~~PC~~
~~GEL 66~~

3 1956

No. 2 of 1955.

In the Privy Council

ON APPEAL
FROM THE SUPREME COURT OF NEW ZEALAND.

BETWEEN

THE NATIONAL MUTUAL LIFE ASSOCIATION OF AUSTRALASIA LIMITED having its principal place of business in the Dominion of New Zealand at Wellington and carrying on business in the said Dominion and elsewhere as a Life Insurance Office . . . . . *Appellant*

AND

HER MAJESTY'S ATTORNEY-GENERAL FOR THE DOMINION OF NEW ZEALAND . . . . . *Respondent.*

RECORD OF PROCEEDINGS

MARKBY, STEWART & WADESON,
5 BISHOPSGATE,
LONDON, E.C.2,
Solicitors for the Appellant.

MACKRELL MATON & CO.,
INIGO PLACE,
31 BEDFORD STREET, W.C.2,
Solicitors for the Respondent.

The Solicitors' Law Stationery Society Limited, Law and Parliamentary Printers, Abbey House, S.W.1.
WL5093-3328

No. 2 of 1955.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF NEW ZEALAND.

BETWEEN

THE NATIONAL MUTUAL LIFE ASSOCIATION OF AUSTRALASIA LIMITED having its principal place of business in the Dominion of New Zealand at Wellington and carrying on business in the said Dominion and elsewhere as a Life Insurance Office . . . . . *Appellant*

AND

HER MAJESTY'S ATTORNEY-GENERAL FOR THE DOMINION OF NEW ZEALAND . . . . . *Respondent.*

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

PART I

PART II

DOCUMENTS AND CORRESPONDENCE

with reference to clauses in Statement of agreed facts in which such documents and correspondence are respectively mentioned)

ADDENDA

ADDITIONAL DOCUMENTS PUT BEFORE FULL COURT BY PARTIES

LIST OF DOCUMENTS NOT INCLUDED IN THE RECORD OF PROCEEDINGS

NO.	DESCRIPTION OF DOCUMENT
1	Warrant to sue given by Appellant.
2	Warrant to defend given by Respondent.
3	Order, giving Appellant conditional leave to appeal to Her Majesty in Council, dated 31st May 1954.
4	Bond in the sum of £500 to the Registrar of the Supreme Court at Wellington, given by the Appellant.
5	Notice of Motion for Order giving final leave to appeal.
6	Affidavit of Jack Robinson Effingham Bennett, Solicitor, sworn and filed in support of Motion for final leave.

No. 2 of 1955.

In the Privy Council.

ON APPEAL
FROM THE SUPREME COURT OF NEW ZEALAND.

BETWEEN

THE NATIONAL MUTUAL LIFE ASSOCIATION OF AUSTRALASIA LIMITED having its principal place of business in the Dominion of New Zealand at Wellington and carrying on business in the said Dominion and elsewhere as a life insurance office . *Appellant*

AND

HER MAJESTY'S ATTORNEY-GENERAL FOR THE DOMINION OF NEW ZEALAND . . . *Respondent.*

RECORD OF PROCEEDINGS

In the Supreme Court of New Zealand (Full Court)

No. 1. Statement of Claim, dated 4th August 1953.

No. 1.

STATEMENT OF CLAIM.

Between THE NATIONAL MUTUAL LIFE ASSOCIATION OF AUSTRALASIA LIMITED having its principal place of business in the Dominion of New Zealand at Wellington and carrying on business in the said Dominion and elsewhere as a Life Insurance Office . Plaintiff.

and

HER MAJESTY'S ATTORNEY-GENERAL FOR THE DOMINION OF NEW ZEALAND Defendant.

The Plaintiff by its Solicitor Jack Robinson Effingham Bennett says :—

FOR A FIRST CAUSE OF ACTION :—

1. That on or about the 15th day of October 1925 it caused to be paid to the Defendant in Wellington New Zealand the sum of Seventy-two thousand five hundred pounds (£72,500) as the purchase price of £72,500 New Zealand Inscribed Stock maturing on the 1st day of February 1951 bearing interest at the rate of 5½% per annum payable half yearly on the first days of February and August in each year such stock to be inscribed

on the Defendant's Stock Register at Wellington New Zealand and to be repayable as to principal and payable as to interest in Melbourne in the Commonwealth of Australia.

2. That on or about the said 15th day of October 1925 the Plaintiff completed at Melbourne a form of application for the said Inscribed Stock addressed to the Treasury Wellington New Zealand in which it was specifically noted that the stock was to be domiciled at Wellington New Zealand and that interest and principal was to be payable at Melbourne. The Plaintiff craves leave to refer to the said form of application on the hearing of this action.

3. That on or about the 30th day of November 1925 the Defendants Registrar of New Zealand Inscribed Stock at Wellington issued a New Zealand Inscribed Stock Receipt for £72,500 No. 51/2 and no Certificate of Title was then issued in respect of the said Inscribed Stock. The Plaintiff craves leave to refer to the said Receipt on the hearing of this action.

4. That on or about the 1st day of June 1927 the Plaintiff disposed of Eleven thousand pounds (£11,000) of the said Inscribed Stock and thereafter applied to the Registrar of Inscribed Stock at Wellington for a Certificate of Title in respect of the balance of the said Inscribed Stock then held by the Plaintiff and on or about the 16th day of November 1927 the Defendant's said Registrar of Inscribed Stock at Wellington issued Certificate of Title No. 14846 to the Plaintiff in respect of its then holding of the said Inscribed Stock namely £61,500.

5. That the said Certificate of Title had endorsed thereon a statement "Principal and interest payable at Melbourne free of exchange." The Plaintiff craves leave to refer to the said Certificate of Title on the hearing of this action.

6. That thereafter the Defendant through its agents duly paid interest at the rate of 5½% per annum on the nominal or face value of the said stock namely £61,500 in Melbourne free of exchange or other deductions up to and including the payment of interest due on the 1st day of August 1948.

7. That on or about the 20th day of August 1948 the official exchange rate between the Dominion of New Zealand and the Commonwealth was altered and thereafter at all material times subject to banking fluctuations £125 Australian currency was the equivalent of £100 New Zealand currency.

8. That the Defendant through its agents paid the interest due on the 1st of February 1949 and all subsequent payments of interest accruing in respect of the said Inscribed Stock in Australian currency in Melbourne as if the measure of the Defendant's obligation was in Australian monetary units of account.

9. That on or about the 1st day of February 1951 the Defendant through its agents tendered in Melbourne to the Plaintiff in repayment of the principal moneys due in respect of the said stock Sixty-one thousand five hundred pounds (£61,500) Australian currency.

10. That all payments of interest and of principal tendered by the Defendant to the Plaintiff after the said alteration of the exchange rate on the said 20th day of August 1948 were accepted by the Plaintiff under protest and with a full reservation of its claim that the indebtedness of the Defendant could only be discharged by payment of the nominal or face value of the several obligations in New Zealand currency or its equivalent in Australian currency in Melbourne at the current rate of exchange applicable as at the date of each payment.

11. That the measure of the obligation of the Defendant in the said contract for the issue of £61,500 New Zealand Inscribed Stock to the Plaintiff in respect of the principal and interest payments due in respect thereof was in New Zealand monetary units of account and the Defendant was at all material times obliged to pay to the Plaintiff in Melbourne in New Zealand pounds or monetary units of account but converted on the occasion of each payment into Australian currency at the then current rate of exchange.

12. That in tendering the aforesaid payments of interest from and including the 1st day of February 1949 and in tendering the said principal moneys on the 1st day of February 1951 in Australian currency to the face or nominal value only of the obligations then being discharged theDefendant broke its said contract with the Plaintiff whereby the measure of its obligations was fixed and determined by reference to New Zealand pounds or monetary units of account.

13. That on or about the 27th day of January 1953 the Plaintiff through its solicitors made formal claim upon the Defendant for (*inter alia*) the amount of the principal moneys and interest moneys short paid in respect of the said £61,500 New Zealand Inscribed Stock and the Defendant has refused to pay or to acknowledge its liability in respect of such short payment of principal and interest.

14. That the amount short paid in respect of interest on the said Inscribed Stock is One thousand six hundred and thirty-six pounds thirteen shillings and ten pence (£1,636.13.10) (New Zealand currency).

15. That the amount short paid in respect of the principal sum secured by the said Inscribed Stock is Eleven thousand nine hundred and three pounds four shillings and sixpence (£11,903.4.6) (New Zealand currency).

FOR A SECOND CAUSE OF ACTION :—

16. That on or about the 21st day of October 1925 the Plaintiff through its Manager for New Zealand at Wellington completed a form of application for £100,000 of New Zealand 5½% Inscribed Stock repayable on the 1st day of February 1951 with interest payable half-yearly on the 1st days of August and February in each year, such application being subject to the special terms set out in a Treasury receipt No. 44/120/2.

17. That the said form of application required the said stock to be domiciled at Wellington New Zealand and interest and principal to be

In the Supreme Court of New Zealand (Full Court).

No. 1. Statement of Claim, dated 4th August 1953, *continued.*

paid at Melbourne in the Commonwealth of Australia. The Plaintiff craves leave to refer to the said form of application on the hearing of this action.

18. That contemporaneously with the completion of the said form of application for the said Inscribed Stock the Plaintiff paid at Wellington to the Defendant's Secretary to the Treasury the sum of One hundred thousand pounds (£100,000) and received the said receipt dated the 21st day of October 1925 No. T. 44/120/2 for the said payment, the said receipt stating that the said £100,000 was for the purchase of the said stock domiciled in Wellington and that interest was payable and principal was repayable in Melbourne at par of exchange. The Plaintiff craves leave to refer to the said receipt on the hearing of this action.

19. That on or about the 2nd day of November 1925 the Registrar of New Zealand Inscribed Stock at Wellington issued on behalf of the Defendant an Inscription Receipt No. 51/1 to the Plaintiff at its Wellington address and that endorsed on the said Inscription Receipt was the statement " Principal & interest payable free of exchange in Melbourne " but no Certificate of Title was then or later issued in respect of the said Inscribed Stock. The Plaintiff craves leave to refer to the said Inscription Certificate on the hearing of this action.

20. That thereafter the Defendant through its agents duly paid interest at the rate of 5½% per annum on the nominal or face value of the said stock namely £100,000 in Melbourne free of exchange or other deduction up to and including the payment of interest due on the 1st day of August 1948.

21. That on or about the 20th day of August 1948 the official exchange rate between the Dominion of New Zealand and the Commonwealth of Australia was altered and thereafter at all material times subject to banking fluctuations £125 Australian currency was the equivalent of £100 New Zealand currency.

22. That the Defendant through its agents paid the interest due on the 1st of February 1949 and all subsequent payments of interest accruing in respect of the said Inscribed Stock in Australian currency in Melbourne as if the measure of the Defendant's obligation was in Australian monetary units of account.

23. That on or about the 1st day of February 1951 the Defendant through its agents tendered in Melbourne to the Plaintiff in repayment of the principal moneys due in respect of the said stock One hundred thousand pounds (£100,000) Australian currency.

24. That all payments of interest and of principal tendered by the Defendant to the Plaintiff after the said alteration of the exchange rate on the said 20th day of August 1948 were accepted by the Plaintiff under protest and with a full reservation of its claim that the indebtedness of the Defendant could only be discharged by payment of the nominal or face value of the several obligations in New Zealand currency or its equivalent in Australian currency in Melbourne at the current rate of exchange applicable as at the date of each payment.

25. That the measure of the obligation of the Defendant in the said contract for the issue of £100,000 New Zealand Inscribed Stock to the Plaintiff in respect of the principal and interest payments due in respect thereof was in New Zealand monetary units of account and the Defendant was at all material times obliged to pay to the Plaintiff in Melbourne in New Zealand pounds or monetary units of account but converted on the occasion of each payment into Australian currency at the then current rate of exchange.

26. That in tendering the aforesaid payments of interest from and including the 1st day of February 1949 and in tendering the said principal moneys on the 1st day of February 1951 in Australian currency to the face or nominal value of the obligation then being discharged the Defendant broke its said contract with the Plaintiff whereby the measure of its obligation was fixed and determined by reference to New Zealand pounds or monetary units of account.

27. That on or about the 27th day of January 1953 the Plaintiff through its solicitors made formal claim upon the Defendant for (*inter alia*) the amount of the principal moneys and interest moneys short paid in respect of the said £100,000 New Zealand Inscribed Stock and the Defendant has refused to pay or to acknowledge its liability in respect of such short payment of principal and interest.

28. That the amount short paid in respect of interest on the said Inscribed Stock is Two thousand six hundred and sixty-one pounds five shillings and tenpence (£2,661.5.10) (New Zealand currency).

29. That the amount short paid in respect of the principal sum secured by the said Inscribed Stock is Nineteen thousand three hundred and fifty-four pounds sixteen shillings and ninepence (£19,354.16.9) (New Zealand currency).

FOR A THIRD CAUSE OF ACTION :—

30. That on or about the 7th day of May 1926 it caused to be paid to the Bank of New Zealand at Melbourne as agent for the Defendant the sum of £300,000 as the purchase price of £300,000 New Zealand Government Inscribed Stock maturing on the 1st February 1951 bearing interest at the rate of 5½% per annum payable half-yearly on the 1st days of February and August in each year such stock to be inscribed on the Defendant's Stock Register at Wellington New Zealand and to be repayable as to principal and payable as to interest in Melbourne in the Commonwealth of Australia.

31. That on or about the 8th day of May 1926 it caused to be paid to the said Bank of New Zealand Melbourne as agent for the Defendant a further sum of Six thousand pounds (£6,000) New Zealand Government Inscribed Stock on the same conditions and terms as applied in respect of its purchase of £300,000 New Zealand Government Inscribed Stock on the previous day.

32. That on or about the 13th day of May 1926 the Plaintiff completed at Melbourne a form of application for the total of the said

In the Supreme Court of New Zealand (Full Court).

No. 1. Statement of Claim, dated 4th August 1953, *continued.*

Inscribed Stock namely Three hundred and six thousand pounds (£306,000) which application was addressed to the Treasury Wellington New Zealand and in such application it was specifically stated that principal was to be payable in Melbourne and that interest was to be payable and principal repayable in Melbourne free of exchange. The Plaintiff craves leave to refer to the said form of application on the hearing of this action.

33. That on or about the 14th day of June 1926 the Defendant's Registrar of New Zealand Inscribed Stock at Wellington issued Certificate of Title No. 12128 in respect of the Plaintiff's holding of £306,000 of the said New Zealand Inscribed Stock and that endorsed on the said Certificate of Title was a statement "Principal and interest payable at Melbourne free of exchange." The Plaintiff craves leave to refer to the said Certificate of Title on the hearing of this action.

34. That in the year 1930 the Plaintiff disposed of Two hundred and fifty thousand pounds (£250,000) of the said Inscribed Stock and applied to the Defendant's Registrar of Inscribed Stock at Wellington for a Certificate of Title in respect of the balance of the said Inscribed Stock then held by the Plaintiff and on or about the 24th day of December 1930 the Defendant's Deputy Registrar of Inscribed Stock at Wellington issued Certificate of Title No. 21505 to the Plaintiff in respect of its then holding of the said Inscribed Stock namely Fifty-six thousand pounds (£56,000).

35. That thereafter the Defendant through its agents duly paid interest at the rate of 5½% per annum on the nominal or face value of the said stock namely £56,000 in Melbourne free of exchange or other deductions up to and including the payment of interest due on the 1st August 1948.

36. That on or about the 20th day of August 1948 the official exchange rate between the Dominion of New Zealand and the Commonwealth of Australia was altered and thereafter at all material times subject to banking fluctuations £125 Australian currency was the equivalent of £100 New Zealand currency.

37. That the Defendant through its agents paid the interest due on the 1st of February 1949 and all subsequent payments of interest accruing in respect of the said Inscribed Stock in Australian currency in Melbourne as if the measure of the Defendant's obligation was in Australian monetary units of account.

38. That on or about the 1st day of February 1951 the Defendant through its agents tendered in Melbourne to the Plaintiff in repayment of the principal moneys due in respect of the said stock £56,000 Australian currency.

39. That all payments of interest and of principal tendered by the Defendant to the Plaintiff after the said alteration of the exchange rate on the said 20th day of August 1948 were accepted by the Plaintiff under protest and with a full reservation of its claim that the indebtedness of the Defendant could only be discharged by payment of the nominal or

face value of the several obligations in New Zealand currency or its equivalent in Australian currency in Melbourne at the current rate of exchange applicable as at the date of each payment.

40. That the measure of the obligation of the Defendant in the said contract for the issue of £56,000 New Zealand Inscribed Stock to the Plaintiff in respect of the principal and interest payments due in respect thereof was in New Zealand pounds or monetary units of account and the Defendant was at all material times obliged to pay to the Plaintiff in Melbourne in the New Zealand pounds or monetary units of account but converted on the occasion of each payment into Australian currency at the then current rate of exchange.

41. That in tendering the aforesaid payments of interest from and including the 1st day of February 1949 and in tendering the said principal moneys on the 1st day of February 1951 in Australian currency to the face or nominal value only of the obligations then being discharged the Defendant broke its said contract with the Plaintiff whereby the measure of its obligation was fixed and determined by reference to New Zealand pounds or monetary units of account.

42. That on or about the 27th day of January 1953 the Plaintiff through its solicitors made formal claim upon the Defendant for (*inter alia*) the amount of the principal moneys and interest moneys short paid in respect of the said £56,000 New Zealand Inscribed Stock and the Defendant has refused to pay or to acknowledge its liability in respect of such short payment of principal and interest.

43. That the amount short paid in respect of interest on the said Inscribed Stock is One thousand four hundred and ninety pounds six shillings and fivepence (£1,490.6.5) (New Zealand currency).

44. That the amount short paid in respect of the principal sum secured by the said Inscribed Stock is Ten thousand eight hundred and thirty-eight pounds fourteen shillings and twopence (£10,838.14.2) (New Zealand currency).

FOR A FOURTH CAUSE OF ACTION :—

45. That on or about the 3rd day of August 1926 it caused to be paid to the Bank of New Zealand Melbourne as agents for the Defendant the sum of Three hundred thousand pounds (£300,000) as the purchase price of £300,000 New Zealand Government Inscribed Stock maturing on the 1st day of February 1951 bearing interest at the rate of 5½ per cent. per annum payable half yearly on the 1st days of February and August in each year such stock to be inscribed on the Defendant's Stock Register at Wellington New Zealand and to be repayable as to principal and payable as to interest free of exchange in Melbourne in the Commonwealth of Australia.

46. That on or about the 12th day of August 1926 the Plaintiff completed at Melbourne a form of application for the said Inscribed

In the Supreme Court of New Zealand Full Court).

No. 1. Statement of Claim, dated 4th August 1953, *continued.*

Stock addressed to the Treasury Wellington New Zealand in which it was specifically noted that interest was payable in Melbourne and principal repayable in Melbourne free of exchange. The Plaintiff craves leave to refer to the said application on the hearing of this action.

47. That on or about the 27th day of August 1926 the Defendant's Registrar of New Zealand Inscribed Stock at Wellington issued a Certificate of Title No. 12545 to the Plaintiff for £300,000 Inscribed Stock and that endorsed on the said Certificate of Title was a statement that " principal and interest was payable at Melbourne free of exchange." The plaintiff craves leave to refer to the said Certificate of Title on the hearing of this action.

48. That thereafter the Defendant through its agents duly paid interest at the rate of 5½ per cent. per annum on the nominal or face value of the said stock namely £300,000 in Melbourne free of exchange or other deduction up to and including the payment of interest due on the 1st day of August 1948.

49. That on or about the 20th day of August 1948 the official exchange rate between the Dominion of New Zealand and the Commonwealth of Australia was altered and thereafter at all material times subject to banking fluctuations £125 Australian currency was the equivalent of £100 New Zealand currency.

50. That the Defendant through its agents paid the interest due on the 1st February 1949 and all subsequent payments of interest accruing in respect of the said Inscribed Stock in Australian currency in Melbourne as if the measure of the Defendant's obligation was in Australian monetary units of account.

51. That on or about the 1st day of February 1951 the Defendant through its agents tendered in Melbourne to the Plaintiff in repayment of the principal moneys due in respect of the said stock £300,000 Australian currency.

52. That all payments of interest and of principal tendered by the Defendant to the Plaintiff after the said alteration of the exchange rate on the said 20th day of August 1948 were accepted by the Plaintiff under protest and with a full reservation of its claim that the indebtedness of the Defendant could only be discharged by payment of the nominal or face value of the several obligations in New Zealand currency or its equivalent in Australian currency in Melbourne at the current rate of exchange applicable as at the date of each payment.

53. That the measure of the obligation of the Defendant in the said contract for the issue of £300,000 New Zealand Inscribed Stock to the Plaintiff in respect of the principal and interest payments due in respect thereof was in New Zealand pounds or monetary units of account and the Defendant was at all material times obliged to pay to the Plaintiff in Melbourne in the New Zealand pounds or monetary units of account but converted on the occasion of each payment into Australian currency at the then current rate of exchange.

54. That in tendering the aforesaid payments of interest from and including the 1st day of February 1949 and in tendering the said principal moneys on the 1st day of February 1951 in Australian currency to the face or nominal value of the obligations then being discharged the Defendant broke its said contract with the Plaintiff whereby the measure of its obligation was fixed and determined by reference to New Zealand pounds or monetary units of account.

55. That on or about the 27th day of January 1953 the Plaintiff through its solicitors made formal claim upon the Defendant for (*inter alia*) the amount of the principal moneys and interest moneys short paid in respect of the said £300,000 New Zealand Inscribed Stock and the Defendant has refused to pay or to acknowledge its liability in respect of such short payment of principal and interest.

56. That the amount short paid in respect of interest on the said Inscribed Stock is Seven thousand nine hundred and eighty-three pounds seventeen shillings and fivepence (£7,983.17.5) (New Zealand currency).

57. That the amount short paid in respect of the principal sum secured by the said Inscribed Stock is Fifty-eight thousand and sixty-four pounds ten shillings and fourpence (£58,064.10.4) (New Zealand currency).

FOR A FIFTH CAUSE OF ACTION :—

58. That on or about the 8th day of January 1942 the Plaintiff purchased from one Edward Menzies Crooke of Victoria Grazier New Zealand Government Inscribed Stock to a nominal or face value of Seven thousand pounds (£7,000) which Inscribed Stock was 5½% stock payable half-yearly on the 1st days of August and February in each year and maturing on the 1st day of February 1951.

59. That the said parcel of £7,000 New Zealand Inscribed Stock was a portion of a larger parcel of £32,000 of New Zealand Inscribed Stock subscribed for by one Edward Jolley Crooke by form of application dated the 27th day of October 1925.

60. That the said form of application completed by the said Edward Jolley Crooke on the 27th day of October 1925 was addressed to the Treasury Wellington New Zealand and was specifically noted that the Stock was to be domiciled at Wellington New Zealand and that interest and principal was to be payable free of exchange at Melbourne. The Plaintiff craves leave to refer to the said form of application by the said Edward Jolley Crooke on the hearing of this action.

61. That on or about the 30th day of November 1925 the Defendant's Registrar of New Zealand Inscribed Stock at Wellington issued a New Zealand Inscribed Stock receipt for Thirty-two thousand pounds (£32,000) No. 51/3 to the said Edward Jolley Crooke but no certificate of Title was later issued to the Plaintiff in respect of the transfer to it of Seven thousand pounds (£7,000) of the said Inscribed Stock.

In the Supreme Court of New Zealand (Full Court).

No. 1. Statement of Claim, dated 4th August 1953. *continued.*

62. That the said Memorandum of Transfer of the said £7,000 Inscribed Stock No. 29042 was duly received and registered by the Reserve Bank of New Zealand as agent for the Defendant on or about the 2nd day of March 1942.

63. That after registration of the aforesaid Memorandum of Transfer the Defendant through its agents duly paid to the Plaintiff interest on the said £7,000 Inscribed Stock at the rate of 5½% per annum on the nominal or face value of the said stock namely £7,000 in Melbourne free of exchange or other deductions up to and including the payment of interest due on the 1st day of August 1948.

64. That on or about the 20th day of August 1948 the official exchange rate between the Dominion of New Zealand and the Commonwealth of Australia was altered and thereafter at all material times subject to banking fluctuations £125 Australian currency was the equivalent of £100 New Zealand currency.

65. That the Defendant through its agents paid the interest due on the 1st of February 1949 and all subsequent payments of interest accruing in respect of the said Inscribed Stock in Australian currency in Melbourne as if the measure of the Defendant's obligation was in Australian monetary units of account.

66. That on or about the 1st day of February 1951 the Defendant through its agents tendered in Melbourne to the Plaintiff in repayment of the principal moneys due in respect of the said stock £7,000 Australian currency.

67. That all payments of interest and of principal tendered by the Defendant to the Plaintiff after the said alteration of the exchange rate on the said 20th day of August 1948 were accepted by the Plaintiff under protest and with a full reservation of its claim that the indebtedness of the Defendant could only be discharged by payment of the nominal or face value of the several obligations in New Zealand currency or its equivalent in Australian currency in Melbourne at the current rate of exchange applicable as at the date of each payment.

68. That the measure of the obligation of the Defendant in the said contract for the issue of (*inter alia*) the said £7,000 New Zealand Inscribed Stock in respect of the principal and interest payments due in respect thereof was in New Zealand pounds or monetary units of account and the Defendant was at all material times obliged to pay to the Plaintiff in Melbourne in New Zealand pounds or monetary units of account but converted on the occasion of each payment into Australian currency at the then current rate of exchange.

69. That in tendering the aforesaid payments of interest from and including the 1st day of February 1949 and in tendering the said principal moneys on the 1st day of February 1951 in Australian currency to the face or nominal value of the obligations then being discharged the Defendant

broke its said contract with the Plaintiff whereby the measure of its obligation was fixed and determined by reference to New Zealand pounds or monetary units of account.

70. That on or about the 27th day of January 1953 the Plaintiff through its solicitors made formal claim upon the Defendant for (*inter alia*) the amount of the principal moneys and interest moneys short paid in respect of the said £7,000 New Zealand Inscribed Stock and the Defendant has refused to pay or to acknowledge its liability in respect of such short payment of principal and interest.

71. That the amount short paid in respect of interest on the said Inscribed Stock is One hundred and eighty-six pounds five shillings and tenpence (£186.5.10) (New Zealand currency).

72. That the amount short paid in respect of the principal sum secured by the said Inscribed Stock is One thousand three hundred and fifty-four pounds sixteen shillings and ninepence (£1,354.16.9) (New Zealand currency).

FOR A SIXTH CAUSE OF ACTION :—

73. That in the year 1946 the Plaintiff purchased and became the holder of four New Zealand Government Debentures Nos. 3618, 3619, 3626 and 3627 respectively and the interest coupons attached to the said Debentures each Debenture being for Five hundred pounds (£500) sterling and repayable to Bearer at the office of the Bank of New Zealand, Melbourne, in the Federal State of Victoria, Australia.

74. That the principal moneys secured by the said four Debentures were repayable by the Defendant on the 1st day of February 1951 and pending repayment as aforesaid bore interest at the rate of 5½% payable by equal half-yearly instalments on the 1st days of February and August in each year at the office of the Bank of New Zealand, Melbourne as aforesaid.

75. That the said Debentures were issued by the Treasury Wellington New Zealand on the 1st day of August 1927.

76. That after purchasing the said four Debentures for £500 each the Plaintiff duly presented to the Bank of New Zealand at Melbourne aforesaid the said half-yearly interest coupons issued in respect thereof on their respective due dates and received interest at the rate of 5½% per annum on the nominal or face value of the said Debentures namely £500 free of exchange or other deductions up to and including presentation of the interest coupon due on the 1st day of August 1948.

77. That on or about the 20th August 1948 the official exchange rate between the Dominion of New Zealand and the Commonwealth of Australia was altered and thereafter at all material times subject to banking fluctuations £125 Australian currency was the equivalent of £100 New Zealand currency.

In the Supreme Court of New Zealand (Full Court).

No. 1. Statement of Claim, dated 4th August 1953, *continued.*

78. That the Defendant through the said Bank paid the interest due on the 1st of February 1949 and all subsequent payments of interest accruing in respect of the said four Debentures in Australian currency in Melbourne as if the measure of the Defendant's obligation was in Australian monetary units of account.

79. That on or about the 1st day of February 1951 the Defendant through the said Bank of New Zealand at Melbourne tendered to the Plaintiff in repayment of the principal moneys due in respect of the said four Debentures Two thousand pounds (£2,000) Australian currency.

80. That all payments of interest and of principal tendered by the Defendant to the Plaintiff after the said alteration of the exchange rate on the said 20th day of August 1948 were accepted by the Plaintiff under protest and with a full reservation of its claim that the indebtedness of the Defendant could only be discharged by payment of the nominal or face value of the several obligations in New Zealand currency or its equivalent in Australian currency in Melbourne at the current rate of exchange applicable as at the date of each payment.

81. That the measure of the obligation of the Defendant in the said contract constituted by the said four Debentures for £500 each and held by the Plaintiff as Bearer thereof in respect of the principal and interest moneys due thereunder was in New Zealand pounds or monetary units of account and the Defendant was at all material times obliged to pay in Melbourne to Bearer New Zealand pounds or monetary units of account but converted on the occasion of each payment into Australian currency at the then current rate of exchange.

82. That in tendering the aforesaid payments of interest from and including the 1st day of February 1949 and in tendering the said principal moneys on the 1st day of February 1951 in Australian currency to the face or nominal value of the obligations then being discharged the Defendant broke its said contract with the Plaintiff as the Bearer and holder of the said four Debentures.

83. That on or about the 27th day of January 1953 the Plaintiff through its solicitors made formal claim upon the Defendant for (*inter alia*) the amount of the principal moneys and interest moneys short paid in respect of the said four Bearer Debentures and the Defendant has refused to pay or to acknowledge its liability in respect of such short payment of principal and interest.

84. That the amount short paid in respect of interest on the said four Debentures is Fifty-three pounds four shillings and sixpence (£53.4.6) (New Zealand currency).

85. That the amount short paid in respect of the principal sum secured by the said four Debentures is Three hundred and eighty-seven pounds two shillings (£387.2.0) (New Zealand currency).

WHEREFORE THE PLAINTIFF CLAIMS :—

In respect of the first cause of action :—

(A) The sum of £11,903.4.6 for short paid principal.

(B) Interest at 5½% per annum on the said sum of £11,903.4.6 from the 1st day of February 1951 to the date of Judgment calculated with half-yearly rests.

(C) The sum of £1,636.13.0 being the amount of short paid interest.

In respect of the second cause of action :—

(A) The sum of £19,354.16.9 for short paid principal.

(B) Interest at 5½% per annum on the said sum of £19,354.16.9 from the 1st day of February 1951 to the date of Judgment calculated with half yearly rests.

(C) The sum of £2,661.5.10 being the amount of short paid interest.

In respect of the third cause of action :—

(A) The sum of £10,838.14.2 for short paid principal.

(B) Interest at 5½% per annum on the said sum of £10,838.14.2 from the 1st day of February 1951 to the date of Judgment calculated with half yearly rests.

(C) The sum of £1,490.6.5 being the amount of short paid interest.

In respect of the fourth cause of action :—

(A) The sum of £58,064.10.4 for short paid principal.

(B) Interest at 5½% per annum on the said sum of £58,064.10.4 from the 1st day of February 1951 to the date of Judgment calculated with half yearly rests.

(C) The sum of £7,983.17.5 being the amount of short paid interest.

In respect of the fifth cause of action :—

(A) The sum of £1,354.16.9 for short paid principal.

(B) Interest at 5½% per annum on the said sum of £1,354.16.9 from the 1st day of February 1951 to the date of Judgment calculated with half yearly rests.

(C) The sum of £186.5.10 being the amount of short paid interest.

In respect of the sixth cause of action :—

(A) The sum of £387.2.0 for short paid principal.

(B) Interest at 5½% per annum on the said sum of £387.2.0 from the 1st day of February 1951 to the date of Judgment calculated with half yearly rests.

(C) The sum of £53.4.6 being the amount of short paid interest.

In the Supreme Court of New Zealand (Full Court).

No. 1. Statement of Claim, dated 4th August 1953, *continued.*

In respect of each cause of action :—

(D) Interest at 4½% per annum to the date of Judgment by way of damages for non-payment on due half yearly dates of :—

(i) The short paid interest from and including the payment due on the 1st February 1949.

(ii) The half yearly payments of interest on the short paid amount of principal from the 1st day of February 1951 as claimed in (B) above.

(E) A declaration as to the rights of the parties.

(F) Such further or other relief as in the premises may be just.

(G) The costs of the action.

This Statement of Claim is filed by JACK ROBINSON EFFINGHAM BENNETT, Solicitor for the Plaintiff, whose address for service is at the offices of Messrs. Young Courtney Bennett and Virtue, 100–102 Customhouse Quay, Wellington.

No. 2. Statement of Defence, dated 21st August 1953

No. 2.

STATEMENT OF DEFENCE.

Friday the Twenty-first day of August 1953.

The Defendant by his Solicitor James McCurdy Tudhope says :—

AS A DEFENCE TO THE FIRST CAUSE OF ACTION :—

1. The Defendant admits the allegations set out in paragraphs 1 to 10 (both inclusive) of the Statement of Claim.

2. The Defendant denies each and every allegation set out in paragraphs 11 and 12 of the Statement of Claim.

3. As to paragraph 13 of the Statement of Claim the Defendant denies that any amount whether of principal or interest has been short paid in respect of the Inscribed Stock referred to therein but save as aforesaid the Defendant admits the allegations set out in the said paragraph 13.

4. As to paragraphs 14 and 15 of the Statement of Claim the Defendant repeats paragraph 2 hereof and the denial contained in paragraph 3 hereof but if his obligation in respect of the Inscribed Stock referred to in the said paragraphs 14 and 15 was measurable in New Zealand money of account (which he denies) the Defendant admits the allegations set out in the said paragraphs 14 and 15.

AND AS A DEFENCE TO THE SECOND CAUSE OF ACTION :—

The Defendant by his said Solicitor says :—

5. The Defendant admits the allegations set out in paragraphs 16 to 24 (both inclusive) of the Statement of Claim.

6. The Defendant denies each and every allegation set out in paragraphs 25 and 26 of the Statement of Claim.

7. As to paragraph 27 of the Statement of Claim the Defendant denies that any amount whether of principal or interest has been short paid in respect of the Inscribed Stock referred to therein but save as aforesaid the Defendant admits the allegations set out in the said paragraph 27.

8. As to paragraphs 28 and 29 of the Statement of Claim the Defendant repeats paragraph 6 hereof and the denial contained in paragraph 7 hereof but if his obligation in respect of the Inscribed Stock referred to in the said paragraphs 28 and 29 was measurable in New Zealand money of account (which he denies) the Defendant admits the allegations set out in the said paragraphs 28 and 29.

AND AS A DEFENCE TO THE THIRD CAUSE OF ACTION :—

The Defendant by his said Solicitor says :—

9. The Defendant admits the allegations set out in paragraphs 30 to 39 (both inclusive) of the Statement of Claim.

10. The Defendant denies each and every allegation set out in paragraphs 40 and 41 of the Statement of Claim.

11. As to paragraph 42 of the Statement of Claim the Defendant denies that any amount whether of principal or interest has been short paid in respect of the Inscribed Stock referred to therein but save as aforesaid the Defendant admits the allegations set out in the said paragraph 42.

12. As to paragraphs 43 and 44 of the Statement of Claim the Defendant repeats paragraph 10 hereof and the denial contained in paragraph 11 hereof but if his obligation in respect of the Inscribed Stock referred to in the said paragraphs 43 and 44 was measurable in New Zealand money of account (which he denies) the Defendant admits the allegations set out in the said paragraphs 43 and 44.

AND AS A DEFENCE TO THE FOURTH CAUSE OF ACTION :—

The Defendant by his said Solicitor says :—

13. The Defendant admits the allegations set out in paragraphs 45 to 52 (both inclusive) of the Statement of Claim.

14. The Defendant denies each and every allegation set out in paragraphs 53 and 54 of the Statement of Claim.

In the Supreme Court of New Zealand (Full Court).

15. As to paragraph 55 of the Statement of Claim the Defendant denies that any amount whether of principal or interest has been short paid in respect of the Inscribed Stock referred to therein but save as aforesaid the Defendant admits the allegations set out in the said paragraph 55.

No. 2. Statement of Defence, dated 21st August 1953, *continued.*

16. As to paragraphs 56 and 57 of the Statement of Claim the Defendant repeats paragraph 14 hereof and the denial contained in paragraph 15 hereof but if his obligation in respect of the Inscribed Stock referred to in the said paragraphs 56 and 57 was measurable in New Zealand money of account (which he denies) the Defendant admits the allegations set out in the said paragraphs 56 and 57.

AND AS A DEFENCE TO THE FIFTH CAUSE OF ACTION :—

The Defendant by his said Solicitor says :—

17. The Defendant admits the allegations set out in paragraphs 58 to 67 (both inclusive) of the Statement of Claim.

18. The Defendant denies each and every allegation set out in paragraphs 68 and 69 of the Statement of Claim.

19. As to paragraph 70 of the Statement of Claim the Defendant denies that any amount whether of principal or interest has been short paid in respect of the Inscribed Stock referred to therein but save as aforesaid the Defendant admits the allegations set out in the said paragraph 70.

20. As to paragraphs 71 and 72 of the Statement of Claim the Defendant repeats paragraph 18 hereof and the denial contained in paragraph 19 hereof but if his obligation in respect of the Inscribed Stock referred to in the said paragraphs 71 and 72 was measurable in New Zealand money of account (which he denies) the Defendant admits the allegations set out in the said paragraphs 71 and 72.

AND AS A DEFENCE TO THE SIXTH CAUSE OF ACTION :—

The Defendant by his said Solicitor says :—

21. The Defendant admits the allegations set out in paragraphs 73 to 80 (both inclusive) of the Statement of Claim.

22. The Defendant denies each and every allegation set out in paragraphs 81 and 82 of the Statement of Claim.

23. As to paragraph 83 of the Statement of Claim the Defendant denies that any amount whether of principal or interest has been short paid in respect of the Debentures referred to therein but save as aforesaid the Defendant admits the allegations set out in the said paragraph 83.

24. As to paragraphs 84 and 85 of the Statement of Claim the Defendant repeats paragraph 22 hereof and the denial contained in paragraph 23 hereof but if his obligation in respect of the Debentures referred to in the said paragraphs 84 and 85 was measurable in New Zealand money of account (which he denies) the Defendant admits the allegations set out in the said paragraphs 84 and 85.

No. 2. Statement of Defence, dated 21st August 1953, *continued.*

AND AS A DEFENCE TO EACH AND ALL OF THE FOREGOING CAUSES OF ACTION :—

The Defendant by his said Solicitor says :—

25. The Defendant denies each and every allegation set out in the prayer of the Statement of Claim and in the particulars therein specified and denies that the Plaintiff is entitled to any relief whatever.

This Statement of Defence is filed by James McCurdy Tudhope Solicitor for the Defendant whose address for service is at the Crown Law Office, Government Buildings, Wellington.

No. 3. Statement of Agreed Facts, dated 24th September 1953.

No. 3.

STATEMENT OF AGREED FACTS.

1. The Plaintiff was on and prior to 1st February 1951 inscribed in the Register of Inscribed Stock kept by the Reserve Bank of New Zealand (hereinafter referred to as " the Reserve Bank ") at its Head Office in Wellington in the Dominion of New Zealand on behalf of the New Zealand Government under and pursuant to the New Zealand Loans Act 1932 and to section 22 of the Reserve Bank of New Zealand Act 1933 as the holder of New Zealand Inscribed Stock 5½ per cent. maturing the said 1st February 1951 (hereinafter referred to as " Inscribed Stock ") in the following amounts that is to say :—

(A) The sum of £61,500 (being the parcel of Inscribed Stock in respect of which the first cause of action set out in the Statement of Claim filed in this action arises).

(B) The sum of £100,000 (being the parcel of Inscribed Stock in respect of which the second cause of action set out in the said Statement of Claim arises).

(C) The sum of £56,000 (being the parcel of Inscribed Stock in respect of which the third cause of action set out in the said Statement of Claim arises).

(D) The sum of £300,000 (being the parcel of Inscribed Stock in respect of which the fourth cause of action set out in the said Statement of Claim arises).

(E) The sum of £7,000 (being the parcel of Inscribed Stock in respect of which the fifth cause of action set out in the said Statement of Claim arises).

2. The Plaintiff was also on and prior to the said 1st February 1951 the holder of four New Zealand Government Debentures (hereinafter referred to as " the said Bearer Debentures ") numbered 3618, 3619, 3626 and 3627 respectively for £500 each, payable to Bearer, issued on 1st August 1927, carrying interest at 5½ per cent. per annum and maturing on the said 1st February 1951. It is in respect of the said Bearer Debentures that the sixth cause of action set out in the said Statement of Claim

In the Supreme Court of New Zealand (Full Court).

No. 3. Statement of Agreed Facts, dated 24th September 1953, *continued.*

arises. The said Inscribed Stock and the said Debentures were issued to the Plaintiff or its predecessors in title in and under the circumstances hereinafter set forth.

3. By section 18 of the State Advances Act 1913 (as amended by section 3 of the Finance Act 1923 and by section 3 of the Finance Act 1924) it was provided that the Minister of Finance, on being authorised by the Governor-General in Council so to do, might from time to time raise, on the security of and charged upon the public revenues of New Zealand, such sums of money as he might think fit, not exceeding in any one financial year the amounts therein specified, for the business of the several branches of the Advances Office established under that Act. By subsection (3) of the said section 18 it was provided that the sums so raised should bear interest at such rate (not exceeding five per centum per annum) as the said Minister might think fit but by section 42 of the Finance Act 1916 (since replaced by section 150 of the Public Revenues Act 1926 which in turn has been replaced by section 53 of the New Zealand Loans Act 1932) it was enacted that in any case where the said Minister was unable to raise any moneys or to issue any securities at the maximum rate of interest prescribed by the Act authorising the raising of the loan or the issue of such securities he might raise the loan or any part thereof or issue any security as aforesaid, at such higher rate as he might deem necessary and no person should be concerned to inquire whether the necessity had arisen for the payment of any higher rate of interest than that prescribed as aforesaid.

4. Pursuant to the powers conferred by the enactments referred to in the preceding clause 3 hereof the Minister of Finance was duly authorised by the Governor-General in Council on 23rd March 1925 to raise by way of loan the sum of £5,000,000 for the Settlers' Branch of the said Advances Office and the sum of £1,500,000 for the Workers' Branch of that office for the financial year ending 31st March 1926, and on 20th April 1926 he was similarly authorised to raise loans to the extent of and for the same sums and for the same purposes for the financial year ending 31st March 1927. Copies of the said Orders in Council are exhibited and numbered (1) to (4) (both inclusive) in the file of documents and correspondence (hereinafter referred to as " the said file ") made available to this Honourable Court.

5. Pursuant to the authorities mentioned in the preceding clauses 3 and 4 hereof the Minister duly borrowed a total of Three million two thousand five hundred pounds (£3,002,500) upon and subject to the following conditions :—

(A) A sum of One million two hundred and fifty thousand pounds (£1,250,000) was subscribed by English investors and made available at Wellington, New Zealand at par of exchange to provide £1,250,000 at Wellington. The Inscribed Stock issued in respect of such borrowings was inscribed on the London Register of the Inscribed Stock Register of the New Zealand Government, and the holders of £1,000,000 of such stock were specifically given the option of payment of interest and repayment of principal at London, England, New York United States of America, or Wellington New Zealand, such payment and repayment at New York to be on the

basis of 4 dollars 86-2/3rds cents to the United Kingdom pound. The remaining £250,000 and the interest thereon were respectively repayable in London only.

(B) A sum of One million six hundred and forty-four thousand five hundred pounds (£1,644,500) was subscribed by Australian investors and made available at Wellington New Zealand at par of exchange to provide £1,644,500 at Wellington. The Inscribed Stock issued in respect of such borrowings was inscribed on the Wellington New Zealand Register of Inscribed Stock, and the principal and interest moneys were respectively repayable and payable either at Melbourne or at Sydney (as arranged at the time of issue) free of exchange, without any option to change the place of such repayment or payment after the date of issue.

(C) A sum of One hundred and eight thousand pounds (£108,000) was subscribed by Australian investors and made available at Wellington New Zealand. In respect of such moneys Bearer Debentures were issued by the New Zealand Government providing for payment at Melbourne in the Commonwealth of Australia and no option was given to the holder of any such Debenture to transfer the place of payment of such Debenture after the date of its issue.

The various parcels of Inscribed Stock referred to in the causes of action numbers 1 to 5 inclusive as set out in the Statement of Claim herein, were part and parcel of the said issue of Inscribed Stock to Australian investors in the sum of £1,644,500 and the four Debentures for £500 each referred to in the sixth cause of action in the said Statement of Claim were a portion of some seventy such Debentures issued by the New Zealand Government to a holder of £35,000 of the said Inscribed Stock who elected in terms of the relevant legislation to convert such £35,000 of Inscribed Stock into Debentures payable to bearer.

Exhibited and numbered (5) in the said file is a Schedule prepared by the Treasury showing the final subscriptions as at 10th December 1926 in respect of the said loan and the said further issue of seventy Bearer Debentures.

6. In or about the month of September 1925 at Wellington negotiations were entered into between the Secretary to the Treasury, acting on behalf of the said Minister of Finance, and a representative of the firm of J. B. Were and Son, Stock, Share and Finance Brokers, of Melbourne in the Commonwealth of Australia (hereinafter referred to as " the said Stockbrokers ") with a view to obtaining by way of loan from investors, either in Australia or in England, the whole or part of the moneys which the said Minister was authorised to raise under the authority referred to in clause 4 hereof. No prospectus was issued by or on behalf of the New Zealand Government in respect of these loan moneys.

7. The said stockbrokers were informed by the said Secretary to the Treasury that they were at liberty to obtain offers of money from Australian investors upon and subject to several options as to stock to be issued such options being more particularly set out in a memorandum or note and an amended memorandum or note both of which were dated

In the Supreme Court of New Zealand (Full Court).

No. 3. Statement of Agreed Facts, dated 24th September 1953, *continued.*

6th October 1925 and prepared by the New Zealand Treasury. Photostat copies of the original memorandum (with a memorandum referring to the domicile of stock attached) and of such amended memorandum and a copy of a Schedule prepared by the Stockbrokers and showing how and to what extent such options were taken up are exhibited and numbered (6) to (8) both inclusive on the said file.

8. In the course of the negotiations referred to in clause 6 hereof the said stockbrokers, on 14th October 1925 placed £72,500 New Zealand Government 5½ per cent. Inscribed Stock, interest to be payable and principal repayable in Melbourne. Copies of the relevant correspondence are exhibited and numbered (9) and (10) respectively in the said file. The sum of £61,500 referred to in clause 1 (A) hereof forms part of the said sum of £72,500 referred to in this clause.

9. On or about 15th October 1925 the said sum of £72,500 was received from the Plaintiff by the Bank of New Zealand at Melbourne for the credit of the Public Account and was by direction of the Treasury remitted to the North End Branch of that Bank at Wellington, the cost of exchange being borne by the said stockbrokers to ensure that a sum of £72,500 was provided at Wellington. Copies of correspondence relating to the payment of the said sum of £72,500 are exhibited and numbered (11) to (17) (both inclusive) in the said file.

10. Subsequently the Plaintiff completed at Melbourne aforesaid a form of application for Inscribed Stock in respect of the said sum of £72,500. This form, a photostat copy of which is exhibited and numbered (18) in the said file was addressed to the Treasury at Wellington, the money being received to the credit of the Treasury at the said North End Branch of the Bank of New Zealand at Wellington on 28th October 1925, and endorsed thereon or included therein were the following words, namely (i) " Interest and principal payable Melbourne " and (ii) " Domicile Wellington."

11. The Registrar of New Zealand Inscribed Stock at Wellington on or about 30th November 1925 issued a New Zealand Inscribed Stock Receipt No. 51/2 to the Plaintiff in respect of the said sum of £72,500 but no certificate of Title was then issued in respect of this parcel of Inscribed Stock. A photostat copy of this receipt is exhibited and numbered (19) in the said file.

12. On or about 1st June 1927 the Plaintiff disposed of £11,000 of the said parcel of £72,500 Inscribed Stock and thereafter applied to the Registrar of Inscribed Stock at Wellington for a Certificate of Title in respect of the balance of the said parcel of Inscribed Stock then held by the Plaintiff.

13. On or about 16th November 1927 the said Registrar of Inscribed Stock issued Certificate of Title No. 14846 (a photostat copy of which is exhibited and numbered (20) in the said file) to the Plaintiff in respect of its then holding of the said parcel of Inscribed Stock namely £61,500. The said Certificate of Title had endorsed thereon the following statement, namely " Principal and interest payable at Melbourne free of exchange."

14. In the course of further negotiations the said stockbrokers on 19th October 1925 arranged with the Plaintiff to sell £100,000 N.Z. 4½% tax free stock, which was payable as to interest and repayable as to principal at Wellington, then held by the Plaintiff, and to reinvest the proceeds in the N.Z. 5½% Inscribed Stock 1951 at par, the stock to be domiciled at Wellington and the interest to be payable and the principal repayable in Melbourne. The basis under which the New Zealand Government was to redeem the tax free stock was to be £96.0.0 per cent., accrued interest to date of settlement to go to the seller and no buying brokerage to be payable by the New Zealand Government. Copies of the correspondence in respect of this transaction are exhibited and numbered (21) to (24) (both inclusive) in the said file.

15. Settlement of the transaction referred to in the preceding clause 14 hereof (which relates to the sum of £100,000 referred to in clause 1 (*b*) hereof) duly took place on 21st October 1925 upon the terms and in accordance with the arrangement between the parties and a receipt T.44/120/2 dated the said 21st October 1925 (a photostat copy of which is exhibited and numbered (25) in the said file) was issued by the Secretary to the Treasury to Plaintiff for the sum of One hundred thousand pounds (£100,000) for the purchase of 5½% stock domiciled in Wellington with currency to 1st February 1951, interest payable 1st February and 1st August to date from 21st October 1925. Interest payable and principal repayable in Melbourne at par rate of exchange.

16. Contemporaneously with the settlement referred to in the preceding clause 15 hereof the Plaintiff through its Manager for New Zealand at Wellington on the said 21st October 1925 completed a form of application (a photostat copy of which is exhibited and numbered (26) in the said file) for £100,000 of New Zealand 5½% Inscribed Stock repayable on 1st February 1951 with interest payable half yearly on 1st February and 1st August in each year. Such form of application was to be subject to the " special terms as per receipt T.44/120/2 " (being the receipt referred to in the preceding clause 15 hereof) and endorsed thereon or included therein were the following words, namely,

(i) " Domiciled Wellington " and

(ii) " Interest & Principal payable Melbourne } Free of Exchange "

17. On or about 2nd November 1925 the Registrar of New Zealand Inscribed Stock at Wellington issued a New Zealand Inscribed Stock Receipt No. 51/1 to the Plaintiff in respect of the said sum of £100,000 and endorsed thereon was the following statement, namely : " Principal & interest payable free of exchange in Melbourne " but no Certificate of Title was ever issued in respect of this parcel of Inscribed Stock. A photostat copy of this Receipt is exhibited and numbered (27) in the said file.

18. On or about 7th May 1926 as a result of further negotiations the Plaintiff caused to be paid to the Bank of New Zealand at Melbourne as the agent of the New Zealand Government the sum of £300,000 as the

In the Supreme Court of New Zealand (Full Court).

No. 3. Statement of Agreed Facts, dated 24th September 1953, *continued.*

purchase price of £300,000 New Zealand Government Inscribed Stock maturing on 1st February 1951 bearing interest at the rate of 5½ per cent. per annum payable half yearly on 1st February and 1st August in each year, such stock to be inscribed in the said Register of Inscribed Stock kept by the New Zealand Government at Wellington and to be repayable as to principal and payable as to interest in Melbourne.

19. On or about 8th May 1926 the Plaintiff caused to be paid to the said Bank of New Zealand at Melbourne as the agent of the New Zealand Government a further sum of £6,000 as the purchase price of £6,000 New Zealand Government Inscribed Stock on the same terms and conditions as applied in respect of the Plaintiff's purchase of the said £300,000 New Zealand Government Inscribed Stock on the previous day and referred to in the preceding clause 18 hereof.

20. On or about 13th May 1926 the Plaintiff completed a form of application (a photostat copy of which is exhibited and numbered (28) in the said file) for the total of the said Inscribed Stock namely £306,000. This application was addressed to the Treasury at Wellington and endorsed thereon or included therein were the following words, namely : " Principal payable in Melbourne Interest payable and principal repayable in Melbourne free of Exchange."

21. On or about 14th June 1926 the said Registrar of Inscribed Stock issued Certificate of Title No. 12128 to the Plaintiff in respect of the said sum of £306,000 New Zealand Inscribed Stock. A photostat copy of this Certificate of Title is exhibited and numbered (29) in the said file. On the said Certificate of Title there was endorsed the following statement, namely " Principal and interest payable at Melbourne free of exchange."

22. In the year 1930 the Plaintiff disposed of £250,000 of the said parcel of £306,000 Inscribed Stock and having applied to the said Registrar of Inscribed Stock for a Certificate of Title in respect of the balance of the said Inscribed Stock then held by the Plaintiff the Deputy Registrar of Inscribed Stock on or about 24th December 1930 issued Certificate of Title No. 21505 (a photostat copy of which is exhibited and numbered (30) in the said file) to the Plaintiff of its then holding of the said Inscribed Stock amounting to the sum of £56,000. This is the sum referred to in clause 1 (C) hereof.

23. On or about 3rd August 1926 as a result of further negotiations the Plaintiff caused to be paid to the Bank of New Zealand at Melbourne as the agents for the New Zealand Government the sum of £300,000 as the purchase price of a further parcel of £300,000 New Zealand Government Inscribed Stock (being the parcel of Inscribed Stock to which the sum of £300,000 referred to in clause 1 (D) hereof relates) maturing on 1st February 1951 bearing interest at the rate of 5½ per cent. per annum payable half-yearly on 1st February and 1st August in each year such stock to be inscribed in the said Register of Inscribed Stock kept by the New Zealand Government at Wellington and to be repayable as to principal and payable as to interest free of exchange in Melbourne.

24. On or about the said 3rd August 1926 the Plaintiff completed a form of application (a photostat copy of which is exhibited and numbered (31) in the said file) in respect of the said £300,000 of Inscribed Stock. This application which was addressed to the Treasury Wellington and forwarded to the said Treasury through the said stockbrokers had endorsed thereon (i) at top thereof the following words, namely: " Interest payable in Melbourne and principal repayable in Melbourne free of exchange " and (ii) at the side thereof the following words, namely: " Principal and interest payable at Melbourne free of exchange."

25. On or about 27th August 1926 the said Registrar of Inscribed Stock issued Certificate of Title No. 12545 to the Plaintiff in respect of the said sum of £300,000 New Zealand Inscribed Stock. A photostat copy of this Certificate of Title is exhibited and numbered (32) in the said file. On the said Certificate of Title there was endorsed the following statement, namely: " Principal and interest payable at Melbourne free of exchange."

26. In the course of the negotiations between the said stockbrokers and the New Zealand Government in the month of October 1925 the said stockbrokers arranged that the Honourable Edward Jolly Crooke of Victoria, Australia, take £32,000 New Zealand 5½% Inscribed Stock maturing on the 1st February 1951, the stock to be domiciled at Wellington and interest to be payable and principal repayable free of exchange in Melbourne; and that the payment for such stock should be made to the New Zealand High Commissioner in London by the Union Bank of Australia at par. The said High Commissioner to issue a receipt setting out the terms of the said issue. Copies of the correspondence and of such receipt are exhibited and numbered (33) to (36) (both inclusive) in the said file.

27. On or about 27th October 1925 the said Edward Jolly Crooke completed a form of application (a photostat copy of which is produced and numbered (37) in the said file) in respect of the said £32,000 Inscribed Stock. This form which was addressed to the Treasury, Wellington had endorsed thereon or included therein the following words namely (i) " Interest and principal payable free of exchange Melbourne " and (ii) " Domicile Wellington."

28. The said sum of £32,000 was duly paid to the New Zealand Government in London on the said 27th October 1925 by the Union Bank of Australia Ltd. on behalf of the said Edward Jolly Crooke and remitted to New Zealand.

29. On or about 30th November 1925 the said Registrar of New Zealand Inscribed Stock at Wellington issued a New Zealand Inscribed Stock Receipt No. 51/3 to the said Edward Jolly Crooke in respect of the said sum of £32,000 but no Certificate of Title was ever issued in respect of this parcel of Inscribed Stock. A photostat copy of this Receipt is exhibited and numbered (38) in the said file.

30. On or about 8th January 1942 the Plaintiff purchased from the estate of the said Edward Jolly Crooke who was then deceased part of the said parcel of £32,000 Inscribed Stock to a nominal or face value of £7,000,

In the Supreme Court of New Zealand (Full Court).

No. 3. Statement of Agreed Facts, dated 24th September 1953, *continued.*

such sum of £7,000 being the sum referred to in clause 1 (E) hereof. Memorandum of Transfer No. 29642 (a photostat copy of which is exhibited and numbered (39) in the said file) from Edward Menzies Crooke (as executor of the will of the said Edward Jolly Crooke) was duly received and registered by the Reserve Bank as agent for the New Zealand Government on or about 2nd March 1942.

31. On or about 19th May 1926 the Plaintiff also caused to be paid to the New Zealand Government at Wellington the sum of £24,000 as the purchase price of a further parcel of £24,000 New Zealand Government Inscribed Stock maturing on 1st February 1951 bearing interest at 10 5½ per centum per annum payable half yearly on 1st February and 1st August in each year and completed in respect thereof a form of application addressed to the Treasury, Wellington (a photostat copy of which is exhibited and numbered (40) in the said file) which had endorsed thereon the following words, namely: " principal payable in Wellington. Interest payable and principal repayable in Melbourne free of exchange." The Plaintiff, however, disposed of the whole of this parcel of stock on or about 25th May 1927 and no claim arises in respect thereof in these proceedings.

32. The parties differ as to the legal significance of the expression 20 " domicile Wellington " and " domiciled Wellington " and similar expressions appearing in the forms of application hereinbefore referred to in this case and in other documents and correspondence relating to the Inscribed Stock mentioned in such forms of application but are agreed that the Plaintiff or the said Edward Jolly Crooke (as the case might be) and their successors in title were in any event to be inscribed as the holders of such stock in the register of inscribed stock established and kept by the New Zealand Government at Wellington, New Zealand. Certified copies of the entries in the said Register of Inscribed Stock in respect of the said Stock are exhibited and numbered (41) to (43) (both inclusive) in the 30 said file. At the time when such Inscribed Stock was first taken up such Register of Inscribed Stock was kept in the office of the Treasury at Wellington but on the 1st October 1936 at the request and direction of the Minister of Finance made and given pursuant to section 22 of the Reserve Bank of New Zealand Act 1933 it was transferred to the Head Office of the Reserve Bank of New Zealand at Wellington and at all times since then it has been kept at that office. The only other Register of Inscribed Stock kept and maintained by the New Zealand Government is that kept and maintained by it at the Head Office of the Bank of England in London. This Register of Inscribed Stock was in existence when the said Inscribed 40 Stock was first taken up.

33. On or about 1st August 1927 the New Zealand Government issued (*inter alia*) the said Bearer Debentures referred to in paragraph 2 hereof with the interest coupons attached thereto, each Debenture being for £500 sterling and repayable to Bearer at the office of the Bank of New Zealand at Melbourne aforesaid. Photostat copies of specimen forms of such Debentures and Interest Coupons are exhibited and numbered (44) and (45) in the said file.

34. The principal moneys secured by the said four debentures were repayable by the New Zealand Government on 1st February 1951 and pending repayment as aforesaid bore interest at the rate of 5½ per cent. per annum payable by equal half yearly payments on 1st February and 1st August in each year at the office of the Bank of New Zealand at Melbourne as aforesaid.

35. In the year 1946 the Plaintiff purchased and became holder of the said Bearer Debentures and the interest coupons then attached thereto.

36. The New Zealand Government paid to the said stockbrokers an amount of ten shillings (10/–) per cent. on so much of the moneys secured in the said inscribed stock and the said Bearer Debentures as were placed by or through the said firm. The said firm bore the cost of remitting some and perhaps all of such moneys to New Zealand at par. All of such moneys reached Wellington for the New Zealand Government at par. In so far as the said firm took part in the realization of existing Inscribed Stock for the purposes of the Plaintiff Association reinvesting in the Inscribed Stock under review they were the agents of the said Plaintiff. The said Stockbrokers also acted generally as an intermediary to bring the investors and the New Zealand Government into contractual relations.

37. The New Zealand Government through its agents duly paid interest at the rate of 5½ per cent. per annum on the foregoing parcels of Inscribed Stock and of the said Bearer Debentures in Melbourne free of exchange or other deductions up to and including the payment of interest due on 1st August 1948. A letter dated 16th September 1953 from the Reserve Bank to the Treasury setting out the fluctuations in the exchange rate between New Zealand and Australia at the various material dates is exhibited and numbered (46) in the said file.

38. On or about 20th August 1948 the official exchange rates of the Dominion of New Zealand and of the Commonwealth of Australia diverged and thereafter at all material times subject to banking fluctuations £125 Australian currency was the equivalent of £100 New Zealand currency.

39. Thereafter the New Zealand Government through its agents continued to pay the interest due on 1st February 1949 and all subsequent payments of interest accruing in respect of all the said parcels of Inscribed Stock and of the said Bearer Debentures in Melbourne at the rate of 5½ per cent. per annum on the nominal or face value thereof on the basis that the measure of its obligation thereunder was in Australian currency or money of account.

40. The New Zealand Government through its Agents tendered and paid in Melbourne on 1st February 1951 in repayment of the principal moneys due in respect of all the said parcels of Inscribed Stock and of the said Bearer Debentures at the nominal or face value thereof measured in Australian currency or money of account, namely, the sum of £526,500 in Australian currency or money of account.

In the Supreme Court of New Zealand (Full Court).

No. 3. Statement of Agreed Facts dated 24th September 1953, *continued.*

41. All payments of interest and of principal moneys tendered by the New Zealand Government to the Plaintiff after the said alteration of the exchange rate on the said 20th August 1948 were accepted by the Plaintiff under protest and with a full reservation of its claim that the indebtedness of the New Zealand Government could only be discharged by payment of the nominal or face value of the several obligations in New Zealand currency or its equivalent in Australian currency in Melbourne at the current rate of exchange applicable as at the date of each payment.

42. On or about 27th January 1953 the Plaintiff through its solicitors made formal claim upon the New Zealand Government for the amount of the principal moneys and interest alleged to be short paid in respect of all the said parcels of Inscribed Stock and of the said Bearer Debentures, but the New Zealand Government rejected such claim on the grounds that it had fully discharged its indebtedness in respect thereof by payment to the Plaintiff at Melbourne of the nominal or face value of such principal and interest measured in Australian currency or money of account. It is agreed between the Plaintiff and the Defendant that no question arises in the present proceedings under Section 23 of the Limitation Act 1950 and no defence is to be pleaded or raised in relation to the date of the issue of the writ herein.

43. The amounts specified in paragraphs 14, 15, 28, 29, 43, 44, 56, 57, 71, 72, 84 and 85 of the Statement of Claim have been calculated at the said rate of £125 Australian currency to £100 New Zealand currency to show the amounts short paid by the New Zealand Government to the Plaintiff for interest and principal in respect of the said parcels of stock or the said Bearer Debentures (as the case may be) therein respectively referred to if the Plaintiff's contention is correct that the several obligations of the New Zealand Government thereunder are measurable in New Zealand currency or money of account to the extent of the nominal or face value thereof or its equivalent in Australian currency in Melbourne at the current rate of exchange applicable as at the date of each payment.

Dated this 24th day of September, 1953.

W. J. SIM,
Counsel for Plaintiff.

H. E. EVANS,
Solicitor-General.

No. 4.

REASONS FOR JUDGMENT.

In the Supreme Court of New Zealand (Full Court).

No. 4. Reasons for Judgment, dated 31st May 1954.

No. A208/53.

IN THE SUPREME COURT OF NEW ZEALAND.
Wellington District.
Wellington Registry.

Between THE NATIONAL MUTUAL LIFE ASSOCIATION OF AUSTRALASIA LIMITED having its principal place of business in the Dominion of New Zealand at Wellington and carrying on business in the said Dominion and elsewhere as a Life Insurance Office . . . Plaintiff

and

HER MAJESTY'S ATTORNEY-GENERAL FOR THE DOMINION OF NEW ZEALAND Defendant.

CORAM:
FAIR, J.
GRESSON, J.
STANTON, J.
HAY, J.
NORTH, J.

Hearing: 5, 6, 7, 8, October, 1953.

Judgment: 31st May, 1954.

Counsel: Sir WILFRID SIM, Q.C. and VIRTUE for Plaintiff.
EVANS, Q.C., Solicitor-General, and HAUGHEY for Defendant.

(A) FAIR, J. (A) Fair, J.

The first question arising in this action is whether the New Zealand Government's obligation to repay monies due by it to the Plaintiff, and interest thereon, is to be discharged by payment of Australian currency equivalent to the nominal amount of the obligation; or whether, on the other hand, the obligation represents New Zealand pounds which, on payment in Australia, will require conversion into Australian pounds, involving an increase of 25 per cent. in the number.

The facts relevant to this question are set out in detail in the Statement of Facts, and the supplementary information furnished to the Court, but those most relevant may be more briefly summarised as follows:

By section 18 of the State Advances Act, 1913 (as amended by section 3 of the Finance Act, 1923, and by section 3 of Finance Act, 1924) it was provided that the Minister of Finance, on being authorised so to do by the Governor-General in Council, might raise, on the security of and

In the Supreme Court of New Zealand (Full Court).

No. 4. Reasons for Judgment, dated 31st May 1954.

(A) Fair, J., *continued.*

charged upon the public revenues of New Zealand, such sums of money as he might think fit not exceeding in any one financial year the amounts therein specified; for the business of the State Advances Office.

The Governor-General in Council on the 23rd March, 1925 authorised the Minister of Finance to raise, by way of loan, the sum of five million pounds for the such purposes for the year ending 31st March, 1926; and on 20th April, 1926 he was similarly authorised to raise loans for the same amount and for the same purposes for the year ending 31st March, 1927. Pursuant to such authorities, the Minister duly borrowed among others the following amounts:—

(A) The sum of £1,250,000 subscribed by English investors from money in England and made available at Wellington, New Zealand, at par Wellington of exchange, i.e., to provide £1,250,000 at Wellington. The Inscribed Stock issued in respect of such money was inscribed on the London Inscribed Stock Register. The holders of £1,000,000 of such stock were specifically given an option of payment of interest and repayment of principal at London, England, New York, United States of America, or Wellington, New Zealand; such payment and repayment at New York to be on a basis of 4 dollars 86⅔ cents to the United Kingdom pound. The remaining £250,000 and any interest thereon were repayable and payable in London only.

(B) The sum of £1,644,500 subscribed by Australian investors from money in Australia and made available at Wellington, New Zealand at par of exchange, to provide £1,644,500 at Wellington. The Inscribed Stock in respect of such amounts was inscribed on the Wellington, New Zealand, Register of Inscribed Stock, and principal and interest monies were respectively repayable and payable either at Melbourne or at Sydney (as arranged at the time of issue) free of exchange without any option to change the place of payment or repayment after the date of issue.

(C) The sum of £108,000 subscribed by Australian investors from funds in New Zealand and made available at Wellington, New Zealand. In respect of such monies Bearer Debentures were issued, providing for payment at Melbourne, in the Commonwealth of Australia, and no option was given to the holder of any such Debenture to transfer the place of payment of such debenture after the date of issue.

The present action is in respect of the issue to Australian investors, referred to under (B) above. The sixth cause of action is in respect of debentures to the value of £2,000 being part of seventy £100 debentures issued by the New Zealand Government in the years 1925–6 to holder of £35,000 of such Inscribed Stock, who elected in terms of the relevant legislation, to convert such stock into debentures payable at Melbourne, Australia, to the bearer.

The following is the history of the loan of £72,500 by the Plaintiff so far as is relevant to the present action. In about the month of September, 1925, negotiations were entered into at Wellington between the Secretary to the Treasury, acting on behalf of the Minister of Finance, and a representative of the firm of J. B. Were & Son, Stock and Share Brokers, of

Melbourne, in the Commonwealth of Australia (hereinafter referred to as " the stockbrokers ") with a view to raising by loan, from investors in New Zealand, Australia, or England, the whole or part of the money so authorised to be raised. No prospectus was issued by, or on behalf of the New Zealand Government in respect of these loan monies. The stockbrokers were informed by the Secretary to the Treasury of the terms upon which offers of moneys from Australian investors would be considered. Copies of the memoranda recording these are attached to the Statement of Facts. It need only be said that the first two are apparently memoranda by Treasury officials of verbal offers from the stockbrokers and are headed " Offers of loan money from Australia." As finally approved they appear to correspond to the terms upon which the stock and debentures were subsequently issued.

On the 14th October, 1925 the stockbrokers wrote the Secretary to the Treasury in terms which indicated that the Plaintiff would take up £72,500 New Zealand Government 5½ per cent. stock. The letter was as follows :—

14th October, 1925.

Midland Hotel
Wellington.
The Secretary to
the Treasury

Dear Sir,

We have pleasure in accepting £72,500 N.Z. Govt. 5½% 1951, as per option No. 5, the interest to be payable and principal repayable in Melbourne. I shall be glad if you will instruct the Bank of New Zealand as early as possible to issue a receipt in Melbourne for the money, which will be paid on Thursday (tomorrow) morning, giving the details of the loan.

Yours faithfully,

(Sgd.) HERBERT RICHMOND,
for J. B. Were & Son.

The letter has a note endorsed that the stockbrokers were to pay the exchange necessary to be paid to provide the money at par Wellington, and in fact they did that. The letter was acknowledged by the Treasury on the same date and treated as an acceptance of an offer by the Government and the letter proceeded :—

" The General Manager, Bank of New Zealand, Wellington, has been requested to instruct his Manager at Melbourne by telegraph to accept the amount from the National Mutual Life Association and arrange for remittance to Wellington by post, cost of exchange to be borne by your firm. The Bank of New Zealand, Melbourne, will issue a receipt embodying the terms and conditions as above."

The General Manager, Bank of New Zealand, Wellington, was so advised on the same day, and replied on the following day that he had instructed the Melbourne Manager of the Bank of New Zealand as

In the Supreme Court of New Zealand (Full Court).

No. 4. Reasons for Judgment, dated 31st May 1954.

(A) Fair, J., *continued.*

requested. On the 15th the Manager of the Bank of New Zealand at Melbourne advised the Secretary to the Treasury that he had received from the stockbrokers on account of the National Mutual Life Association Australasia Ltd. the sum of £72,500 which he had remitted to the North End, Wellington Branch, of Bank of New Zealand, for credit of the Public Account, which was kept at that time at the Bank of New Zealand. The Branch Manager asked that the Certificate of Title be issued in the name of the Association and that it be forwarded to him. The stockbrokers wrote on the same date confirming the payment, and setting out the interim receipt given to them by the Bank of New Zealand, at Melbourne, as follows :—

" Price of issue—par.

Rate 5½% payable half yearly, 1st February and 1st August.

Stock to be inscribed on the Wellington Register.

Interest to be payable and principal repayable in Melbourne free of exchange.

Interest to accrue from to-day's date and the first interest payment to be on the 1st February, 1926 for the period 15th October, 1925 to 1st February, 1926."

" Currency of the loan to be until the 1st February, 1951."

They stated that they had been requested by their principal to ask that the Certificate of Title be prepared and forwarded to them at the earliest opportunity.

On 28th October, the Secretary to the Treasury wrote to the Manager, Bank of New Zealand, at Melbourne, acknowledging the remittance of the £72,500 and informing him that the stock would be inscribed in the name of the Plaintiff, on receipt of " formal application for investment " the form in respect of which had been handed to the stockbrokers' representative in New Zealand. In view of the fact that sharebrokers had asked that the Certificate of Title be forwarded to them, he stated the Plaintiff was being asked to indicate to whom it should be forwarded on inscription of the amount. On the same date the Secretary to the Treasury also wrote the stockbrokers as follows :—

" Dear Sir,

I have to acknowledge receipt of your letter of the 15th instant relative to the amount of £72,500 lodged on the same date on behalf of the National Mutual Life Association of Australasia Ltd., for investment in New Zealand Government 5½% stock, on the terms indicated in the receipt handed to you by the Bank of New Zealand Melbourne. To complete Treasury records in the matter of inscription formal application for investment will require to be submitted by the Association and the necessary form is being handed to your representative, Mr. Richmond, for completion. On return of the form certificate of title will be forwarded as requested.

Yours faithfully,

(Sgd.) R. E. HAYES,
Secretary to the Treasury."

Then appears a note :—

" Verbally arranged for with Mr. Richmond, representative of J. B. Were & Son."

The form referred to, duly completed, is attached to the file which shows that the application was apparently duly signed by the Plaintiff, and asked for inscribed stock. It was dated the 15th October. It has on it an endorsement, presumably by the Treasury : " Domicile Wellington " and a note that the Certificate of Title was to be forwarded to the National Mutual Life Association of Australasia, Ltd., 359 Collins Street, Melbourne, Victoria. The interest and principal are payable in Melbourne. The Treasury note indicates that it was received on the 28th October. A credit voucher was prepared on the 29th October, 1925, for the full amount. It does not record when the Inscribed Certificate was issued, but it appears from the subsequent document to have been dated 30th November. The formal receipt is as follows :—

NEW ZEALAND INSCRIBED STOCK.
Issued under the New Zealand Inscribed Stock Act, 1917.

Inscription No. 51/2.

Office of the Registrar of New Zealand Inscribed Stock,
Treasury, Wellington.

30th November, 1925.

Receipt is hereby acknowledged of the sum of Seventy Two Thousand Five Hundred Pounds (£72,500) for investment in 5½ per cent. New Zealand Inscribed Stock maturing 1st February, 1951, which amount has this day been duly recorded in the Inscription Register in the name of the National Mutual Life Association of Australasia, Ltd., of Melbourne.

Interest is payable half-yearly on 1st February and 1st August.

This document is neither negotiable nor transferable and has no significance except as evidence of the original deposit for the purposes of inscription.

In the case of the sale of any stock the transferor may, in order to satisfy the transferee, obtain a certificate of title by making application on the prescribed form.

The National Mutual Life Association
of Australasia, Ltd.,
359 Collins Street,
Melbourne,
Victoria.

(Sgd.)
Registrar of New Zealand
Inscribed Stock.

In the Supreme Court of New Zealand (Full Court).

No. 4. Reasons for Judgment, dated 31st May 1954.

(A) Fair, J., *continued.*

The certificate of title which, it is to be noted, was issued nearly two years later, is as follows :—

PRINCIPAL AND INTEREST PAYABLE AT MELBOURNE FREE OF EXCHANGE.

NEW ZEALAND INSCRIBED STOCK. Fol. 70.

Under " The N.Z. Inscribed Stock Act, 1917."

CERTIFICATE OF TITLE.

No. 14846. Inscription No. 51/2.

Office of the Registrar of Inscribed Stock,
Wellington,
16th November, 1927.

£61,500.

THIS IS TO CERTIFY That

The National Mutual Life Association of Australasia Limited of Melbourne, is the registered holder(s) of Sixty-one thousand five hundred pounds 5½ per cent. NEW ZEALAND INSCRIBED STOCK maturing 1st February 1951 which amount has been duly inscribed in the books of the Treasury under the name(s) and address mentioned above.

This certificate is conclusive evidence of the ownership of the Stock to which it relates, and is proof that no Stock Certificate is outstanding in respect of that stock.

The Treasury will not transfer or allow any dealings in the Stock to which this certificate relates without the production of this Certificate.

(Sgd.) K. A. CLARK,
Registrar of Inscribed Stock.

The amount is £61,500, as the Plaintiff had, prior to 16th November, 1927, disposed of a parcel of £11,000 of the Stock.

During argument, the Solicitor-General seemed hesitant to argue that the contract for the loan and receipt of this money were effected upon the payment by the Plaintiff to the Bank of New Zealand, Melbourne, and the issue of the Interim Receipt by the Manager of that Bank there. The question was not fully argued ; but on the facts as presented to this Court, there seems to me little doubt that there was a binding contract on the issue of the Interim Receipt by the Bank of New Zealand at Melbourne under the authority of the Secretary to the Treasury. It was part of the contract that the monies were to reach New Zealand at par, which means that the New Zealand Government was not to bear the exchange which in the normal course would be charged by the Bank for remittance. Both parties had agreed, as had the stockbrokers, that the latter should bear this cost. It seems to me reasonably clear that this was a tripartite contract which, in case of default on the part of the stockbrokers, would have given the New Zealand Government a claim against them. The Bank of New Zealand by accepting the money had,

under the Government's instructions undertaken to draw on the stockbrokers for exchange. By this course the Government, or the Bank had accepted the liability of the stockbrokers for exchange costs. As the sharebrokers were being paid £½% commission by the Government it was amply secured against any default by the stockbrokers in paying the exchange. It seems clear that if default had occurred it could not have been successfully urged as invalidating the contract with the Plaintiff evidenced by the interim receipt. There seems little doubt that there was a completed contract for the lending and borrowing of this money upon the payment of the moneys and the giving of the Interim Receipt in the terms stated. The issue of a formal receipt, of a certificate and inscription on the register at Wellington were in my view thereafter obligatory on the Government. The further requirement as to the signing of an application by the Plaintiff " to complete Treasury records," was merely formal (as was indeed stated in the letter of the 28th October) as the money had already been received on terms agreed upon. It would be difficult for either party to contend that the contract was conditional on this being signed when the Treasury itself said it was a purely formal matter. I mention it at this stage because it appears that the supply of the money in Australia is a factor, although possibly not one of great weight, to be considered in determing the intention of the parties as to the currency of the money of obligation.

Australia " pegged " her exchange rate in 1931 and thereafter, until New Zealand took the same course on the same basis in 1933, the £N.Z.100 represented in value £A.118.12.6 in 1931, and £A.113.12.6 in 1932. In 1948 New Zealand removed the " pegging "—a step which necessitated the New Zealand Government making very extensive banking and financial provisions and readjustments. Australia has not taken similar steps. Her currency is consequently, commonly referred to as " depreciated," in relation to its value before 1931 and the present value of the £ N.Z. and £ E. The £ N.Z. has, to use a term in popular use, been " appreciated " as a result of the steps taken in 1948 to revoke the " pegging " of the exchange.

It has been questioned whether it was *intra vires* New Zealand Parliament to modify the value of the pound by the legislation which did so by " pegging " the exchange in New Zealand. (See *Mann's Legal Aspect of Money* 2nd Edition p. 57 but cf. p. 53.) I have not considered this question as it was not argued before us and both parties assumed its validity. The legislation has been accepted and acted upon as valid by everybody affected by it, including, presumably, the parties in the present case. I approach the problem on the assumption that the " pegging " or " depreciation " of the £ N.Z. between the years 1933–1948 was *intra vires.*

The question to be decided is, authority shows, purely one of construction, and the advantages to either party cannot influence it. It is not an abstract question, but it is entirely one as to what meaning is to be attached to the contract which the parties have made, quite irrespective of the advantages or disadvantages to one or the other.

The question of construction is, no doubt, a difficult one. This primarily arises from the fact that probably neither party expressly

In the Supreme Court of New Zealand (Full Court).

No. 4. Reasons for Judgment, dated 31st May 1954.

(A) Fair, J., *continued.*

adverted in making the contract to the situation that would arise if the two currencies became substantially different in value. The Court has to determine what the contract means according to principles of law, and what the parties are presumed to have intended in respect of a matter to which neither of them probably directed its attention.

Similar problems and decisions dealing with them are fully discussed by Dr. F. A. Mann in chapter VI of *The Legal Aspect of Money*, 2nd edition, p. 186, *et seq.*, particularly at pages 190–2 and 203–4. They have also been examined in detail in many cases. Of the more recent may be mentioned the judgment of Fullagar J. in the High Court of Australia in *Goldsborough, Mort & Co. Ltd.* v. *Hall* (1948), V.L.R. 148, *Bonython* v. *Commonwealth of Australia* [1951] A.C. 201 and *National Bank of Australasia Ltd.* v. *Scottish Union and National Insurance Ltd. and Others* [1952] A.C. 493.

A concise statement of the law on the general question is found in Lord Herschell's judgment in *Hamlyn & Coy.* v. *Talisker Distillery* [1894] A.C. 202 where he says at p. 207 :—

> " Where a contract is entered into between parties residing in different places, where different systems of law prevail, it is a question, as it appears to me, in each case, with reference to what law the parties contracted, and according to what law it was their intention that their rights either under the whole or any part of the contract should be determined. In considering what law is to govern, no doubt the *lex loci solutionis* is a matter of great importance. In the present case the place of the contract was different from the place of its performance. It is not necessary to enter upon the inquiry, which was a good deal discussed at the bar, to which of these considerations the greatest weight is to be attributed, namely, the place where the contract was made, or the place where it is to be performed. In my view they are both matters which must be taken into consideration, but neither of them is, of itself, conclusive, and still less is it conclusive, as it appears to me, as to the particular law which was intended to govern particular parts of the contract between the parties."

It appears to me that the present case falls completely within the *ratio decidendi* in the *Auckland City Council* v. *The Alliance Assurance Co. Ltd.* [1937] A.C. 587 and in *Adelaide Electric & Supply Co.* v. *The Prudential Insurance Co.* [1934] A.C. 122 as explained in the *Mount Albert Borough Council* v. *Australasian T. & G. Society* [1938] A.C. 224 at 241, where it was said :—

> " The House of Lords was not concerned (in the *Adelaide* case) with any such general questions, or with questions of the substance of the obligation which, in general, is fixed by the proper law of the contract under which the obligation is created. The House of Lords was concerned only with performance of that obligation, in regard to the particular matter of the currency in which payment was to be made. There was no question such as a reduction in the amount of the debt or liability, or other change in the contractual obligation. The House of Lords had no intention of questioning the distinction emphasized in *Jacobs, Marcus & Co.* v. *Credit Lyonnais*

(1884), 12 Q.B.D. 589 between obligation and performance. Indeed, that line of authorities was not referred to either in argument or in the speeches. It may be that in some cases difficulties have arisen in distinguishing ' obligation ' from ' performance,' and that ' manner and mode of performance ' may effect the value of the obligation."

In the present proceedings, if I understood the argument of counsel for the Plaintiff correctly, it was strongly submitted that the decision in *Bonython's* case had shown that the place fixed for the performance by payment of the contract, was not entitled to as much weight in determining the currency of the obligation (or account) as had up to that time been attributed to it. It was argued that *Bonython's* and the *National Bank* cases had weakened the authority of the *Auckland* case, in its application to the problem to be determined in this action.

Consideration of the two former cases seems to show that certain relevant principles are now firmly settled. These appear to me to be as follows :—

(1) The Australian pound and the English pound dominate different currencies since at least 1900. *Bonython* pp. 217–218 ; *National Bank* pp. 512–513. The reasons for that conclusion apply equally to the English and New Zealand currencies. In the *Auckland* case it was so held although not explicitly stated in that form (see pp. 604 to 606).

(2) The currency of obligation is to be determined as a question of construction of the document—i.e. the stock as at the time it was made. (See *Bonython* p. 210, *National Bank* pp. 508, 514) ; though the documents must be looked at as a whole and in the light of the relevant surrounding circumstances. *Ibid* pp. 221, 508. See also the *Adelaide* case, p. 603, cited below.

(3) 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 which the transaction had its closest, or most real connection. (*Bonython* p. 219). In the present case both parties agree that the proper law of the contract is the New Zealand law, which is, in this respect, the same as that of England.

(4) Where the holder is given an option for payment in different countries with different currencies in units of the same denomination or the power at will to change the place of registration, little weight can be attached to the primary place of payment named, or the exercise of the option, in determining the currency of obligation. *Bonython* pp. 221, *National Bank* pp. 509–10.

(5) Although there was an option in the *Auckland* case and the place chosen for payment was held a decisive factor in determining the currency of obligation, that must be treated as a special case on the question of the effect of an option on the construction of the contract, since the Privy Council expressly disclaimed considering this as a factor requiring consideration by it.

(6) In the absence of circumstances indicating a contrary intention, where the borrower is a Government with a local

In the Supreme Court of New Zealand (Full Court).

No. 4. Reasons for Judgment, dated 31st May 1954.

(A) Fair, J., *continued.*

currency, it is *prima facie* presumed to have contracted an obligation expressed in units of its own currency. *Bonython* p. 222 where it is said :

> " . . . . where " (the legislature of a self-governing colony) " uses terms which are apt to describe its own lawful money, it must require the strongest evidence to the contrary to hold that it had intended some other money."

But the passage next cited appears to show that in such cases the place of its performance may well be a decisive factor displacing the inference to be drawn from this fact.

(7) Where only one place of payment is specified in payments of this nature in a contract, that is " an important factor in determining the substance of the obligation." *Bonython* p. 221. The decision in the *Adelaide* case, 1934 A.C. 322 :

> " Can be fairly rested on the fact that . . . payment of dividends on its stock was to be made in Australia only. It was therefore easy to conclude that on 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."

Ibid. p.220.

(8) The fact that the stock is part of a uniform scheme, and gives a right to the holder to change the place of payment by a transfer to a different register neutralises any inference from the place of payment (*National Bank* case p. 509) ; as, in the absence of other circumstances supporting the contrary view, does an option (*Bonython* p. 221).

(9) The acceptance of payment in one currency over a period of years, or the method of presentation of accounts in the case of currency or denominations of equal value on the day of the making of the contract, cannot be invoked to affect the construction of the contract. (*National Bank* pp. 513–14).

The principles stated establish, I think, that the place of payment fixed in the contract under consideration, and in the certificates and stock issued as a result of it, is a very strong factor indicating that the currency of obligation was intended to be that of Australia. If to this is added the fact that £72,500 of the monies invested was supplied in and from foreign currency (then identical in name and practically identical in value, with the New Zealand currency), and that all monies came from foreign investors, it seems to me very strong evidence against the parties having intended to designate the New Zealand currency as that for payment. Some slight confirmation of this may also be found in the fact that the Certificate of Title issued by the New Zealand Government was sent to the directors of the Plaintiff in Australia for custody.

The fact that, to the knowledge of the agent of the lenders, other monies raised about the same time for the same purpose, and under the same authority, were directed to be paid in equivalent of dollars calculated by reference to the £ U.K. seems to me to assist in this construction

and in negativing any *prima facie* inference that £ N.Z. were meant. It seems, at least, to indicate the New Zealand Government's willingness to repay these monies on the basis of two foreign currencies. Also, if, as I think, the original contract for the advance and receipt of these monies was made at Melbourne, that affords some confirmation of the view that the parties intended the amount of the loan to be repaid in Australian currency.

The place of registration and domicile (except where they determine the place of payment) seem to me, having regard to the other circumstances, entitled to little weight. It may well be that it is fixed or stated either to meet administrative convenience or lenders' wishes and not of real moment to the parties, or for other reasons. We were not informed as to these.

Having regard to the relevant circumstances, it seems to me that the facts bring the present case within the type of contract dealt with in the *Auckland* case, and within the examples referred to in *Bonython's* and the *National Bank* cases, as fixing a foreign currency as the currency of obligation. Where only one place is fixed for repayment of the principal and payment of interest, in the absence of very definite indications to the contrary, that seems generally to have been treated as of almost decisive importance. Indeed in the *Auckland* case it was treated as decisive, and there would appear, in the absence of countervailing considerations, logically a strong *prima facie* presumption that in such case the currency designated for the money of payment should also have been intended by the parties to be the currency of obligation or account. That would be the natural assumption in the absence of special grounds for a contrary view, such as (possibly) a recognised discrepancy in the value of the currencies, or an option for payment, provides.

Although the fact that the Plaintiff declined to pay the exchange required for the banking costs of transmission to New Zealand may point to its requiring the moneys it provided in Australia in Australian money being the measure of the obligation, the New Zealand Government's refusal to pay such exchange may well neutralise this consideration. But the parties, by making the payment of interest and repayment of the capital free of exchange did ensure that the Plaintiff got back the same amount in pounds in Australia as it provided. The conjunction of these two conditions seems to me to indicate that the Plaintiff had in mind the amount of Australian pounds it was providing, and which it intended should be repaid in full.

I have considered my brother Gressom's judgment with care, but, with the greatest respect, I cannot think that the term " free of exchange " was intended to cover more than the banking costs of transmission, or be more than an expression to avoid any doubt as to which party was liable to pay it. If the currencies had remained of equal value exchange, in the sense of banking charges for the transmission of the moneys from New Zealand would have had to be incurred, and the provision " free of exchange " may well have been inserted in order to avoid any doubt as to whether the amounts specified were subject to deduction of such charges that had been incurred. That seems a proper and businesslike provision to insert in such contracts. It is one that is often inserted in cheques

In the Supreme Court of New Zealand (Full Court).

No. 4. Reasons for Judgment, dated 31st May 1954.

(A) Fair, J., *continued.*

for payment to a creditor at a different town in the same country, though that position is perhaps more often met by an increase in the amount. Otherwise the creditor is liable to pay the exchange. It seems to me that the phrase cannot be regarded as doing more than avoiding a possible ambiguity, and this would be advisable whichever was the currency intended. Clearly on this view it was for the benefit of the Plaintiff, and recognised a substantive liability reciprocal with that that the stockbrokers took when the loan was made.

Counsel did not argue in support of the view that it was capable of a wider meaning and, with respect, in such circumstances, I feel some hesitation in considering an interpretation which the Plaintiff refrained from relying on.

But even if the phrase be taken to refer to a possible difference in currency it would seem that it should be construed in much the same way as where it has the more restricted application, that is as directed towards ensuring payment of the stipulated amounts without any deduction, and so mean free of any reduction in the amount agreed to be paid. It seems to me extremely unlikely that, in its use in this context, it could have been intended to mean " with the addition of any amount due to the value of the New Zealand currency being greater than that of Australia." Indeed in its application to the difference in currency favourable to the lenders the reverse seems its natural meaning. The payments admittedly have to be made in Australian pounds. If on payment an amount is added by reason of the " exchange " being added how can the payment be said to be " free of " exchange ?

Thompson v. *Wylie* (1938), N.S.W.S.R. 328 seems an illustration of circumstances where, owing to English pounds being possibly liable to *a deduction* owing to adverse " exchange " the words " free of " applied in their natural and ordinary sense of " not subject to deduction by reason of." The ordinary meaning of the words " free of " hardly needs authority, but it may be found on the words of a will in which it was held that words giving legacies " free of . . . expense of every kind " mean they were to be received " without deduction." *Fitzherbert* v. *Waterhouse* (1908), 27 N.Z.L.R. 600 at 602–3. So too in *Hodgworth* v. *Crawley* (1942), 2 A. & K. 376, Lord Hardwick, L.C., said at p. 376 :

> " I must direct the trustees to lay it out in the purchase of an annuity free from taxes, which is the proper meaning of the word ' clear '."

So treating the words " free from " as equivalent to " clear of." In Halsbury, 2nd Edn., Vol. XX, p. 170, para. 183, note (*n*), it is said :

> " Frequently the reservation of rent expresses that it is to be free from specified deductions such as taxes charges and impositions (*Giles* v. *Cooper* (1690), Carth 135 or from deduction generally ; and then the lessee is debarred from making deduction which he could make in the absence of an agreement. *Bradbury* v. *Wright* (1781), 2 Doug. (K.B.) 624."

So too of rent " clear of rates " and a " clear " rental in leases. *Henderson* v. *Gurr* (1913), 32 N.Z.L.R. 785, *Hanson* v. *Wright & Ors.* (1922), N.Z.L.R. 856.

It seems, too, more probable and natural for the lender to stipulate, where possible, for repayment to him of the exact equivalent in kind as well as in amount of the moneys lent by him; and, if such a speculation were admissible, it seems unlikely that an Australian lender would contract for payment in the currency of a smaller country on the assumption or possibility that, in the future, it might be of greater value than that of Australia.

A consideration of the whole of these circumstances to my mind shows that they clearly outweigh the consideration that the loan was issued by the New Zealand Government under local authorising legislation, and indicate that the intention of both parties was that the amount named should be paid in that amount of Australian currency.

As the *Auckland* case has been much under discussion, it is perhaps desirable that I should state my views as to its present authority and effect. It was argued for the Appellant in the Privy Council on four main grounds:

(A) That the N.Z.£ and E.£ were different, although expressed by the same symbol.

(B) That it was *ultra vires* the Corporation to issue debentures in any currency but the New Zealand currency.

(C) That the reference to "pounds" was *prima facie* to the local currency which was, therefore, the measure of the debt.

(D) That, in any case, having regard to the relevant statutory provisions and all the circumstances, the debentures referred to New Zealand currency, and the place of payment was of quite secondary importance in determining the currency intended.

No argument is reported as having been addressed to the Board as to the right of option as to place of payment affecting the weight of the provision as to the place in determining the currency intended. This appears from the passage on page 597 of the judgment where it is said:

> "for the purposes of this appeal, the question can be considered as if the instrument simply provided for payment in London; the option to require payment in New Zealand can be disregarded, as the actual or assumed basis of the proceedings is that the London option has been duly exercised."

It appears to me from the terms of the judgment, particularly on pages 604 and 606, that the Board clearly accepted the argument that the currencies were different. It rejected on p. 607 the argument that the contract to pay in English currency was *ultra vires*; and the argument that the legislation and other circumstances reduced the place of payment to quite secondary importance. At p. 606 it adopted the rule laid down in the *Adelaide* case and said:

> "In the *Adelaide* case, however, there was no express term to show what currency was intended by the word 'pound.' The House of Lords held that the true meaning of the word 'pound' must be determined on the basis of a rule depending on a well-known principle of the conflict of laws—namely, that the mode of performance of a contract is to be governed by the law of the place

In the Supreme Court of New Zealand (Full Court).

No. 4. Reasons for Judgment, dated 31st May 1954.

(A) Fair, J., *continued.*

of performance. That principle, no doubt, is limited to matters which can be fairly 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; but when it applies, as in the *Adelaide* case, it has the effect of introducing into the contract the law of currency or legal tender governing in the place of payment as a mode or method incidental to performance. Thus, where there is a common unit of account to which the same denomination applies as is the case with the word ' pound ' here, the debt expressed in the common unit of account must, in the absence of contrary evidence of actual intention, be discharged by payment in the currency of the place of payment. That was the decision in the *Adelaide* case, which, subject to a further matter, to be next discussed, governs the present case . . . (The currency intended by the contract) was left to be determined by the Court in accordance with the general principles of law, and in accordance with the place of payment which the bearer adopted under the option given to him."

Although these two cases were held inapplicable to the contracts required to be construed in *Bonython's* case, it seems to me that their authority in their application to the present case remains unaffected. The reference in *Bonython's* case to the *Auckland* case as a decision " on the words of the particular contract and the surrounding circumstances as the Board found them to exist " must, I think, have been intended to convey the same meaning as the words in the *National Bank* case as being : " a very special decision on the facts of the particular case."

These words appear to have reference to the fact that the Privy Council was not, in that case, asked to consider whether an option as to the place of payment affected the weight to be attached to the place of payment in construing the contract. In the *Adelaide* case and in the *Auckland* case it was considered that the provision as to the place of payment was decisive, where there was no alternative place designated, and the circumstances did not otherwise definitely indicate the country of the issuing authority as the currency of obligation. In the present case there is, as I have said, the additional factor that in respect of this issue the Government made clear its intention to repay in dollars if required and also agreed to these being calculated in relation of U.K. pounds.

The authority of the *Adelaide* and *Auckland* cases so far as their applicability to this case is concerned, is, therefore, I think, unaffected by the later decisions. Further the provision in respect of the loan of £1,000,000 for repayment in dollars the amount of which was fixed in relation to the £ U.K. definitely shows, it seems that the £ N.Z. was not regarded in that contract as the currency of obligation ; for if it had been the basis would have been by reference to the N.Z. £. The Government seems to have treated the £ U.K. and the £ N.Z. as equivalent to each other ; or to have acquiesced in the latter being converted to £ U.K. and then to dollars. Either view involves the abandonment of the £ N.Z. as the basis of that contract. This seems to me to negative any presumption as to the basis of similar contracts entered into under the same authorisation being an obligation in £s N.Z.

The stipulation as to one place of payment only, in these contracts, and that place being in Australia, seems, in all the circumstances, definitely to indicate Australian currency as that intended as the measure of obligation. That seems to me to apply too, though perhaps less clearly, to the debentures.

For these reasons, which apply equally to each cause of action I, think that the judgment in the present case should be for the Defendant.

No. 4. Reasons for Judgment, dated 31st May 1954.

Solicitors for Plaintiff: YOUNG, COURTNEY, BENNETT & VIRTUE, Wellington.

Solicitor for Defendant: CROWN LAW OFFICE, Wellington.

(A) Fair, J., *continued.*

(B) GRESSON, J.

(B) Gresson, J.

The Plaintiff in this action alleged that the Government of New Zealand in assessing and making repayment in Australian currency of several amounts owing to the Plaintiff in respect of New Zealand Government stock did not fully discharge the borrower's indebtedness, which, it is alleged, sounded in New Zealand currency. There were therefor several causes of action in respect of the amounts alleged to have been short paid in respect of the several loans, and as well damages for detention of the money was claimed. The dominant issue was which pound—the Australian pound or the New Zealand pound—was the measure of the obligation of the borrower, that is to say, was the borrower bound to discharge the loan in New Zealand pounds, or in Australian pounds.

The Plaintiff is incorporated in the State of Victoria in the Commonwealth of Australia with its registered office at Melbourne; it carries on business in many parts of Australia and New Zealand. It was the Melbourne Office of the Plaintiff Company which invested the various sums with which the action is concerned.

The first consideration must be what is the proper law of the contract? The principles which settle that question are not in doubt:—

> "The legal principles which are to guide an English court on the question of the proper law of a contract are now well settled. It is the law which the parties intended to apply. Their intention will be ascertained by the intention expressed in the contract, if any, which will be conclusive. If no intention be expressed, the intention will be presumed by the court from the terms of the contract and the relevant surrounding circumstances. In coming to its conclusion, the court will be guided by rules which indicate that particular facts or conditions lead to a *prima facie* inference, in some cases an almost conclusive inference, as to the intention of the parties to apply a particular law, e.g., the country where the contract is made, the country where the contract is to be performed, if the contract related to immovables the country where they are situate, the country under whose flag the ship sails in which goods are contracted to be carried. But all these rules only serve to give

In the Supreme Court of New Zealand (Full Court).

No. 4. Reasons for Judgment, dated 31st May 1954.

(B) Gresson, J., *continued.*

prima facie indications of intention : they are all capable of being overcome by counter indications, however difficult it may be in some cases to find such. The principle of law so stated applies equally to contracts to which a sovereign state is a party as to other contracts."

(*Per* Lord Atkin in *R.* v. *International Trustee for the Protection of Bondholders Akt.* [1937] A.C. 500, 529.) It becomes necessary therefore to examine the manner in which the loan on which the first cause of action was based was completed. Though there are several loans it will be most convenient to discuss the question in relation to the first loan and subsequently to examine each of the others as to whether there are in respect of any of them distinguishing circumstances which compel a different conclusion.

In September, 1925, there were negotiations between the Treasury and a representative of Were & Son, Finance Brokers of Melbourne, who offered on behalf of Australian investors various sums of money for loan to the New Zealand Government. Eventually it was arranged through Were & Son that the National Mutual Life Association of Australasia Limited would provide £72,500 by way of loan for a term expiring 1st February, 1951, at an interest rate of 5½%. Interest was to be payable and the principal to be repayable at Melbourne. The Treasury had stipulated that the money should be provided in Wellington at par free of exchange and it was accordingly, on the 15th October, 1925, lodged at the Bank of New Zealand, Melbourne, and the same day remitted to Wellington by post, exchange being borne by Were & Son. Were & Son wrote on that day recording by way of confirmation the terms of the loan as follows :—

" Price of issue—Par.

Rate—5½% payable half yearly 1st February and 1st August.

Stock to be inscribed on the Wellington Register.

Interest to be payable and principal repayble in Melbourne free of exchange.

Interest to accrue from today's date and the first interest payment to be on 1st February, 1926, for the period 15th October, 1925, to 1st February, 1926.

Currency of the loan to be until 1st February, 1951."

The Treasury acknowledged the letter and asked that a formal application for investment be completed ; this was done in the form which had been prescribed as a form of application " For Dominion of New Zealand 5½% debentures or inscribed stock." It was executed by the General Manager at Melbourne of the Plaintiff Company and expressly stated— interest and principal payable Melbourne. A receipt in the prescribed form was issued by the Registrar of New Zealand Inscribed Stock acknowledging receipt of £72,500 for investment in 5½% New Zealand Inscribed Stock maturing 1st February, 1951, "which amount has this day been duly recorded in the Inscription Register." Subsequently in June, 1927, the Plaintiff disposed of £11,000 of the stock and applied for a Certificate of Title in respect of the balance. A Certificate of Title dated 16th November, 1927, was accordingly issued in the form common to all

investments of stock save that across the top were added the words: "Principal and Interest payable at Melbourne free of exchange." Thereafter the Defendant paid interest at the prescribed rate on the nominal or face value of the amount in Melbourne free of exchange up to the 1st August, 1948. When in August, 1948, on account of alterations in the exchange rate, £125 Australian currency became equivalent to £100 New Zealand currency, the Defendant paid the interest falling due on the 1st February, 1949, and thereafter, in Australian currency in Melbourne as if the measure of the Defendant's obligation was in Australian monetary units of account. Finally, on the 1st February, 1951, the Defendant in repayment of the principal moneys tendered £61,500 in Australian currency.

There can be no doubt that the proper inference arising from the circumstances of the loan is that the law of New Zealand is the law of the contract. Lord Wright in restating the principle when delivering the judgment of the Privy Council in *Mount Albert Council* v. *Australian Temperance Society* ([1938] A.C. 224) said :—

> "The proper law of the contract means that law which the English or other Court is to apply in determining the obligations under the contract. English law, in deciding these matters, has refused to treat as conclusive rigid or arbitrary criteria such as *lex loci contractus* or *lex loci solutionis*, and has treated the matter as depending on the intention of the parties to be ascertained in each case on a consideration of the terms of the contract, the situation of the parties and generally on all the surrounding facts. It may be that the parties have in terms in their agreement expressed what law they intend to govern, and in that case *prima facie* their intention will be effectuated by the Court. But in most cases they do not do so. The parties may not have thought of the matter at all. Then the Court has to impute an intention, or to determine for the parties what is the proper law which as just and reasonable persons they ought or would have intended if they had thought about the question when they made the contract."

The circumstances which in my opinion compel the inference that the law of New Zealand is the proper law of the contract are :—

(A) The loan was made to the Government of New Zealand which was borrowing under statutory authority; the loan was secured on the public revenues of New Zealand. Such a feature was in *Bonython's* case regarded as "of great, if not decisive weight, in determining what is the proper law of the contract," in which case it was said as well that where terms were used by a Government which were apt to describe its own money "It must require the strongest evidence to the contrary to suppose that it intended some other money."

(B) The money was paid to and received by the Defendant as New Zealand pounds. I have not overlooked that Australian pounds were lodged with the Bank of New Zealand at Melbourne and by that bank remitted to Wellington to be lodged with the Treasury, but in my opinion the Bank of New Zealand at Melbourne acted as agent for the Plaintiff in so doing. The New Zealand Government had stipulated that payment was to be made to it at

In the Supreme Court of New Zealand (Full Court).

No. 4. Reasons for Judgment, dated 31st May 1954.

(B) Gresson, J., *continued.*

Wellington without any deduction of any sort and when the broker who negotiated the loan paid to the Bank of New Zealand at Melbourne the cost of transmission he did so to enable the Plaintiff to fulfil its obligation of making payment in Wellington. The Plaintiff's obligation was to provide the money—in New Zealand pounds—in Wellington. That was the agreement. The arrangements to have the money remitted were the responsibility of the Plaintiff and the Plaintiff found it convenient to employ the Bank of New Zealand to carry out the transfer. It could just as easily have employed some other bank. I think the Bank of New Zealand at Melbourne in receiving the money and (for a consideration) forwarding it to Wellington acted as agent for the Plaintiff, so that the loan could be completed in Wellington as was necessary. The Plaintiff does not in its pleading allege that it caused the moneys to be paid to the Bank of New Zealand at Melbourne as agent for the Defendant as it does in respect of the later loans of £300,000 and £6,000. However, I do not think the question whether the Bank of New Zealand at Melbourne received the money as agent for the Defendant is of importance. It may well be that the Bank was agent for both parties.

Shortly the position is that except that the moneys had an Australian origin; and that repayment of the principal, and all payment of interest meantime, was to be made in Australia all the circumstances go to make the contract one which has its closest connection with New Zealand and point to the law of New Zealand as the proper law of the contract. Counsel on both sides conceded this was the case.

But that conclusion does not resolve the question whether pounds New Zealand or pounds Australian were to be paid to the Plaintiff. The crucial question is which of the two different moneys of account the parties intended. The question of determining the currency is not concluded by a decision as to what was the proper law of the contract. It is a question of construction which currency was the measure of the obligation; if the agreement between the parties is sufficiently explicit upon this point it concludes the matter. If that important matter is left in doubt two conflicting presumptions have to be taken into account—one a well-established principle that in the absence of indications to the contrary there is a presumption in favour of the money of the place of payment being the money of account, another that, since the substance of the obligation is governed by the proper law of the contract, it is that to which resort should be had to resolve the doubt—a principle which since *Bonython's* case must be regarded as of at least equal weight. A consideration of the respective force of these two presumptions I postpone in order to consider first whether the parties have sufficiently explicitly given expression to their intention. This question—what upon a proper construction of the contract is the money of account—is different because first it must be determined as a preliminary matter whether the Australian pound is a pound separate and distinct from the New Zealand pound; secondly, because the terms of the contract governing payment are somewhat loosely expressed, and thirdly because the decisions which have been given bearing upon the issue are difficult to reconcile.

As to the preliminary question, it is apparent that, by the time repayment had become due, the Australian pound had become a very different unit of account from the New Zealand pound, though each continued to be designated " pound ". They were " different " at the time the contract was made. There were in fact two monetary systems. It is only since the recent decision of the Privy Council in *Bonython* v. *Commonwealth of Australia* (1951) A.C. 201 that there has been recognised what had only been imperfectly recognised before—if recognised at all—that the pound in Australia is not the same unit of account as the pound in England. It must be equally true that the pound in Australia and the pound in New Zealand were not identical. Applying the test adopted in *Bonython* v. *Commonwealth of Australia* there were even at the time the contract was made different money systems in operation in Australia and New Zealand, even though at that time there was little if any practical difference between the Australian pound and the New Zealand pound. There was, however, the vital difference that they depended respectively upon the legislative power of Australia and that of New Zealand. Though in value there was no disparity, the two pounds were potentially different. There was in appearance a common unit of account, designated " pound " and symbolised " £ "; this fact obscured from the parties the fact that there was not an identity of currencies. The parties used a term which unknown to them was ambiguous. There were, though they may have failed fully to recognise it, two sorts of " pounds," an Australian pound and a New Zealand pound. Interpretation of the contract requires a decision which pound was meant, or is to be deemed to have been meant. The relative documents—the receipt, the application forms and the Certificate of Title, all merely spoke of "pounds." The parties in fixing the amount of the loan designated a unit of money which bore a different meaning according to whether it had an Australian or a New Zealand connotaton.

The case is therefore one where the parties have contracted in terms of either the one or the other standard of currency which belonged respectively to distinct monetary systems. The task is to ascertain which of the two different moneys of account the parties intended, considered in the light of the nature of the transaction, the place where it was concluded, and all other relevant circumstances. I think the words " payable in Melbourne free of exchange " provide the answer. The phrase " free of exchange " negatives the adoption of Australian currency as the money of account for if the debt was a stated number of Australian pounds there could be no question of exchange.

The provision " payable in Melbourne " of necessity meant payment was to be made in Australian currency and if no more had been said the question as to which currency was the measure of the debt would have had to be decided upon the authorities. But the added words " free of exchange " are no less an expression of the intention of the parties than the words " payable in Melbourne "; their proper meaning and effect must be sought for and given effect to. The phrase is ambiguous. It can refer either to the cost of exchanging one currency into another or to the rate of exchange or disparity in value of the currency; in the latter sense it is not a deduction at all. The expression " free of exchange " is susceptible of meaning, unaffected by the difference in value between the Australian pound and the New Zealand pound (see *Thomson* v. *Wylie*, 1938, N.S.W.

In the Supreme Court of New Zealand (Full Court).

No. 4. Reasons for Judgment, dated 31st May 1954.

(B) Gresson, J., *continued.*

(S.R.) 328, at p. 335). It is difficult to construe so ambiguous a term but it must mean either free of cost of transmission (Counsel were in agreement that at least it meant that), or free from, that is to say, unaffected by any difference in value there might be between the New Zealand pound and the Australian pound. In either case the provision is incompatible with the obligation sounding in Australian pounds. If Australian currency was to be the money of account as well as the money of payment no exchange operation could arise. Dr. Mann in his book " The Legal Aspect of Money," when discussing the determination of the money of account, points out that :—

> " The rule that in case of doubt it is the money of the place of payment that is owed by the debtor deserves approval, since, in view of the fact that the money of the place of payment is usually the money of payment, it leads to an identity of money of account and money of payment and thus to the avoidance of an exchange operation."

(The italics are my own.)

Since therefore the parties contemplated that payment of interest and repayment of principal would involve an exchange operation, it is a necessary inference that they must be deemed to have regarded New Zealand pounds as the money of account and Australian pounds as no more than the money of payment. I regard the words " payable in Melbourne free of exchange " as indicative of an intention to contract by reference to New Zealand pounds, a recognition that just as the Plaintiff was required to convert his Australian money into New Zealand money to complete the loan so on repayment there would be a similar conversion operation. The lender desired to secure repayment of these New Zealand pounds in its own country certainly undiminished by any cost of transmission, and perhaps unaffected by any question of exchange, i.e., disparity in values. The words are, I think, the negation of an intention that Australian currency should be the measure of the debt ; they are, on the contrary, a recognition that the contract was made on the basis of the New Zealand pound as the money of account. That interpretation, in my opinion, is much to be preferred to one which would leave the measure of the borrower's obligation a matter of uncertainty. It is, I think, unreal to suppose that the parties intended that the measure of the obligation should be a fluctuating one—that it should vary according to the value of the Australian pound. The parties at least recognised that in some sense the Australian pound was different from the New Zealand pound in that payment of the interest and principal in Australian currency would involve an exchange operation. The lender's stipulation that he should receive the money due to him in his own country " free of exchange " is consistent only with New Zealand pounds constituting the measure of the debt. If the debt was one of a stated amount of Australian pounds payable in Melbourne there could be no question of exchange. There would not be any exchange payable. I am therefore of opinion that this term of the contract expresses the intention of the parties to contract on the basis of New Zealand pounds as the money of account ; that accordingly the debt owing by the Defendant was expressed in New Zealand pounds which the Defendant was bound to pay at Melbourne as the place of payment and would consequentially be required to convert so as to pay the equivalent in Australian currency of the amounts from time to time accruing due.

If, however, I am wrong in attributing this effect to the inclusion of the words " free of exchange," then the position is that, the question not having been expressly decided by the parties, one is driven to a consideration what implication must be deemed to arise from all the circumstances of the transaction. One turns to the many authorities for guidance but one must be careful in examining the cases (which reveal perplexing differences of judicial opinion) to appreciate that each was a decision on the facts of that particular case and one must be on one's guard against regarding a principle enunciated, or a dictum let fall, as necessarily applying in another case which exhibits similarities but as well has differences. After giving to the cases close and careful consideration I reach the same conclusion, namely, that even if there is no expressed intention there must be attributed to the parties an intention to make New Zealand money the " money of account " to govern the substance of the obligation, and the currency of Australia no more than the " money of payment " to provide the means for discharging the debt.

At first sight it may appear that *Adelaide Electric Supply Company Limited* v. *Prudential Assurance Company Limited* (1934), A.C. 122, compels a contrary conclusion. The governing principle of that decision was that the law of the place of payment governed the meaning of the word " pound," and accordingly that where payment was to be made in Australia the debt was dischargeable in whatever currency was legal tender at that place ; and that where the creditor was entitled to payment in London it was entitled to be paid the appropriate number of pounds in the currency of England, i.e., English pounds. But the decision was based upon the view (of the majority) that the Australian pound was the same unit of account as the English pound. The later case *Mayor of Auckland* v. *Alliance Assurance Company Limited* (1937), A.C. 587 applied the Adelaide decision. At the date of the issue of the debentures evidencing the indebtedness there was little or no difference between the value of the New Zealand currency in New Zealand and the value of the sterling currency in England. The latter case, in applying the former case, proceeded on the same basis of fact that the pound contemplated in the contract was the common unit of account current in Great Britain and in various parts of the British Empire, and that at the time the contract was made " there was little or no practical difference between the value of the New Zealand currency in New Zealand and the value of the Sterling currency in England." This appears to amount to a finding that the English pound and the New Zealand pound were one and the same. It was accordingly held that as the mode of performance was governed by the law of the place of performance, the debt must be discharged in the currency of the place of payment—England—since an option there to be paid had been exercised. Lord Wright said (at page 606) :—

> " The debt expressed *in the common unit of account* must in the absence of contrary evidence be discharged by payment in the currency of the place of payment."
> (The italics are mine.)

In this case there is not a common unit of account.

Hard on the heels of the *Auckland* case came *Mount Albert Borough Council* v. *Australasian Temperance and General Mutual Life Assurance*

In the Supreme Court of New Zealand (Full Court).

No. 4. Reasons for Judgment, dated 31st May 1954.

(B) Gresson, J., *continued.*

Society Limited (1938) A.C. 224. The issue which there arose was somewhat different. Debentures issued by a local body in New Zealand bore interest payable in Melbourne. The question for decision was whether certain Victorian Legislation providing for compulsory reduction of interest on mortgage and other securities had any application. It was held that it had not; that the contract was governed by New Zealand law and that the obligation to pay was not governed by the law of the place where payment was stipulated to be made to the extent that the amount of the debt as expressed in the instrument creating it could be varied by Victorian legislation. Lord Wright had said, in delivering the judgment in the *Auckland* case :—

> " In the *Adelaide* case (1), however, there was no express term to show what currency was intended by the word ' pound.' The House of Lords held that the true meaning of the word ' pound ' must be determined on the basis of a rule depending on a well known principle of the conflict of laws, namely, that the mode of performance of a contract is to be governed by the law of the place of performance. That principle, no doubt, is limited to matters which can be fairly 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; but when it applies, as in the *Adelaide* case (1) it has the effect of introducing into the contract the law of currency or legal tender governing in the place of payment as a mode or method incidental to performance. Thus, where there is a common unit of account, to which the same denomination applies, as is the case with the word ' pound ' here, the debt expressed in the common unit must, in the absence of contrary evidence of actual intention, be discharged by payment in the currency of the place of payment. That was the decision in the *Adelaide* case (1), which, subject to a further matter, to be next discussed, governs the present case."

In the *Mount Albert* case, Lord Wright emphasised the distinction between obligation and performance. After pointing out that the whole tenor of the transaction was consistent only with its being governed by New Zealand law, that the loan had been agreed in New Zealand, that the money under the loan had been paid by the respondents to the appellants there, and that the appellants were a statutory body in New Zealand borrowing under statutory powers, he continued :—

> " Nor can they (i.e. their Lordships) accept the view that the obligation to pay is here governed by the place where it is stipulated that payment is to be made, in the sense that the amount of the debt, as expressed in the instrument creating it, can lawfully be varied by the Victorian Financial Emergency Act so as to bind a foreign jurisdiction, or indeed at all. So to hold would be, in their Lordships' judgment, to confuse two distinct conceptions, that is, to confuse the obligation with the performance of the obligation. It is well established in the law of England and of New Zealand which in this respect follows it, that the proper law of a contract has to be first ascertained where a question of conflict of laws arises."

Lord Wright made it clear that the law of the place of performance was not to be applied to the extent of changing the substance of the obligation expressed or embodied in the contract; that the *Adelaide* case had not been concerned with the substance of the obligation, " which in general is fixed by the proper law of the contract under which the obligation is created "; that there was in that case no question of reduction in the amount of the debt or liability or change in the contractual obligation. The actual decision in the *Mount Albert* case was based upon the ground that the Victorian legislation was not to be held applicable because it would operate to reduce the obligation under the contract whereas the law of the place of performance was concerned only with mode and method of payment.

There is not any real inconsistency between the *Mount Albert* case and the *Adelaide* case as some appear to have thought. In the *Adelaide* case the House of Lords was not concerned with the substance of the obligation but only with the mode or manner of performance, whilst in the *Mount Albert* case the Australian legislation, if it had been held to be applicable would have reduced the obligation arising from a contract which was governed by New Zealand law.

The principle of the *Adelaide* case as applied in the *Auckland* case was that where a debt is incurred in a unit which is common to two or more countries (e.g., the pound) then applying the rule that the mode of performance of a contract is governed by the law of the place of performance the debt must in the absence of contrary evidence of intention be discharged by payment in the currency of the place of payment. Such a contrary intention was found in *de Bueger* v. *J. Ballantyne and Company Limited* case (1938, A.C. 452). The contract was made in England for moneys to be paid in New Zealand. It was held that the word " sterling " added to the agreement defined what means of discharge, that is, what currency was being stipulated, the word " pound " and the symbol " £ " being the same both in England and New Zealand. If the word " sterling " had not been inserted the salary would have been payable in New Zealand currency, that being the place of payment. The Board refused to express an opinion on the question whether the construction of the agreement would have been the same if it had been made and entered into in New Zealand.

I do not think any of these decisions are inconsistent with my view that even if the parties have not expressly so decided there is an implication that the contract contemplated repayment of New Zealand pounds. The decision in the *Adelaide* case dominates the decision in the *Auckland* case but it was based upon a misapprehension of fact—an assumption that the two currencies were not separate and distinct, whereas in fact they were. That " monetary obligations are effectually discharged by payment of that which is legal tender in the *locus solutionis* " as was said by Lord Warrington in the *Adelaide* case (at p. 138) is true where, as he himself held, both currencies are identical. In the *Adelaide* case, the *Auckland* case, and again in the *Mount Albert* case, the place of payment governed the meaning of the word " pound " and the question appears to

In the Supreme Court of New Zealand (Full Court).

No. 4. Reasons for Judgment, dated 31st May 1954.

(B) Gresson, J., *continued.*

have been treated as one relating to performance on the assumption there was a common unit of account. As was said in the last-mentioned case :—

> " The law of the place of performance will *prima facie* govern the incidents or mode of performance, that is, performance as contrasted with obligation, thus in the present case it is not contested that the word ' pound ' in the debenture or coupon is to be construed with reference to the place of payment and as referring to the ' pound ' in Victorian currency."

Lord Wright, however, was only stating what was conceded in argument, though he made no comment on the concession. In the *de Bueger* case the parties were held to have expressly provided which currency was to be paid.

If alterations in the value of the pound can be made by the Government of the country of payment it results in a variation of the obligation ; but this is something which is outside the sphere of the law of the country of performance. Agreement that payment is to be made at such or such a place cannot, of itself, imply that the parties agree that the obligation of the contract is to be subject to variation by action on the part of the Government of the country where payment is to be made. The *Mount Albert* case decided the contrary. I do not overlook that in this case it was the action of the New Zealand Government which produced the disparity in value, by determining during the currency of the loan to restore its pound to parity with the English pound—thus as between New Zealand and Australia appreciating the value of the New Zealand pound and depreciating the value of the Australian pound. The parties had, however, contracted with the law of New Zealand as the proper law of the contract. If New Zealand should have legislated that all debenture indebtedness should be reduced and cancelled by ten pounds per centum (or any other proportion) thereof such an enactment would have bound the parties ; but a similar enactment by the Government of Australia would have been inoperative to reduce the debt, since the law of Australia was limited to matters of performance, not of obligation (as was decided in the *Mount Albert* case). The terms of the contract required payments of interest as well as of principal to be made in Melbourne free of exchange. The weight of authority is that it is only the method and manner in which a contractual obligation is to be performed that is governed by the law of the place of performance. Whether " New Zealand pounds " or " Australian pounds " should be paid relates to the substance of the obligation not to method or manner of payment.

It has always been the case that :—

> " In the absence of countervailing considerations . . . when the contract is made in one country, and is to be performed either wholly or partly in another, then the proper law of the contract may be presumed to be the law of the country where the performance is to take place (*lex loci solutionis*). This presumption may, in a given case, be applicable only to certain aspects of a contract. It will usually apply to the mode of performance as distinguished from the substance of the obligation."

(Dicey Conflict of Laws 6th Edition p. 593) and, too, that :—

> ". . . whenever the law of the place of performance is not the proper law of the contract or of any part of it, the court will incline towards the view that a line must be drawn between the substance of the obligation (governed by the proper law) and the mode of performance (governed by the *lex loci solutionis*). Any issue which arises between the parties must be classified as affecting the obligation itself or as one referring to the method in which it is to be performed."

(*Ibid.* p. 602.)

This case has to be dealt with on the basis that the law of New Zealand is the proper law of the contract and that its currency is different and distinct from that of Australia. *Bonython's* case compels a recognition that though a " pound " is the unit of currency both in the place of the proper law of the contract and in the place where the payment is to be made, it may not be a truly common unit of account, and that therefore to measure the debt in the currency of the place of payment would in effect be to affect the substance of the obligation, which is a matter which must be governed by the proper law of the contract. *Bonython's* case decided (authoritatively for us in New Zealand) not only that the determination of the money of account is essentially a question of interpretation but as well that it is a question of construction which, in any case where there are distinct and separate currencies, relates to the substance of the obligation and not to the mode of performance. So, too, in the latest case of all—*National Bank of Australasia* v. *Scottish Union and National Insurance Company Limited* [1952] A.C. 493 (though it is a case which is only of limited relevance since in this case the debtor's obligation was not based on contract). Lord Cohen in delivering Judgment of the Privy Council in the *National Bank* case quoted with apparent approval the observations made in the High Court of Australia by Dixon and Fullagar, JJ., that " great care must be exercised in using the place of payment as a consideration supporting an inference that the substance of the obligation is to be measured in the money of the same place " whilst conceding that " it may still be possible to draw the inference." Finally, Dr. Mann in his recently published second edition of " The Legal Aspect of Money " (p. 193) says :—

> " The rule is nothing but an easily rebuttable presumption, an emergency solution or a last resort which may be displaced by even the slightest indication in the circumstances of the case."

In this case there were no allegations that the law of Australia (the place of payment) was the proper law of the contract. All counsel conceded that the law of New Zealand was the proper law of the contract. The law of the place of payment must therefore be limited in its operation to the mode and method of the discharge of the obligation unless the parties have agreed otherwise. The earlier cases are to be explained on the basis that it was assumed, contrary to fact, that there was a common unit of account and that therefore the question " which currency " related to the mode of discharge and not to the substance of the obligation. In deciding whether an ambiguously described money of account is to be deemed to connote the currency of the proper law or the currency of the

In the Supreme Court of New Zealand (Full Court).

No. 4. Reasons for Judgment, dated 31st May 1954.

(B) Gresson, J., *continued.*

place of payment presumptions in both directions operate but in the final analysis the decision must be what on balance is the most reasonable intention to impute to the parties.

Turning to the facts of this case there is a contest between what may be called the Australian features of the contract and the New Zealand features of the contract; in my opinion the New Zealand features predominate. The moneys had their origin in Australia (and possibly were paid over in Australia to the Bank of New Zealand at Melbourne as agent for the Defendant); but it is a more material consideration that the contract was not completed until the moneys had been brought to New Zealand and had been lodged with the Treasury at Wellington. Payment of interest and repayment of principal was to be made in Australia and that is a weighty consideration. Even if the phrase " payable in Melbourne free of exchange " does not negative a presumption that the money of account which is intended is the money of the place of payment (as I think it does) nevertheless that presumption is not decisive. It is no more than a factor, sometimes decisive that a particular place is chosen for performance. (*Bonython's* case at p. 279.) Of what I have termed the New Zealand features there is the fact that it was the Government of New Zealand borrowing under statutory powers and charging the public revenues of the State a circumstance " of great, if not decisive weight in determining what is the proper law of the contract " (*Bonython's* case at p. 221), and though " it is not inconceivable that the legislature of a self-governing colony should authorise the raising of a loan in terms of currency other than its own . . . where it uses terms which are apt to describe its own lawful money it must require the strongest evidence to the contrary to suppose it intended some other money " (*ibid.* at p. 222).

My conclusion is therefore that, even upon an assumption that the contract does not contain any express indication of the intention of the parties (though I think it does), the proper implication arising from all the circumstances of the transaction (except the conduct of the parties subsequent to the contract which I do not regard as of any assistance in construing the contract) is that the parties based the transaction on the monetary system of New Zealand—that the law of New Zealand was the proper law of the contract by which the substance of the obligation is to be measured and that the liability of the Defendant was for a fixed amount in New Zealand pounds. I think careful consideration of all the cases supports my view that, where under a contract payment is to be made at a place other than the place where the contract was made, and there is not a truly common unit of account, so that the question " which currency " becomes one affecting the substance of the obligation rather than its performance, a great deal is required to warrant imputing to the parties an intention to adopt the currency of the place of payment as that by which the obligation is to be measured.

There remain to be considered the other loans. Though there are minor differences in respect of the completion of these loans in every case the moneys were brought to New Zealand, or were already in New Zealand, and were paid over to the Treasury at Wellington (although as regards three of the loans it is alleged and admitted that payment was made to

the Bank of New Zealand at Melbourne as agent for the Defendant). The sixth course of action was in respect of bearer debentures bought on the open market, but in that case too the moneys would have been paid to the Treasury in New Zealand. The more important features relating to the loan of £61,500 which I have discussed at some length apply equally to the other loans. All were borrowings by the Government of New Zealand. All were secured on the revenues of New Zealand. In every case (except that of the bearer debenture) payment of interest and repayment of principal was to be in Melbourne free of exchange. Even if the term " free of exchange " does not conclude the matter (as I think it does), and the question is therefore what intention is to be imputed to the parties the same considerations which led me to hold that the first loan was expressed in New Zealand pounds leads me similarly to hold as to all the others. In my opinion they too were loans of a fixed amount of New Zealand pounds.

There remains the question of interest. I think the Plaintiff should receive interest, say at $3\frac{1}{2}\%$ on all principal short paid as from 1st February, 1951, and is entitled to all interest (but without interest thereon) short paid.

Solicitors for Plaintiff : Messrs. YOUNG, COURTNEY, BENNETT and VIRTUE, Wellington.

Solicitors for Defendant : THE SOLICITOR-GENERAL, Crown Law Office, Wellington.

(C) STANTON, J.

(C) Stanton, J.

In this action the facts have been so fully stated by other members of the Court that it is unnecessary for me to recapitulate them. It will be sufficient for me to say that in my view the circumstances attending the negotiations between the parties when the moneys were borrowed do not afford much, if any, assistance in the interpretation of the documents here in question.

What seems to emerge is that the borrowing Government stipulated for the full amount of the advances to be provided in Wellington, that is in New Zealand pounds, and where their money was in Melbourne, the lending Company objected to paying the cost of converting it into New Zealand pounds. Had they accepted the Government's demands, it would have been strong evidence that the advance was made in New Zealand pounds. However, neither side would give way and the Brokers solved the impasse by personally bearing the cost of conversion. If anything, the circumstances seem to me to support the view that the advances were all received by the Government in New Zealand pounds.

I do however attach importance to what has been called the statutory backgrounds, that is the New Zealand Statutes under which the present securities were issued. Sec. 18 of the State Advances Act 1913 (as amended) provided as follows :—

> " (1) For the purposes of the Advances Office the Minister on being authorised by the Governor-General in Council so to do, may from time to time raise, on the security of and charged upon

In the Supreme Court of New Zealand (Full Court).

No. 4. Reasons for Judgment, dated 31st May 1954.

(c) Stanton, J., *continued.*

the public revenues of New Zealand, such sums of money as he thinks fit, not exceeding in any one financial year the amounts hereinafter specified.

(2) The maximum amount that may be raised in any one financial year for the business of the several branches of the Advances Office shall be as follows :—

For the Advances to Settlers Branch (Five million pounds) ;

For the Advances to Workers Branch (One million five hundred thousand pounds) ; and

For the Advances to Local Authorities Branch One million pounds.

(3) The sums so raised shall bear interest at such rate (not exceeding five per centum per annum) as the Minister prescribes.

(4) This Act shall be deemed to be an authorising Act within the meaning of the New Zealand Loans Act, 1908, and all moneys raised under this section shall be raised under and subject to the provisions of that Act accordingly."

The New Zealand Loans Act 1908 contains provision for the issue of debenture scrip or other securities in such form as the Minister thinks fit.

Regarding the matter for the moment apart from authority one would think it logical and natural that the words " sums of money " in sec. 18 referred to money that was legal tender in New Zealand, that is New Zealand money, and that the word "pounds" meant New Zealand pounds, and consequently the section contemplated the issue of securities in pounds only and consequently in New Zealand pounds only. It would be a startling proposition to say that the securities could be expressed, for example, in dollars, although it seems clear that moneys might be borrowed under the Act in Canada or the United States and made repayable there. Logically it would seem to follow that securities could not be issued in Australian pounds and that if it had been suggested that the securities in the instant case should be expressed as for so many Australian pounds, the New Zealand Government would have felt itself unable to agree and one can hardly imagine any Crown Law Officer advising the Government that it could properly or safely do so. Obviously what the Government could not or should not do expressly it could not and should not do by implication or presumption. Dr. Mann in The Legal Aspect of Money (1953 Edition) points out that in some countries certain records and transactions must be carried out only in the domestic currency and thinks it remarkable that there is no such statutory provision in England. He says however at page 157, note 5 :—

" It cannot be doubted that though there does not exist a statutory provision, the capital of a company incorporated in England must be expressed in pounds sterling, and if authority is needed, it is supplied by the dictum of Lord Wright in *Adelaide Electric Supply Co.* v. *Prudential Assurance Co.* (1934) A.C. 122, 150 : ' as the appellant company was registered in England, it is clear that its capital must be fixed in British sterling '."

Similarly the capital of a company incorporated in New Zealand must be expressed in New Zealand pounds. One would think that still more clearly would it appear that securities issued by the New Zealand Government under the authority of the Acts referred to must be expressed in New Zealand pounds. Similarly New Zealand taxpayers must make their returns for income tax in New Zealand pounds and if they have income earned in a foreign country and received in a foreign currency, it must for the purposes of such returns be converted into its equivalent in New Zealand pounds. See *Payne* v. *Deputy Federal Commissioner of Taxation* [1936] A.C. 497. Here the authority to borrow is a limited one and the amount borrowed and for which securities can be issued must not exceed the amounts specified in respect of each Branch calculated in New Zealand pounds. If securities are issued in a foreign currency how can it be known when the limit of issue has been reached ?

I have been assuming that New Zealand and Australian currencies are separate and distinct because they depend on two separate and distinct law-making systems, but I apprehend that it is now established beyond question that such is the recognised position. Although there is an identity of terminology between the two systems—an identity which no doubt has caused the uncertainty and confusion that has arisen—the two systems are as clearly distinct from each other as they are for example from that of the United States or France.

This distinction between the two currencies was accepted by both parties in the argument before us and it was equally accepted that the proper law of the contract was New Zealand law. Also that the determination as to the currency in which the securities were expressed was to be ascertained as a matter of construction as being the intention of the parties, regard being had to the words of the documents and all relevant circumstances. It was, however, contended by the Solicitor-General that in the circumstances of this case the Court should hold that there was an applicable rule of law, namely, that the question of currency was to be determined by the place of payment, and this being Melbourne, the currency contemplated was that of Australia. He did, however, concede that if there had been in the securities a provision that the lender could demand payment in two or more countries, at his option, the rule relating to the place of payment would not apply and the securities would then be regarded as expressed in New Zealand currency. That this admission was clearly right is established by the decision of the Judicial Committee of the Privy Council in *Bonython* v. *Commonwealth of Australia* [1951] A.C. 201. In that case the circumstances were, I think, indistinguishable from those in the instant case except in one respect, in *Bonython's* case there were optional places of payment, in this case there is but one, and it is on this fact and this fact alone that we are invited to come to the opposite conclusion from the one that was acceptable to their Lordships in the case cited.

It is undoubted that in some cases the place of payment has been held decisive in determining a doubtful question of currency and the most authoritative of these is the decision of the House of Lords in *Adelaide Electric Supply Co.* v. *Prudential Assurance Company* [1934] A.C. 122. This case has been repeatedly explained and criticised and was again examined by the Judicial Committee in *Bonython's* case and in *National Bank*

In the Supreme Court of New Zealand (Full Court).

No. 4. Reasons for Judgment, dated 31st May 1954.

(c) Stanton, J., *continued.*

of Australasia v. *Scottish Union and National Insurance Company* [1952] A.C. 493. Without going through these judgments at length I think the effect has been well summarised in Cheshire's Private International Law (1952 edition) at p. 237, as follows :—

> " The decision, however, did not lay down any general rule that if a particular place is chosen for payment the *Lex loci solutionis* must determine the measure of the obligation.
>
> This has been made clear by the Privy Council in *Bonython* v. *Commonwealth of Australia.*"

Another authority relied on in support of the rule as to the place of payment is *Auckland Corporation* v. *Alliance Assurance Company* [1937] A.C. 587. This case was in many respects very similar to *Bonython's* case and if in the latter case their Lordships had been satisfied with it, they could hardly have done otherwise than apply the rule as to the place of payment. Instead they were at pains to limit its authority to " the words of the particular contract and the surrounding circumstances as the Board found them to exist," and they consequently dealt with the slightly different circumstances in the *Bonython* case as justifying a completely different conclusion. It is true that their Lordships did not say that the result would have been the same if in the *Bonython* case there had been only one place of payment and that particular case was left open, but I read their judgment as moving the emphasis from the place of payment to the circumstances of issue, and particularly to the circumstances that the issuing body was the Government of a self-governing country acting under the statutory authority of that country, and charging its revenues. In such circumstances they said that the " Government using the terms applicable to its own monetary system must be presumed to refer to that system." That presumption they said could be displaced, but when it was also said that where a legislature " 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," I cannot think that the difference between having only one place of payment and having two or more places provides such evidence. The latter case, as their Lordships pointed out, is an instance of an option of place, not an option of currency. I would think it was only consonant with the expressions used by their Lordships that in such a case as this the rule of the place of payment must undoubtedly give way to the " overwhelming evidence " against it provided by the circumstances of issue. This seems to be the view of Dr. Mann who in the book already mentioned says at page 187 :—

> " The Government of a self-governing country must be presumed in its legislation as well as in its contracts to refer to its own monetary system whether or not the terms used by it are apt to refer to another system also."

Of the rule of the place of performance the same writer, referring to the difficulties arising in its application, says at page 193 :—

> " The remedy against such difficulties lies in a clear realisation of the fact that the rule is nothing but an easily rebuttable presumption, an emergency solution, or a last resort which may be displaced by even the slightest indication in the circumstances of the case."

In the *National Bank* case their Lordships said that case was similar to the *Auckland* case but following *Bonython's* case they said the *Auckland* case must be regarded as " a very special decision on the facts of the particular case," and they had no hesitation in coming to an opposite conclusion.

I conclude therefore that it is no longer possible to rely on the *Auckland* case where, as here, the circumstances are different. I also think that the proper inference to be drawn from *Bonython's* case and the *National Bank* case is that the fact of there being only one place of payment is not a " countervailing feature " sufficient to displace the presumpation arising from the special circumstances of issue. I do this with more confidence because with great respect, I think this result accords with what I have already referred to as the natural and logical result of the statutory background.

I have read with much interest the closely reasoned argument of Gresson, J., on the significance of the words " free of exchange " but in view of the clear conclusion to which I have come on the broader and more fully argued question of intention, I have not thought it necessary to consider the other matter.

Some reference was made to the fact that throughout the currency of the securities, interest was invariably paid in Australian pounds, although there were at times variations between the relative values of New Zealand and Australian pounds ranging from 7/6% depreciation of the New Zealand pound to £18/12/6% appreciation, and it was suggested that this course of conduct might be looked at to show the intention of the parties as to the meaning and construction of the securities. I do not think this can be done. In *Ottoman Bank of Nicosia* v. *Chakarian* [1938] A.C. 260 Lord Wright in delivering the judgment of the Judicial Committee said at page 272 :—

> " It is obvious that if a contract is clear and unambiguous its true effect cannot be changed merely by the course of conduct adopted by the parties in acting under it. Such conduct, if it is clear and unambiguous, may in certain events raise the inference that the parties have agreed to modify their contract, but short of that such conduct cannot have the effect of changing the operation of an unambiguous agreement, though it might possibly in special cases support, along with other appropriate evidence, a claim for rectification."

In rejecting a similar contention, Lord Cohen in the *National Bank* case said that their Lordships (of the Judicial Committee) were unable to attach weight to such facts and quoted with approval the statement of Macressan, C.J. (of Queensland), that subsequent conduct could not be called in aid to determine the true construction of a contract made many years before.

My conclusion therefore is that these securities are all to be considered as being expressed in New Zealand currency and that the obligation of the New Zealand Government is to provide in Melbourne the number of Australian pounds which is the equivalent of the nominal amount in

In the Supreme Court of New Zealand (Full Court).

No. 4. Reasons for Judgment, dated 31st May 1954.

(c) Stanton, J., *continued.*

New Zealand pounds of the principal and interest payable thereunder respectively and the Plaintiff is therefore entitled to recover the various amounts short paid since 1949.

The only question remaining is the claim for interest on the amounts short paid. By sec. 87 of the Judicature Act 1908 as substituted by sec. 3 of the Judicature Amendment Act 1952, it is provided that in any proceedings in any Court for the recovery of any debt or damages, the Court may if it thinks fit allow interest at such rate not exceeding 5% per annum as it thinks fit, on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of judgment. In *Bonython's* case the High Court of Australia refused to allow any interest and the Judicial Committee agreed with it, but the circumstances as explained by Latham, C.J. (75 C.L.R. 606), were rather special and quite different from those in the instant case. There would seem to be no reason why interest should not be allowed and it therefore requires to be considered as to whether that should be on the whole of the claim and at what rate. Section 87 contains an express provision against allowing interest upon interest, and although this was probably intended to refer to the interest which the section itself authorises and not to claims for interest already owing, it does suggest that claims for interest may properly be differentiated from other claims. Plaintiff is–as has already been said–claiming interest on short paid amounts of both interest and principal and I would think it reasonable to allow interest on unpaid principal but not on unpaid interest. As to the rate of interest to be allowed, a table put in at the hearing showed that New Zealand Government securities commanded a rate of 3·08% in 1951 and 3·85% in 1952 and the tendency is for interest rates to rise. In all the circumstances I would think it reasonable to allow interest at 3½% per annum on all principal sums unpaid from 1st February, 1951 down to the date of judgment.

I would give judgment for the Plaintiff for the total amount claimed with simple interest on all principal sums at 3½% per annum from 1st February 1951 to the date of judgment, together with appropriate costs.

Solicitors: Messrs. YOUNG, COURTNEY, BENNETT & VIRTUE, Wellington, for Plaintiff.

CROWN LAW OFFICE, Wellington, for Defendant.

(D) Hay, J.

(D) HAY, J.

The problem before the Court is to determine the currency in which the parties intended the obligation expressed in the inscribed stock and debentures to be measured, or in more technical language, to determine the money of account. Where, as in the present case, there has been no express designation of the monetary system within the framework of which it was intended that the debtor's obligation should be measured, the question becomes one of implication from the terms of the contract and its surrounding circumstances, no one factor being necessarily decisive (Cheshire—Private International Law, 4th Ed. (1952), p. 235).

The factor most strongly relied upon by the Plaintiff company is that the inscribed stock and debentures were issued by the New Zealand Government on the authority of New Zealand statutory provisions, and secured on the public revenues of the Dominion. It is contended in those circumstances that the question before the Court is governed by the decision of the Privy Council in *Bonython* v. *Commonwealth of Australia* (1951), A.C. 201, where the Judicial Committee at p. 222 said (*inter alia*) :

> " 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 . . . 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 determined the meaning of the word ' pound '."

On the other hand, the factor relied upon by the Defendant is the rule of construction that in the absence of indications of a contrary intention, it is to be presumed that the money of account which is intended is the money of the place of payment. That presumption, so it is contended, should have full application to the facts of the present case, where one place of payment, and one place only is specified. The submission is that by the terms of the contract, the inscribed stock and debentures were to be repaid in the currency of the place of payment, at the time of repayment, and that the rule to that effect has been in no way affected by any of the authorities cited on behalf of the Plaintiff. That being so, it is submitted that the case stands in the same category as *Adelaide Electric Supply Coy., Ltd.* v. *Prudential Assurance Coy., Ltd.* (1934), A.C. 122, and is governed by that decision.

The issue accordingly resolves itself into a contest between two presumptions, in order to determine which of them is to be deemed to prevail in the light of the facts of the case. The inquiry is directed only to that aspect of the contracts which relates to the mode of performance, it not being disputed by the Solicitor-General that the proper law of the contracts is the law of New Zealand. Such a situation does not involve any departure from the principal that the proper law alone is the one to which regard must be had in determining the general obligations of the contracts. As stated by Evatt, J. In the *Wanganui-Rangitikei Electric-power Board* case (1934), 50 C.L.R. 581 at p. 604 :

> " It is quite correct, as Mr. Bonney has contended, that a transaction may in certain respects, such as the mode of performance be governed by the law of one country although it is governed by the law of another country in other respects. For instance, the present debentures are payable in New South Wales to the holder for the time being, and, although the governing law of the

In the Supreme Court of New Zealand (Full Court).

No. 4. Reasons for Judgment, dated 31st May 1954.

(D) Hay, J., *continued.*

transaction is that of New Zealand, the form of currency which may be lawfully tendered to the holder will be determined by the local law in force in New South Wales. But this does not mean that there are two different systems of law which can simultaneously govern and determine the general obligation of the contract, including the question of interpretation whether what has been done amounts to a performance of the obligation of the contract. On the contrary, the whole theory which lies at the root of private international law, however difficult that theory may be in its application, is that the law of one country and one country alone, can be the proper or governing law of the contract; so that, to pursue the illustration given, although the law of country *A* is the proper or governing law of the contract, and the law of country *B* may be referred to in order to determine the method and incidents of performance of the contract, this is because the law of country *A* itself requires or concedes that the methods and incidents of performance should depend upon the law in force at the locality of performance, that is, country *B*."

Careful study on my part of the reasoning in the *Bonython* case does not lead me to the conclusion that in considering the two presumptions to which reference has been made, any greater weight is to be attached to the one as against the other. Countervailing features may be present in either case to affect the weight to be given to the presumption. The Judicial Committee found in the circumstances before it overwhelming evidence that it was to the law of Queensland that the parties looked for the determination of their rights, and put the matter equally strongly when it went on to say (at p. 222) :—

> " 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."

At the same time it was said (at p. 219) :—

> " . . . 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, which 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."

Their Lordships went on to say it was thus that the decision in the *Adelaide* case was to be explained, the decision resting on the fact that under the altered articles of the company, payment of dividends on its stock was to be made in Australia only; and added (at p. 220) :—

> " It was therefore easy to conclude that on 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."

I therefore find nothing in the *Bonython* case which compels this Court to hold that it must govern the decision in the present case. On the contrary, the circumstances here are such as in my opinion to make the *Bonython* case clearly distinguishable. The only countervailing features present in that case were firstly that the lender was given a choice of payment in London, and secondly that the larger part of the authorised loan was in fact raised in London. As to the first, it was pointed out in the judgment that payment in London was only one of four alternative modes of performance, and as the substance of the obligation must be deemed in every case to be the same, the fact that London might be chosen as the place of payment became a factor of little or no weight. As to the second, the judgment stated that while it was more difficult to assess, no details of the transaction had been given, and the history and fate of the debentures issued in London were not revealed. In the circumstances, the Judicial Committee took what it described as the safer course of examining the contract between the appellants or their predecessors in title and the Government of Queensland, and of disregarding what must be a matter of mere speculation, namely, 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. In marked contrast to those circumstances which characterised the *Bonython* case, we have here the crucial factor that in the inscribed stock and debentures held by the Plaintiff Company one place only is named as the place of payment; and so far as the remainder of the loan is concerned, full details as to the terms and conditions of issue are set out in the statement of agreed facts.

According to those facts, the Minister of Finance in the years 1925 and 1926 duly borrowed a total of £3,002,500 upon and subject to the following conditions:—

(A) A sum of £1,250,000 was subscribed by English investors and made available at Wellington, New Zealand, at par rate of exchange to provide £1,250,000 at Wellington. The inscribed stock issued in respect of such borrowings was inscribed on the London Register of the Inscribed Stock Register of the New Zealand Government, and the holders of £1,000,000 of such stock were specifically given the option of payment of interest and repayment of principal at London, New York or Wellington, such payment and repayment at New York to be on the basis of 4 dollars 86⅔ cents to the United Kingdom pound. The remaining £250,000 and the interest thereon were respectively repayable and payable in London only.

(B) A sum of £1,644,500 was subscribed by Australian investors and made available at Wellington at par rate of exchange to provide £1,644,500 at Wellington. The inscribed stock issued in respect of such borrowings was inscribed in the Wellington, New Zealand, Register of Inscribed Stock, and the principal and interest moneys were respectively repayable and payable either at Melbourne or at Sydney (as arranged at the time of issue) free of exchange, without any option to change the place of such repayment or payment after the date of issue.

In the Supreme Court of New Zealand (Full Court).

No. 4.
Reasons for Judgment, dated 31st May 1954.

(D) Hay, J., *continued.*

(C) A sum of £108,000 was subscribed by Australian investors and made available at Wellington. In respect of such moneys Bearer Debentures were issued by the New Zealand Government providing for payment at Melbourne, and no option was given to the holder of any such debentures to transfer the place of payment of such debentures after the date of its issue.

The various parcels of inscribed stock referred to in the causes of action numbered 1 to 5 inclusive in the Plaintiff's Statement of Claim were part and parcel of the issue of inscribed stock to Australian investors referred to under paragraph (B) above; and the four debentures for £500 each referred to in the sixth cause of action were a portion of some seventy such debentures issued in 1925 and 1926 by the New Zealand Government to a holder of £35,000 of the said inscribed stock who elected in terms of relevant legislation in 1927 to convert such £35,000 of inscribed stock into debentures payable to bearer.

No prospectus was issued by or on behalf of the New Zealand Government in respect of these loan moneys. In or about September 1925 at Wellington negotiations were entered into between the Secretary to the Treasury, acting on behalf of the Minister of Finance, and a representative present in Wellington of the firm of J. B. Were and Son, Stock, Share and Finance Brokers, of Melbourne, with a view to obtaining by way of loan from investors, either in Australia or in England, the whole or part of the moneys which the Minister was authorised to raise. The said stockbrokers were informed by the Secretary to the Treasury that they were at liberty to obtain offers of money from Australian investors upon and subject to several options as to stock to be issued. Documentary evidence establishes the course the negotiations took. A memorandum of the 6th October 1925, prepared by the Secretary of the Treasury, enumerated details of the initial offers (aggregating £1,500,000) made by the stockbrokers on account of unnamed Australian investors, the memorandum stating that as to a specified portion of that sum interest and principal was to be payable in London, as to a further portion in London, as to another portion in New York or London at the option of the lender, and as to another portion in London or Australia at the option of the lender. Further negotiations resulted in the preparation by the stockbrokers on the 19th October 1925 of a schedule setting out particulars of investments totalling £1,872,500 by named lenders for specified amounts, and indicating in each case where the moneys were to be repayable by the borrower. The schedule included the initial investment of £72,500 by the Plaintiff Company (£61,500 of which is the subject of the first cause of action) and showed that repayment was to be made in Melbourne. Subsequent investments to a substantial extent in the same loan were made by the Plaintiff Company, the moneys in each case being expressed to be repayable in Melbourne, and it is, I think, reasonable to assume that the same surrounding circumstances as obtained in relation to the initial investment of £72,500 apply also the subsequent investments.

In the negotiations between the Treasury and the stockbrokers, one of the requirements by the Treasury was that the moneys invested were to

be made available in Wellington, and the said schedule prepared by the stockbrokers on the 19th October 1925 accordingly shows that the principal sums subscribed, whether in London or Australia, were to be at par Wellington. As regards the Plaintiff Company's initial subscription of £72,500, the money was on the 15th October 1925 paid by it to the Bank of New Zealand at Melbourne as the agent for the New Zealand Treasury, on terms that interest should accrue as from that date. The exchange charge involved in remitting the money to Wellington was borne by the stockbrokers. In fact it is stated that the stockbrokers bore the cost of remitting to New Zealand perhaps all of the moneys subscribed to the loan through their activities. Considerable discussion took place in the argument before us as to whether in the circumstances it could be said (as contended by the Solicitor-General) that the Plaintiff Company had made its initial investment in Australian currency, but to my mind, whatever view be taken of the facts in that connection, they can have no important bearing on the question for determination in the case. The stockbrokers acted generally as an intermediary to bring the investors and the New Zealand Government into contractual relations, and it was no doubt to their advantage to meet the cost of bringing the moneys to Wellington in the first instance. Of the remaining investments made by the Plaintiff Company in the loan, the moneys were in two instances—causes of action 3 and 4—paid similarly in Melbourne ; and in another instance—cause of action 2—in Wellington by way of exchange for existing New Zealand Government Inscribed Stock already held by the Plaintiff Company (and significantly for present purposes repayable at Wellington). In the other two cases—causes of action 5 and 6—the debentures were acquired by the Plaintiff Company by purchase from other original holders.

The whole atmosphere in which this loan was floated suggests to me that at the time of the making of the contracts which are the subject of these proceedings, both parties must be deemed to have had in mind the possibility of a divergence of currencies in the future. In the year 1925 the liability of currencies to depreciate was a matter of common knowledge, demonstrated by the collapse of currencies in different parts of the world. From the point of view of the New Zealand Government, it was inviting subscriptions to its loan wholly from foreign investors, at the same time making it clear that the lenders had the option at the time of issue (within certain prescribed limits) of nominating the place where repayment was to be made. From the point of view of the Plaintiff Company, it was careful in its negotiations through the stockbrokers to stipulate that the terms of the contracts should include provision for repayment in Melbourne, and that provision appears to me a dominant feature of the contracts, going far beyond the choice of a place of payment merely as a matter of convenience. Such provision was arrived at as the result of bargaining between the parties, and in my opinion the course of negotiations is consistent only with the view that the intention in the mind of the Plaintiff Company was that in making its investment it should be assured of repayment in Australian currency, without taking the risk of possible fluctuations in the currency of New Zealand. Granting that the securities issued were apt in their terms to describe the New Zealand Government's own lawful money, and that (in the words of the Privy Council) it must require the strongest evidence to the contrary to suppose that it intended some other

In the Supreme Court of New Zealand (Full Court).

No. 4. Reasons for Judgment, dated 31st May 1954.

(D) Hay, J., *continued.*

money, I think such evidence is present in the circumstances of the case. It is significant in that connection to look at the terms of issue in respect of the loan moneys subscribed in London which, it may be noted, were so subscribed by two Australian life insurance companies other than the Plaintiff Company. Of the total of £1,250,000 so subscribed, £250,000 was made repayable in London, and the remaining £1,000,000 in London, New York or Wellington at the option of the holders, the important factor to be noted being that payment in New York was to be on the basis of a fixed rate of exchange between the dollar and the United Kingdom (not the New Zealand) pound.

The judgment in the *Bonython* case proceeded on the assumption that there must be deemed to have been one measure of obligation common to all the debentures, and if I may say so with the greatest respect, that assumption was justified by the facts of the case. Here, however, the facts are essentially different, showing that contracts on varying terms were made with the different classes of investors. I see no reason in principle why the contracts made between the Plaintiff Company and the New Zealand Government should not be construed separately from those made with English investors, taking into account on such construction all relevant factors associated with the loan as a whole.

During the argument, considerable reference was made to the course of conduct of the parties during the subsistence of the contracts, but I agree with the view expressed by Mr. Justice Stanton (whose judgment I have had the opportunity of considering) that subsequent conduct cannot in the circumstances be called in aid to determine the construction of contracts made many years previously. I have considered it unnecessary to refer to the question whether at the time of the issue of this inscribed stock and of these debentures in 1925 the currencies of Australia and New Zealand were distinct. That they were is in my opinion authoritatively settled by the *Bonython* case. Nor do I consider it a factor of importance that in certain of the contracts (those named in the 1st, 2nd and 5th causes of action) the stock was expressed to be domiciled at Wellington. I am satisfied from the facts before the Court that the term " domiciled " was so used in the sense of " inscribed," and in order to distinguish stock inscribed on the New Zealand register from that on the London register.

I desire, however, to advert to certain references in the *Bonython* case and the later case of *National Bank of Australasia Ltd.* v. *Scottish Union and National Insurance Co. Ltd* (1952) A.C. 493 to the case of *Auckland Corporation* v. *Alliance Assurance Coy.* (1937) A.C. p. 587. In the *Bonython* case (at p. 221) it was stated that if the Board in the *Auckland* case 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, the decision could only be rested on the words of the particular contract and the surrounding circumstances as the Board found them to exist. In the *National Bank* case (at p. 511) the Judicial Committee called attention to the observations of Dixon and Fullagar, JJ., in the High Court of Australia to the effect that great care must be exercised in

using the place of payment as a consideration supporting an inference that the substance of the obligation was to be measured in the money of the same place ; and went on to say :—

> " It may still be possible to draw the inference (see *Auckland Corporation* v. *Alliance Assurance Co*) but as appears from the observations of Lord Simons in *Bonython's* case, that case must be regarded as a very special decision on the facts of the particular case."

The foregoing references do not appear to me to impair the validity of the Auckland decision, nor the principles applied by Lord Wright in reaching it. If the facts there were special, those in the present case might equally be so regarded, as to my mind the conclusion arrived at by Lord Wright would have followed even more readily had the facts before him been those in the present case. I therefore regard the *Auckland* case as authoritative in the decision of the present case. In that connection attention may well be directed to the *Mount Albert Borough* case (1936) N.Z.L.R. 54 where the decision of the Court of Appeal was affirmed by the Privy Council (1938) A.C. 324. There the debentures provided for payment in Melbourne, and it was accepted both in the Court of Appeal and in the Privy Council that the implication of that provision was that the debentures were payable in Victorian currency. As Lord Wright said in delivering the judgment of the Privy Council (at p. 241) :

> " Thus in the present case it is not contested that the word ' pound ' in the debentures and coupon is to be construed with reference to the place of payment, and as referring to the ' pound ' in Victorian currency."

The conclusion at which I have arrived in this difficult case is that on the facts the presumption arising from the fixing of the place of payment has not been displaced, and that the mode of performance of the obligations sounds in Australian currency. That being so, the New Zealand Government having completely discharged its obligations under the various contracts, nothing further is payable to the Plaintiff company. I am for giving judgment for the Defendant.

Solicitors : YOUNG, COURTNEY, BENNETT & VIRTUE, Wellington, for Plaintiff.

CROWN LAW OFFICE, Wellington, for Defendant.

(E) NORTH, J.

The substantial question raised in these proceedings is whether the Plaintiff Company, as the holder of several parcels of inscribed stock and four bearer debentures issued by the Government of New Zealand which matured on the 1st February 1951, was entitled to be paid at Melbourne, Australia, the equivalent of the nominal amounts of such stock and debentures expressed in New Zealand currency. When some twenty years ago the currencies of the Dominion of New Zealand and of the Commonwealth of Australia diverged from English sterling, problems arose in a field of law then not very well understood. Since those days the subject

In the Supreme Court of New Zealand (Full Court).

No. 4. Reasons for Judgment, dated 31st May 1954.

(E) North, J., *continued.*

of money in its legal aspects has been much more closely studied, and now, finally, their Lordships in the Judicial Committee of the Privy Council in *Bonython* v. *Commonwealth of Australia* [1951] A.C. 201 have had occasion to re-examine some of the factors which require to be considered in determining which of two possible standards of currency the parties intended to use for the purpose of expressing the measure of the obligation. In result it is now possible to approach the problem raised in this case with a clearer appreciation of the matters which require to be considered.

First of all, I think it may now be accepted that at all relevant times the Dominion of New Zealand and the Commonwealth of Australia enjoyed separate and distinct monetary systems each resting on independent law-making power; if this be so, then it necessarily follows that there were in fact different moneys of account in each country, and although each bore the same denomination and had the same value at the date of the issue of these securities, they were " none the less potentially different " (*National Bank of Australasia Limited* v. *Scottish Union and National Insurance Company Limited* [1952] A.C. 493, 512). It follows then that when the Melbourne brokers met the New Zealand Treasury officials at Wellington and it was agreed that in respect of this part of the loan interest should be paid and principal repaid at Melbourne, Australia, there existed from the beginning an ambiguity as to which of these two moneys of account the parties intended to use for the purpose of expressing the obligation. This ambiguity became of very real importance when, before the date of the maturity of the stock and debentures, the Government of New Zealand, in exercise of its independent law-making power, decided to restore its currency to parity with English sterling, while the Commonwealth Government on the other hand presumably preferred to maintain the then existing rate of exchange on London.

The ascertainment of the intended money of account accordingly becomes a question of interpretation of the contractual intentions of the parties. In the nature of things, the enquiry is a somewhat artificial one because it would seem probable that at the time neither of the negotiating parties would have a clear appreciation that the currencies of the two countries—legally speaking— were separate and distinct, though I should think that it would have been realised that the " pound " might have different values in the two countries. In these circumstances the Court has to impute the intention from a consideration of the nature of the transaction and all the circumstances of the case. As the identification of the money of account goes to the substance of the transaction, this means that the question is to be determined in accordance with the proper law of the contract and which in my opinion in this case is New Zealand law. If I have correctly understood matters, however, the determination of the proper law of the contract " does not of course mean that (New Zealand) currency is the money of account. To ascertain the money of account in accordance with a given system of law does not mean to decide that the currency of the country, the law of which is applied, is the money owing by the debtor " (see *Dicey's Conflict of Laws*, 6th edn., p. 736, and see also *Auckland Corporation* v. *Alliance Assurance Company Limited* [1937] A.C. 587, 602. As however the legal systems of Australia and New Zealand are both founded on the common law of England, it would seem

that the general approach to the problem would be the same whether the proper law of the contract was English law, New Zealand law, or Australian law, but the proper law of the contract being New Zealand law, I think that this Court is obliged to pay particular regard to the judgments of the Judicial Committee of the Privy Council in the currency cases which have come from New Zealand.

The issue between the parties may be stated thus. Counsel for the Plaintiff Company, encouraged by the judgment of the Board in *Bonython's* case, submits that, as this is a Government loan, he starts the enquiry with a presumption in his favour that the obligation in the inscribed stock and debentures was expressed in New Zealand currency, and he submits that this presumption is so strong that the fact that the terms of the loan provided for repayment at Melbourne in Australia is not enough to displace it. The Solicitor-General on the other hand submits that there is a firmly established rule of construction that, in the absence of clear evidence of a contrary intention, the parties to a contract such as this are to be presumed to have intended to measure the obligation in the currency of the country in which the debt is made payable, and he urges that nothing was said in *Bonython's* case which would justify this Court declining to apply that rule in the present case.

Before discussing these opposing contentions, it will be desirable if I indicate my views on certain of particular matters that were discussed during the hearing. First of all I should say that further consideration has not caused me to change the opinion I expressed at the hearing that, in determining this question of interpretation, the subsequent conduct of the Plaintiff Company is of no importance. To begin with, I doubt whether this is a type of case where the subsequent behaviour of the lender could safely be looked at to solve the ambiguity. If, for example, the holder of one parcel of inscribed stock behaved differently from another, it would appear to me to produce a surprising result if the measure of the obligation of the common issue was held to vary from case to case. Apart from this difficulty, I do not consider that the conduct of the Plaintiff Company was sufficiently clear and unambiguous to permit the Court to draw any safe inference that the Plaintiff Company understood the debt to be expressed in Australian pounds—*Ottoman Bank of Nicosia* v. *Chakarian* 1938 A.C. 260, 273. Secondly, I do not think it right to use against the Plaintiff Company the circumstance that in most instances the Plaintiff Company paid its contributions to the New Zealand loan in Australian pounds and began to receive interest from the time that the money was paid into the Bank of New Zealand at Melbourne, for it seems clear that the New Zealand Government required the moneys to be brought to Wellington, and apparently the Treasury officials saw that the brokers met the cost of transmission of the moneys to New Zealand out of their commission. Thirdly, I am disposed to think that the Court, in reaching its conclusion on the question of interpretation, should not be influenced by the fact that other parts of this Government loan contained options entitling the holder to require payment at London, New York or Wellington, though the linking of the dollars with English sterling is rather significant. These arrangements appear to have been all made by the same firm of brokers, and I cannot think that it necessarily follows that the parties or their agents intended that each part of the total issue should be expressed in the

In the Supreme Court of New Zealand (Full Court).

No. 4. Reasons for Judgment, dated 31st May 1954.

(E) North, J., *continued.*

same currency—particularly when the evidence appears to show that the terms of the several parts of the loan were the subject of individual negotiations. Finally, it is desirable that I should indicate shortly the reasons which have caused me to conclude that the words " free of exchange " which appear in the inscribed stock certificates—but not in the debentures—after the words " principal and interest payable at Melbourne " do not really assist in ascertaining the intention of the parties. It seems clear that the word "exchange" may mean one of two things; it may mean the banking costs and charges in connection with the transmission of money from place to place, or it may refer to the difference or rate of difference in values between two currencies. At the hearing I certainly understood both counsel to agree that in the years 1925–1926 the word was not used with the latter meaning in transactions of this kind, and so far as I can recall—and the notes appear to confirm this—neither counsel claimed that any advantage accrued to his case from the use of these words. In the absence of any evidence to assist in the interpretation of this equivocal expression I am not disposed to conclude that the words "free of exchange" amount to a recognition that an exchange operation for the conversion of the money of account into the money of payment was involved, and that therefore the parties mean to provide that the money of account was to be the New Zealand " pound." I appreciate that the stipulation that payment was to be made at Melbourne placed the obligation on the debtor to get the money to Melbourne and thus to meet any costs of transmission, but it is not uncommon, both in commercial and in legal documents, to find the words " free of exchange " or " free of all charges " included after the designation of the place of payment, merely for the purpose of indicating that payment is to be made at a stipulated place without any deductions. I do not consider then that it would be safe to conclude that the words " free of exchange " either add to or detract from the weight to be given to the fact that the borrower undertook to repay the loan money at Melbourne, Australia. Even, however, if it be permissible to interpret the words as having the wider meaning, then the question still remains whether the words " free of " do not mean " independent of the difference in values of the (New Zealand) pound and the Australian pound "—*Thomson* v. *Wylie* 1938 N.S.W.S.R. 334—and I am inclined to think that the provision meant that the loan was to be repaid in Australian " pounds " whether at the material date the exchange rate was in favour of or against Australia as regards New Zealand.

Turning now to a consideration of the question posed in this case, I think it must be acknowledged that, until *Bonython's* case, it had been accepted in this country that the *Auckland* case had resolved the doubts which arose when overseas loans began to mature after the Government, as a matter of policy, decided to depreciate the currency. Moreover, in the *Auckland* case neither the fact that the terms of the loan gave the lender several options entitling him to select the most convenient place of payment nor the fact that the debentures were issued by a local body pursuant to the provisions of a New Zealand Act of Parliament were thought by the Judicial Committee to constitute sufficient evidence of a contrary intention to displace the presumption in favour of the currency of the place of payment determining the measure of the obligation. If for no other reason than the desirability of maintaining a certain rule

of law, it seems to me, if I may say so with respect, that it is very necessary that this Court should not too readily conclude—as counsel for the Plaintiff company invites us to conclude—that *Bonython's* case would have been decided in the same way even if only one place of payment had been provided, and that this case should be similarly decided. I should say at once that I do not read the judgment of the Board in that case as intending to do more than leave that question open for future consideration, for their Lordships expressly said (p. 221): "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." Nor do I think it right to conclude that their Lordships who sat in the *Auckland* case did not appreciate that the currency of New Zealand was different from the currency of England, for it must not be overlooked that in *Adelaide Electric Supply Company Limited* v. *Prudential Assurance Company Limited* (1934), A.C. 122, 155, Lord Wright had said: "I think it must be held in view of these facts that not only in a business sense, but in a legal sense, the currencies of England and Australia are and were at all material times different currencies, notwithstanding the identity of the unit of account. This difference is inherent in the difference of the law-making authority at either place. "The criticism that can be levelled against the *Auckland* case, as I see it, is that the Board did not regard it as of any importance that optional places of payment had been provided, but proceeded to deal with the case as if the only place of payment had been London, and it is this particular aspect of the case which is impliedly criticised by their Lordships in *Bonython's* case in the passage which reads (p. 220): "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 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 principle, no doubt, is 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." Furthermore, as *De Buegar* v. *J. Ballantyne and Company Limited* (1938), A.C. 452 shows, it has never been doubted that the rule in favour of the currency of the place of payment raises only a rebuttable presumption, for in that case the addition of the word "sterling" in a contract made in England was held to provide sufficient evidence of a contrary intention, but, even so, Lord Wright thought it wise to emphasise that "if the word 'sterling' had not been inserted, the salary would have been payable in New Zealand currency, that being the place of payment, on the principles laid down in the *Adelaide* case." Perhaps a more striking expression of judicial opinion

In the Supreme Court of New Zealand (Full Court).

No. 4. Reasons for Judgment, dated 31st May 1954.

(E) North, J., *continued.*

of the importance of the rule is to be found in *Mount Albert Borough Council* v. *Australasian Temperance and General Mutual Life Assurance Society Limited* (1938), A.C. 224 where the facts, so far as I can see, were precisely similar to the facts in the present case with the one exception that the debentures were issued by a local body and not by the Government itself. In that case Lord Wright seems to treat the presumption as being a qualification to the rule that the proper law of the contract governs the substance of the obligation saying (p. 240): " It is true that, when stating this general rule, there are qualifications to be borne in mind, as for instance, that the law of the place of performance, will *prima facie* govern the incidents or mode of performance, that is performance as contrasted with obligation. Thus in the present case it is not contested that the word ' pound ' in the debenture and coupon is to be construed with reference to the place of payment, and as referring to the ' pound ' in Victorian currency." On the other hand, in *Bonython's* case, once their Lordships reached the conclusion that, as payment in London was only one of four alternative modes of performance, " the fact that London might be chosen as the place of payment becomes a factor of little or no weight," then in the nature of things there was no room for the application of the rule of law laid down in the earlier cases, and it was in this situation, as I see it, that their Lordships, while recognising that " 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," emphasised that (p. 222) " 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." Their Lordships then turned to see whether there were any other countervailing factors of sufficient weight to displace this presumption and found that there were none, for in that case, unlike the present case, no details of the history of the loan were included in the record.

It is apparent then that there are very real points of difference between the facts of this case and the facts in *Bonython's* case, and, this being the position, in view of the present state of the authorities, it may be open to question whether this Court is justified in departing from the principles laid down in the *Adelaide* case, adopted three years later in the *Auckland* case, and referred to with approval in the later cases to which I have referred. I think I am bound to regard the *Auckland* case as still being authoritative apart from the options question, and, if this be the position, I can find nothing in the facts of this case to encourage me to conclude that it can be distinguished from the *Auckland* case, with the one exception that here we are concerned with a loan raised by a Government pursuant to express statutory authority, whereas there the Judicial Committee were concerned with a local body which also had raised its loan moneys pursuant to statutory authority. I have read with care the judgments of Gresson and Stanton, J.J., but, with great respect for their opinions, I feel that, if, after all these years, there is to be a new approach to this problem and a distinction drawn between the acts of a Government and the acts of a local body, itself a creature of statute, it is for their Lordships in the Privy Council to say so and not for this Court. It would seem that the rule of construction applied in these cases was first applied in disputes arising within the ambit of a single monetary system which

nevertheless had differing values in different places—see *Taylor* v. *Booth* (1834), 1 C. & P. 286—but its extension to this type of case in my opinion provides a convenient and sensible solution to a most difficult and complex problem, and even Dr. F. A. Mann in his comprehensive work, *The Legal Aspect of Money*, 2nd Edn., p. 191, acknowledges that the rule " deserves approval." If, however, as my two brothers think sufficient was said by their Lordships in *Bonython's* case to justify the course which Sir Wilfred Sim invites us to take, I can only say that his argument has not satisfied me that the Plaintiff company is entitled to succeed. In my opinion there are three factors present in this case which in any event displace the presumption that " the Government of a self-governing country, using the terms appropriate to its own monetary system, must be presumed to refer to that system." The first of these factors is that section 5 of the New Zealand Loans Act 1908 expressly authorises the Minister to raise loans outside New Zealand, and he is given authority to prescribe the mode, conditions, times and places of repayment of such loans. There is no reference in the section to New Zealand money as such, and I conclude that, so long as the Minister does not exceed the authorised maximum sum prescribed by section 18 of the State Advances Act 1913 (which sum I agree must mean New Zealand pounds), he is free to raise the loans wherever he pleases and in whatever currency he thinks it advantageous to adopt. If, then, as I think is the case, the New Zealand statute contemplated that loans might be raised in other countries, it seems to me that the presumption loses much of its weight, and it should not be overlooked that in the *Auckland* case, in dealing it is true with a question of *ultra vires*, Lord Wright, in discussing the meaning of a companion Act expressed in more limited language, said (p. 607): " The sections of the Act of 1913 quoted above in this judgment show clearly that the place of payment contemplated by the Act may be a place either within or without New Zealand . . . For obvious financial reasons, a country like New Zealand will desire to raise money in other than the local financial markets. Thus it may desire to float a loan in England or in one of the Australian States ; if it floats such a loan and issues debentures expressed in pounds payable in London or in (e.g.) Melbourne, such a financial operation is within the conditions of the Act, and will carry with it, according to the rules of law now established, the consequence, that if nothing more is said in the debenture, the pounds in question will connote a currency either of England, if the loan is repayable in London, or of Australia, if the loan, for instance, is repayable in Melbourne." The second factor, which in my opinion requires to be taken into account, is that, although Australia and New Zealand are independent states and were at the time independent Dominions, yet in financial matters they are and were closely associated one with the other. Most of the large Australian banks trade in New Zealand, and as the debenture shows, the Bank of New Zealand has an office in Melbourne. In view of this close association there does not seem to be anything incongruous in the idea of the Government of New Zealand undertaking to repay the Australian investors so many " pounds " expressed in Australian currency, and, as the enquiry is directed to the ascertainment of the parties' intentions, it seems to me that there may be a danger of treating the " pounds " of the two countries in the same way as if they were foreign countries. Finally, whatever the position may be in cases such as

In the Supreme Court of New Zealand (Full Court).

No. 4. Reasons for Judgment, dated 31st May 1954.

(E) North, J., *continued.*

Bonython's where nothing was known of the history of the transaction, I cannot help thinking that, where a Government deliberately undertakes in the course of negotiations to repay a loan in the country of the lender and uses terms that are apt to describe the legal money of that country, it is more consonant with the probable intentions of the parties to hold that the lender was stipulating for repayment to be made in the currency of his own country without regard to rises or falls in value of the currency of the borrower. Thus, in the present case, if the position had been reversed and it had been the Australian " pound " which had appreciated in value, then, if the argument of counsel for the Plaintiff company be correct, it seems that that company would have been obliged to have contented itself with a lesser number of " pounds " than the sum expressed in the inscribed stock and debentures, and this notwithstanding the fact that the brokers who had arranged the terms of the loan had expressly stipulated for the repayment of so many " pounds " at Melbourne.

For these reasons I am of opinion that the Plaintiff company fails in its action. I agree with the order proposed by Fair, J., as to costs.

Solicitors: YOUNG, COURTNEY, BENNETT & VIRTUE, Solicitors, Wellington, for Plaintiff.

THE CROWN LAW OFFICE, Wellington, for Defendant.

No. 5.

FORMAL JUDGMENT.

In the Supreme Court of New Zealand (Full Court).

No. 5. Formal Judgment, dated 31st May 1954.

No. A.208/53.

IN THE SUPREME COURT OF NEW ZEALAND.
Wellington District.
Wellington Registry.

Between THE NATIONAL MUTUAL LIFE ASSOCIATION OF AUSTRALASIA LIMITED having its principal place of business in the Dominion of New Zealand at Wellington and carrying on business in the said Dominion and elsewhere as a Life Insurance Office . . . . . Plaintiff

and

HER MAJESTY'S ATTORNEY-GENERAL FOR THE DOMINION OF NEW ZEALAND Defendant.

Before :

THE HONOURABLE MR. JUSTICE FAIR.
THE HONOURABLE MR. JUSTICE GRESSON.
THE HONOURABLE MR. JUSTICE STANTON.
THE HONOURABLE MR. JUSTICE HAY.
THE HONOURABLE MR. JUSTICE NORTH.

Monday, the 31st day of May, 1954.

THIS ACTION coming on for trial on the 5th, 6th, 7th and 8th days of October 1953 UPON HEARING Sir Wilfred Sim, Q.C., and Mr. D. W. Virtue of Counsel for the abovenamed Plaintiff and UPON HEARING Mr. H. E. Evans, Q.C., Solicitor-General, and Mr. E. J. Haughey, of Counsel for the abovenamed Defendant and the evidence then adduced on behalf of the Plaintiff and the Defendant respectively IT IS ADJUDGED that the abovenamed Plaintiff do recover nothing against the abovenamed Defendant and by consent that the above-named Plaintiff do pay to the abovenamed Defendant the sum of Seven Hundred and Fifty Pounds (£750.0.0) for costs together with the sum of Seventy-seven Pounds (£77.0.0) for disbursements.

By the Court,
J. L. W. GERKEN,
Deputy Registrar.

L.S.

In the Supreme Court of New Zealand (Full Court).

No. 6.
Order granting Final Leave to Appeal to Privy Council, dated 7th October 1954.

No. 6.

ORDER granting Final Leave to Appeal to Privy Council.

No. A.208/53.

IN THE SUPREME COURT OF NEW ZEALAND.
Wellington District.
Wellington Registry.

Between THE NATIONAL MUTUAL LIFE ASSOCIATION OF AUSTRALASIA LIMITED having its principal place of business in the Dominion of New Zealand at Wellington and carrying on business in the said Dominion and elsewhere as a Life Insurance Office . . . . . Plaintiff

and

HER MAJESTY'S ATTORNEY-GENERAL FOR THE DOMINION OF NEW ZEALAND Defendant.

Before :

THE HONOURABLE MR. JUSTICE STANTON,
THE HONOURABLE MR. JUSTICE ADAMS, and
THE HONOURABLE MR. JUSTICE McGREGOR.

Thursday, the 7th day of October, 1954.

UPON READING the Notice of Motion and Affidavit of Jack Robinson Effingham Bennett filed herein AND UPON HEARING Mr. D. W. Virtue of Counsel for the Plaintiff and Mr. H. E. Evans Q.C. the Solicitor-General of Counsel for the Defendant THIS COURT DOTH ORDER that the Plaintiff do have final leave to appeal to Her Majesty in Council from the Judgment of this Honourable Court delivered herein on Monday, the 31st day of May, 1954.

By the Court,
H. J. WORTHINGTON,
Deputy Registrar.

No. 1.

ORDER IN COUNCIL (relating to advances to Settlers).

No. 1. Order in Council (relating to advances to settlers), dated 23rd March 1925.

CHARLES FERGUSSON, Governor-General.

At the Government Buildings at Wellington this 23rd day of March, 1925.

Present:

THE HON. SIR FRANCIS BELL, presiding in Council.

WHEREAS by section 4 of the New Zealand Loans Act, 1908 (hereinafter referred to as "the said Act"), it is enacted that where in any authorizing Act authority is given to the Minister of Finance to raise any sum or sums of money on the security of and charged upon the Public Revenues of New Zealand, such moneys may be raised under and subject to the provisions of the said Act: AND WHEREAS by section 5 of the said Act as amended by section 8 of the Finance Act 1924 it is further enacted that, upon being authorized by the Governor-General in Council so to do, the Minister of Finance may from time to time, in New Zealand or elsewhere, by debentures, or scrip, or stock, or other securities under the said Act raise such sums of money not exceeding in the whole the total sum authorised to be raised as he thinks fit; AND WHEREAS by section 8 of the said Act it is declared that for all the purposes of the said Act and of the authorizing Act the total sum authorized to be raised shall be deemed to be the sum named in the authorizing Act together with such additional sums as may be necessary in order to actually produce to the Treasury the sum authorized to be raised after providing for all costs, charges and expenses connected with the raising of the loan or with the redemption or renewal of the securities issued in respect thereof, and that securities in excess of the sum authorized to be raised may be created and issued accordingly: AND WHEREAS the State Advances Act 1913 (hereinafter referred to as the authorising Act) is an authorising Act within the meaning of the said Act AND WHEREAS by Section 18 of the authorising Act as amended by Section 3 of the Finance Act 1923 and Section 3 of the Finance Act 1924 the Minister of Finance is empowered for the purposes of the Advances to Settlers Branch of the State Advances Office, and on being authorised by the Governor-General in Council so to do, to raise on the security of and charged upon the public revenues of New Zealand, such sums of money as he thinks fit not exceeding in any one financial year the amounts therein specified: AND WHEREAS by subsection 2 of the said section 18 as amended by Section 3 of the Finance Act 1923, and Section 3 of the Finance Act 1924, the maximum amount that may be raised in any one financial year for the business of the Advances to Settlers Branch of the State Advances Office is five million pounds: AND WHEREAS by subsection 3 of the said Section 18 it is provided that the sum so raised shall bear interest at such rate (not exceeding five per centum per annum) as the Minister of Finance prescribes: NOW THEREFORE His Excellency the Governor-General of the Dominion of New Zealand, in pursuance and exercise of the powers

Documents and Correspondence.

No. 1. Order in Council (relating to advances to settlers), dated 23rd March 1925. *continued.*

and authorities vested in him by the said Act and the authorising Act as so amended, and acting by and with the advice and consent of the Executive Council of the said Dominion, doth hereby authorise the Minister of Finance to raise for the business of the Advances to Settlers Branch of the State Advances Office under subsection 2 of section 18 of the authorising Act as so amended, any sum or sums not exceeding in the financial year ending on the Thirty First day of March one thousand nine hundred and twenty six, the sum of five million pounds, together with such additional sums as may be necessary in order to actually produce to the Treasury the said sum of five million pounds, after providing for all costs, charges and expenses connected with the raising thereof, or with the redemption or renewal of the securities issued in respect thereof.

(Sgd.) F. D. THOMSON,
Clerk of the Executive Council.

No. 2. Order in Council (relating to advances to workers), dated 23rd March 1925.

No. 2.

ORDER IN COUNCIL (relating to advances to Workers).

CHARLES FERGUSSON, Governor-General.

At the Government Buildings at Wellington, this 23rd day of March, 1925.

Present:

THE HON. SIR FRANCIS BELL, presiding in Council.

WHEREAS by section 4 of the New Zealand Loans Act, 1908 (hereinafter referred to as "the said Act"), it is enacted that where in any authorising Act authority is given to the Minister of Finance to raise any sum or sums of money on the security of and charged upon the Public Revenues of New Zealand, such moneys may be raised under and subject to the provisions of the said Act: AND WHEREAS by section 5 of the said Act as amended by section 8 of the Finance Act 1924 it is further enacted that, upon being authorised by the Governor-General in Council so to do, the Minister of Finance may from time to time, in New Zealand or elsewhere, by debentures, or scrip, or stock, or other securities under the said Act raise such sums of money not exceeding in the whole the total sum authorised to be raised as he thinks fit: AND WHEREAS by section 8 of the said Act it is declared that for all the purposes of the said Act and of the authorising Act the total sum authorised to be raised shall be deemed to be the sum named in the authorising Act together with such additional sums as may be necessary in order to actually produce to the Treasury the sum authorised to be raised after providing for all costs, charges, and expenses connected with the raising of the loan or with the redemption or renewal of the securities issued in respect thereof

No. 2. Order in Council (relating to advances to workers), dated 23rd March 1925. *continued.*

and that securities in excess of the sum authorised to be raised may be created and issued accordingly: AND WHEREAS the State Advances Act 1913 (hereinafter referred to as the authorising Act) is an authorising Act within the meaning of the said Act AND WHEREAS by Section 18 of the authorising Act as amended by Section 3 of the Finance Act 1923, the Minister of Finance is empowered for the purposes of the State Advances Office and on being authorised by the Governor-General in Council so to do, to raise on the security of and charged upon the public revenues of New Zealand, such sums of money as he thinks fit, not exceeding in any one financial year the amounts thereinafter specified AND WHEREAS by subsection 2 of the said section 18 as amended by section 3 of the Finance Act, 1923, the maximum amount that may be raised in any one financial year for the business of the Advances to Workers Branch of the State Advances Office, is one million five hundred thousand pounds AND WHEREAS by subsection 3 of the said section 18 it is provided that the sums so raised shall bear interest at such rate (not exceeding five per centum per annum) as the Minister of Finance prescribes NOW THEREFORE His Excellency the Governor-General of the Dominion of New Zealand, in pursuance and exercise of the powers and authorities vested in him by the said Act and the authorising Act as so amended and acting by and with the advice and consent of the Executive Council of the said Dominion, doth hereby authorise the Minister of Finance to raise for the business of the Advances to Workers Branch of the State Advances Office under subsection 2 of section 18 of the authorising Act as so amended any sum or sums not exceeding in the financial year ending on the thirty first day of March one thousand nine hundred and twenty six, the sum of one million five hundred thousand pounds, together with such additional sums as may be necessary in order to actually produce to the Treasury the said sum of one million five hundred thousand pounds, after providing for all costs, charges and expenses connected with the raising thereof, or with the redemption or renewal of the securities issued in respect thereof.

(Sgd.) F. D. THOMSON,
Clerk of the Executive Council.

No. 3.

ORDER IN COUNCIL (relating to advances to Settlers).

No. 3. Order in Council (relating to advances to settlers), dated 20th April 1926.

CHARLES FERGUSSON, Governor-General.
At the Government Buildings at Wellington, this 20th day of April, 1926.

Present:
THE RT. HON. J. G. COATES, presiding in Council.

WHEREAS by section 4 of the New Zealand Loans Act, 1908 (hereinafter referred to as "the said Act"), it is enacted that where in any authorising Act authority is given to the Minister of Finance to raise any sum or sums of money on the security of and charged upon the Public

Documents and Correspondence.

No. 3. Order in Council (relating to advances to settlers), dated 20th April 1926. *continued.*

Revenues of New Zealand, such moneys may be raised under and subject to the provisions of the said Act: AND WHEREAS by section 5 of the said Act, as amended by section 8 of the Finance Act, 1924, it is further enacted that, upon being authorised by the Governor-General in Council so to do, the Minister of Finance may from time to time, in New Zealand or elsewhere, by debentures, or scrip, or stock, or other securities, under the said Act raise such sums of money not exceeding in the whole the total sum authorised to be raised as he thinks fit: AND WHEREAS by section 8 of the said Act it is declared that for all the purposes of the said Act and of the authorising Act the total sum authorised to be raised shall be deemed to be the sum named in the authorising Act together with such additional sums as may be necessary in order to actually produce to the Treasury the sum authorised to be raised after providing for all costs, charges, and expenses connected with the raising of the loan or with the redemption or renewal of the securities issued in respect thereof, and that securities in excess of the sum authorised to be raised may be created and issued accordingly: AND WHEREAS the State Advances Act 1913 (hereinafter referred to as the authorising Act) is an authorising Act within the meaning of the said Act AND WHEREAS by Section 18 of the authorising Act as amended by Section 3 of the Finance Act 1923 and Section 3 of the Finance Act 1924 the Minister of Finance is empowered for the purposes of the Advances to Settlers Branch of the State Advances Office, and on being authorised by the Governor-General in Council so to do, to raise on the security of and charged upon the public revenues of New Zealand, such sums of money as he thinks fit not exceeding in any one financial year the amounts therein specified: AND WHEREAS by subsection 2 of the said section 18 as amended by Section 3 of the Finance Act 1923, and Section 3 of the Finance Act, 1924, the maximum amount that may be raised in any one financial year for the business of the Advances to Settlers Branch of the State Advances Office is five million pounds: AND WHEREAS by subsection 3 of the said Section 18 it is provided that the sums so raised shall bear interest at such rate (not exceeding five per centum per annum) as the Minister of Finance prescribes: NOW THEREFORE His Excellency the Governor-General of the Dominion of New Zealand, in pursuance and exercise of the powers and authorities vested in him by the said Act and the authorising Act as so amended, and acting by and with the advice and consent of the Executive Council of the said Dominion, doth hereby authorise the Minister of Finance to raise for the business of the Advances to Settlers Branch of the State Advances Office under subsection 2 of section 18 of the authorising Act as so amended, any sum or sums not exceeding in the Financial Year ending on the Thirty First day of March one thousand nine hundred and twentyseven, the sum of five million pounds, together with such additional sums as may be necessary in order to actually produce to the Treasury the said sum of five million pounds, after providing for all costs, charges and expenses connected with the raising thereof, or with the redemption or renewal of the securities issued in respect thereof.

(Sgd.) F. D. THOMSON,
Clerk of the Executive Council.

No. 4.

ORDER IN COUNCIL (relating to advances to Workers).

No. 4. Order in Council (relating to advances to workers), dated 20th April 1926.

CHARLES FERGUSSON, Governor-General.

At the Government Buildings at Wellington, this 20th day of April, 1926.

Present:

The RT. HON. J. G. COATES presiding.

WHEREAS by section 4 of the New Zealand Loans Act, 1908 (hereinafter referred to as " the said Act "), it is enacted that where in any authorizing Act authority is given to the Minister of Finance to raise any sum or sums of money on the security of and charged upon the Public Revenues of New Zealand, such moneys may be raised under and subject to the provisions of the said Act: AND WHEREAS by section 5 of the said Act, as amended by section 8 of the Finance Act, 1924, it is further enacted that, upon being authorised by the Governor-General in Council so to do, the Minister of Finance may from time to time, in New Zealand or elsewhere, by debentures, or scrip, or stock, or other securities, under the said Act raise such sums of money not exceeding in the whole the total sum authorized to be raised as he thinks fit: AND WHEREAS by section 8 of the said Act it is declared that for all the purposes of the said Act and of the authorizing Act the total sum authorized to be raised shall be deemed to be the sum named in the authorizing Act together with such additional sums as may be necessary in order to actually produce to the Treasury the sum authorized to be raised after providing for all costs, charges, and expenses connected with the raising of the loan or with the redemption or renewal of the securities issued in respect thereof, and that securities in excess of the sum authorized to be raised may be created and issued accordingly: AND WHEREAS the State Advances Act, 1913 (hereinafter referred to as the authorising Act) is an authorising Act within the meaning of the said Act: AND WHEREAS by Section 18 of the authorising Act as amended by Section 3 of the Finance Act 1923, the Minister of Finance is empowered for the purposes of the State Advances Office and on being authorised by the Governor-General in Council so to do to raise on the security of and charged upon the public revenues of New Zealand, such sums of money as he thinks fit, not exceeding in any one financial year the amounts therein specified: AND WHEREAS by subsection 2 of the said section 18 as amended by section 3 of the Finance Act 1923, the maximum amount that may be raised in any one financial year for the business of the Advances to Workers Branch of the State Advances Office, is one million five hundred thousand pounds: AND WHEREAS by subsection 3 of the said section 18 it is provided that the sums so raised shall bear interest at such rate (not exceeding five per centum per annum) as the Minister of Finance prescribes: NOW THEREFORE His Excellency the Governor-General of the Dominion of New Zealand in pursuance and exercise of the powers and authorities vested in him by the said Act and the authorising Act as so amended and acting by and with the advice and consent of the Executive Council of

Documents and Correspondence.

No. 4. Order in Council (relating to advances to workers), dated 20th April 1926. *continued.*

the said Dominion, doth hereby authorise the Minister of Finance to raise for the business of the Advances to Workers Branch of the State Advances Office under subsection 2 of section 18 of the authorising Act as so amended any sum or sums not exceeding in the financial year ending on the thirty-first day of March one thousand nine hundred and twenty-seven, the sum of one million five hundred thousand pounds, together with such additional sums as may be necessary in order to actually produce to the Treasury the said sum of one million five hundred thousand pounds, after providing for all costs, charges and expenses connected with the raising thereof, or with the redemption or renewal of the securities issued in respect thereof.

(Sgd.) F. D. THOMSON,
Clerk of the Executive Council.

No. 5.

SCHEDULE showing Subscriptions to 5½ per cent. 1st February 1951 Loan.

(A) £1,000,000 payable as to interest and repayable as to principal at London, New York or Wellington at option of holders on the basis of 4.86–2/3rds dollars to £(U.K.)1.

(All originally subscribed for by Mutual Life & Citizens Assurance Co. Ltd. in three parcels of £500,000, £300,000 and £200,000 on 8 October 1925, 19 October 1925 and 20 October 1925.)

£250,000 payable as to interest and repayable as to principal at London.

(All originally subscribed for in one parcel of £250,000 by Colonial Mutual Life Assurance Society Ltd. on 12 October 1925.)

(B) Amounts payable as to interest and repayable as to principal in Melbourne

1925	Plaintiff Association	172,500	
	Edward Jolley Crooke	32,000	
	Colonial Mutual Life Assurance Society Ltd.	450,000	
			654,500
1926	Plaintiff Association		
	7th May	300,000	
	8th May	6,000	
	19th May	24,000	
	3rd August	300,000	
			630,000
			£1,284,500
	Amount payable as to interest and repayable as to principal at Sydney. Mutual Life and Citizens Assurance Co. Ltd. (1926)		360,000
			£1,644,500

(C) Debentures payable as to interest and repayable as to principal at Melbourne

Issued in 1925	95,500
„ „ 1926	12,500
	£108,000

Documents and Correspondence.

No. 5. Schedule showing subscriptions to 5½% 1st February 1951 Loan, *continued.*

SUMMARY.

Total Issues for cash as at 10 December 1926

Inscribed Stock—London, New York or Wellington				1,000,000
,, ,, London				250,000
,, ,, Melbourne		1,284,500		
,, ,, Sydney		360,000		
			1,644,500	
Debentures			108,000	
			£3,002,500	10

As from 1st August 1927 portion of the 1951 stock payable as to interest and repayable as to principal at Melbourne amounting to £35,000 was converted by the then holder into 70 Debentures for £500 each (including Debentures Nos. 3618, 3619, 3626 and 3627 which were subsequently purchased by the Plaintiff Association).

No. 6.

MEMORANDUM as to options (with memorandum as to domicile of stock attached).

No. 6. Memorandum as to options (with memorandum as to domicile of stock attached), dated 6th October 1925.

No. 7.

AMENDED COPY OF MEMORANDUM as to options.

No. 7. Amended copy of memorandum as to options, dated 6th October 1925.

No. 8.

SCHEDULE Prepared by Stockbrokers showing how and to what extent options were taken up.

MIDLAND HOTEL, WELLINGTON, N.Z.

AS AT 19TH OCTOBER 1925.

N.Z. 5½ PER CENT. 1951.

Options		*Subscribed*		*Outstanding*	
No.	Amount	Name	Payable	Amount	Amount
				£	
1 and 3	£500,000 (Cash)	Mutual Life & Citizens Assce. Co. (Principal paid in London at par Wellington)	London, New York or Wellington	500,000	Nil
2 and 4	£500,000 (Cash)	Colonial Mutual Life Insce. Co. Ltd. (Principal paid in London at par Wellington)	London Melbourne	250,000 250,000	Nil
				200,000	
5	£500,000 (Cash)	Colonial Mutual (Principal paid in London at par Wellington)	Melbourne	200,000	
		M. L. & Citizens (Principal payable in London at par Wellington)	London/New York/N.Z.		
		National Mutual (Principal paid in Melbourne at par Wellington)	Melbourne	72,500	
				Total 472,500	27,500
		£1,472,500		Total Cash £1,472,500	
7	£400,000 (Exchange) tax free for 5½%/1951	M.L.C.	London/New York/N.Z.	300,000	
		National Mutual	Melbourne	100,000	Nil
				Total Exchange 400,000	
				Grand Total £1,872,500	
		(Cash & Exchanges)			

Documents and Correspondence.

No. 8. Schedule prepared by Stockbrokers showing how and to what extent options were taken up, dated 19th October 1925.

Documents and Correspondence.

No. 9. Letter. Stockbrokers to Treasury, dated 14th October 1925.

No. 9.

LETTER. Stockbrokers to Treasury.

14 Oct. 1925.

Midland Hotel,
Wellington.

The Secretary.
To The Treasury.

Dear Sir,

We have pleasure in accepting £72,500 N.Z. Govt. 5½% 1951, as per option No. 5, the interest to be payable and principal repayable in Melbourne. I shall be glad if you will instruct the Bank of New Zealand as early as possible to issue a receipt in Melbourne for the money, which will be paid on Thursday (tomorrow) morning, giving the details of the loan.

Yours faithfully,

(Sgd.) HERBERT RICHMOND,
for J. B. WERE & SON.

Details for the Bank—
5½%
Due 1/2/1951.
National Mutual Life Assn.
J. B. Were & Son to pay the exchange.

No. 10. Letter. Treasury to Stockbrokers, dated 14th October 1925.

No. 10.

LETTER. Treasury to Stockbrokers.

W : EDR.

14th October.

Dear Sir,

I have your acceptance of even date in respect of £72,500 New Zealand Government 5½% Inscribed Stock with currency to 1st February 1951, being portion of amount covered by option number (5), interest to be payable and principal repayable in Melbourne.

The General Manager, Bank of New Zealand, Wellington, has been requested to instruct his Manager at Melbourne by telegraph to accept the amount from the National Mutual Life Association and arrange for remittance to Wellington by post, cost of exchange to be borne by your firm.

The Bank of New Zealand, Melbourne, will issue a receipt embodying the terms and conditions as above.

Yours faithfully,
(Sgd.) ?
Secretary to the Treasury.

H. Richmond, Esq.,
c/o J. B. Were & Son,
Melbourne.

No. 11.

LETTER. Treasury to Bank of New Zealand, Wellington.

W : EDR. T.44/120/2.

14th October.

No. 11. Letter. Treasury to Bank of New Zealand, Wellington, dated 14th October 1925.

Sir,

ISSUE OF 5½% STOCK.

With further reference to my letter of the 9th instant, I have the honour to inform you that the Government has accepted a further investment of £72,500 in 5½% stock with currency for 25 years, to 1st Feb. 1951 interest and principal to be payable and repayable, respectively, in Melbourne. I shall be obliged if you will instruct your Manager at Melbourne by telegraph to accept the amount which will be lodged by the National Mutual Life Association. It is requested that your Melbourne Manager be instructed to issue a receipt to the Association embodying the terms and conditions as above.

The money is to be remitted to Wellington by post, exchange to be borne by Messrs. J. B. Were & Son.

I have the honour to be,
Sir,
Your obedient servant,
(Sgd.) A. D. PARK,
Assistant Secretary to the Treasury.

The General Manager,
Bank of New Zealand,
Wellington.

No. 12.

LETTER. Bank of New Zealand, Wellington to Treasury.

No. 12. Letter. Bank of New Zealand, Wellington to Treasury, dated 15th October 1925.

Bank of New Zealand,
Head Office,
Wellington,
15th October, 1925.

The Secretary to the Treasury,
Wellington.

Dear Sir,

Issue of 5½% Stock.

In terms of your letter No. T.44/120/2 of 14th inst., we cabled our Melbourne Manager yesterday to receive the £72,500 to be paid us to-day by the National Mutual Life Association, to issue a receipt therefor as agents for the New Zealand Treasury, and to remit by mail to North-End Branch for credit of the Public Account, collecting exchange from Messrs. J. B. Were & Son.

Yours faithfully,
(Sgd.) ?
General Manager.

Documents and Correspondence.

No. 13. Letter. Bank of New Zealand, Melbourne to Treasury, dated 15th October 1925.

No. 13.

LETTER. Bank of New Zealand, Melbourne to Treasury.

P.O. Box 528 E.

Tel. Cent. 421 & 422.

Bank of New Zealand,
347 Collins Street,
Melbourne.
15th October, 1925.

The Secretary,
The Treasury,
Wellington.

Dear Sir,

New Zealand Government Loan 5½% Maturing 1st February 1951.

Under instructions from our Head Office, Wellington we have today remitted by mail to North End, Wellington Branch the sum of £72,500 for credit of the Public Account.

The amount was received from Messrs. J. B. Were and Son, Melbourne on account of the National Mutual Life Association of Australasia, Ltd. Will you kindly issue a Certificate of Title in the name of the National Mutual Life Association in the above Loan and forward same to us.

Yours faithfully,
(Sgd.) ?
Manager.

No. 14. Letter. Stockbrokers to Treasury, dated 15th October 1925.

No. 14.

LETTER. Stockbrokers to Treasury.

J. B. WERE & SON,
Stock and Share
Brokers.

Telegraphic Address :—" Were Stock Exchange, Melbourne."
Cable Address :—" Were, Melbourne."
Bank of New Zealand Chambers,
349 Collins Street,
P.O. Box 1679 P,
Melbourne,
15th October, 1925.

The Secretary to the Treasury,
The Treasury,
Wellington, N.Z.

Dear Sir,

In connection with the £72,500 which we have today paid to the Bank of New Zealand, Melbourne, to be transferred to Wellington for the credit of the Treasury we confirm the cabled advices that this payment is made

on behalf of the National Mutual Life Association of A/sia Ltd. The Bank of New Zealand, Melbourne, has given us an Interim Receipt setting out the terms of the loan, which are as follows :—

Price of issue—Par.

Rate—5½% payable half-yearly 1st February and 1st August.

Stock to be inscribed on Wellington Register. Interest to be payable and principal repayable in Melbourne free of exchange.

Interest to accrue from to-day's date and the first interest payment to be on 1st February 1926 for the period 15th October 1925 to 1st February 1926.

Currency of the loan to be until 1st Feb. 1951.

No. 14. Letter. Stock-brokers to Treasury, dated 15th October 1925, *continued.*

We have been requested by our principals to write to you asking that the Certificate of Title be prepared and forwarded to us at the earliest opportunity.

Thanking you in anticipation,
We remain,
Yours faithfully,
(Sgd.) J. B. WERE & SON.

No. 15.

LETTER. Treasury to Bank of New Zealand, Melbourne.

No. 15. Letter. Treasury to Bank of New Zealand, Melbourne, dated 28th October 1925.

WHW : EDR

T.44/120/2

28th October,

Dear Sir,

New Zealand Government Inscribed Stock 5½%
maturing 1st February 1951.

I have to acknowledge receipt of your letter of the 15th instant, relative to the amount of £72,500 received for credit of the Public Account, and note that remittance by mail to North End, Wellington Branch, has been effected.

The stock will be inscribed in the name of the National Mutual Life Association of Australasia Ltd., on receipt of formal application for investment, the form in respect of which has been handed to the representative (in new Zealand) for Messrs. J. B. Were & Son, Melbourne.

In view of the fact that the Sharebrokers have preferred a request that the certificate of title be forwarded to them the National Mutual Life Association is being asked to indicate to whom the certificate is to be forwarded on inscription of the amount.

Yours faithfully,
(Sgd.) R. E. HAYES,
Secretary to the Treasury.

The Manager,
Bank of New Zealand,
P.O. Box 528 E.,
Melbourne.

Verbally arranged for with Mr. Richmond representing J. B. Were & Son.
(Sgd.) W.H.W.

Documents and Correspondence.

No. 16. Letter. Treasury to Stockbrokers dated 28th October 1925.

No. 16.

LETTER. Treasury to Stockbrokers.

WHW : EDR

T.44/120/2

28th October,

Dear Sirs,

I have to acknowledge receipt of your letter of the 15th instant relative to the amount of £72,500 lodged on the same date on behalf of the National Mutual Life Association of Australasia Ltd., for investment in New Zealand Government 5½% stock, on the terms indicated in the receipt handed to you by the Bank of New Zealand Melbourne. To complete Treasury records in the matter of inscription formal application for investment will require to be submitted by the Association and the necessary form is being handed to your representative, Mr. Richmond, for completion. On return of the form certificate of title will be forwarded as requested.

Yours faithfully,
(Sgd.) R. E. HAYES,
Secretary to the Treasury.

Messrs. J. B. Were & Son,
Stock & Sharebrokers,
P.O. Box 1679P.,
Melbourne.

* Position as regards application for Title explained to Mr. Richmond and supply of forms Ty. 213 forwarded to Messrs. J. B. Were & Son.

(Sgd.) W.H.W.
29/10.

No. 17. Letter. Stockbrokers to Treasury, dated 13th November 1925.

No. 17.

LETTER. Stockbrokers to Treasury.

Telegraphic Address :—" Were, Melbourne."
Cable Address :—" Were, Melbourne."

Registered J. B. Were & Son, Stock and Share Brokers,
Bank of New Zealand Chambers,
349, Collins Street,
P.O. Box 1679 P.,
Melbourne.

The Secretary to the Treasury,
The Treasury,
Wellington.

13th November, 1925.

Dear Sir,

We beg to enclose herewith Form of Application by the National Mutual Life Association of Australasia Limited for £72,500 New Zealand Government 5½% 1951 Inscribed Stock. Will you kindly send to us Certificate of Inscription in due course in the name of The National Mutual, or if you send direct to the Association, will you please let us know that you have done so.

We remain,
Yours faithfully,
(Sgd.) J. B. WERE & SON.

No. 18.
Application Form in respect of £72,500 Inscribed Stock.

No. 18.

APPLICATION FORM in respect of £72,500 Inscribed Stock.

No. 19.

INSCRIBED STOCK RECEIPT No. 51/2.

No. 19. Inscribed Stock Receipt No. 51/2, dated 30th November 1925.

No. 20.
CERTIFICATE OF TITLE No. 14846.

No. 21.

LETTER. Stockbrokers to Treasury.

No. 21. Letter. Stockbrokers to Treasury, dated 19th October 1925.

Midland Hotel. Wellington, N.Z.

19th October 1925.

The Secretary to the Treasury.

Dear Sir,

"National Mutual" Sale of £100,000 N.Z. Tax Free 4½% and Purchase of 5½% 1951.

I have pleasure in confirming my telephone intimation to you that my firm has been successful in arranging with the National Mutual Life Association to sell £100,000 N.Z. 4½% tax free stock and reinvest the proceeds in N.Z. 5½% 1951 at par, the stock to be inscribed in Wellington and the interest to be payable and principal repayable in Melbourne. The basis under which your Government will purchase the tax free stock is £96%, accrued interest to date of settlement to go to the seller, and no buying brokerage to be payable by the Government.

I shall advise you later regarding the details of the tax free stock being sold, the date of settlement, and also as to whether the association will be making a cash payment for the amount of the discount so that an even £100,000 of the new loan may be taken up.

Yours faithfully,

(Sgd.) H. RICHMOND.
Representing
J. B. Were & Son,
349 Collins St.,
Melbourne.

Documents and Correspondence.

No. 22.

LETTER. Treasury to Stockbrokers.

RA.

19th October.

No. 22. Letter. Treasury to Stockbrokers, dated 19th October 1925.

Dear Sir,

I am in receipt of your letter of the 19th instant re "National Mutual" sale of £100,000 New Zealand tax free 4½% securities purchase price £96, the proceeds to be invested in the 5½% issue now offered with a currency of 25 years, stock to be inscribed in Wellington, interest to be payable and principal repayable in Melbourne, the purchase of the 4½% stock to be free of any charge to the Government.

Yours faithfully,

(Sgd.) R. E. HAYES,
Secretary to the Treasury.

H. Richmond, Esq.,
c/o Messrs. J. B. Were & Son,
Wellington.

No. 23.

LETTER. Stockbrokers to Treasury.

No. 23. Letter. Stockbrokers to Treasury, dated 20th October 1925.

Midland Hotel. Wellington, N.Z.
20th October 1925.

The Secretary to the Treasury.

Dear Sir,

" National Mutual " exchange of £100,000 N.Z. tax free 4½% for N.Z. 5½% 1951.

I beg to inform you that it is desired to make the settlement in regard to this transaction in Wellington to-morrow (Wednesday), 21st instant.

The N.Z. manager for the National Mutual Life Assn. is being instructed to hand over to me a transfer for £100,000 4½% 1939 stock and he (or I) will later pay in to the Treasury a cheque for £100,000 for the purchase of a similar amount of N.Z. 5½% 1951, the Treasury to issue a receipt setting out that interest is payable half-yearly on 1st February and 1st August in Melbourne free of exchange and the principal is repayable in Melbourne, the stock to be inscribed in Wellington.

I also will be lodging the transfer with the Treasury and trust to receive in return cheque for £96,012.6.7, made up as follows :—

£100,000 4½/39 at £96	£96,000
Accrued Interest one day	12. 6. 7
	£96,012. 6. 7

I will fix the settlement with the National Mutual at ten o'clock a.m. and with the Treasury at 10.30 a.m. if this is suitable to you.

Yours faithfully,
(Sgd.) HERBERT RICHMOND.
Representing
J. B. Were & Son,
349 Collins St.,
Melbourne.

Documents and Correspondence.

No. 24.
Letter. Treasury to Stockbrokers, dated 21st October 1925.

No. 24.

LETTER. Treasury to Stockbrokers.

T.44/120/2.

W : EDR.

21st October.

Dear Sir,

Purchase of £100,000 4½% Tax Free Stock from the National Mutual Life Association.

I have to acknowledge receipt of your letter of the 20th instant, relative to the above transaction, settlement in respect of which will take place this morning. It is noted that the proceeds together with additional amount required to make up £100,000 will be lodged this day for investment in 5½% 1951 stock, domiciled Wellington with interest payable and principal repayable in Melbourne free of exchange.

Yours faithfully,

(Sgd.) R. E. H.
Registrar of N.Z. Inscribed Stock.

Herbert Richmond, Esq.,
c/o Messrs. J. B. Were & Son,
Melbourne.

No. 25.

TREASURY RECEIPT No. T44/120/2.

No. 25. Treasury Receipt No. T/44/120/2, dated 21st October 1925.

No. 26.
Application in respect of £100,000 Inscribed Stock.

No. 26.

APPLICATION in respect of £100,000 Inscribed Stock.

No. 27.
Inscribed Stock Receipt No. 51/1, dated 2nd November 1925.

No. 27.

INSCRIBED STOCK RECEIPT No. 51/1.

No. 28.
Application form in respect of £306,000 Inscribed Stock.

No. 28.

APPLICATION FORM in respect of £306,000 Inscribed Stock.

No. 29.
Certificate of Title No. 12128.

No. 29.

CERTIFICATE OF TITLE No. 12128.

No. 30.
Certificate of Title No. 21505.

No. 30.

CERTIFICATE OF TITLE No. 21505.

No. 31.

APPLICATION FORM in respect of £300,000 Inscribed Stock.

No. 32.
Certificate of Title No. 12545.

No. 32.

CERTIFICATE OF TITLE No. 12545.

No. 33.

LETTER. Stockbrokers to Treasury.

No. 33. Letter. Stockbrokers to Treasury, dated 23rd October 1925.

Wellington, N.Z.
23rd October, 1925.

Midland Hotel.
The Secretary to the Treasury.

Dear Sir,

E. J. Crooke £32,000 N.Z. 5½% 1951 Stock.

I have pleasure in informing you that the Honourable Edward Jolley Crooke, The Holey Plain, Rosedale, Victoria, Australia, has taken £32,000 N.Z. 5½%, 1st February, 1951; stock to be inscribed on the Wellington register and interest to be payable and principal repayable free of exchange in Melbourne.

The principal money will be paid to the New Zealand High Commissioner in London by the Union Bank of Australia Ltd. next Tuesday 27th inst., for transfer to Wellington at par. I shall be glad if you will kindly arrange with the High Commissioner for the issue of a receipt setting out the terms of the issue and with the Bank of New Zealand for the transfer to Wellington.

Thanking you in anticipation,

Yours faithfully,
(Sgd.) HERBERT RICHMOND,
Representing J. B. Were & Son.

No. 34.

LETTER. Treasury to Stockbrokers.

No. 34. Letter. Treasury to Stockbrokers, dated 23rd October 1925.

T.44/120/2.

W : EDR.

23rd October.

Dear Sir,

E. J. Crooke—£32,000 New Zealand 5½% 1951 Stock.

I have to acknowledge receipt of your letter of even date relative to the investment of £32,000 in New Zealand 5½% 1951 stock by the Honourable Edward Jolley Crooke, The Holey Plain, Rosedale, Victoria, Australia; stock to be inscribed Wellington interest payable and principal repayable at par of exchange Melbourne.

It is noted that purchase money will be paid in London by the Union Bank of Australia Ltd. on Tuesday next, 27th instant. The necessary advices are being issued to the High Commissioner by cable and to the General Manager, Bank of New Zealand, Wellington, transfer of the money to Wellington at par being at your charge.

Yours faithfully,
(Sgd.) R. E. HAYES,
Secretary to the Treasury.

Herbert Richmond, Esq.,
c/o Messrs. J. B. Were & Son,
Melbourne.

Documents and Correspondence.

No. 35.

LETTER. New Zealand Loan Agents, London to Union Bank of Australia, Ltd., London.

No. 35. Letter. New Zealand Loan Agents, London to Union Bank of Australia, Ltd., London, dated 27th October 1925.

Finance

ET/GB. 27th October, 1925.

Dear Sir,

We hereby acknowledge receipt of the sum of £32,000 for investment in the New Zealand Government 5½% Loan on account of the Honourable Edward Jolley Crooke, The Holeyplain, Rosedale, Victoria, Australia, on the following terms :—

Amount of investment :—	£32,000.
Rate of Interest :—	5½% per annum.
Issue Price :—	Par.
Maturity Date :—	1st February 1951.
Interest payable from date of lodgment.	
Interest dates :—	1st February & 1st August.
Security :—	Stock to be domiciled in Wellington.

Payment of Principal and Interest at Melbourne free of Exchange.

We are, dear Sir,

Yours faithfully,

(Sgd.) J. ALLEN,

(Sgd.) ALEXANDER CRABB,
Loan Agents.

Countersigned :
(Sgd.) H. C. STEERE,
for Audit Officer.

The Manager,
The Union Bank of Australia, Ltd.,
71 Cornhill,
London, E.C.3.

No. 36. Letter. High Commissioner for New Zealand to Minister of Finance, dated 4th November 1925.

No. 36.

LETTER. High Commissioner for New Zealand to Minister of Finance.

Dominion of New Zealand.
New Zealand Government Offices,
415, Strand,
London, W.C.2.
4th November, 1925.

Finance
ET/GB.

No. B/5839.

Sir,

New Zealand Government 5½% Internal Loan.

In continuation of my letter No. B/5740 of 22nd ultimo, I now have the honour to acknowledge receipt of your further cablegram of 23rd idem, as follows :—

" With reference to 5½% issue have accepted following additional offers :—

Firstly : £32,000 5½% Stock maturing 1st February 1951 domicile Wellington, interest and principal to be made payable in Melbourne. Purchase money will be paid to Public Account London by Union Bank of Australia, Ltd., on 27th October on account of Honourable Edward Jolley Crooke, The Holeyplain, Rosedale, Victoria, Australia.

Secondly : £70,500 5½% Debentures interest payable and principal repayable in Melbourne, Debentures to be issued in Wellington. Colonial Mutual Life Assurance Society, Ltd., will lodge £70,500 in Public Account London on 27th October. Arrangements have been made here for transfer both amounts to Wellington at par. Stock and Debentures will be issued under State Advances Act 1913 Settlers Branch. Receipt embodying terms to be given to respective purchasers."

Immediately upon receipt of this cablegram, I communicated with the Union Bank of Australia, Ltd., and the Colonial Mutual Life Assurance Society, Ltd., who duly confirmed the terms of the investments as above. The Union Bank of Australia, however, informed me that the payment of interest and Principal in Melbourne was to be made free of Exchange, and the Colonial Mutual Life Assurance Society, Ltd., stated in connection with their investment, that the maturity date was 1st February, 1951, and that payments in Melbourne were also free of Exchange. As these two conditions were not contained in your above cablegram, I deemed it advisable to cable you in this connection, in order to obtain your confirmation on these points. I therefore cabled you on 27th ultimo, as follows :—

" . . . *Thirdly :* Presume payment of principal and interest in Melbourne in connection with both offers is free of exchange and that £70,500 Debentures mature on 1st February 1951. Please confirm."

and on the following day I received your reply cablegram, viz. :—

" With reference to your telegram of 27th October your thirdly confirmed."

Documents and Correspondence.

No. 36. Letter. High Commissioner for New Zealand to Minister of Finance, dated 4th November 1925, *continued.*

On the 27th ultimo the Union Bank of Australia, Ltd., paid over to me the sum of £32,000 and the Colonial Mutual Life Assurance Society, Ltd., the amount of £70,500, and these two amounts were duly credited to the New Zealand Public Account on that day. A receipt embodying the terms of the investment was handed over to the purchaser in each instance, and I now attach hereto a copy of these receipts for your information.

I have also to inform you that the Bank of New Zealand were requested to transfer these amounts, totalling £102,500, to the Public Account, Wellington, and, in this connection, Commissioners' Order No. 2441 for £102,500 was issued on 27th ultimo in favour of the Public Account, Wellington. I cabled you on that day regarding these transactions, as under :—

> " Referring to your telegram of 23rd October, £32,000 Union Bank of Australia and £70,500 Colonial Mutual has this day been lodged for the credit of the Public Account. *Secondly :* £102,500 transferred to the Public Account, Wellington, 27th October. Audited. *Thirdly* . . ."

I have, the honour to be, Sir,

Your obedient Servant,

(Sgd.) ALEXANDER CRABB,
for HIGH COMMISSIONER FOR NEW ZEALAND.

No. 37.
Application form in respect of £32,000 Inscribed Stock.

No. 37.

APPLICATION FORM in respect of £32,000 Inscribed Stock.

No. 38.

INSCRIBED STOCK Receipt No. 51/3.

No. 38. Inscribed Stock Receipt No. 51/3, dated 30th November 1925.

No. 39.

MEMORANDUM OF TRANSFER No. 29642.

No. 40.
Application form in respect of £24,000 Inscribed Stock.

No. 40.

APPLICATION FORM in respect of £24,000 Inscribed Stock.

No. 41.

CERTIFIED COPY OF ENTRY in Register of Inscribed Stock.

STATE ADVANCES ACT, 1913 (ADVANCES TO SETTLERS BRANCH).

Maturing 1st February, 1951, Interest at 5½% payable 1st Feb. 1st August.

Principal and Interest payable at Melbourne Free of Exchange.

Warrant to go to General Manager,

THE NATIONAL MUTUAL LIFE ASSOCIATION OF AUSTRALASIA LTD.,

395 Collins St.
Melbourne, Vic.

1927							1925			
May 25	19478	To Transfer	51/11	11000	72500		Oct. 15	51/2	By Cash	72500
„ 25	19479	„	51/11	24000	96500					
1930							1926			
Nov. 18	26129	„	51/13	5000	396500		May 19		„	24000
„ 18	26166	„	51/17	100000	402500		„ 7		„	300000
„ 24	26179	„	51/18	2000	391500		„ 8		„	6000
„ 25	26188	„	51/17	45000	367500					
„ 18	26290	„	51/19	50000	362500					
Dec. 2	26357	„	51/20	2500	262500					
Nov. 25	26358	„	51/21	3000	260500					
„ 24	26391	„	51/22	1000	215500					
„ 24	26392	„	51/22	4000	165500					
Dec. 2	26407	„	51/24	2500	163000					
Nov. 25	26455	„	51/28	5000	160000					
„ 25	26456	„	51/28	5000	159000					
„ 25	26937	„	51/40	10000	155000					
„ 25	26937	„	51/41	5000	152500					
„ 25	26937	„	51/35	5000	147500					
„ 25	26937	„	51/36	5000	142500					
1951										
Feb. 1	To Redemption DE 327			117500	132500					
					127500					
					122500					
					117500					

In accordance with the provisions of Section 38 of the New Zealand Loans Act, 1932, I hereby certify that the above is a correct copy of the entries in the Register of Stock.

Reserve Bank of New Zealand,
Registrar of Stock,
(Sgd.) W. R. EGGERS,
Chief Accountant.
Date : 10 Sep. 1953.

Documents and Correspondence.

No. 42. Certified copy of entry in Register of Inscribed Stock.

No. 42.

CERTIFIED COPY OF ENTRY in Register of Inscribed Stock.

STATE ADVANCES ACT, 1913 (ADV. TO WORKERS).

5½% Matures 1st February, 1951.

Principal and Interest payable at Melbourne Free of Exchange.

Interest Warrants to be addressed to the General Manager,
THE NATIONAL MUTUAL LIFE ASSOCIATION OF AUSTRALASIA LTD.,
Melbourne.

1951					1926				
Feb. 1	Redemption D.E. 327	300000	300000		Aug. 3	51A/2	By Cash	300000	

In accordance with the provisions of Section 38 of the New Zealand Loans Act, 1932, I hereby certify that the above is a correct copy of the entries in the Register of Stock.

Reserve Bank of New Zealand,
Registrar of Stock,
(Sgd.) W. R. EGGERS,
Chief Accountant.
Date: 10 Sep. 1953.

No. 43. Certified copy of entry in Register of Inscribed Stock.

No. 43.

CERTIFIED COPY OF ENTRY in Register of Inscribed Stock.

STATE ADVANCES ACT, 1913 (ADVANCES TO SETTLERS BRANCH).
Maturing 1st February, 1951, Interest at 5½% payable 1st Feb. 1st August.

Principal and Interest payable at Melbourne Free of Exchange.

THE NATIONAL MUTUAL LIFE ASSOCIATION OF AUSTRALASIA LTD.,
Melbourne.

1951					1925				
Feb. 1	Redemption D.E. 327	107000	100000		Oct. 21	51/1	By Cash	100000	
			107000						
					1942				
					Mar. 12		By Transfer	51/3	7000

In accordance with the provisions of Section 38 of the New Zealand Loans Act, 1932, I hereby certify that the above is a correct copy of the entries in the Register of Stock.

Reserve Bank of New Zealand,
Registrar of Stock,
(Sgd.) W. R. EGGERS,
Chief Accountant.
Date: 10 Sep. 1953.

No. 44.

SPECIMEN FORM OF DEBENTURE.

No. 45.
SPECIMEN FORM OF INTEREST COUPON.

No. 45. Specimen form of Interest Coupon.

No. 46.

LETTER. Reserve Bank of New Zealand to Treasury setting out Fluctuations in the Exchange Rate between New Zealand and Australia.

No. 46. Letter. Reserve Bank to Treasury setting out fluctuations in the exchange rate between New Zealand and Australia, dated 16th September 1953.

P.O. Box 2498.
C.20/1840.

Reserve Bank of New Zealand,
Chief Cashier's Office,
Wellington, C.I.
New Zealand.
16th September 1953.

The Secretary to the Treasury,
The Treasury,
P.O. Box 5010,
Wellington.

Dear Sir,

$5\frac{1}{2}\%$ Loan Matured 1st February, 1951.

Further to my letter C.20/1631 of the 27th August last concerning the amount of Australian currency a resident of Melbourne would receive in exchange for an interest warrant for £N.Z.100 payable in Wellington on the 1st February and 1st August commencing 1st February, 1926, and ending 1st February, 1951, I furnish the following extract from a letter received by the Reserve Bank from the Commonwealth Bank of Australia, Sydney, in reply to inquiries instituted on your behalf :—

> " The following amounts of Australian Currency would have been paid in Melbourne by the Commonwealth Bank of Australia in exchange for an interest warrant for £N.Z.100. Only changes in the rate have been shown as the rate is not subject to frequent fluctuation.

1/2/26	£A. 99 12 6	1/2/33	£A. 99 15
1/2/29	99 15 0	1/8/34	100 10
1/2/31	118 2 6	1/8/38	100 5
1/8/31	118 12 6	1/2/39	100 0
1/2/32	113 12 6	1/2/49	124 0 "

In compliance with the request contained in your letter T.44/120/2 of the 27th August, 1953, this letter is forwarded in duplicate.

Yours faithfully,
(Sgd.) G. WILSON,
Chief Cashier.

Documents and Correspondence.

No. 47.

STATEMENT (put in at Hearing by Plaintiff) showing typical interest computation.

No. 47. Statement (put in at hearing by Plaintiff) showing typical interest computation,.

A. INTEREST COMPUTATION IN RESPECT OF 6TH CAUSE OF ACTION.

The short paid interest to 1st February 1951 was :—			Interest at 4½% from due date to 1st Aug. 1953
On 1/2/49	£10.12.10	=	£2. 7. 2
„ 1/8/49	£10.12.10	=	£2. 1. 5
„ 1/2/50	£10.12.10	=	£1.15.11
„ 1/8/50	£10.12.10	=	£1.10. 5
„ 1/2/51	£10.12.10	=	£1. 5. 0

B.

Interest at 5½% on short repaid principal £387.2.0 notionally accruing at £10.12.10 every six months as under :—

On 1/8/51	£10.12.10
„ 1/2/52	£10.12.10
„ 1/8/52	£10.12.10
„ 1/2/53	£10.12.10
„ 1/8/53	£10.12.10

C.

Interest at 4½% on each sum of £10.12.10 (in "B" above) from its notional due date to 1st August 1953 as under :—

1/8/51	to	1/8/53	=	19.11
1/2/52	to	1/8/53	=	14.11
1/8/52	to	1/8/53	=	9. 9
1/2/53	to	1/8/53	=	4.11

No. 48.

STATEMENT (put in at Hearing by Defendant) showing typical interest yields in New Zealand.

STATEMENT PREPARED BY TREASURY AND PUT IN AT HEARING BY DEFENDANT SHOWING THE INTEREST YIELD FROM 1947 ON (A) GOVERNMENT SECURITIES (B) LOCAL BODY SECURITIES (C) FIRST MORTGAGES.

Government Securities :

(Calculated in respect of 1960/63, 3% stock.)

1947	3%
1948	3·03%
1949	3%
1950	3·07%
1951	3·08%
1952	3·85%

Local Body Securities :

Before 20 August 1952	3·25%.
From 20 August 1952	4%.

First Mortgages :

Building and Investment Societies	4·5% to 5%. (Some societies rebate their profits making effective rate lower.)
Government Life Insurance Office ..	Before 1.11.51, 4% on £2,500 and upwards. From 1.11.51 to 18.3.52 4·25% on £2,001 and upwards. From 19.3.52 to 13.11.52 4·5% on all amounts. From 14.11.52, 4·5% on £5,001 and upwards.
Public Trust Office	1.6.46 to 7.10.51, 4% on £2,500 and upwards. 8.10.51 to 26.3.52, 4·25% on £2,001 and upwards. 27.3.52 to 13.11.52, 4·5% on all amounts. From 14.11.52, 4·5% on £5,001 and upwards.
Industrial Mortgagees	Preference shares, 5% limit. Mortgages over £10,000 : Before August 1952, 4·25%. From August 1952, 4·5%. Debentures 5% limit.

Documents and Correspondence.

No. 49. Statement (put in at hearing by Defendant) showing interest yields in Australia as at July 1953.

No. 49.

STATEMENT (put in at Hearing by Defendant) showing interest yields in Australia as at July, 1953.

STATEMENT PUT IN AT HEARING BY DEFENDANT SHOWING INTEREST RATES AND SECURITY YIELDS.

(Per Cent.)

Extract from the Commonwealth Bureau of Census and Statistics, Canberra, Australia, Monthly Review—July 1953.

Period	Trading Banks Interest on Fixed Deposits				C'wealth Savings Bank	Treasury Bills (Discount Rates)	C'wealth Govt. Securities Taxed at Current C'wealth Rates		Private 1st Mortgages Registered in New S. Wales Urban Securities
	3 mos.	6 mos.	12 mos.	24 mos.	Deposits (maximum rate of interest)		Short-dated 2 yrs.	Long-dated 12 yrs.	
1946–47	0.50	0.75	1.00	1.50	2.00	1.00	1.93	3.21	4.5
1947–48	0.50	0.75	1.00	1.50	2.00	1.00	2.34	3.16	4.4
1948	0.50	0.75	1.00	1.50	2.00	0.96	2.07	3.12	4.4
1949–50	0.50	0.75	1.00	1.50	2.00	0.75	1.95	3.13	4.4
1950–51	0.50	0.75	1.00	1.50	2.00	0.75	1.99	3.21	4.4
1951–52	0.50	0.75	1.00	1.50	2.00	0.75	2.05	3.95	4.4
1952–53	0.96	1.21	1.46	1.73	2.23	0.98	3.03	4.54	4.7
1951–52									
July	0.50	0.75	1.00	1.50	2.00	0.75	2.03	3.73	4.4
August	0.50	0.75	1.00	1.50	2.00	0.75	2.03	3.82	4.4
September	0.50	0.75	1.00	1.50	2.00	0.75	2.04	3.83	4.4
October	0.50	0.75	1.00	1.50	2.00	0.75	2.01	3.80	4.4
November	0.50	0.75	1.00	1.50	2.00	0.75	2.02	3.76	4.4
December	0.50	0.75	1.00	1.50	2.00	0.75	1.99	3.75	4.4
January	0.50	0.75	1.00	1.50	2.00	0.75	2.04	3.82	4.4
February	0.50	0.75	1.00	1.50	2.00	0.75	2.03	3.82	4.4
March	0.50	0.75	1.00	1.50	2.00	0.75	2.00	3.81	4.4
April	0.50	0.75	1.00	1.50	2.00	0.75	2.07	4.19	4.4
May	0.50	0.75	1.00	1.50	2.00	0.75	2.13	4.43	4.4
June	0.50	0.75	1.00	1.50	2.00	0.75	2.21	4.62	4.4
1952–53									
July	0.50	0.75	1.00	1.50	2.00	0.75	2.40	4.51	4.5
August	1.00	1.25	1.50	1.75	2.25	1.00	2.58	4.49	4.5
Sept.	1.00	1.25	1.50	1.75	2.25	1.00	2.94	4.61	4.5
Oct.	1.00	1.25	1.50	1.75	2.25	1.00	3.05	4.68	4.6
Nov.	1.00	1.25	1.50	1.75	2.25	1.00	3.15	4.62	4.7
Dec.	1.00	1.25	1.50	1.75	2.25	1.00	3.23	4.53	4.7
Jan.	1.00	1.25	1.50	1.75	2.25	1.00	3.15	4.46	4.8
Feb.	1.00	1.25	1.50	1.75	2.25	1.00	3.16	4.53	4.8
March	1.00	1.25	1.50	1.75	2.25	1.00	3.20	4.57	4.8
April	1.00	1.25	1.50	1.75	2.25	1.00	3.17	4.51	4.8
May	1.00	1.25	1.50	1.75	2.25	1.00	3.17	4.54	4.9
June	1.00	1.25	1.50	1.75	2.25	1.00	3.16	4.48	4.9
1953–54									
July	1.00	1.25	1.50	1.75	2.25	1.00			

No. 50.

MEMORANDUM by Counsel submitting New Zealand Government Financial Tables for years 1948 and 1949.

No. A.208/53.

IN THE SUPREME COURT OF NEW ZEALAND,
Wellington District.
Wellington Registry.

Between THE NATIONAL MUTUAL LIFE ASSOCIATION OF AUSTRALASIA LIMITED having its principal place of business in the Dominion of New Zealand at Wellington and carrying on business in the said Dominion and elsewhere as a Life Insurance Office . Plaintiff

and

HER MAJESTY'S ATTORNEY-GENERAL FOR THE DOMINION OF NEW ZEALAND Defendant.

No. 50. Memorandum by Counsel submitting New Zealand Government Financial Tables for years 1948 and 1949, dated 19th November 1953.

MEMORANDUM OF COUNSEL.

1. With the consent of the Plaintiff there are submitted herewith by the Defendant for the information of this Honourable Court :—

(A) A copy of Table No. 5 attached to the Financial Statement presented to Parliament by the Right Honourable the Minister of Finance on the 19th day of August 1948 showing the maturity and domicil of the Public Debt outstanding on the 31st day of March 1948, that due in Australia being shown at £779,000.

(B) A copy of Table No. 20 attached to the Financial Statement presented to Parliament by the Right Honourable the Minister of Finance on the 18th day of August 1949 showing the maturity and domicil of the Public Debt outstanding on the 31st day of March 1949, that due in Australia being shown at £628,226 which is the amount arrived at by deduction from the sum of £779,000 of the equivalent of the difference in exchange at the rate of 125 Australian pounds to 100 New Zealand pounds.

2. The individual items comprised in the total amount of the debt shown as being due in Australia in each of the said two Tables remained unchanged in each year and in each Table both the Inscribed Stock and the Debentures involved in this action are included in the total.

3. The documents are submitted in substitution for the Memorandum dated 29th July 1953 from the Secretary to the Treasury to the Solicitor-General already lodged by the Defendant with this Honourable Court and the Defendant now desires to withdraw the said Memorandum of 29th July 1953.

Dated this 19th day of November 1953.

W. J. SIM,
Counsel for Plaintiff.
Herbert E. Evans, Solicitor-General.

Documents and Correspondence.

No. 51. Table 5. Showing maturity and domicile of Public Debt outstanding 31st March 1948.

No. 51.

TABLE 5. Showing maturity and domicile of Public Debt outstanding, 31st March, 1948.

EXTRACT FROM P. VI OF APPENDIX ATTACHED TO FINANCIAL STATEMENT (B–6) BY THE RIGHT HON. WALTER NASH, MINISTER OF FINANCE, 19TH AUGUST 1948, APPEARING IN VOL. 1 OF THE APPENDIX TO JOURNALS OF THE HOUSE OF REPRESENTATIVES OF NEW ZEALAND. SESSION 1948.

TABLE NO. 5.

PUBLIC DEBT.

Maturity and Domicile of Debt Outstanding, 31st March, 1948.

Loans maturing in Financial Year ending 31st March*	Due In				Total Debt (Nominal Amount)
	London (in New Zealand Currency)	Australia	New Zealand		
			Public	Departmental	
	£	£	£	£	£
Overdue ..	—	—	3,445	—	3,445
Treasury bills..	—	—	10,000	54,990,000	55,000,000
Interest free ..	—	—	4,802	—	4,802
1949	—	—	6,981,040	272,675	7,253,715
1950	9,375,000	—	11,375,100	5,759,575	26,509,675
1951	1,562,500	779,000	—	—	2,341,500
1952	—	—	2,603,475	5,455,030	8,058,505
1953	—	—	11,342,955	1,136,125	12,479,080
1954	9,153,224	—	9,307,375	360,565	18,821,164
1955	—	—	6,100,170	358,930	6,459,100
1956	15,000,000	—	17,434,800	971,805	33,406,605
1957	—	—	29,785,800	4,055,790	33,841,590
1958	24,031,831	—	20,910,695	134,788,720	179,731,246
1959	—	—	10,006,920	63,624,590	73,631,510
1960	—	—	7,147,795	1,336,800	8,484,595
1961	7,889,599	—	18,951,010	2,264,415	29,105,024
1962	—	—	—	14,000,000	14,000,000
1964	9,174,570	—	23,373,675	6,044,790	38,593,035
1965	—	—	11,157,615	8,670,250	19,827,865
1966	21,547,734	—	1,125,240	2,400,000	25,072,974
1972	6,250,000	—	—	—	6,250,000
TOTALS ..	103,984,458†	779,000	187,621,912	306,490,060	598,875,430†

* In respect of many of the loans the Government has the option to redeem the securities at an earlier date. For particulars, see B.1 (Pt. I).

† Excludes debt as under :—

	£
Advances from Imperial Government Funded in terms of Section 8 of Finance Act, 1922	30,125,250
Other debt on which interest has been suspended and principal repayments postponed by agreement with Imperial Government	2,613,636
	£32,738,886

No. 52.

TABLE 20. Showing maturity and domicile of Public Debt outstanding 31st March, 1949.

EXTRACT FROM p. xxii OF APPENDIX ATTACHED TO FINANCIAL STATEMENT (B–6) BY THE RIGHT HON. WALTER NASH, MINISTER OF FINANCE, 18TH AUGUST, 1949, APPEARING IN VOL. 1 OF THE APPENDIX TO JOURNALS OF THE HOUSE OF REPRESENTATIVES OF NEW ZEALAND, SESSION 1949.

TABLE NO. 20.

PUBLIC DEBT.

Maturity and Domicile of Debt Outstanding, 31st March, 1949 (£N.Z.).

Loans maturing in Financial Year ending 31st March*	Due In				Total Debt (Nominal Amount)
	London	Australia	New Zealand		
			Public	Departmental	
	£	£	£	£	£
Overdue ..	—	—	3,185	—	3,185
Treasury bills	—	—	5,000	54,995,000	55,000,000
Interest free ..	—	—	4,350	—	4,350
1950	7,500,000	—	16,137,635	981,300	24,618,935
1951	1,250,000	628,226	—	—	1,878,226
1952	—	—	4,592,430	5,459,380	10,051,810
1953	—	—	11,229,430	1,203,010	12,432,440
1954	7,322,579	—	9,023,545	561,905	16,908,020
1955	—	—	6,069,860	362,540	6,432,400
1956	12,000,000	—	18,636,290	982,135	31,618,425
1957	—	—	29,543,070	4,203,275	33,746,345
1958	—	—	21,188,245	135,803,210	156,991,455
1959	—	—	10,005,820	64,175,290	74,181,110
1960	—	—	7,081,660	21,357,350	28,439,010
1961	6,311,679	—	18,772,580	2,291,505	27,375,764
1962	—	—	—	17,000,000	17,000,000
1964	7,339,656	—	23,332,305	6,081,240	36,753,201
1965	—	—	11,088,510	8,681,935	19,770,445
1966	17,238,187	—	9,339,815	14,202,500	40,780,502
1969	16,000,000	—	—	—	16,000,000
1972	5,000,000	—	—	—	5,000,000
TOTALS ..	79,962,101†	628,226	196,053,730	338,341,575	614,985,632†

* In respect of many of the loans the Government has the option to redeem the securities at an earlier date. For particulars, see B.1 (Pt. I).

† Excludes debt as under :—

	£
Advances from Imperial Government funded in terms of Section 8 of Finance Act, 1922	24,100,200
Other debt on which interest has been suspended and principal repayments postponed by agreement with Imperial Government	2,090,909
	£26,191,109

Documents and Correspondence.

No. 53. Certificate of Registrar as to accuracy of Record.

No. 53.

CERTIFICATE of Registrar of Supreme Court as to accuracy of Record.

CERTIFICATE OF REGISTRAR OF SUPREME COURT AS TO ACCURACY OF RECORD.

I WALTER PARKER, Registrar of the Supreme Court of New Zealand at Wellington DO HEREBY CERTIFY that the foregoing pages contain true and correct copies of all the proceedings, evidence, Judgments, Decrees and Orders had or made in the above matter so far as the same have relation to the matters of appeal and also correct copies of the reasons given by the Judges of the Supreme Court of New Zealand in delivering Judgment therein such reasons having been given in writing AND I DO FURTHER CERTIFY that the Appellant has taken all the necessary steps for the purpose of procuring the preparation of the Record and the despatch thereof to England and has done all other acts, matters and things entitling the said Appellant to prosecute this Appeal. AS WITNESS my hand and the seal of the Supreme Court of New Zealand this 19th day of November one thousand nine hundred and fifty-four (1954).

(Sgd.) W. PARKER,
Registrar.

(L.S.)

No. 2 of 1955.

In the Privy Council.

ON APPEAL
FROM THE SUPREME COURT OF NEW ZEALAND.

BETWEEN

THE NATIONAL MUTUAL LIFE ASSOCIATION OF AUSTRALASIA LIMITED having its principal place of business in the Dominion of New Zealand at Wellington and carrying on business in the said Dominion and elsewhere as a Life Insurance Office . . . . . *Appellant*

AND

HER MAJESTY'S ATTORNEY-GENERAL FOR THE DOMINION OF NEW ZEALAND . . . . . *Respondent.*

RECORD OF PROCEEDINGS

MARKBY, STEWART & WADESON,
5 BISHOPSGATE,
LONDON, E.C.2,
Solicitors for the Appellant.

MACKRELL MATON & CO.,
INIGO PLACE,
31 BEDFORD STREET, W.C.2,
Solicitors for the Respondent.

The Solicitors' Law Stationery Society Limited, Law and Parliamentary Printers, Abbey House, S.W.1.
WL5093-3328