

[HIGH COURT OF AUSTRALIA.]

ERVIN APPELLANT ;

AND

THE FEDERAL COMMISSIONER OF TAXATION RESPONDENT.

Income Tax (Cth.)—Assessable income—Gold dollar bonds—External loan—Principal and interest payable “without deduction for any taxes,” present or future, imposed by Commonwealth or State—Bondholder resident in Commonwealth—Interest—Liability to tax—Treasury bonds—Income Tax Assessment Act 1922-1932 (No. 37 of 1922—No. 76 of 1932)—Commonwealth Inscribed Stock Act 1911-1927 (No. 20 of 1911—No. 2 of 1927), sec. 52B—Loans Securities Act 1919 (No. 25 of 1919), sec. 3.

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SYDNEY,
June 13, 14 ;
July 15.
Rich, Starke,
Dixon, Evatt
and McTiernan
JJ.

Sec. 52B of the *Commonwealth Inscribed Stock Act 1911-1927* provides that “the interest derived from stock or Treasury bonds shall not be liable to income tax under any law of the Commonwealth or a State unless the interest is declared to be so liable by the prospectus relating to the loan on which the interest is payable.”

The taxpayer was a resident of the Commonwealth. His income for the year ended 30th June 1932 included interest received on his behalf by his banker’s agent in New York, and credited to his account in Sydney, as the holder of some bonds issued in New York in 1928 by the Commonwealth of Australia as part of an external loan raised, with the approval of the Governor-General, under the *Loans Securities Act 1919*. According to the tenor of the bonds principal and interest was payable in New York in gold coin of the United States of America of the standard of weight and fineness existing on 1st May 1928, without deduction for any taxes then or at any time thereafter imposed by the Commonwealth or by any taxing authority thereof. The sum payable was expressed in dollars. The bonds were redeemable on any interest date at the option of the Commonwealth upon certain notice, and were negotiable only when countersigned for authentication by a specified New York bank. The prospectus relating to the loan did not declare that the interest derived from the bonds should be liable to Commonwealth income tax.

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Held that the bonds were not Treasury bonds within the meaning of sec. 52B of the *Commonwealth Inscribed Stock Act* 1911-1927, and the interest derived therefrom formed part of the taxpayer's assessable income for the purposes of the *Income Tax Assessment Act* 1922-1932.

CASE STATED.

On an appeal by Samuel Henry Ervin from an assessment for Federal income tax in respect to income received by him during the year ended 30th June 1932, *Rich J.* stated a case, which was substantially as follows, for the opinion of the Full Court:—

1. The appellant, Samuel Henry Ervin, is and at all material times was a resident in the State of New South Wales and a taxpayer within the meaning of the *Income Tax Assessment Act* 1922-1932.

2. The appellant duly furnished to the respondent a return under the provisions of the Act of his income for the year ended 30th June 1932.

3. The appellant during the whole of that year was the owner of certain bonds of the Commonwealth of Australia, being gold bonds payable to bearer of a face value of \$41,000 and being part of an external loan of \$50,000,000 $4\frac{1}{2}$ per cent gold bonds floated by the Commonwealth of Australia in the State of New York in the United States of America in the year 1928. The bonds were dated 1st May 1928 and were expressed to be due on 1st May 1956 but subject to redemption at the option of the Commonwealth upon any interest payment date by payment of 100 per cent of the principal amount, and upon the terms and subject to the conditions set out in the bonds. The interest payable upon the principal sum of one thousand dollars mentioned in each of the bonds was expressed to be payable semi-annually on 1st May and 1st November in each year after the date of the bond until the principal sum should have been paid. The principal sum and interest instalments when due respectively were payable in the Borough of Manhattan, the City of New York, State of New York, United States of America, at the office therein of J. P. Morgan & Co., or at the principal office of the National City Bank of New York, or at the office of the Commonwealth Bank of Australia in the City of New York, as the holder of any such bond should elect in gold coin of the United States of America of the standard of weight and fineness existing on 1st May 1928 without

deduction for any taxes then or at any time thereafter imposed by the Commonwealth of Australia or by any taxing authority thereof or therein. Each bond contained a statement that it was "one of the 4½% Gold Bonds External Loan of 1928 dated May 1, 1928, for an aggregate principal amount of 50,000,000 dollars, issued by the obligor in accordance with the loan contract dated May 7, 1928, entered into by the obligor with the aforesaid J. P. Morgan & Co. and the National City Company as bankers" and that it "shall not be negotiable until countersigned for authentication by the National City Bank of New York or its successor duly appointed by the obligor for that purpose."

4. A prospectus issued by the Commonwealth of Australia in connection with the flotation of the loan stated that the principal and interest were payable as aforesaid without deduction for any Australian taxes present or future. It was not declared by any prospectus relating to the loan that the interest to be derived from the bonds was to be liable to income tax under any law of the Commonwealth or a State.

5. The bonds were issued and sold in New York in the manner and upon the terms and conditions mentioned in the bonds and in the prospectus by authority of the Governor-General of the Commonwealth of Australia acting with the advice of the Executive Council of the Commonwealth, such authority and advice being stated in a minute of the Executive Council dated 14th May 1928. In the minute, which was signed by the Treasurer, reference was made to the *Loans Securities Act* 1919, the *States Loan Act* 1925-1927, and the *Loan Act* (No. 2) 1927, and then it was recommended for the approval of the Governor-General in Council that the Treasurer be authorized pursuant to sec. 3 of the *Loans Securities Act* 1919 to borrow the sum of £10,274,324, by borrowing United States gold dollars to an equivalent of that sum in the manner and at the prices and on the terms and conditions contained in the loan agreement entered into between J. P. Morgan & Co. and the National City Co. of the first part and the High Commissioner of Australia of the second part and in the prospectus approved on behalf of the Treasurer by the High Commissioner. It was further recommended for the approval of the Governor-General in Council that the

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Treasurer be authorized to issue securities in respect of the loan in the form of security which had been settled and approved between the High Commissioner on behalf of the Treasurer and the two companies referred to above, and that the High Commissioner be authorized to execute the securities by a facsimile imprint of his signature and to cause the securities to be manually countersigned by the Official Secretary of the Commonwealth in New York. The recommendations were approved.

6. During the year ended 30th June 1932 the appellant derived income from sources in Australia and elsewhere, including interest payable upon the bonds.

7. The interest received by the appellant during that year on the bonds was collected by the agent of the appellant's bankers in New York and converted into Australian currency and when so converted amounted to the sum of £337, which sum was credited by the bankers to the appellant's account in Sydney.

8. The appellant did not include that sum as assessable income in his return of income furnished to the respondent in respect of that year, claiming that the interest was not liable to income tax under any law of the Commonwealth or any State therein.

9. The respondent on 9th May 1933 caused an assessment to be made for the purpose of ascertaining the taxable income upon which income tax should be levied upon the appellant for the financial year ended 30th June 1933 and caused notice in writing of that assessment to be given to the appellant. Subsequently the respondent caused an alteration to be made to the assessment by including in the appellant's taxable income the said sum of £337 and notified the appellant thereof by notice in writing dated 30th October 1933.

10. On or about 6th November 1933 the appellant lodged an objection in writing with the Commissioner of Taxation against the amended assessment, objecting to the inclusion of the sum of £337 in the assessable income of the appellant on the grounds that (a) Federal income tax should not be assessed on the sum of £337 interest on Commonwealth gold dollar bonds payable in New York; (b) the prospectus of the Commonwealth Dollar Bonds Loan stated that the interest on the bonds would be paid without deduction of any Australian taxes present or future and

the *Commonwealth Inscribed Stock Act* provides that, where the prospectus of a loan declares the interest as free from income tax, then income tax shall not be levied on such interest.

11. The respondent on or about 6th February 1934 gave written notice to the appellant that the respondent had disallowed the objection to the amended assessment.

12. The appellant, being dissatisfied with the decision of the Commissioner, on 23rd February 1934 in writing requested the Commissioner to treat his objection as an appeal and forward it to this Court for decision.

13. The appellant contends that the sum derived as interest from the bonds is not liable to income tax under any law of the Commonwealth and did not form part of his assessable income for that year under the provisions of the *Income Tax Assessment Act* 1922-1932 upon the ground that the sum is exempt from income tax under the provisions of sec. 52B of the *Commonwealth Inscribed Stock Act* 1911-1927.

14. The respondent contends that the sum has been properly included in the appellant's assessable income for that year and that the amended assessment is correct.

The question for determination by the Full Court was :—

Does the sum of £337 form part of the appellant's assessable income derived during the year ended 30th June 1932, for the purposes of the *Income Tax Assessment Act* 1922-1932 ?

Collier, for the appellant. There is a contractual obligation on the part of the Commonwealth under each bond that the holders of those bonds shall be free from all and any taxation imposed by Australian taxing authorities. The promise in the bonds to this effect is in accordance with a statement contained in the prospectus issued in respect to the loan. It is a term of the contract which confers upon bondholders immunity from deductions made at the time of payment and also from liability to taxation after payment. Ambiguous words should be given the interpretation most favourable to the taxpayer (*The Commonwealth v. Queensland* (1)). The bonds

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are Treasury bonds (*Perpetual Trustee Co. v. Federal Commissioner of Taxation* (1)), and therefore the interest derived therefrom is, by virtue of sec. 52B of the *Commonwealth Inscribed Stock Act* 1911-1927, not liable to income tax. The general policy of the Legislature in regard to liability to taxation of income derived from moneys loaned to the Commonwealth is shown in the *Commonwealth Inscribed Stock Act* 1911, as amended by Act No. 26 of 1915, Act No. 7 of 1918, and Act No. 25 of 1932, the *Taxation of Loans Act* 1923, and the *Commonwealth Debt Conversion Act* 1931, read in conjunction with the *Income Tax Assessment Act*. The inference to be drawn from the *Taxation of Loans Act* 1923 is that liability to taxation is restricted to interest derived from loans raised in Australia.

E. M. Mitchell K.C. (with him *Kitto*), for the respondent. The bonds are not Treasury bonds. There is more material before the Court in this matter than there was in *Perpetual Trustee Co. v. Federal Commissioner of Taxation* (2), which, therefore, should not be taken as concluding the question. A Treasury bond is a document which can be issued only in the prescribed form, or, alternatively, in some form approved by the Treasurer. Treasury bonds have certain characteristics which are not present in the bonds now under consideration. These bonds are not in the prescribed form, nor in a form approved by the Treasurer; they are expressed in foreign currency and not in sterling, and there is not any machinery for translation from one to the other; they are required to be paid in gold coin; they are not exchangeable for inscribed stock, nor, being expressed in foreign currency, are they acceptable at face value in payment of Commonwealth estate duty; they are not convertible; there is no obligation to register in the general register of Treasury bonds; they are redeemable not by any rights reserved to the Treasurer, but by the Commonwealth in accordance with the conditions fixed by the Governor-General at the time of the issue of the securities; the various matters arising under the bonds are to be dealt with, not in accordance with anything prescribed by the regulations, but in accordance with the contractual obligations appearing on the face of the bonds. The "domicil"

(1) (1932) 47 C.L.R. 402, at p. 409.

(2) (1932) 47 C.L.R. 402.

of the bonds is where they are capable of being effectively dealt with (*Brassard v. Smith* (1)). The *Taxation of Loans Act* 1923 does not affect the question raised here. [Counsel referred to the *Treasury Bills Act* 1914-1915, the *States Loan Act* 1916, the *States Loan Act* 1917, the *Loans Securities Act* 1919, *Commonwealth Inscribed Stock Regulations* 1927 (S.R. 1927, No. 157), regs. 4, 47, 52, 55, 56, 59, Forms 26, 35, and *Commonwealth Inscribed Stock Regulations* 1932 (S.R. 1932, No. 71), Form 33.] The Executive minute shows that the Governor-General elected not to proceed under the *Commonwealth Inscribed Stock Act*, or the *Treasury Bills Act*, but to proceed under the provisions of the *Loans Securities Act*, and therefore to issue the securities in a form approved by himself. The form of security here is not in accordance with the form prescribed in the regulations, and it does not correspond to any form of security known as a Treasury bond. The bonds are special securities designed to meet the peculiar circumstances of this particular loan. They do not come within sec. 52B of the *Commonwealth Inscribed Stock Act*. Payment "without deduction" means that there shall not be any deduction at the source, that the bonds were to be paid in full in gold coin at the appointed office on the appointed date. Upon this having been done the contractual obligation to pay "without deduction" would have been performed according to its tenor and effect (*Perpetual Trustee Co. v. Federal Commissioner of Taxation* (2)). What happens afterwards is not relevant to the contract on the face of the bond (*Plummer v. Coler* (3) ; *Murdock v. Ward* (4)).

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Collier, in reply. Treasury bonds, as usually understood, are bonds issued by or on behalf of the Treasury of a country. (See the definition of "bond" in *Webster's Dictionary* and in the *Oxford English Dictionary*.) Treasury bonds may be issued and sold in such amounts and manner, and at such price, and on such terms and conditions, as the Governor-General directs (*Commonwealth Inscribed Stock Act* 1911-1927, sec. 51B). "Bond" is not defined in that Act. The Executive minute shows that the approval of the Treasurer,

(1) (1925) A.C. 371. (3) (1900) 178 U.S. 115; 44 Law. Ed. 999.
(2) (1932) 47 C.L.R., at pp. 409, 416.
(4) (1900) 178 U.S. 139, at p. 148; 44 Law. Ed. 1009, at p. 1013.

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as contemplated by sec. 55 of the Act, was given to the issue of the bonds in this particular form. If securities issued in pursuance of the powers conferred by the *Loans Securities Act* 1919 were not to have the protection of sec. 52B of the *Commonwealth Inscribed Stock Act*, provision to this end in clear words would have been made by the Legislature. The difference in the currency does not present any real difficulty. Reference to payment of estate duty was not made in the bonds because the people in the United States of America, to whom it was proposed they should be issued, were not likely to be interested in the payment of Australian estate duty. (See also the *Income Tax Assessment Act* 1922-1935, secs. 57, 65.)

Cur. adv. vult.

July 15.

The following written judgments were delivered :—

RICH, DIXON, EVATT AND McTIERNAN JJ. The taxpayer is a resident of the Commonwealth and so liable to taxation upon his income from all sources. His income for the year now in question includes interest received on his behalf by his banker's agent in New York. The interest was paid to him as holder of some bonds issued by the Commonwealth of Australia as part of an external loan. They were issued in New York in 1928. According to the tenor of the bonds, principal and interest is payable in New York in gold coin of the United States of the standard of weight and fineness existing on 1st May 1928, "without deduction for any taxes now or at any time hereafter imposed by the Commonwealth of Australia or by any taxing authority thereof or therein." The prospectus relating to the loan in respect of which the bonds were issued did not declare that the interest derived from them should be liable for Commonwealth income tax.

The question for our consideration is whether the interest derived by the taxpayer from the bonds is part of his assessable income. The question depends entirely upon sec. 52B of the *Commonwealth Inscribed Stock Act* 1911-1927.

The *Taxation of Loans Act* 1923 is confined to loans raised in Australia and does not affect the matter.

Sec. 52B is as follows: "The interest derived from stock or Treasury bonds shall not be liable to income tax under any law of the Commonwealth or a State unless the interest is declared to be so liable by the prospectus relating to the loan on which interest is payable." It clearly applies if the bonds held by the appellant are Treasury bonds. If they are not Treasury bonds, it is equally clear that the provision does not apply and the interest derived from them enjoys no statutory immunity from Commonwealth income tax.

The question, therefore, is whether the bonds are Treasury bonds.

Treasury bonds were issued by the Treasurer under the authority of the Governor-General in Council in pursuance of sec. 51A of the *Commonwealth Inscribed Stock Act* 1911-1927, a provision inserted by Act No. 26 of 1915. It enabled the Governor-General to authorize the Treasurer from time to time to make out and issue Treasury bonds for raising by way of loan any money authority to borrow which is granted by any Act. They might be issued and sold in such amounts and manner, and at such price, and on such terms and conditions, as the Governor-General directed (sec. 51B). Commonwealth Government inscribed stock may be exchanged for Treasury bonds and Treasury bonds for inscribed stock (sec. 51E, sec. 3). Registries for the inscription of stock exist only within the Commonwealth and in London (sec. 14). Treasury bonds may be accepted at their face value in payment of estate duty payable to the Commonwealth (sec. 52c). The form of Treasury bond was prescribed by regulations (Statutory Rules 1927, No. 157, reg. 55, Form 31). In that form it describes itself as a Treasury bond, transferable by delivery. The body of the instrument contains no more than a simple statement that the bond entitles the bearer to payment of the amount expressed, at the specified date, at the offices of the Commonwealth Bank at various cities in Australia. One other form of Treasury bond was prescribed: viz., a war savings certificate. These forms, however, are not exclusive; for sec. 55 (2) of the *Commonwealth Inscribed Stock Act* provides that no forms other than the prescribed forms shall be used, except with the approval of the Treasurer.

Subject to the regulations, the provisions of the *Treasury Bills Act* 1914-1915 apply to Treasury bonds as if they were Treasury bills

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(sec. 51c). Under the provisions of that Act, they must be consecutively numbered, signed by the Treasurer or some other person appointed by the Governor-General, be registered at the office of the Auditor-General, and be redeemable at par on a date fixed by the Governor-General before issue (sec. 4). Provisions are made for the replacement of the instrument in case of defacement, and, in case of total loss, for obtaining a certificate from the High Court (secs. 9 and 10).

The security now under consideration is in a form which does not resemble that prescribed for Treasury bonds. Apart from form, it possesses features peculiar to the particular loan transaction in respect of which it was issued. It begins by expressing a promise on the part of the Commonwealth of Australia to pay the bearer principal and interest. The sum to be paid is expressed in dollars. The place of payment is New York. The currency which the tenor of the instrument demands is gold coin of the United States of a particular weight and fineness. Deduction for Australian taxes is negatived. A description of its nature appears in its text as follows: —“ This bond is one of the 4½% Gold Bonds External Loan of 1928 dated May 1, 1928, for an aggregate principal amount of 50,000,000 dollars, issued by the obligor in accordance with the loan contract dated May 7, 1928, entered into by the obligor with the aforesaid J. P. Morgan & Co. and the National City Company as bankers.” It is expressly made redeemable on any interest date at the option of the obligor upon sixty days’ notice. It is to become negotiable only when countersigned for authentication by a specified New York bank. The instruments appear to have been executed on behalf of the Commonwealth by the High Commissioner. The security was issued under the authority, not of the *Commonwealth Inscribed Stock Act*, but of the *Loans Securities Act* 1919. That statute provides that, when under any Act the Treasurer has authority to borrow in accordance with the *Commonwealth Inscribed Stock Act* 1911-1918, or any Act authorizing the issue of Treasury bills, the Governor-General may, notwithstanding the provisions of those Acts, authorize the Treasurer to borrow the moneys in such amounts and manner and at such prices and on such terms and conditions and issue such securities in such form as he approves (sec. 3). It defines securities

to mean any document made out and issued under the *Loans Securities Act* 1919 for defining or registering the indebtedness of the Commonwealth to lenders, and to include a debenture to bearer, a bond to bearer, and a Treasury bill (sec. 2). It appropriates the Consolidated Revenue Fund for the purpose of paying principal and interest secured (sec. 4). It empowers the Governor-General to establish registries for stock at any place outside the Commonwealth (sec. 5).

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By an Executive minute, dated 12th May 1928, the Governor-General in Council authorized the loan in respect of which the bonds held by the taxpayer were issued. The minute began by reciting sec. 3 of the *Loans Securities Act* 1919, and then, after reciting the provisions of the special Acts authorizing the raising of the money and some other matters going to the description, purpose and amount of the loan, proceeded to authorize the Treasurer, pursuant to sec. 3 of the *Loans Securities Act* 1919, to borrow the money. It authorized him to do so "by borrowing United States gold dollars to an equivalent of" the sum required "in the manner and at the prices and on the terms and conditions contained in the loan agreement" which it proceeds to identify. The minute further authorizes the Treasurer to issue securities in respect of such loan in the form of security which had been settled and approved between the High Commissioner on behalf of the Treasurer and the other parties to the loan contract.

It thus appears that the bonds held by the taxpayer were not issued under the authority of the statute which authorizes Treasury bonds. They are not in the form prescribed for Treasury bonds. Their form is not one substituted therefor by the Treasurer, but is the result of special agreement and depends on the authority of the Governor-General in Council. They are not in Australian currency and could not be used to pay estate duty. There is no provision for converting them into inscribed stock, and, if there were, it must be by means of a registry established otherwise than under the *Commonwealth Inscribed Stock Act*. They are not transferable by delivery until specially authenticated by a foreign bank. They are not payable in Australia.

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In our opinion, it follows that they are not Treasury bonds within the meaning of sec. 52B of the *Commonwealth Inscribed Stock Act* 1911-1927, and we think that they were never intended by either party to the contract of loan to be Treasury bonds.

The question whether the instruments fell within sec. 52A was raised by counsel for the Crown in *Perpetual Trustee Co. v. Federal Commissioner of Taxation* (1), but, as the majority of the Court held that the section gave no immunity from Commonwealth estate duty to instruments to which it related, the matter did not require decision.

The question in the special case should be answered : Yes.

STARKE J. The appellant, the taxpayer, is a resident of New South Wales. During the financial year which ended on 30th June 1932, he derived income from sources in Australia and elsewhere, including interest upon certain gold dollar bonds issued by the Commonwealth of Australia. The interest on these bonds was collected in dollars in New York, converted into Australian currency, and credited to the taxpayer's banking account in Sydney, New South Wales. It amounted to £337. The Commissioner included this sum in the taxpayer's assessment to income for the financial year 1932-1933. The question stated is whether this sum forms part of the income of the taxpayer assessable to income tax for the financial year 1932-1933.

The *Income Tax Assessment Acts* 1922-1933 impose an income tax for each financial year upon the taxable income derived directly or indirectly by every resident from all sources, whether in Australia or elsewhere. But the taxpayer relies for his exemption upon the provisions of the *Commonwealth Inscribed Stock Act* 1911-1932, or those of the *Loans Securities Act* 1919. The *Commonwealth Inscribed Stock Act* 1911-1927, sec. 52B provided : "The interest derived from stock or Treasury bonds shall not be liable to income tax under any law of the Commonwealth or a State unless the interest is declared to be so liable by the prospectus relating to the loan on which the interest is payable." It has been assumed that the Act, 1932 No. 25, which commenced on 12th September 1931 and omitted from sec.

52B the words "the Commonwealth or," has no application to the case. It looks as if the words were omitted in consequence of the passing of the *Commonwealth Debt Conversion Act* 1931. But I doubt the assumption, and incline to the view that the omission of these words would deprive the taxpayer of the exemption which he claims if his gold dollar bonds were Treasury bonds within the meaning of sec. 52B as it stood before their omission. Despite the assumption or expression of opinion in *Perpetual Trustee Co. v. Federal Commissioner of Taxation* (1) that gold dollar bonds, such as those held by the taxpayer, were Treasury bonds within the meaning of sec. 52A of the *Commonwealth Inscribed Stock Act* 1911-1932, the argument addressed to the Court in this case and further consideration of the matter have satisfied me that the gold dollar bonds held by the appellant are not Treasury bonds within the meaning of sec. 52B of the Act. The legislation of the Commonwealth before the *Commonwealth Debt Conversion Act* 1931 provided for Commonwealth inscribed stock, Treasury bonds, Treasury bills, and some anomalous securities called war savings certificates and peace savings certificates. The Act of 1911, No. 20, provided for the creation of capital stock called Commonwealth Government inscribed stock. It must be issued and sold in such amounts and manner and at such price and on such terms and conditions as the Governor-General decided. It was inscribed in a ledger in the name of the owner, and might be transferred, in the prescribed form. The owner might, however, obtain what was called a stock certificate to bearer in respect of any stock standing in his name, and the stock certificate was transferable by delivery. An Act of 1914, No. 33, provided for the issue of Treasury bills. They were payable to bearer and transferable by delivery and were issued and sold in such amounts and manner and at such prices and on such terms and conditions as the Governor-General directed. They entitled bearer to payment of the amount stated therein at the Commonwealth Treasury (Statutory Rules 1927, No. 156, Form). An Act of 1915, No. 26, provided for the issue of Treasury bonds; the provisions of the *Treasury Bills Act* applied to them as if they were Treasury bills issued under the *Treasury Bills Act*. They were payable at the

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Commonwealth Bank in the capital cities of Australia (Statutory Rules 1927, No. 157, Form 31). Inscribed stock might be exchanged for Treasury bonds and Treasury bonds for stock, stock might be accepted at par, and Treasury bonds at their face value, in payment of estate duty payable under any law of the Commonwealth (Act, 1915, No. 26). The moneys secured by stock, bonds or bills were all expressed in the monetary unit in use in Australia, and were redeemable or repayable in the currency of Australia. The gold dollar bonds held by the taxpayer do not conform to any of the descriptions in the Acts of stock, bonds or bills, nor are the same rights or obligations attached to them. The sum secured is expressed in the monetary unit of the United States of America. The bonds are payable in New York in gold coin of the United States, of a certain weight and fineness, with interest in the meantime on the principal sum secured, also payable in gold coin of the United States. They are not inscribed, nor are they convertible into inscribed stock or Treasury bonds under the *Commonwealth Inscribed Stock Act* 1911-1932. They are not negotiable unless countersigned in manner prescribed. They were not issued pursuant to any authority contained in the *Commonwealth Inscribed Stock Act* 1911-1932. Nor could they be tendered at par, or their face value, or at all, in payment of estate duty payable under any law of the Commonwealth. It follows, in my opinion, that the gold dollar bonds do not answer the description "Treasury bonds" as those words are used in the *Commonwealth Inscribed Stock Act* 1911-1932. Treasury bonds in that Act and in sec. 52B refer to bonds issued under and in accordance with the authority and provisions of that Act. The authority under which the gold dollar bonds were issued is contained in the *Loans Securities Act* 1919, sec. 3: "When under any Act the Treasurer has authority to borrow moneys in accordance with the provisions of the *Commonwealth Inscribed Stock Act* 1911-1918, or in accordance with the provisions of any Act authorizing the issue of Treasury Bills, the Governor-General may, notwithstanding the provisions of those Acts, authorize the Treasurer to borrow the moneys in such amounts and manner and at such prices and on such terms and conditions and issue such securities in such form as the Governor-General

approves." By an Executive minute of 12th May 1928 the Governor-General in Council was empowered, pursuant to this Act, to raise a gold dollar loan in the United States of America, and to issue securities in respect of such loan in the form of gold dollar bonds. The bonds held by the taxpayer were issued accordingly, and are warranted by the Act and the minute, including the provision that the principal sum and interest secured by the bonds shall be paid in gold coin of the United States of a certain weight and fineness "without deduction for any taxes now or at any time hereafter imposed by the Commonwealth of Australia or by any taxing authority thereof or therein." It is argued that the terms of the bonds issued in accordance with this authority operate as a statutory exemption from income tax imposed by the Commonwealth. But there is nothing in the Acts or the bonds, as was said in *Perpetual Trustee Co. v. Federal Commissioner of Taxation* (1), which excludes or renders inoperative the powers of Parliament with respect to taxation or which exempts the bonds from income or other tax. The bonds constitute a contract between the Commonwealth and the bondholders. And for any breach of that contract the Commonwealth will be responsible. The case stated does not raise the question whether the collection of income tax in respect of income arising from the bonds will constitute a breach of the contractual provisions of the bonds. The Commonwealth should not assume too readily, however, that such cases as *Perpetual Trustee Co. v. Federal Commissioner of Taxation* (2) and *Murdock v. Ward* (3) settle the matter in its favour.

The question stated should be answered in the affirmative.

Question in the special case answered: Yes.

Costs in the appeal.

Solicitor for the appellant, *J. H. Noonan*.

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

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(1) (1932) 47 C.L.R., at p. 409.
(2) (1932) 47 C.L.R. 402.

(3) (1900) 178 U.S., at p. 148; 44
Law. Ed., at p. 1013.

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