Commonwealth of Australia - - - - - *Respondent*

FROM

THE HIGH COURT OF AUSTRALIA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 30TH OCTOBER, 1950

Present at the hearing:

VISCOUNT SIMON
LORD SIMONDS
LORD MORTON OF HENRYTON
LORD MACDERMOTT
LORD REID

[*Delivered by* LORD SIMONDS]

The substantial question raised in this appeal, which is brought from a judgment of the High Court of Australia, is whether (as the appellants assert but the respondent denies) the appellants as holders of several sums of Consolidated Inscribed 3½ per cent. stock of the Commonwealth of Australia, maturing on the 1st January, 1945, are entitled to be paid in London the nominal amounts of such stock in English currency or, alternatively, to be paid in Australia the equivalent in Australian currency of such amounts of English currency.

The appellants instituted their action in the High Court claiming the relief to which they alleged that they were entitled. At the trial of the action on the 15th October, 1947, the learned Chief Justice (Latham C.J.) with the consent of the parties and pursuant to section 18 of the Judiciary Act, 1903-1947, stated a Case and referred for the opinion and consideration of the Full Court of the High Court the relevant questions of law. It is proper, particularly in view of certain submissions made on behalf of the respondent upon the appeal, that the Case Stated should be set out in some detail in this opinion. The material parts of it are as follows (the appellants being referred to as the Plaintiffs and the respondent as the Defendant):—

> "1.—The Plaintiffs respectively are and since prior to 1st July, 1944, have been inscribed in a stock ledger kept at a Registry established by the Defendant at Adelaide under the Commonwealth Inscribed Stock Act, 1911-1945, as the holders of Commonwealth

Consolidated Inscribed Stock 3.5 per cent. maturing 1st January, 1945 (hereinafter referred to as " Commonwealth Inscribed Stock ") in the following amounts that is to say:—[The amounts held by the several plaintiffs are then set out.]

The Plaintiffs are and at all material times have been resident in Australia.

2.—The Commonwealth Inscribed Stock referred to in paragraph 1 hereof was originally issued by the Defendant in or about the month of March, 1932, to the Australian Mutual Provident Society upon the surrender of Queensland Government Debentures hereinafter referred to. It is admitted that the said Commonwealth Inscribed Stock was issued to the Australian Mutual Provident Society subject to the condition that the same conferred upon the registered holders thereof for the time being rights which conformed in all particulars with the rights conferred by the said Queensland Government Debentures.

3.—By the provisions of Act 58 Victoria No. 32 of the Parliament of Queensland and known as the Government Loan Act of 1894 the Governor-in-Council of the Colony of Queensland was authorised to raise by way of loan for the Public Service of the Colony such several sums of money not exceeding in the whole the sum of Two million pounds as might be required for purposes therein set out. Pursuant to the powers conferred by the said Act the Governor-in-Council for the said Colony of Queensland on 26th April 1895 raised by way of loan in London England the sum of £1,250,000 part of the sum authorized by the said Act and on 3rd July 1895 raised by way of loan in Australia sums of £250,000 and £500,000 respectively balance of the sum so authorized and in respect of all the sums so raised issued debentures for varying amounts but otherwise in the form following that is to say:

ONE THOUSAND POUNDS

QUEENSLAND Identical S1. T1.

GOVERNMENT	DEBENTURE
No. 1	£1,000 Series S1.

ISSUED BY THE GOVERNOR in Council, by authority of the PARLIAMENT OF QUEENSLAND under the Act 58 Victoria No. 32.

THIS DEBENTURE entitles the HOLDER to the sum of ONE THOUSAND POUNDS STERLING, which, together with interest at the rate of THREE POUNDS TEN SHILLINGS PER CENTUM PER ANNUM is secured upon the CONSOLIDATED REVENUE OF QUEENSLAND.

THE PRINCIPAL SUM will be payable on the First day of January 1945 either in BRISBANE, SYDNEY, MELBOURNE or LONDON at the option of the holder; but notice must be given to the Treasurer of the Colony, on or before the First July 1944 of the place at which it is intended to present this Debenture for payment of such principal.

THE INTEREST WILL commence on the first day of JANUARY 1896 and will be payable on the 1st JANUARY and 1st JULY in each year, at the Treasury in BRISBANE or at the offices of the Agents of the Government in SYDNEY, MELBOURNE or LONDON on presentation of such of the annexed coupons as shall then be due, and not otherwise.

WHEN THIS DEBENTURE is issued the place at which the Purchaser wishes the interest first falling due to be paid, shall be endorsed on the Debenture; any change in the place of payment of interest must be registered at the Treasury in BRISBANE or at the offices of the Agents of the Government in SYDNEY, MELBOURNE or LONDON six months prior to the date on which such interest shall be payable, and the transfer at the same time endorsed on the Debenture.

DATED at Brisbane this 1st day of November 1895.

E. DESHON	H. W. NORMAN
Auditor General.	*Governor of Queensland.*
T. M. KING	HUGH M. NELSON
Under Secretary.	*Colonial Treasurer.*

4.—The sum of £250,000 referred to in paragraph 3 hereof was wholly subscribed by the Australian Mutual Provident Society a company incorporated and carrying on business in Australia and with respect thereto the Governor-in-Council in Queensland caused 150 of the debentures referred to in paragraph 3 hereof each for the sum of £1,000 and 200 of the said debentures each for the sum of £500, to be issued in Queensland to the said Australian Mutual Provident Society.

5.—On each of the debentures referred to in paragraph 4 the place at which the Purchaser wished the interest first falling due to be paid was endorsed as Sydney. No change in the place of payment of interest under the said debentures was registered.

6.—The following is a copy of the form of coupon annexed to the said £1,000 debentures:—

QUEENSLAND GOVERNMENT DEBENTURE

£1,000 SERIES S1. £1,000

Half year's Dividend at the rate of Three Pounds Ten Shillings per centum per annum, due 1st January 1945.

£17.10.0 H.M.N.

The coupon annexed to the said £500 debentures was in the same form except as to the sums mentioned therein.

7.—Under and by virtue of an agreement made the 12th day of December 1927 between the Defendant of the first part and the States of New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania of the second third fourth fifth sixth and seventh parts and under and by virtue of the Financial Agreement Act 1928 No. 5 of 1928, the Financial Agreement Validation Act 1929 No. 4 of 1929, and the Financial Agreements (Commonwealth Liability) Act 1932 No. 2 of 1932 (all of the Parliament of the Commonwealth of Australia) the public debt of the State of Queensland which included the liability of that State under and in respect of the debentures mentioned in paragraph 4 hereof was taken over by the Defendant.

8.—Upon the issue to the Australian Mutual Provident Society of the Commonwealth Inscribed Stock referred to in paragraph 1 and for some time thereafter the same was inscribed in the stock ledger kept at the Registry in Brisbane and interest was paid there. Upon or subsequently to the Plaintiffs becoming the holders of the said stock the same was transferred to the Registry kept at Adelaide and thereafter interest was paid there."

The Case then set out correspondence passing between the appellants and the respondent which may be briefly summarised. On or about the 15th December, 1944, the Treasurer of the Commonwealth sent to the holders of the inscribed stock in question a letter inviting them to convert their maturing securities into a new issue made by the Commonwealth and adding that, if they should not find it possible to convert their securities, they would be " redeemed on the due date on presentation at the Commonwealth Bank." To this letter the appellants made no answer. By letters written by or on their behalf on the 22nd December, 1944, to the Deputy Registrar of Inscribed Stock at Adelaide the appellants requested that " in accordance with the conditions on which the said stock was issued " the amount of the stock held by them respectively should " be paid on maturity in London in sterling ". On the 30th December, 1944, the

Deputy Registrar replied that this request had been submitted to the Commonwealth Treasury adding that the conditions of the Loan provided that six months' notice of redemption in London would be necessary and enclosing certain forms which he invited them to fill in and return. The forms were alternative and were for conversion of the existing securities to a new loan or for redemption in cash. On or about the 2nd January, 1945, the Deputy Registrar wrote a further letter to the appellants in which, after quoting the redemption provisions of the original debentures, he added, " As the holders of the Stock did not give the notice required by the terms of the debenture they are now precluded from exercising an option for payment in London."

The Case then proceeded as follows:—

" 16.—None of the Plaintiffs completed the forms referred to in paragraph 14 hereof nor did they or any of them present the said inscribed stock at the Commonwealth Bank.

17.—The Defendant has not paid to the Plaintiffs or any of them the principal moneys due on maturity of the said inscribed stock. On and from the 1st January 1945 the Defendant was at all times ready and willing to repay the said principal moneys in Australian currency equal to the amount inscribed but no larger amount, at Adelaide aforesaid or elsewhere in Australia as might be required by the holder. Save as appears from the letters hereinbefore set forth, no notice for the redemption of the said inscribed stock has been given by the Treasurer of the Commonwealth to the Plaintiffs or any of them.

18.—The parties having appeared before me and agreed that all the facts necessary to determine this action are stated in this Case I state the following questions of law arising in the action for the opinion and consideration of the Full Court of the High Court of Australia:—

(*a*) With respect to the Commonwealth Inscribed Stock held by the Plaintiffs was the Defendant bound to pay the principal sums secured thereby in English currency in London six months after the date of the delivery of the letters referred to in paragraphs 10, 11 and 12 of this Case?

(*b*) If nay when and where did such moneys become due and payable?

(*c*) If the principal sums are payable in Australia are the Plaintiffs respectively entitled to be paid in Australian currency the equivalent of the principal sums in English currency?

(*d*) Are the Plaintiffs respectively entitled to interest upon the amount of the said stock held by each of them at 3½ per cent. per annum since 1st January 1945?

Dated this 15th day of October One thousand nine hundred and forty-seven.

J. G. LATHAM,
Chief Justice."

These questions were answered as follows: the majority of the Full Court (Rich, Dixon and McTiernan J.J.) answered questions (*a*), (*c*) and (*d*) in the negative: Dixon and McTiernan J.J. thought it unnecessary to answer (*b*): Rich J. was of opinion that the principal sums were payable at the places mentioned in the debentures upon presentation of the inscribed stock. Latham C.J. and Starke J. dissented, the former being of opinion that the appellants were entitled to be paid in Australia on the 1st January, 1945, the equivalent in Australian currency of the principal sums in English currency, the latter that they were entitled to be paid the principal sums on the 1st January, 1945, in English currency in London. Both Latham C.J. and Starke J. were of opinion that the appellants were not entitled to interest, but Starke J. thought that they

were entitled to damages for breach of contract by reason of the respondent's failure to pay on the 1st January, 1945, and that such damages might be measured by the interest payable on the said stock.

These answers being remitted to the learned Chief Justice, he gave judgment in conformity with the answers of the majority, and from that judgment this appeal is brought.

Before dealing with the matters which alone appear upon the face of the case to have been in dispute between the parties and were the subject of conflicting opinions in the High Court, their Lordships must deal with a submission made on behalf of the respondent which admittedly was not made to the High Court. It was to the effect that, whatever rights the appellants might have had if they had retained the original debentures, their present rights must be determined solely by their status as holders of Consolidated Inscribed Stock of a certain issue made under the authority of the Commonwealth Inscribed Stock Act, 1911-33, and that the statutory terms of issue and redemption precluded the payment of anything but the nominal amount of the stock in Australian currency at par. Their Lordships do not feel at liberty to entertain this submission. The statement in paragraph 2 of the Case (which was based on allegations and admissions in the pleadings) that the Inscribed Stock was issued "subject to the condition that the same conferred upon the registered holders thereof for the time being rights which conformed in all particulars with the rights conferred by the said Queensland Government Debentures," the further statement in paragraph 18 that "all the facts necessary to determine this action are stated in this case," the form and substance of the questions submitted for this opinion of the Full Court, and the opinions delivered by the several members of that Court make it clear that the action has throughout proceeded upon the footing that, though not all the terms and conditions of the original debentures were appropriate to the substituted inscribed stock, yet their rights in regard to the currency in which, and the place at which, payment should be made were unaltered. It is upon this footing that their Lordships decide this appeal.

The first question that emerges arises on a narrow point of construction. It is whether the appellants, having failed to give the proper notice on or before the 1st July, 1944, in any event lost their right to require payment in sterling in London. This would not necessarily be fatal to their substantial claim, for, in the opinion of Latham C.J., they would, though precluded from requiring payment in London, still be entitled to payment in Australia of the equivalent in Australian pounds of the nominal amount of their stock in English pounds. Nor, on the other hand, would it avail them to succeed upon this point if, being paid in London, they were entitled to be paid in English pounds only the equivalent of the nominal amount of their stock in Australian pounds. The vital question to be decided is what was the substantial obligation created by the debenture. Their Lordships, nevertheless, think it right, in view of the difference of opinion in the High Court, to make some observations on this preliminary matter.

As has already been stated, the original debentures provided that the principal sum would be payable on the 1st January, 1945, either in Brisbane, Sydney, Melbourne or London at the option of the holder, but that notice must be given to the Treasurer of the Colony on or before the 1st July, 1944, of the place at which it was intended to present the debenture for payment. No provision was made for the event of notice not being given on or before the 1st July, 1944, an event which happened in the case of the appellants. What then are their rights? Two views are possible: the first, for which the appellants contend, that, as they had on the 22nd December, 1944, nominated London as the place of payment, the respondent was bound to pay in London within a reasonable time after notice had been given and at the latest on the 22nd June, 1945;

the second, for which the respondent contends, that it was a condition precedent to the option being exercised that due notice should be given on or before the 1st July, 1944, and that, the condition not having been complied with, payment was due only in Australia. It was not made clear, upon the footing that the respondent's contention was right, at what place in Australia payment must be made, and this difficulty is not diminished by the change that has taken place in the nature of the security.

Their Lordships, for a reason which will shortly appear, do not find it necessary to determine which of these conflicting views is the right one. If the option is not exercised no place is designated for payment and the proper place of payment must in that case be implied from the terms of the debenture. It is difficult, however, to find in the document clear indications on which to found this inference. The appellants would prefer Mr. Justice Dixon's view on this preliminary point, though, of course, challenging his final conclusion. On this view the length of notice required would be associated with the obligation of the Government to provide the money on the due date at any of the places named and not with the existence of the option itself. In other words, if the debenture-holder does not give due notice, he cannot require payment on the due date, but he does not lose his right to require payment at the place named by him when reasonable notice (which may be assumed to be six months' notice) has been given and expired. But even so, this interpretation will not avail the appellants unless it is followed by the conclusion that their claim to be paid in London involves the right to receive English currency. The question which will decide the appeal is whether, even if the claim to be paid in London was good, the appellants became entitled to be paid in due course in English currency in London the nominal amount of their stock or only the equivalent of that amount of Australian currency. For brevity, these alternatives will be referred to as payment in English currency (or pounds) and payment in Australian currency (or pounds).

At the outset it must be determined whether in the year 1895 when the original debentures were issued, the word " sterling " in connection with pound denoted the currency of England alone, or, alternatively, the currency of England rather than that of Queensland. For even upon this point there has been some conflict of opinion in the High Court, and, as their Lordships venture to think, some confusion arising from the speeches of some of the noble and learned Lords who took part in the decision of *Adelaide Electric Supply Coy. Ltd.* v. *Prudential Assurance Coy. Ltd.* 1934 A.C. 122. In the year 1895 such a question, if asked, would have appeared otiose. Alike in London and in Brisbane, the pound was the pound sterling and the unit of account was properly denominated by either name. As Starke J. said in the present case, " Before fluctuations in exchange occurred in the value of the currencies of England and Australia it was not unusual in commercial documents operating within Australia, e.g., cheques, to find the obligation expressed in pounds sterling for that was the unit of account in Australia."

It is therefore in their Lordships' opinion impossible to infer from the mere use of the word " sterling " in conjunction with the word " pound " in a document of the year 1895, whether it be a contract between Brisbane merchants or a debenture issued by the Queensland Government, that the currency of England rather than that of Queensland was intended. It is significant that, when at a later date the values of the English and the Queensland (or, more properly, the Australian) pound diverged so that convenience required that the units of account should be differently described, the word sterling was appropriated to the English pound and for greater clarity the symbols £E and £A were used in cases in which confusion might arise.

But in 1895 this was not so and, as already observed, the enquiry what was the substantial obligation created by the debentures is not to be concluded by pointing to the use of the word " sterling."

The question then is what upon the true construction of the debenture of 1895 according to its proper law is intended by the use of the words therein " pounds sterling ". This is a question which must be determined as at the date of its issue. " It is as at the date of the contract " that it must be decided what currency is meant by the contract as the " currency or measure of value in which the contract obligation is to be " discharged ": see *Auckland Corporation* v. *Alliance Assurance Co.* 1937 A.C. 587 at p. 603.

It appears to their Lordships that in the consideration of this question too much emphasis should not be laid upon the fact that the money of account of Queensland and England was the same in 1895. It was undoubtedly similar at that date, and before and after that date, in the sense that the same nomenclature, pounds, shillings and pence, was used to describe its units of value. In other respects too, though not in all respects, the monetary systems were the same in the two countries. But by 1895 Queensland had for nearly forty years been separated from New South Wales and had been a self-governing colony with power to make laws for its own peace order and good government. The power to determine what is lawful money of a country is a power exercisable by the legislature of such a country, and that which was lawful money in the self-governing Colony of Queensland in 1895 was lawful money by virtue of the law of Queensland. Its origin may be sought in the history of the relations between Queensland, or at an earlier date New South Wales, on the one hand and the Crown or the Imperial Parliament on the other. But its existence and validity in 1895 rested (apart from any question arising under the Colonial Laws Validity Act) on the inherent law-making power of the Queensland Legislature. It is worth while to pursue this question, which is in the background of the present appeal ; for, as their Lordships venture to think, it may not have been sufficiently present to the minds of the learned Judges who have considered similar questions in earlier cases. Leaving aside the vital distinction between the two monetary systems in that they depend on different law-making powers, their Lordships think that the identity (or, as it were better said to avoid confusion, the similarity) of the two systems can be over-stressed. For, while it is true enough, as already stated, that the money of account, in the sense of the denomination of the units of account, was the same in New South Wales and in England, yet the money of payment, by which the obligation to pay so many units of the money of account could be discharged, was by no means immutable. In England the unit of account has been from Anglo-Saxon times until today the pound, dignified at an early date by the addition of the word " sterling ", but the money of payment by which a debt of a pound could be discharged has suffered changes innumerable. Coins of silver or of gold whose names are now almost forgotten have passed current and been legal tender at different periods. So too in New South Wales the early settlers took with them the money of account which they had known, but from the date of the first settlement metallic coin was scarce, particularly that which was current in England, and the history of the currency of the colony, including as it extended northwards the territory which afterwards became the colony of Queensland, is studded with johannas, Spanish dollars, ducats and other exotic coins. It will illustrate the divergence between the monetary systems of England and the colony if reference is made to but one of many proclamations made by the Governor of New South Wales, namely that of the 19th November, 1800, by which he attached a rate at which each of these and many other coins should be considered legal tender in all payments or transactions in the colony.

The changes which were effected first by the attempt to drive out the Spanish dollar and promote the circulation of the sterling money of Great Britain, then by the discovery of gold in Australia and the establishment

of Branches of the Royal Mint first at Sydney and then at Melbourne, by Acts of the Imperial Parliament, notably perhaps 26 & 27 Vic. c. 74 and 29 & 30 Vic. c. 65 and Proclamations made thereunder and by Acts too of the New South Wales Legislature of 1854 and 1855 make an intricate story into which it is not necessary to delve. Undoubtedly the result was a gradual assimilation of the monetary systems so that in 1895 not only the money of account but also the money of payment was substantially the same in both countries, yet not entirely the same, for the Treasury Notes Acts of Queensland (30 Vic. No. 11 and 56 Vic. No. 37), to which Starke J. refers in his judgment, show that the self-governing colony of Queensland not only could, but did, as it thought fit, regulate its own monetary system.

This was the position when under the authority of the Government Loan Act, 1894, of the Colony of Queensland the Governor in Council raised the loan and issued the debentures which are the subject of this appeal, and it is with this background that the nature of the obligation incurred by the Government of Queensland must be considered.

The question can be posed in this way. The facts being that, though there were in a real sense two monetary systems, the money of account was the same and the money of payment substantially the same in the two countries, what meaning is to be attributed to the use by the Legislature and Executive Authority of Queensland of the words " pound " and " sterling " in a Queensland Act and an instrument made thereunder? Necessarily the question is a somewhat artificial one ; for it is safe to assume that a divergence in the value of the Queensland pound and the English pound was in the contemplation of nobody. But this at least seems clear, that, if no such divergence was thought of, it cannot have been intended that the debenture holder should obtain a different measure of value or the Queensland Government be placed under a different liability according to the place of payment ; in other words, it is clear that the same substantial obligation was imposed on the Queensland Government whatever the place chosen for payment, the choice being given to the debenture holder purely as a matter of convenience. The position is wholly different from that which arises where the creditor is expressly given an option not only as to the place of payment but also as to the currency in which it shall be made and is perhaps given the further protection of the familiar gold clause.

The conclusion to which, as a matter of construction, their Lordships come, that the substantial obligation under the debenture is the same whatever the place of payment, clears the way to a solution of the whole problem. It has been urged that, if London is chosen as the place of payment, then English law as the *lex loci solutionis* governs the contract and determines the measure of the obligation. But this contention cannot be accepted. The mode of performance of the obligation may, and probably will, be determined by English law ; the substance of the obligation must be determined by the proper law of the contract, i.e. the system of law by reference to which the contract was made or that with which the transaction has its closest and most real connection. In the consideration of the latter question, what is the proper law of the contract, and therefore what is the substance of the obligation created by it, it is a factor and sometimes a decisive one that a particular place is chosen for performance.

It appears to their Lordships that it is thus that the decision in the *Adelaide* case is to be explained. There was in that case considerable diversity of view upon what appears to be a question of fact, viz. the identity or similarity of the English and Australian pound at different periods of their history, and it is clear that some at least of the learned Lords who heard the case found a greater degree of identity and similarity than a further examination of the facts appears to their Lordships to justify. But the decision itself can be fairly rested on the fact that under the altered articles of the Adelaide Company payment of dividends upon its stock was to be made in Australia only. It was therefore easy

to conclude that upon the true construction of the contract the place of performance determined the substance of the obligation, i.e. the currency by which the obligation was to be measured. This appears to have been the view taken of the case by this Board in *Payne* v. *Deputy Federal Commissioner of Taxation* 1936 A.C. 497, see per Lord Russell of Killowen at p. 509 " The actual decision was this: that an obligation to pay a " preference dividend of (say) £5 which was originally payable in England " but which by an alteration of the company's articles, binding on the " preference stockholder, had been made payable only in Australia, was " effectively discharged by a payment in Australian currency, although the " stockholder in England received owing to the rate of exchange less than " £5 in English currency ". The same view of the case appears to have been taken in the *Auckland* case, 1937 A.C. 587 at p. 604, where Lord Wright delivering the judgment of the Board said " It is quite clear that " the whole problem arose because of the divergence in value of the two " currencies, and it was solved, as a question of construction, by determining " what currency on the true construction of the contract was connoted by " the use of the word ' pound ' ". It is true that in the latter case, where alternative places of payment, one of them London, were provided, it was decided that the creditor who elected to be paid in London was entitled to be paid the nominal amount of his coupon interest in English currency without any allowance for exchange. But the relevant principle had already been correctly stated in the passage just cited and was further emphasised in a later passage of the judgment at p. 606 where in reference to the *Adelaide* case it was pointed out that the mode of performance of a contract is to be governed by the law of the place of performance but " that this principle is, no doubt, limited to matters which " can fairly be described as being the mode or method of performance " and is not to be extended so as to change the substantive or essential " conditions of the contract ". If the Board, nevertheless, found it possible to hold that as a matter of construction of the contract the nature of the substantial obligation was determined by the place of performance, that decision can only be rested on the words of the particular contract and the surrounding circumstances as the Board found them to exist.

In the present case it is clear that, if it had been provided that payment would be made in London only, that would have been an important factor in determining the substance of the obligation, though other features, not present in the *Adelaide* case, could not be ignored. But payment in London was only one of four alternative modes of performance and the fact that London might be chosen as the place of payment becomes a factor of little or no weight. If the substance of the obligation is in every case the same, how can it affect the rights of one debenture holder who elects to be paid in Melbourne that another has elected to be paid in London?

The question then is what is the proper law of the contract, or, to relate the general question to the particular problem, within the framework of what monetary or financial system should the instrument be construed. Upon the assumption that express reference is made to none, the question becomes a matter of implication to be derived from all the circumstances of the transaction.

Applying this test to the present case, as was properly done in *Goldsbrough Mort & Co. Ld.* v. *Hall* 1948 V.L.R. 145 and 78 C.L.R.1 (a case in which the judgments of Fullagar J. in the Supreme Court of Victoria and of the learned Judges of the High Court have been of the greatest assistance in the consideration of this appeal) their Lordships find in the circumstances overwhelming evidence that it was to the law of Queensland that the parties looked for the determination of their rights. As has been pointed out, the debentures were issued on the authority of a Queensland Act which empowered the Governor in Council to raise by way of loan not more than £2,000,000 for the public service of the Colony. By the same Act the loan was secured on the public revenues of the

Colony, and was made repayable on the 1st January, 1945. These circumstances must be of great, if not decisive, weight in determining what is the proper law of the contract: see *Rex* v. *International Trustee* 1937 A.C. 500 per Lord Atkin at p. 531 and compare *Mount Albert Borough Council v. Australian Temperance Society* 1938 A.C. 224 at p. 238. It is not inconceivable that the Legislature of a self-governing colony should authorise the raising of a loan in terms of a currency other than its own, but where it uses terms which are apt to describe its own lawful money, it must require the strongest evidence to the contrary to suppose that it intended some other money. Here there are no countervailing features except (*a*) that the lender was given a choice of payment in London and (*b*) that the larger part of the authorised loan of £2,000,000 was in fact raised in London. The weight of the first factor has already been discussed: the second is more difficult to assess. As has been pointed out by Dixon J., no details of this transaction have been given and the history and fate of the debentures issued in London were not revealed. The safer course is to examine the contract as between the present appellants or their predecessors in title and the Government of Queensland and to disregard what must be a matter of mere speculation, whether the fact that similar debentures had been, or were to be, issued in London was a circumstance, from which an intention could fairly or reasonably be implied that the debentures issued to them in Queensland were to be repaid in anything but the lawful money of Queensland.

The expression has been used above in reference to the Queensland loan " terms which are apt to describe its own lawful money ", and it is urged that, as they are apt also to describe the lawful money of England, the matter is carried no further. But this appears to ignore the substance of the argument. The Government of a self-governing country, using the terms appropriate to its own monetary system, must be presumed to refer to that system whether or not those terms are apt to refer to another system also. It may be possible to displace that presumption, but, unless it is displaced, it prevails, and, if it prevails, then it follows that the obligation to pay will be satisfied by payment of whatever currency is by the law of Queensland valid tender for the discharge of the nominal amount of the debt: c.f. the *Legal Tender Cases* in the United States of America (79 U.S. 382) and re *Chesterman's Trusts* 1923 2 Ch. 466. It becomes an irrelevant consideration whether the parties ever thought that the money of account of Queensland and England might at a future date, though still bearing the same name, become disparate in value or whether in fact that divergence took place. The law of Queensland governs the contract and that law determines the meaning of the word " pound ".

Coming to this conclusion as to the substance of the obligation undertaken by the Queensland Government, their Lordships think it necessary in regard to the subsidiary claim by the appellants to interest to say no more than that that claim has in the circumstances no validity. They will assume without deciding the question that the Court had in this case a discretionary power to award interest, but upon this assumption they entertain no doubt that the discretion was rightly exercised in refusing to do so.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed. The appellants must pay the respondent's costs of the appeal.

(69707) Wt. 8148—56 100 11/50 D.L. G. 338

In the Privy Council

JOHN LAVINGTON BONYTHON
AND OTHERS

v.

THE COMMONWEALTH OF AUSTRALIA

DELIVERED BY LORD SIMONDS

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