[HIGH COURT OF AUSTRALIA.]

ALEXANDER STEWART & SONS LIMITED . PLAINTIFF;

AND

HENRY MACNAMARA ROBINSON (ACTING COLLECTOR OF CUSTOMS, BRISBANE) . . DEFENDANT.

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MELBOURNE, *Nov.* 3.

SYDNEY, *Dec.* 6.

Knox C.J., Isaacs, Gavan Duffy, Rich and Starke JJ.

Customs Duties—Value of goods—Value expressed in foreign currency—Conversion into British currency—Rate of exchange—Customs Act 1901-1916 (*No.* 6 *of* 1901—*No.* 10 *of* 1916), *secs.* 154, 157.

Sec. 157 of the *Customs Act* 1901-1916 provides that "Where the genuine invoice shows the value of the goods in any currency other than British currency the equivalent value of the goods in British currency shall be ascertained according to a fair rate of exchange to be declared in case of doubt by the Minister."

Held, by *Knox* C.J., *Isaacs*, *Rich* and *Starke* JJ. (*Gavan Duffy* J. dissenting), that the "rate of exchange" referred to in sec. 157 is the commercial rate of exchange between Australia and the country of export of the goods at the date of their export.

SPECIAL CASE.

An action having been brought in the Supreme Court of Queensland by Alexander Stewart & Sons Ltd. against Henry Macnamara Robinson, Acting Collector of Customs at Brisbane, the parties concurred in stating, for the opinion of the Court, a special case which was substantially as follows:—

1. This action was commenced on 22nd July 1920 by a writ of summons specially endorsed as follows:—The plaintiff's claim is against the defendant as Collector within the meaning of the *Customs Act* 1901-1916 for £66 6s. 8d. for a return of money overcharged for customs duty. The following are the particulars:—1920, 28th

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June.—To amount of money overpaid by the plaintiff to the defendant under protest duly made as customs duty on lace for attire exported from France and imported into Queensland by the plaintiff, the equivalent value of which goods in British currency was not ascertained by the defendant according to a fair rate of exchange: £66 6s. 8d.

2. The plaintiff in or about the month of June 1920 imported into Queensland the goods mentioned in the statement of claim.

3. The said goods were exported from France.

4. The genuine invoice produced by the plaintiff at the time of making the customs entry in respect of the said goods showed that the price paid for the said goods by the plaintiff in France without any deduction was 8301·25 francs French currency.

5. The said sum of 8301·25 francs was the fair market value of the said goods in the principal markets of France (whence the said goods were exported) in the usual and ordinary commercial acceptation of the term and free on board at the port of export in France.

6. The plaintiff on 28th June 1920 paid the sum of £108 11s. 6d. in respect of duty on the said goods, which sum the plaintiff paid under protest duly made in accordance with the provisions of the *Customs Act* 1901-1916, and more particularly in accordance with the provisions of sec. 167 of the said Act.

7. The plaintiff contends that the equivalent value in British currency of the said goods for the purpose of imposing the customs duty thereon should be ascertained according to the rate of exchange which actually obtained between England and France—(*a*) at the time of payment for the said goods, that is to say, at the rate of 64·85 francs to the £1 sterling, or, in the alternative, (*b*) at the date of export of the said goods from France, that is to say, at the rate of 57·68 francs to the £1 sterling.

8. The defendant contends that the equivalent value in British currency of the said goods for the purpose of imposing the customs duty thereon should be ascertained according to the mintage par rate of exchange between England and France at the date of export of the said goods, that is to say, at the rate of 25·23 francs to the £1 sterling.

9. A dispute having arisen between the plaintiff and the defendant,

who is the " Collector " as defined by the *Customs Act* 1901-1916, as to the amount of duty payable in respect of the said goods under the said Act, the parties have concurred in stating the following questions of law for the opinion of the Court :—

(1) What is the equivalent value of the said goods in British currency for the purpose of imposing the customs duty thereon according to the provisions of the *Customs Act* 1901-1916 ?

(2) By whom should the costs of and incidental to this case and action be paid ?

The case was ordered by *Chubb* J. to be argued before the Full Court of the High Court.

Latham (with him *Fahey* and *Kelly*), for the plaintiff. The rate of exchange referred to in sec. 157 of the *Customs Act* is the mercantile or bank rate of exchange, and not the mintage par rate of exchange. Mintage par rate of exchange only exists between countries having the same standard of currency. If the standard is gold, for instance, the mintage par rate of exchange depends on the ratio of the amount of gold in the standard coins, and that is determined by the legislation of the countries concerned and never varies (see *Spalding on Foreign Exchanges*, p. 13 ; *Sykes on Banking and Currency*, 3rd ed., p. 210). No possible question of fairness or doubt can arise in relation to such a rate of exchange. But sec. 157 is directed to ascertaining value, and the value to be ascertained is the value referred to in sec. 154 (*a*), namely, the value of the goods in the country of export at the date of exportation (*Threlfall* v. *Matthew Goode & Co.* (1)). Sec. 157 is a means of turning foreign currency into British currency for the purpose of sec. 154. The price in the invoice, which is the sum to be paid in an actual mercantile transaction, is the commercial price, that is, the sum in British coinage which the Australian merchant will have to provide to pay for the goods the price mentioned in the invoice. That must be ascertained according to the commercial rate of exchange and the inquiry is what, in the particular instance, he must pay for a draft which will provide in the country of export the sum mentioned in the

(1) 26 C.L.R., 217.

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invoice. The Minister is not authorized to fix a rate of exchange for all transactions with a particular country, but he is required in each particular transaction to say what is the rate of exchange. [Counsel also referred to *Di Ferdinando* v. *Simon, Smits & Co.* (1); *Wollaston's Customs Law in Australia*, pp. 98, 99.]

Owen Dixon, for the defendant. Sec. 157 is entirely devoted to ascertaining the domestic value of the goods in the country of export, and the rate of exchange there referred to must be the mintage par rate of exchange, because the commercial rate of exchange affords no criterion of that domestic value. By applying the mintage par rate of exchange the sum of foreign money can be properly expressed in British currency, and that is the proper criterion to be adopted. The object of sec. 157 in this particular case is to find the value in France of the specified number of French coins expressed in British currency.

Latham, in reply.

Cur. adv. vult.

Dec. 6. The following written judgments were delivered :—

KNOX C.J. The question raised in this case turns on the meaning to be given to the phrase "according to a fair rate of exchange" in sec. 157 of the *Customs Act*. The object of that section is to provide a method for expressing in British currency, *i.e.*, in pounds, shillings and pence, the amount shown in an invoice in foreign currency representing the price of the goods covered by the invoice. The section is one of a number of provisions dealing with the method of ascertaining the value of goods which are subject to ad valorem duties. Sec. 154 provides that when any duty is imposed according to value the value shall be taken to be the fair market value of the goods in the country of export together with 10 per cent. on such value. That section further provides for the production of the invoice for the purpose of verifying the value of the goods, but there is nothing to compel the Collector to accept the value shown by the invoice as the fair market value of the goods in the country of export. The invoice is merely evidence

(1) (1920) 2 K.B., 704.

of the market value which the Collector may accept or reject as he chooses. The value to be ascertained for the purpose of calculating the duty payable is the value of the goods on arrival in this country (see *Threlfall* v. *Matthew Goode & Co.* (1)), and that is ascertained by the arbitrary method of adding to the fair market value of the goods in the country of export 10 per cent. of that value.

Under these circumstances it is plain that the sole function of sec. 157 is to provide for the expression in British currency of the amount expressed in the invoice in foreign currency for the purpose of ascertaining how much the goods actually cost the importer f.o.b. in the country of export. The section provides that this substitution has to be made "according to a fair rate of exchange" The question is whether this phrase indicates the commercial rate of exchange or the mintage par rate of exchange as the rate to be applied. The object being to ascertain from the invoice what the goods cost the importer, it would seem to follow that this must be done by ascertaining the sum in British currency which he would have to lay out in Australia in order to provide for the payment of the necessary amount in the country of export in the currency of that country, or, in other words, what sum in British currency would it cost the importer to buy a draft for the amount of the invoice payable in the country of export in the currency of that country. This amount is found by applying what is commonly known as the "rate of exchange" on the relevant date, that is to say, the rate at which money can be provided for payment in the foreign country. I think the phrase "rate of exchange" when used in an Act of Parliament *primâ facie* means, as it does in ordinary parlance, the commercial rate of exchange, that is to say, the rate at which drafts for payment in a foreign country in the currency of that country can be purchased for sterling at the relevant date. Where a debt is payable in foreign currency the amount of English currency required to pay it "must be arrived at by taking the real value in English currency of the foreign currency where payable as a purchasable commodity—*i.e.*, in practice, according to the rate of exchange existing at the particular time between the currencies" (see per *Vaughan Williams* L.J. in *Manners* v. *Pearson & Son* (2)).

(1) 26 C.L.R., 217.

(2) (1898) 1 Ch., 581, at p. 592.

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Knox C.J.

The plaintiff contends that the rate of exchange to be applied is that which existed between England and France on the relevant date, but in my opinion the proper rate to apply is that existing between Australia and France on that date, the transaction being between Australia and France and not between England and France.

The answer to question 1 should be: "The sum in sterling which represents 8301·25 francs at the rate of exchange which actually obtained between Australia and France at the date of export of the goods."

The answer to question 2 should be: "By the defendant."

ISAACS AND RICH JJ. (delivered by ISAACS J.). The one real question we have to determine in this case is: What in sec. 157 of the *Customs Act* is meant by the expression "a fair rate of exchange"? In the special case stated by the parties they have set out their respective contentions. The plaintiff's contentions as there stated are in the alternative. The first is that the rate of exchange which should have been applied was the actual rate which obtained between England and France at the date of payment; the second, that it was the actual rate which obtained between England and France at the date of exportation of the goods. In the argument the first contention was not pressed, but the second was maintained. The defendant's contention, as set out and urged in argument, is that "a fair rate of exchange" in sec. 157 always means the mintage par rate of exchange based on the legal gold standards of the respective countries, and, in this case, of England and France respectively.

Both sides agree in accepting England and not Australia as the country which must always be considered for this purpose in relation to the country of export. A possible qualification of this was suggested by the application of the provision in sec. 157, that the rate of exchange is "to be declared in case of doubt by the Minister." We do not accept that view. It may be that it has been assumed in this case that Australian drafts would have been drawn not directly on Paris but indirectly through London, but, however that may be in practice, the legal position is that Australia is the one terminus and the exporting country—in this instance, France—is the other.

for the purpose of ascertaining the rate of exchange in order to convert the foreign currency into British currency. The provision as to the Minister has reference only to figures, not countries.

Reading Division 2 of Part VIII. of the *Customs Act*—"*Ad valorem duties*"—as a whole, the matter does not appear to us to present any serious difficulty. Duties ad valorem are duties upon the value of goods as at the moment of their importation into Australia. It is their Australian value which is to be ascertained, and upon which duty is to be reckoned. *Threlfall's Case* (1) establishes in the first place that their value is required by sec. 154 (*a*) to be found by ascertaining two factors, viz., (1) their fair market value abroad f.o.b. at the date of exportation, and (2) an addition of 10 per cent. on that market value which is to cover the cost over all of their transfer to Australia. It also establishes—and this was the very point of that case—that the amount of a "genuine invoice" is not the standard of the foreign market value of the goods. Usually it is a good guide, but, as the sale might have been in some way exceptional, it cannot control the matter. Where there is no sale or even consignment, but importation by the owner, there can, of course, be no "genuine invoice." Consequently, in considering sec. 157 it must be borne in mind that the "equivalent value of the goods" mentioned in that section not only is not their dutiable value but is not even conclusive as to their foreign market value. The section is simply a provision collateral to section 154 for the purpose, where a genuine invoice exists, of aiding in ascertaining the first factor by substituting for terms of foreign currency, terms of British currency, that is, in £ s. d., by means of the formula "fair rate of exchange." It is not the final step; it is not in some cases even a possible step. Where it is taken, it is an intermediate step, and, when effected, the process of valuation goes on as if the invoice were expressed in terms of British currency. It is not a section primarily for appraising money: its own language precludes that notion. It says "the equivalent value of the *goods* . . . shall be ascertained" &c. The "rate of exchange" is merely a means of arriving at the value of the *goods*, but by finding, as an evidentiary fact only, *what in terms of British currency the*

(1) 26 C.L.R., 217.

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importer has apparently had to pay for the goods. That, when found, may or may not be accepted by the Customs as the true market value abroad of the goods. But as an immediate fact the only effect of translating the foreign currency of the invoice into British currency is to put into terms of English money the amount of the importer's bill rendered by his vendor. It is a purely commercial operation, just as if the importer did it for himself in order to remit payment through a bank. He would first ascertain the "rate of exchange," though he would necessarily have to do so at the date of payment, whereas the Customs for their own purposes regard the date of exportation. That, however, does not affect the meaning of the expression "rate of exchange." It is a perfectly well recognized phrase, having a meaning so well established in the community that Judges cannot be presumed to be ignorant of it. It has been used by Judges as a term of common knowledge in cases altogether independent of any Act of Parliament. It has also been employed by the Legislature as a well understood mercantile expression. As to the judicial use of the term, it is perhaps convenient to quote a short passage from *Mayne on Damages*, 7th ed., p. 258, because of the phraseology, and because of the reference to cases in which prior decisions are quoted. The passage runs thus: "When an action is brought in England, to recover the value of a given sum in a foreign currency, upon a judgment obtained abroad, the value is that sum in sterling money which the currency would have produced, according to the rate of exchange between the foreign country and England at the date of the former judgment." The case of *Manners* v. *Pearson & Son* (1), there cited, contains references to *Story* and other authorities which evidence how well understood is the expression "rate of exchange" in relation to varying currencies. There may be added a quotation from *Lansdowne* v. *Lansdowne* (2), where Lord *Redesdale* says: "The currency is always the same: the rate of exchange depends on circumstances which may cause a gain or loss upon payment in either country." Two of the most recent cases apply this, namely, *Di Ferdinando* v. *Simon, Smits & Co.* (3) and *Barry* v. *van den Hurk* (4). As regards legislative recognition of the phrase, in

(1) (1898) 1 Ch., 581.
(2) 2 Bli., 60, at p. 95.
(3) (1920) 2 K.B., 704.
(4) (1920) 2 K.B., 709.

addition to sec. 157 itself, see, for instance, the English *Bills of Exchange Act* 1882, sec. 72 (4), and the corresponding sec. 77 (*d*) of the Australian Act of 1909, and the English *Stamp Act* 1891, sec. 6 (1), and the New South Wales Act 1898, No. 27, sec. 11.

The "fair rate of exchange" from the standpoint of sec. 157 is the sum which at the time of exportation the Australian importer would, in the circumstances, have to pay in sterling in Australia to obtain a credit in the country of exportation sufficient to pay the amount of the invoice in the currency there. That is the practical method, and, being the practical method, it is also the legal method (for that, we must take it, was meant by the Legislature) of ascertaining what the goods have as a matter of fact, according to the invoice, cost the importer at the port of export.

So much we have said by way of affirmative interpretation of the section; but it is proper to address a few words directly to the defendant's contention respecting "mintage par rate." The argument in support of that treated "fair rate of exchange" as referring to an exchange in France of metallic values. It figured the Australian importer sending sovereigns in specie to France, and there not paying his creditor at 57·68 francs to the £1, but going to the French Mint and exchanging English sovereigns for French 20-franc pieces at the rate of 25·23 francs to the £1 until he had obtained gold answering 8301·25 francs, and then paying his creditor the French gold coins at the rate of 20 francs for each. That would, said learned counsel for the defendant, absorb over twice the number of sovereigns that would suffice at the current rate of exchange. No doubt the departmental view has been followed from a sincere belief that the law so required, and with a most laudable determination to adhere to the law, be the consequences what they may. There are several reasons, however, why we are unable to adopt that view. To begin with, the section does not use the phrase "mintage par rate of exchange." It does not use the phrase "par of exchange," and the absence of the word "par" is significant that it is not what the Legislature meant. Even if the word "par" were used, a question would arise whether the "nominal" or the "real" *par* was intended, the real par being in effect the "rate of exchange." But the Legislature has gone at once to the familiar expression "rate of

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exchange," and on ordinary principles of interpretation it should receive its primary, which in this case is its commercial, meaning. The sense of the matter makes it practically conclusive. First, the defendant's supposition is opposed to the basic notion of "rate of exchange." It assumes transmission of gold in specie, whereas "rate of exchange" connotes that there is no specie transmitted. "Specie" is transmitted only where the rate of exchange passes the limit which renders such transmission unprofitable. It is not inapt to quote from among many recognized writers of authority the following passage from Lord *Farrer* in his *Studies in Currency* (1898), at p. 198: "If the two countries have the same standard of value, or, in other words, have the same metal as the material of the standard coin of their respective currencies, and if they are both solvent, the alteration in *exchange*, or in other terms *in the rate at which the two currencies will exchange for each other*, can never go beyond the certain and comparatively narrow limits of what is called the specie or bullion point—in other words, the point at which it is cheaper to send bullion than to pay the premium on bills, since, when that point is reached, it is less disadvantageous to the merchants of the debtor country to remit coin or bullion than to pay the premium." The defendant's view, indeed, postulates an impossible state of affairs. The fact that the current rate was 57·68 francs to the £1 at the date of exportation shows that there was not sufficient gold in France to maintain the nominal value of the franc, and therefore not sufficient to enable the Australian importer to obtain at the French Mint 20-franc gold pieces for 20 francs each. If he could, the French merchant would, indeed, be simple if he accepted a pound sterling for 57·68 francs. It is idle to talk of the nominal mint par rate on a gold basis when, by reason of (say) an adverse balance of trade, French gold remaining in France is insufficient to meet the requirements of French trade. In those circumstances the franc, in proportion to the insufficiency of its gold backing, must depend on its own intrinsic metallic value. The mint par rate is then only one factor in the equation, the French law regulating the purity and the weight of the gold coinage only comes into the sum which bankers and other financial authorities, in fixing the rate of exchange, work out so far as French gold is necessary and available. For the

rest, the franc must stand, not on the nominal value of unprocurable gold but on its own metallic value, and the resultant—arising partly from pure arithmetic, partly from known factors of trade, and possibly also from factors of opinion based on conjecture and forecast—determines the extent to which the real rate of exchange deviates from the nominal rate. So much is true even when the standard of value of the two countries is identical. But when it differs, there is still, as Lord *Farrer* points out at p. 199, another factor of great importance in determining the "exchange"—in other words, "the value of the currency of the one nation in terms of the currency of the other—that is the 'computed exchange'." There you have to take into consideration also the market value of the respective standards of value. Now, in the case of goods imported into Australia from a country having a silver basis, what would be the true method, according to the departmental view, of proceeding under sec. 157? The departmental system, resting on a rigid adherence to arithmetic alone, and disregarding other factors, is clearly unsound as an interpretation of the law.

In our opinion, the answer to question 1 should be that "The equivalent value of the said goods in British currency for the purpose of imposing the customs duty thereon, according to the provisions of the *Customs Act* 1901-1916, is the sum sterling which represents 8301·25 francs, at the rate of exchange actually obtaining between Australia and France at the date of export." The defendant should pay the costs.

GAVAN DUFFY J. The plaintiff purchased and imported into Australia a quantity of lace. The sum of 8301·25 francs was the fair market value of the lace in the principal markets of France (whence it was exported) in the usual and ordinary commercial acceptation of the term and free on board at the port of export in France, within the meaning of sec. 154 (*a*) of the Federal *Customs Act*. This value was duly verified at the time of entry in compliance with sec. 154 (*b*) by the production of the genuine invoice, which showed that sum to be the price actually paid. Sec. 157 of the Federal *Customs Act* runs as follows: "Where the genuine invoice shows

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the value of the goods in any currency other than British currency the equivalent value of the goods in British currency shall be ascertained according to a fair rate of exchange to be declared in case of doubt by the Minister." As the genuine invoice in this case showed the value of the goods in a currency other than British currency, it became necessary to ascertain according to a fair rate of exchange the equivalent value of the goods in British currency. The Collector of Customs contended that this should be done by ascertaining a fair rate of what is known as nominal exchange based on the comparative intrinsic values of the British and French coinage without respect to trade transactions. The plaintiff on the other hand contended that it should be done by ascertaining a fair rate of what is known as real exchange based on such trade transactions. The expression "exchange" is equally applicable to nominal and to real exchange, and its meaning in sec. 157 must be ascertained from the collocation in which it is used. I find great difficulty in supposing that the words "the equivalent value of the goods in British currency shall be ascertained according to a fair rate of exchange" authorize an inquiry as to the terms on which a draft on France could be obtained from an Australian banker, but if I could agree with the Chief Justice in thinking that the object of sec. 157 was to ascertain from the invoice what the goods cost the importer, I might agree with him when he says "that this must be done by ascertaining the sum in British currency which he would have to lay out in Australia in order to provide for the payment of the necessary amount in the country of export in the currency of that country, or, in other words, what sum in British currency would it cost the importer to buy a draft for the amount of the invoice payable in the country of export in the currency of that country." But in my opinion the object of the section is not to ascertain what the goods cost the importer, but to enable the Customs authorities to know what the invoice really means, by converting into British currency the price stated therein on the basis of the respective intrinsic values of the British and foreign coinage. To ascertain what sum the plaintiff actually paid or would have to pay for a draft issued by a bank in Australia for the payment in France of a sum of 8301 francs would be totally irrelevant and even misleading in this case. The value on which ad valorem duty is

payable under sec. 154 is not based on the price nominally or actually paid for the goods: it is based on the fair market value of the goods in the country of export. When the importer is also the purchaser of the goods, he produces the invoice as a help to the Customs authorities in determining the value of the goods. I adhere to what I said in *Threlfall* v. *Matthew Goode & Co.* (1):—"In my opinion the production of the invoice is not required as necessarily indicating the value of the goods at any time, for even if the invoice accurately records the transaction the price paid may have been very much less or very much greater than the real value of the goods. It is required so that the Customs authorities may be set on immediate inquiry if the importer declares a value less than that which would seem justified by the invoice. When an entry of goods is made, it is the duty of the Customs official to ascertain their fair market value at that time in the principal markets of the country whence they were exported, and the price stated in the invoice will no doubt generally be accepted as the basis of such value, because the invoice usually records a transaction of recent date, and honest merchants generally pay the fair market value; but, having received the invoice, the Customs authorities are at liberty to ignore it if they choose." Where the goods are consigned for sale in Australia the original invoice to be produced must be prepared and issued by the consignor, and must show the true description of the goods and the actual money price for cash at which such goods were saleable in the principal markets of the country whence such goods were exported at the date of shipment (sec. 155 (*b*)). Let us suppose an importer to produce an invoice showing prices for goods purchased by him in a market where British currency prevailed. If such an importer were to say "This invoice shows the fair market value of the goods in the principal markets of the country from which they were exported, but owing to the balance of trade between that country and Australia, and other circumstances, the draft which I sent in payment of the account was for a considerably smaller sum, and that is the sum on which I wish to pay duty," the answer would be —"We have nothing to do with what you paid; it is true that in this case you may have disbursed less than the fair market value, but

(1) 26 C.L.R., at p. 229.

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fair market value is the criterion provided by sec. 154 and not fair market value less commercial exchange, nor actual price when it deviates for any reason from the fair market value." Let us suppose again that an importer of goods consigned for sale in Australia produces the original invoice of goods prescribed by sec. 155 (*b*) showing the actual money price for cash at which such goods were saleable in the principal markets of the country of export at the date of shipment free on board at the port of shipment, and then explains that a merchant in Australia need not pay so much because of the rate of commercial exchange. The Collector would say, "I have nothing to do with that. If your invoice is accurate it shows the fair market value prescribed by sec. 154, and I can make no deduction from that value." Exactly the same answer must be given where the invoice shows prices in foreign currency unless sec. 157 makes it necessary to give a different answer. In my opinion the words of the section limit the inquiry to be made to a comparison between values expressed in foreign and those expressed in British currency, and do not authorize an inquiry into questions depending upon trade relations existing between Great Britain and a foreign country or those existing between Australia and a foreign country, which may be entirely different from the trade relations existing between Great Britain and that country. The words of the section apply exactly to a comparison of the intrinsic values of different coinages, and this is the only relevant inquiry. It is plain that before ad valorem duty can be assessed the Controller must know what the prices expressed in foreign currency mean, but no reasons can be suggested for introducing into the calculation the element of commercial exchange, an element wholly irrelevant to the question of the amount of duty to be paid. Nor can any reason be suggested why that element should be introduced in the case of invoices expressed in foreign currency and not in the case of those expressed in British currency. But whatever may be the meaning of the section it does not pretend to interfere with the obligations established by secs. 154, 155 and 156, nor does it pretend to prescribe any method of ascertaining the fair market value of goods in the country of production: it merely provides for the conversion on some principle of the figures in the invoice from foreign into British currency.

When that conversion has taken place the Collector must still take the responsibility of determining for himself what in fact is the fair market value of the goods in the country of production. In this case it is admitted that 8301 francs is the fair market value of the goods in the country of export, and, as I understand the matter, the only question in issue between the parties is whether any deduction should be made from that sum because of exchange other than nominal exchange. It follows from what I have said that no such deduction should be made, and I therefore answer both questions in favour of the defendant.

STARKE J. The main question raised by the special case depends upon the true construction of sec. 157 of the *Customs Act*. According to the defendant the rate must be founded on the mintage par of exchange, which, in this case, depends on the ratio between the weight of gold in the monetary unit of France as compared with that in the monetary unit of Great Britain. Even in times of peace the rate of exchange oscillates a little above and below the point which is called the par of exchange, but the oscillation during and since the close of the War has been great.

Merchants are not much concerned with pars of exchange. The medium of exchange used by them is as a rule not money but credit, and the price at which they can buy drafts or credits with which to discharge their obligations is the important matter from their point of view. And this price as it varies from time to time is the rate of exchange as distinguished from the par of exchange.

It is true, as Mr. *Dixon* contended, that the foreign exchanges are thus determined by the demand and supply for remittances in respect of all liabilities between two countries from whatever transactions they may arise. But it is equally true that the rate of exchange between any two countries thus gives the relative purchasing power or the relative value in terms of commodities of their respective monetary units of account. And is not this precisely what the *Customs Act* seeks to ascertain? Where the invoice shows the value of the goods in a foreign currency the Act directs that *the equivalent value of the goods* in British currency shall be ascertained *according to a fair rate of exchange*. The language is apt, in

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my opinion, to ascertain the relative purchasing power of the British monetary unit as compared with that of the foreign unit. The section is not dealing with pars of exchange. In countries having a gold basis for their currency—and most nations are in this position—the par of exchange is definite. No declaration as to a fair rate of exchange is in these cases required. If you know the exact weight and fineness of the gold units, you simply divide the one by the other and thus obtain the par of exchange. On the other hand, if you are seeking in Australia to ascertain what is the value f.o.b. of commodities in a foreign country expressed in terms of the British monetary unit, then the ascertainment of the fair rate of exchange is all-important. You are then seeking to ascertain the amount expressed in British money which a merchant must provide to meet his obligations abroad, or, in other words, the price at which he can buy his drafts or credits to discharge his obligations abroad.

For these reasons I agree with the answers to the questions proposed by the Chief Justice.

Questions answered accordingly.

Solicitors for the plaintiff, *Hawthorn & Lightoller*, Brisbane, by *Derham, Robertson & Derham*.

Solicitors for the defendant, *Chambers, McNab & McNab*, Brisbane, by *Gordon H. Castle*, Crown Solicitor for the Commonwealth.

B. L.