[HIGH COURT OF AUSTRALIA.]

PAYNE . . . . . APPELLANT;

AND

THE FEDERAL COMMISSIONER OF TAXATION RESPONDENT.

H. C. OF A. 1933-1934.

MELBOURNE, *Oct.* 15, 16, 1933; *Mar.* 26, 1934.

SYDNEY, *April* 30, 1934.

Gavan Duffy C.J., Rich, Starke, Dixon, Evatt and McTiernan JJ.

Income Tax (Cth.)—Assessment—Amount received and retained in sterling in London—Australian assessment—Exchange to be added—Assessed as though transmitted to Australia—Income Tax Assessment Act 1922-1931 (*No.* 37 *of* 1922—*No.* 23 *of* 1931), *sec.* 13—*Income Tax Act* 1931 (*No.* 24 *of* 1931), *secs.* 4, 5 *and* 6—*Coinage Act* 1909 (*No.* 6 *of* 1909), *sec.* 5—*Commonwealth Bank Act* 1911-1931 (*No.* 18 *of* 1911—*No.* 6 *of* 1931), *sec.* 60H.

During the year ending 30th June 1931 a taxpayer, who was resident and domiciled in Australia, received interest amounting to £5,671 from British funded stock. The interest was paid in British sterling to the credit of his bank account in London. The taxpayer used the money in London, and did not cause any part of it to be transferred or remitted to Australia. In his return of income for the financial year beginning 1st July 1931, the taxpayer included the sum of £5,671 so received in sterling as income derived by him during the preceding year. The Commissioner, however, assessed him, not in the sum of £5,671 received in sterling in London, but in the sum of £6,768, being the amount which the sums amounting to £5,671 in London would have produced in Melbourne if transferred to Melbourne at the rates of telegraphic transfer prevailing on or about the respective dates when the sums making up the amount of £5,671 were credited to the taxpayer's bank account in London.

Held, by *Gavan Duffy* C.J., *Evatt* and *McTiernan* JJ. (*Rich*, *Starke* and *Dixon* JJ. dissenting), that the taxpayer was rightly assessed in the sum of £6,768.

Per Gavan Duffy C.J., *Evatt* and *McTiernan* JJ.: The identity of the English and Australian pound in measuring obligations is of no significance where it becomes necessary to ascertain the relative value of the two currencies in which those obligations are discharged.

Broken Hill Pty. Co. v. *Latham*, (1933) Ch. 373, and *Adelaide Electric Supply Co.* v. *Prudential Assurance Co.*, (1934) A.C. 122, considered.

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CASE STATED.

On an appeal by Arthur Ernest Tyndall Payne to the High Court from an assessment for Federal income tax for the year 1931-1932, *Dixon* J. stated a special case, which was substantially as follows, for the opinion of the Full Court :—

1. Arthur Ernest Tyndall Payne, of Melbourne in the State of Victoria, gentleman (hereinafter called " the taxpayer "), is, and at all material times has been, a resident of and domiciled in the State of Victoria.

2. The taxpayer furnished to the respondent under the *Income Tax Assessment Act* 1922-1931 a return dated 18th September 1931 setting forth a statement of his income for the year ending 30th June 1931.

3. A true copy of such return is to be treated as part of this case.

4. Upon this return the respondent caused an assessment for the financial year 1931-1932 to be made pursuant to such Act, and notice of such assessment was given to the taxpayer on 8th June 1932. Subsequently, such assessment was amended and further amended, and notices of such amended assessments were given to the taxpayer on 15th November 1932 and on 20th September 1933 respectively.

5. True copies of such notices of assessment and amended assessment are to be treated as part of this case.

6. An amount of £5,671 was included in the said return as income, being the interest derived by the taxpayer during the year ending 30th June 1931 from British funded stock.

7. Such interest is not chargeable with income tax in any country outside Australia, and is chargeable with tax under the *Income Tax Assessment Act* 1922-1931.

8. The taxpayer received such interest during the year in question by a credit of the sum of £5,671 in English sterling to his account at the Union Bank of Australia Ltd. in London and the interest was used by the taxpayer in London, and no part thereof was remitted or transferred by the taxpayer to Australia.

9. By the amended assessments (*inter alia*) an amount of £1,097 was added to the taxable income of the taxpayer for the year in question as set out in the return and as originally assessed by the respondent.

10. The amount of £1,097 is the difference between the sum of £5,671 and the sum, namely, £6,768 which an amount of £5,671 in London would produce in Melbourne if transferred to Melbourne at the rates of telegraphic transfer prevailing in London and also in Melbourne on or about the respective dates when the sums amounting to the sum of £5,671 were credited in London to the taxpayer.

11. The taxpayer being dissatisfied with such amended assessments, in so far as they added to his taxable income the sum of £1,097, lodged an objection in writing against each of the amended assessments.

The respondent considered each of the objections and disallowed them, and gave written notice of such decisions to the taxpayer. The taxpayer, being dissatisfied with the decisions, requested the respondent to treat his objections as an appeal and to forward them to the High Court, and the respondent transmitted them accordingly.

The questions for the opinion of the Full Court were :—

1. (*a*) Was the Commissioner right in including in the assessment or assessments the amount of £1,097 ? or
   (*b*) Ought the Commissioner to have included no more, in respect of the interest aforesaid, than the sum of £5,671 ?
2. If both the preceding questions are answered : No, upon what basis ought the amount to be included in the appellant's assessment in respect of such interest to be ascertained ?

The case was first argued on 15th and 16th October 1933, but further argument was heard after the decision of the House of Lords in *Adelaide Electric Supply Co.* v. *Prudential Assurance Co.* (1).

Wilbur Ham K.C. (with him *Clyne*), for the appellant. The only challenge is to the amount added by way of exchange in calculating the value of English sterling in Australia. The assessment in Australia should have been at the figure of £5,671, which is the amount of English sterling received by the taxpayer. At the relevant time English notes were convertible into gold bullion, and Australia was then not off the gold standard. In 1931 Australian notes bore on their face the promise of the treasurer to redeem them in gold

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at the treasury. The power of the treasurer to require the holder of gold coin to deliver it up was the only restriction then in force. The English and the Australian pound are identical. There is no distinction between the English and the Australian pound except for the purpose of discharging obligations. The whole point in *Adelaide Electric Supply Co.* v. *Prudential Assurance Co.* (1) is that there is a difference between money of account and currency. In that case all the Lords other than Lord *Atkin* decide that the money of account and currency were identical in 1921, and they have not changed since. Until the obligation to pay arises, the whole of the *Income Tax Assessment Act* deals with money of account, and not with currency. This shows that it is not necessary to import the question of exchange. At the relevant time both Australia and England were on the gold standard, and the amount received was convertible into gold, and could have been paid to the taxpayer in that form. Moreover, what was brought into assessment was money of account and not currency.

Robert Menzies, A.-G. for Victoria, and *Tait*, for the respondent.

Robert Menzies, A.-G. In *Adelaide Electric Supply Co.* v. *Prudential Assurance Co.* (1) the House of Lords has only said that where you find reference to a " pound " that expression is capable of applying to Australian or English " pounds," and that the real problem on the facts which there arose was to determine whether in all the circumstances payment ought to be made in Australia or in England, and, if in Australia, payment should be made in Australian legal tender, and, if in England, it should be made in English legal tender. Bnt that does not touch the problem of how money received in another country can be brought into account in this country.

Tait. There was at the relevant time a distinction between currency and gold, and the income of the taxpayer had to be ascertained and denoted in Australian currency. In the *Income Tax Act*, No. 24 of 1931, which is the only relevant Act, the word " sterling " was omitted for the first time. There may be a question whether Australia remained on the gold standard until 1931. The real

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decision in *Adelaide Electric Supply Co.* v. *Prudential Assurance Co.* (1) was that there was a contract which provided for payment in Australia, and the obligation to pay could be discharged by payment in Australian currency. If the income were received in francs it would be necessary to express in terms of Australian currency the amount received in francs. But according to the contention of the taxpayer, if the income were received in francs, it would be permissible to convert into English currency without a further conversion into Australian currency. The taxpayer was assessed not only at so many pence in the pound upon the income he received, but was also assessed under sec. 5 (1) of the *Income Tax Act* 1931 to " a further income tax of ten per centum of the amount of that taxable income." This expression avoids the use of the term " pound " altogether.

Wilbur Ham K.C., in reply.

Cur. adv. vult.

April 30, 1934.

The following written judgments were delivered :—

GAVAN DUFFY C.J., EVATT AND MCTIERNAN JJ. At all material times the taxpayer was a resident of Australia. Upon various occasions during the year ending June 30th, 1931, there were placed to the credit of his account at a bank in London receipts which amounted in all to " £5,671 in English sterling." These credits represented interest derived during the same year from British funded stock. It is admitted that these receipts are part of his income for the year in question, and are assessable to tax under the provisions of the Commonwealth *Income Tax Assessment Act* 1922-1931. The only question in dispute concerns the manner of quantifying the receipts for the purpose of their inclusion in the Australian Commissioner's assessment of the taxpayer's income. In point of fact the taxpayer did not transfer to Australia any part of the interest payments, but it is agreed that, had he done so at or about the time of each payment, there would have been paid to his credit in Melbourne, Australia, a sum which would be expressed in Australia as £6,768, because it would have represented 6,768 Australian one-pound notes. The Commissioner says that it is this figure, £6,768,

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in respect of which tax is payable by the taxpayer in Australia. The taxpayer contends that, throughout the year ending June 30th, 1931, the legal standard to which both English and Australian currencies answered was the same gold sovereign, and that the credit of £5,671 sterling should appear in the appellant's Australian return as £5,671, no more and no less.

In our opinion, it is not necessary to determine whether, in the year in question, there existed, to use the words of *Maugham* J. (*Broken Hill Pty. Co.* v. *Latham* (1)), " any coin or other measure of value which could with legal correctness be described as an Australian pound." *Maugham* J. held, but only as a step towards construing the words of a debenture expressed in terms of " pounds," that in the year 1920 there was no such separate standard of value in Australia as an " Australian pound." In the Court of Appeal however, the majority of the Lords Justices reached a different conclusion, holding that the word " pounds," wherever used in the debenture, referred " to the Australian and not to the English pound " (per *Romer* L.J. (2)).

For present purposes, the real significance of *Latham's Case* (3) is that all the Judges who heard the matter asserted the inequality in value between English and Australian currencies of the denomination of £1 in the year 1932, when the suit was commenced. Thus *Maugham* J., whose judgment, according to counsel for the present appellant, was a correct expression of the law, said : " On March 30, 1932, the date of the issue of this summons, one pound in Australian currency was worth, according to the rate of exchange in London, about sixteen shillings in English currency " (4). Later he said :

> " There has been a considerable depreciation in the value of the pound in Australia as compared with the value of the pound in England since the month of March, 1930 ; and on March 31, 1932, the rate of exchange in London from Australian into English currency was approximately sixteen shillings English for each one pound Australian, so that in effect £100 English was equivalent to £125 Australian in the case of a telegraphic transfer from London to Australia, while in the case of such a transfer from Australia to London £125 Australian would be converted into £100 English " (5).

(1) (1933) Ch. 373, at p. 391.
(2) (1933) Ch., at p. 410.
(3) (1933) Ch. 373.
(4) (1933) Ch., at p. 377.
(5) (1933) Ch., at pp. 387, 388.

In the Court of Appeal Lord *Hanworth* in his dissenting judgment said :—

> "The value of the note depends upon the likelihood that when presented it will be cashed in coin. That prospect is estimated differently in Australia and in London, with the result that however close in fineness of gold the coins may be which are the response to the presentment of the note, the expectation that that response will be fulfilled is measured approximately at four to five in Australia as compared with London ; or, to express it in terms of notes, 125 Australian notes must be taken to represent the value of 100 Bank of England notes " (1).

Whatever may be accepted as the true explanation for the actual non-equivalence of Australian and English currency, the fact of such non-equivalence at the relevant period was incontestable.

So, too, *Lawrence* L.J. said that " at the commencement of these proceedings the Australian pound in terms of sterling was 16s." (2). And further :—

> " When that question " (i.e. the meaning of the agreement) " has been decided there is no difficulty as to the manner in which the payment ought to be made. As a matter of fact the parties are agreed that, if the sums payable in London ought to be paid in Australian currency, the proper way in which the company ought to discharge its obligation is by paying an equivalent amount of sterling at the current rate of exchange on the due date for payment " (3).

Many explanations of the relation between currency and exchange have been attempted. For instance, in his supplementary Note IX. on *Adam Smith's Wealth of Nations, M'Culloch*, 4th ed. (1850), at p. 493, said :—

> " When the currency consists, as in England, partly of the precious metals and partly of paper convertible into them, the effects produced by an over-issue of paper are the same as those resulting from an over-issue of gold or silver. The excess of paper is not indicated by a depreciation or fall in the value of paper compared with gold, but by a depreciation in the value of the whole currency, gold as well as paper, as compared with that of other States."

And he added later (at p. 493) :—

> " Although, therefore, an over-issue of paper payable on demand be not indicated by any fall in its value, as compared with gold in the country in which it is issued, it is clearly indicated by a fall of the exchange, and an efflux of gold. The fact of the exchange being depressed, and of gold continuing, for any considerable period, to be demanded from the bank and exported, is, independently of all other considerations, a conclusive proof that the currency is redundant or depreciated, as compared with the currency of other countries."

(1) (1933) Ch., at p. 396. (2) (1933) Ch., at p. 399.
(3) (1933) Ch., at pp. 399, 400.

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During argument we were also referred to Professor *T. E. Gregory's* fuller exposition, which is based upon more recent experiences of the world's money market and exchange, *Foreign Exchange* (5th impression). As Professor *Gregory* points out at p. 11, "the foreign exchanges exist, secondly, in order to give persons to whom debts are owing in foreign currencies the opportunity to exchange these rights to foreign currency into the money of their own country."

Clearly it is no longer possible to disregard the fact of increasing control of the exchange situation.

By way of illustration of this last factor, it may be pointed out that, on December 2nd, 1931, the Board of the Commonwealth Bank of Australia

> "issued a statement that it would buy London exchange, at rates to be fixed by itself, without restriction so far as the public were concerned, and subject to certain conditions, would also buy from the banks any surplus accumulated by them. The rates were fixed at Buying: £125 Australian = £100 English: Selling: £125 10s. Australian = £100 English. Rates are quoted weekly. Forward purchases of London exchange up to 28 days are contracted for by the bank. Buyers of our wool and other exportable produce are thus placed in the position of being able to calculate the prices they will give with the exchange factor definitely fixed. In this way the bank has removed the condition of uncertainty which had commenced to have adverse reactions upon the prices for our wool and other products. The Commonwealth Bank has been accused of forcing down the exchange rate, whereas the contrary is the fact. In fixing a rate at which it was prepared to buy openly, the Commonwealth Bank, influenced by the open market, fixed a rate beyond which the exchange could not, for the time being, fall, and in this way was instrumental in preventing the collapse which must otherwise have occurred. There is nothing to prevent interested parties from quoting higher rates if they desire, as has been done in the past" (*Official Report*, March 9th, 1932).

In the next report the Board stated that

> "another feature of importance is that of exchange. In the last report reference was made to the circumstances which led up to the Commonwealth Bank assuming the function of exchange control. The result of this action definitely placed upon the shoulders of the Bank Board the management of exchange in such manner as to safeguard the economic position generally and the banks against any serious loss. In the ordinary operations of the bank the position can reasonably be controlled by an exchange rate which simply has regard to the factors of favourable or unfavourable balances overseas. Owing, however, to the effect which this consideration alone might have upon the internal prices of our exportable products and a general feeling in the community that this factor alone should receive some consideration in determining the rate of exchange, the Bank Board communicated with the Government in January, calling attention to this aspect of the matter. The representatives

of the Board did not, as has been suggested, invite Parliament or the Government to interfere in the administration of exchange, nor does the Board subscribe to any policy of interference. In this connection the Government has publicly announced its policy of non-interference, but at the same time has indicated to the Board its desire that the economic aspect of the matter, as well as the ordinary banking question of oversea balances, should receive the consideration of the Board in determining the rate of exchange. This policy the Bank Board is endeavouring to carry out " (*Official Report*, August 5th, 1932).

And further:

" The Board has maintained exchange on London during the past six months at a stabilized position in relation to sterling, and in so far as gold is concerned has allowed the fluctuations in sterling and dollars to operate as between Australian pounds and dollars " (*Official Report*, August 5th, 1932).

And, still later, it was reported:

" The Commonwealth Bank during the period has maintained exchange stability at £125 Australian to £100 sterling, which rate has now operated since November 1931, when the bank assumed control of the exchange position " (*Official Report*, March 14th, 1933).

The fact is that the relative value of English and Australian currency payments in satisfaction of money claims may be dependent upon a large number of factors, the importance of which varies at different times and under differing conditions. In this case, the cause of non-equivalence is quite immaterial. We reject the theory advanced that, in the practical task of expressing the actual income of an Australian resident, the taxing authority is bound to disregard the commercial and actual value of an ex-Australian income receipt, but is bound to treat a money receipt of £100 in English currency in England as being of precisely equal value to a money receipt of £100 in Australian currency in Australia, upon the ground that they were received at a time when the internal currency systems of the two countries, though operated almost entirely by means of notes having only local operation as legal tender, were related in law, though very distantly in fact, to the self-same golden coin.

In this connection, we think that the comment of *Isaacs* and *Rich* JJ. in *Alexander Stewart & Sons Ltd.* v. *Robinson* (1) is of considerable force. They said:—

" 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

(1) (1920) 29 C.L.R. 55, at pp. 64, 65.

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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.*" (Italics are ours).

The *Income Tax Assessment Act* makes subject to taxation the income of every Australian resident, whatever may be the source of the income. In the present case the taxpayer's income receipt in London should be taxed upon its value at the time of receipt. The question is, how should that value be expressed in an Australian income tax return? Clearly, in some way which will fairly express its true value in Australia, and its true relation to all other items of Australian receipts and Australian expenditure. The amount of that value is a question of fact. It is not correct to state in an Australian income tax return that the value of the interest in question received by the appellant was only £5,671. What a taxpayer chooses to do with income derived outside Australia after its receipt is, of course, of no significance to the Commissioner except that, if the taxpayer should transfer it to Australia, he would necessarily afford very strong evidence of its value in Australian currency at the time of the receipt of the income in London. It is erroneous to assert that, if taxed by reference to the Australian value of the receipt, he is being taxed upon the value of income situated abroad as distinct from its value if situated in Australia. It is the taxpayer's actual income, as and when received abroad, which is the relevant subject of taxation. Its value abroad is necessarily the same as its value in Australia. The taxpayer is not being taxed upon an imaginary " accretion " to his real income by reason of a hypothetical transfer of it to Australia. The short answer to the taxpayer's argument that he is being taxed upon a purely hypothetical transfer of his income receipt is that the hypothesis of transfer is only made for

one purpose—that of determining as a question of fact the market value of the untransferred income receipt. That value has to be expressed as in Australian currency, because every other item of income or outgo in the taxpayer's return is so expressed. In our opinion the word "income" whenever used in the Act of Parliament means income expressed in Australian currency.

In the present case, the question of fact, i.e., the actual value in Australia, has been correctly determined by the Commissioner. Indeed, if the argument of absolute equivalence is rejected, the *quantum* of value is not disputed.

For some years past English-Australian money dealings have exhibited the appearance either of accretion to or deduction from a given "standard" or "norm." This is due to the use of such phrases as "cost" of exchange. The business reality of the matter is illustrated by the following comment:—

> "One of the reasons why we tend to keep the fiction of a 'normal' parity is that we are still talking of the 'cost of exchange.' The accounts of the Government of New South Wales, for instance, show that during the last financial year £7.9 millions was paid in external interest and £2.3 millions in 'exchange.' Unwittingly, the Treasury has included in its accounts £7.9 millions in a currency which is quite different from that in which the rest of the figures in the financial statement are expressed, and, in order to adjust the discrepancy, has added the item 'exchange.' No one would think of adding together tons of flour and tons of wheat, calling the lot flour or wheat, or even wheat and flour. The flour would first be converted into its wheat equivalent, or *vice versa*, in order to get a common denominator, and then the two could be added together. Yet the figures added in the Treasurer's statement are just as different as flour and wheat. It would, in fact, be quite as logical to include in the budget interest in United States dollars, adding a credit item for the difference between the dollar and the Australian pound. The correct way of expressing the interest payment instanced would be to state it as £A. 10.2 millions so as to keep it on the same denominator as the rest of the financial statement. The fact that this amount is equal to £ stg. 7.9 millions may or may not be interesting enough to show in a footnote to the statement, but has certainly no place in the statement itself" (*Bank of New South Wales Circular*, vol. III., No. 5).

In our opinion, the taxpayer's contention finds no real support in the provisions of the *Income Tax Assessment Act*. And it is significant that, in the relevant Act fixing the rates of taxation, the word "sterling" which was used in prior legislation, was, for the first time, omitted. This shows clearly that, in carrying out

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the duty of assessment, the Commissioner should distinguish between the real value in Australia of English and Australian currency, so that both the subject of taxation and the impost will be expressed, as the tax itself will have to be paid, in terms of Australian currency.

Since preparing a draft of this judgment, we have considered the recent decision of the House of Lords in *Adelaide Electric Supply Co.* v. *Prudential Assurance Co.* (1). That case accepts the view of *Maugham* J. in *Latham's Case* (2), but the correctness of that view is beside the point in the present case. The problem here is not solved by reason of the identity of the Australian and English "money of account." We have not to ascertain the meaning of an obligation defined in terms of "pounds," but to determine the correct way of expressing in the income tax return a particular income receipt according to a unit of value which is common to the whole return. The Australian income tax system is only concerned with the real value, not with the theoretical basis, of assessable income. If it were otherwise, and the contention of the present taxpayer were correct, the Australian taxpayer who pays £*X* in England as interest would be entitled to a deduction of £*X* only in ascertaining his taxable income. Yet, from his resources in Australia, such taxpayer has to find Australian values far exceeding £*X* in order to make his payment in England. In our opinion, the taxpayer is entitled to deduct the true value in Australian currency of the overseas payment, and his claim to do so has always been recognized.

We think that there is nothing in the House of Lords decision which in any way affects the validity of our opinion. As Lord *Atkin* said in his speech :—

> "We do not seem to get very far by describing the 'pound' as a unit of account. Its essential use is to denote a measure of value expressed in a specific currency or currencies. . . . Of course, notwithstanding that the pound was the same, the contract might expressly or impliedly state the place for performance. In such a case the pound denoted value expressed in the currency of that place" (3).

In the same case, it was pointed out by Lord *Wright* :—

> "Exchange rates are quoted between England and Australia; your Lordships have been provided with a summary of these at various dates from 1913 to 1932. . . . I think it must be held in view of these facts that not

(1) (1934) A.C. 122. (2) (1933) Ch. 272.
(3) (1934) A.C., at pp. 134, 135.

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, as well as in the different commercial conditions prevailing " (1).

Nor do the other speeches run in any way counter to the opinion we had formed of the present case. For instance, Lord *Warrington* stated :

" I have come to the conclusion that, merely as a unit of account, the pound symbolized by the £ is one and the same in both countries, and that the difference in the currencies merely concerns the means whereby an obligation to pay so many of such units is to be discharged " (2).

But in the present case we *are* concerned with the " means whereby an obligation " of the British Government to the plaintiff was " discharged." That discharge was effected in England by means of English payments or credits. What was the real value to the plaintiff of such payments or credits ? And how is that value to be expressed in terms of payments or credits in Australia, i.e., in terms of Australian currency ? It is here that we must, to refer again to Lord *Warrington's* judgment (2), attend to the " difference in the currencies " of England and Australia. The great difference in the value of the two currencies is clearly illustrated both by the very fact of the *Adelaide Electric Supply Co.* litigation (3) and by the judgment of all the Law Lords. For the real controversy was whether what was held ultimately to be precisely the same obligation had to be discharged in England or in Australia. This shows what the decision itself demonstrates, that, although there was the same " money of account " in England and Australia, discharging a debt in England produced a very different result, to debtor and creditor alike, from discharging it in Australia. That difference in result was due entirely to the lack of equivalence in the value of the two currencies at the time to which both the *Adelaide Electric Supply Co.'s Case* and this case refer.

The form of the questions asked tends to emphasize a view of the matter which we do not accept, because the question, in our view, is one of valuing the taxpayer's receipt in terms of Australian currency. But treating, as we do, the supposed transfer of the moneys to Australia merely as a method of valuation, it is sufficient if the questions asked are answered :—1 (*a*) : Yes. 1 (*b*) : No. The costs should be costs in the appeal.

(1) (1934) A.C., at p. 155. (2) (1934) A.C., at p. 138.
(3) (1934) A.C. 122.

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RICH J. The taxpayer, a resident of Australia, in his return of income for the financial year which began on 1st July 1931, included as income derived during the preceding year certain interest from British funded stock which had been paid into his bank in London in British sterling. No part of this money was transferred to Australia. The Commissioner assessed the taxpayer, not at the amount actually paid to the taxpayer's credit in London, but at the increased sum which would have resulted from the transfer to Australia of the amount so paid. In determining the question which emerges from these facts for our decision one must take into consideration the *Coinage Act* of 1909, the *Commonwealth Bank Act* of 1929 and sec. 60H of the *Commonwealth Bank Act* 1911-1931. This section was not repealed until 1932 by the *Commonwealth Bank Act* 1932. This statute does not, therefore, form part of the relevant facts. It might, perhaps, alter the taxpayer's position if it had to be considered.

The taxpayer has, no doubt, under the provisions of the *Income Tax Assessment Act* 1922-1931 and Schedules, to return in pounds, shillings and pence the income he has derived in Australia and abroad. In the case under consideration the income returned by the taxpayer was derived from sources in Australia and England. For the purposes of the statutory return the taxpayer must convert units of account other than pounds, shillings and pence, into pounds, shillings and pence. But if he has made a return in pounds, shillings and pence according to the facts, there is nothing in the *Income Tax Act* or in the necessity of the case which requires him to value the unit of account according to any standard depending on market value in Australia of such unit arising from exchange or other considerations. There are, in my opinion, two compelling legal reasons for denying the necessity of converting the amount of pounds, shillings and pence received in England by the taxpayer in order to express correctly in his Australian return his income received abroad.

The first is that at the material times sec. 60H of the *Commonwealth Bank Act* 1911-1931 operated to make the British gold sovereign the ultimate legal tender or currency into which notes were convertible and upon which they depended. A court of law cannot go beyond this legal fact. It cannot, particularly in ascertaining a liability to the Commonwealth, proceed upon the basis that practical considerations had prevented the operation of the law which required the Commonwealth to pay gold sovereigns for pound notes.

The second is that we now have a definite decision of the House of Lords which treats pounds, shillings and pence as a single monetary expression operating in Great Britain and Australia alike as a description of the one money of account. This, as I understand it, means that Australia and Great Britain possess the same money for the purpose of expressing obligations, even although differences exist between the actual things which the law of the respective countries prescribes as legal tender sufficient for the discharge of obligations. The decision to which I refer is *Adelaide Electric Supply Co.* v. *Prudential Assurance Co.* (1). The case might be otherwise if the income here and in England had to be brought into a single account for the purpose of ascertaining the income of a business carried on here and in England.

Question 1 in the special case should be answered:—(*a*): No. (*b*): Yes. Costs, costs in the appeal.

STARKE J. Case stated pursuant to the *Income Tax Assessment Act* 1922-1932.

Income tax is levied and payable for each financial year upon the taxable income derived directly by every resident from all sources, whether in Australia or elsewhere (*Income Tax Assessment Acts* 1922-1932, sec. 13). The tax is imposed upon taxable income expressed in pounds (*Income Tax Act*, 1931, No. 24). The taxpayer, Payne, was resident and domiciled in Australia, and it appears that he received, during the year which ended on 30th June 1931, interest upon British funded stock amounting to £5,671. This amount was credited to his account in the Union Bank of Australia Ltd. in London, and was never remitted to Australia. But during the financial year 1931-1932, exchange was much against Australia, and a credit of £5,671 in London could be transformed into a credit of £6,768 in Australia, or a difference in amount of £1,097. The Commissioner added this sum of £1,097 to the taxable income of the taxpayer, and assessed him for the financial year 1931-1932 to income tax in respect thereof. The question is whether he was right in so doing. In my opinion, he was not.

It was Peel who said that "according to practice, according to law, according to the ancient monetary policy of this country, that which is implied by the word 'pound' is a certain definite quantity of gold, with a mark upon it to determine its weight and fineness,"

(1) (1934) A.C. 122.

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and that "the engagement to pay a pound means nothing else than the promise to pay to the holder when he demands it, that definite quantity of gold." But the pound, as economists point out, is also an English money of account, which comes into existence along with debts and price lists. A money of account is that in which debts and prices are expressed; it provides a unit for the measurement of debts and prices, and is not merely a measurement of gold. Money proper only exists in relation to a money of account; it is the thing by delivery of which debts and price contracts are discharged. (See *Keynes' Treatise on Money*, Vol. 1; *Hawtrey, Currency and Credit.*) This monetary unit of account is the same, both in England and Australia (*Adelaide Electric Supply Co.* v. *Prudential Assurance Co.* (1)). But so long as debts were payable in gold, the distinction was practically unimportant. "Debts in different countries," *Hawtrey* (*Currency and Credit*, 3rd ed. (1928), p. 65) says, "are as heterogeneous as commodities in different countries; £10,000 in Capetown is something quite different from £10,000 in London. The fact that each is transformable into precisely the same quantity of gold, and that the gold can be sent at moderate expense from either place to the other, does not alter this, though it keeps the variations of the value of either debt in terms of the other within narrow limits"—the cost of transporting it from one to the other. If, however, gold be for any cause unprocurable, the distinction is of importance.

Now it so happened that in 1931-1932 the sovereign was in law and in fact, both in England and Australia, the principal coin, the unit of value, and the principal money of account. The *Gold Standard Act* 1925 (15 & 16 Geo. V. c. 29) was not suspended in England until September 1931 (21 & 22 Geo. V. c. 46). In Australia the provision in the Act 1920 No. 43, sec. 60, that Australian notes should bear the promise of the Treasurer to redeem the same in gold coin was not repealed until May 1932, by the Act 1932 No. 16, though, by the Act 1929 No. 31, any person might, upon certain conditions being fulfilled, be required to exchange for its equivalent in Australian notes any gold coin or bullion held by him, and power was taken to prohibit the export of gold. The former power was, I understand, at times exercised, but the latter power was never exercised. But gold had in fact practically gone out of circulation, and, quoted in terms of money of account, was at a premium.

(1) (1934) A.C. 122.

Exchange between England and Australia was more or less controlled, and against Australia. At all events, the taxpayer's credit or debt of £5,671 in England was of a value of £6,768 in Australia, expressed in terms of the common money of account. But the credit or debt or income of the taxpayer, expressed in terms of the common money of account, was the same, though the command over wealth or value was not the same, in the two countries. Returns of income and assessments to tax under the Income Tax Act are not stated in terms of money proper or currency, but in terms of the monetary unit of account, however the assessment may be discharged. The result may be considered anomalous, but it flows from the use of a common monetary unit of account.

A credit or income in Australia, expressed in terms of the common money of account as £6,768 must, it was suggested, if the view I take be correct, be also £6,768 in England, though a credit of only £5,671 could be purchased there for that amount. I agree, but that is only the converse of the present case. But, it is said, a credit or debit of £5,671, in terms of the English money of account, would be converted into dollars or francs at the current exchange, for that would express the sum of £5,671 in the terms of the monetary units of the United States of America and France respectively. Again I agree, but the units of account are not there the same, as is the case between England and Australia.

The questions stated in the case should, in my opinion, be answered: 1 (*a*): No, or 1 (*b*): Yes.

Dixon J. During the twelve months ended 30th June 1931, the taxpayer, who was a resident of Australia, received interest from British funded stock. The amount of interest was paid in British sterling to the credit of his bank account in London. The taxpayer used the money in London and did not cause any part of it to be transferred or remitted to Australia. In his return of income for the financial year beginning 1st July 1931, the taxpayer included the amount of interest so received in sterling as income derived by him during the preceding year. The Commissioner, however, considered that the amount at which the interest should be included in the assessment was not that of the sum received in sterling in London, but the sum which that amount in London would produce in Melbourne if transferred to Melbourne at the rates of telegraphic transfer prevailing on or about the respective dates when the sums

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making up the amount of interest were credited to the taxpayer's bank account in London. He accordingly included the interest in the taxpayer's amended assessment at this increased figure, an increase of nearly twenty per cent.

The question is whether the Commissioner was right in doing so. In my opinion he was wrong. I agree that sec. 13 of the *Income Tax Assessment Act* 1922-1931 and secs. 4, 5 and 6 and the Schedules of the *Income Tax Act* 1931 require that the income of a resident derived from all sources shall be ascertained and assessed in terms of money of the Commonwealth. It may follow that, when income is received abroad expressed in money of a foreign country, a commercial rate of exchange prevailing at the time of derivation must be adopted as the means of converting the amount received into terms of Australian money. No doubt, the adoption of the commercial rate of exchange will introduce into the ascertainment of the amount of income derived abroad elements which properly arise out of the operation of transferring or remitting the income to Australia. I do not think that the enactments mean to require the assessment of income derived abroad upon the hypothesis that it has been remitted to the Commonwealth. They intend to tax the resident upon the actual income he has received abroad without any such further supposition, but they do require that, for the purpose of assessment and calculation of the tax, all his income shall be expressed in terms of money and of money of the Commonwealth. In many cases of foreign currency this may be impossible without resort to conversion at commercial rates of exchange. But, in the case of income derived in Great Britain and expressed in sterling, no conversion was, I think, necessary, at any rate before the enactment of the *Commonwealth Bank Act* 1932. Before that date, in contemplation of law, the primary, or, perhaps, I should say ultimate, currency of Australia was the British sovereign. The unit of account is the pound, and the British sovereign was in the last resort the only currency which for all purposes satisfied the description. Sec. 5 of the *Coinage Act* 1909 makes a tender of payment of money good if made in British or Australian coins. So far as concerns sovereigns the result was that the same coin was legal tender in Great Britain and the Commonwealth. Under sec. 60H of the *Commonwealth Bank Act* 1911-1931, Australian notes were also a legal tender throughout the Commonwealth, but, by par. (*c*)

of sub-sec. 1 of that section, the notes were required to bear the promise of the Treasurer to redeem the notes in gold coin on demand. This provision was not repealed until the *Commonwealth Bank Act* 1932. While it stood, the Australian note, although legal tender between subject and subject, created a debt by the Crown to the holder which in law could only be discharged by payment of sovereigns. Whatever may have been the practical relation of Australian notes to gold, I do not think that, at this date at any rate, they can be considered, for the purposes of calculating liability to the Crown to tax, as the exclusive measure of the money of account in which the taxpayer's income must be expressed. In point of law the ultimate measure was the sovereign current in Great Britain. I have not overlooked the *Commonwealth Bank Act* 1929 which was assented to on 17th December 1929. It empowered the Treasurer, if he were satisfied that it was expedient for the protection of the currency or of the public credit of the Commonwealth, to authorize the Board of Directors of the Commonwealth Bank to require any person to exchange gold coin with the Bank for its equivalent in Australian notes at its nominal value. This is a power exercisable in individual cases, and does not repeal or destroy the legal effect of sec. 60H (1) (*c*) of the *Commonwealth Bank Act*, although it "*in effect* ended the convertibility of the Commonwealth notes," as Lord *Wright* said in *Adelaide Electric Supply Co.* v. *Prudential Assurance Co.* (1). In that case, which has been decided by the House of Lords since the argument of the present case, Lord *Warrington*, Lord *Tomlin* and Lord *Russell* definitely decide that Australia possesses the same money of account as Great Britain, that the pound is the same unit of account, not merely a unit of account with the same name. Lord *Wright*, with whose opinion Lord *Atkin* expressed his agreement, said, after a review of the currency legislation: "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" (2). But I do not understand his Lordship to mean by this conclusion that the ascertainment of a money sum in sterling is not sufficient as an expression of its amount for Australian purposes, nor that prior to the statutory termination of the legal convertibility of the Australian

(1) (1934) A.C., at p. 154. (2) (1934) A.C., at p. 155.

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note into the sovereign, it was not in contemplation of law the ultimate measure of the unit of account. The qualification made by the words "in effect" in his Lordship's description of the consequences of the *Commonwealth Bank Act* 1929 appears to imply that in contemplation of law the note remained convertible. Indeed, the actual decision of the House, in which all their Lordships concurred, is inconsistent with the existence of a necessity to convert English pounds into Australian, or *vice versa*, in order to obtain a common, or equivalent, monetary expression. The decision was that a percentage dividend on share capital expressed and payable in money of the Commonwealth could without any conversion be declared, although the capital was divided into shares expressed in the money of Great Britain. It is obvious that, if these were two different moneys, as would, for instance, be the case if the dividend were expressed in United States dollars, such a process would be impossible. If a dividend of 5 per cent in dollars were payable upon a share capital expressed in sterling, a conversion at some rate of exchange would be essential to the ascertainment of the dividend. But the decision of the House was that the division of capital and the declaration of the dividend involved one money only, and no conversion should, or indeed could, be made in ascertaining the sum payable in Australia for dividend. Finally, the approval by all their Lordships of the judgment of *Maugham* J., as he then was, in *Broken Hill Proprietary Co.* v. *Latham* (1), shows that, prior to the Australian departure from gold, the unit of account and the ultimate measure of its value was considered the same in both countries.

In my opinion, question 1 in the special case should be answered :— (*a*) : No. (*b*) : Yes.

Questions answered :—1 (*a*) : *Yes.* 1 (*b*) : *No.*

Solicitors for the appellant, *E. L. Vail & Son.*

Solicitor for the respondent, *W. H. Sharwood*, Crown Solicitor for the Commonwealth.

H. D. W.

(1) (1933) Ch. 373.