[HIGH COURT OF AUSTRALIA.]

ADELAIDE ELECTRIC SUPPLY COMPANY LIMITED . . . . . } APPELLANT;

AND

FEDERAL COMMISSIONER OF TAXATION . RESPONDENT.

H. C. OF A. 1949.

MELBOURNE, *June* 2, 3; SYDNEY, *August* 3; ADELAIDE, *Sept.* 23.

DIXON J.

War-time (*Company*) *Tax—Assessment—Currency—Company incorporated in England, carrying on business in Australia—"Capital employed in any accounting period"—Paid-up capital—Computation for purposes of tax—Whether expressed in English or Australian currency—War-time* (*Company*) *Tax Act* 1940-1941 (*No.* 91 *of* 1940—*No.* 57 *of* 1941)—*War-time* (*Company*) *Tax Assessment Act* 1940-1944 (*No.* 90 *of* 1940—*No.* 29 *of* 1944), *ss.* 3, 13, 19, 20, 24.

The paid-up capital of a company incorporated under the Companies Acts of the United Kingdom is expressed in sterling and to ascertain for the purposes of the *War-time* (*Company*) *Tax Assessment Act* 1940-1944, as required by s. 24 (1) (*a*), "the capital paid up in money or by other valuable consideration averaged over the accounting period" it is necessary to convert the expression of the amount paid up of the capital of such a company into Australian money.

For the purpose of s. 24 (1) (*b*) of the *War-time* (*Company*) *Tax Assessment Act* 1940-1944 "the amounts standing to the credit of the Profit & Loss Account" depend on the accounting of the company and not on what the Commissioner may from time to time have taken into the profit of accounting periods for the purpose of assessments to income tax.

APPEALS from assessments to war-time (company) tax.

These were appeals (heard together) by the taxpayer company from three assessments to tax under the *War-time* (*Company*) *Tax Assessment Act* 1940, as amended from time to time. The facts appear in the judgment hereunder.

K. L. Ward K.C., and *A. K. Sangster*, for the appellant.

D. B. Ross K.C., and *C. H. Bright*, for the respondent.

Cur. adv. vult.

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Aug. 3

DIXON J. delivered the following written judgment:—

These are three appeals under ss. 187 (*b*) and 197 of the *Income Tax Assessment Act* 1936-1944 as applied by s. 34 of the *War-time (Company) Tax Assesment Act* 1940-1944 to the imposition, assessment and collection of tax chargeable under the latter Act. The appeals are from assessments to war-time (company) tax made respectively for the three annual accounting periods of the taxpayer beginning on 1st September 1940 and ending on 31st August 1943.

The taxpayer is a company incorporated in Great Britain under the Companies Acts of the United Kingdom. The business of the company was to supply electric energy for power and lighting to Adelaide and the vicinity. At all material times the share capital of the company amounted to £3,625,000. It had been all issued and it had been converted into stock. Substantially all the assets of the company consisted in its undertaking in Australia. There were in addition some cash and deposits at its bankers and some investments of a sinking fund for debenture stock, but probably the greater part of these assets also were in Australia. During the operation of the *War-time (Company) Tax Act* 1940-1941, the tax was levied upon the amount by which the taxable profit derived by any company in an accounting period exceeded the percentage standard. The taxable profit consisted in the taxable income as assessed for the purpose of income tax, less income tax borne at any stage by the profit. The percentage standard was a statutory percentage of five per cent upon the capital of the company employed in Australia, or deemed to be employed, during the accounting period in gaining or producing the taxable profit: cf. ss. 13, 19, 20 and 3 of the *War-time (Company) Tax Assessment Act* 1940-1944.

The expression "capital employed in an accounting period" is used artifically by the Act as a compendious description of a notional fund made up of certain statutory components. These are set out in s. 24. They comprise the shareholders' funds consisting of paid-up capital, reserves and accumulated profits at the credit of the profit and loss account. But from the point of view of the revenue authorities such funds might be over or under-stated or over or under-estimated by reason of a departure from the value of assets adopted for the purpose of income tax or the disregard of the depreciation allowed for that purpose or when depreciation is not allowed for income tax the desertion of cost as the measure of value. A provision is therefore made for the addition of amounts by which the values appearing in the accounts of the company are

thus exceeded and for the deduction of amounts by which the value, depreciated value or cost, as the case may be, used for income tax, is exceeded by the values appearing in the accounts : s. 24 (1) (*d*) and (i) and (2) (*a*), (*c*) and (*d*). " The section contemplates that the amount of capital employed by a company in its business will include the moneys paid up on its issued shares and accumulated profits and that these moneys will be found invested in the assets which constitute the company's commercial capital. It contains provisions to ensure that the amount of the capital employed will not be inflated by a company writing up its assets " : per *Williams* J., *Associated Newspapers Ltd.* v. *Federal Commissioner of Taxation* (1). They are also intended to give the company any advantage that it might otherwise have lost through an undue writing down of assets.

The chief question in the appeals is concerned with paid-up capital. This component of capital employed is placed in the list by par. (*a*) of s. 24 (1), which describes it simply as " the capital paid up in money or by other valuable consideration, averaged over the accounting period." Averaging over the accounting period is required because of the possibility that at some point of time during the accounting period more capital may be paid up and perhaps of the possibility that paid-up capital may be returned. The average over the period of the amount " paid up " must be found. But nothing turns on that in the present case.

The question in the present case concerning paid-up capital arises from the fact that it is an English company the share capital of which is necessarily expressed in sterling. For the purpose of the assessment should the paid-up share capital be taken into the calculation of the capital employed at the amount at which it is expressed in sterling or should it be converted notionally into Australian money and expressed in the increased number of pounds which, at the fixed rate of exchange of £A125 to £100 sterling, the conversion would produce ? That is the principal question I am called on to decide. It is not disputed that in their application to a company with a share capital, the words " capital paid up in money or other valuable consideration " refer to the paid-up share capital : see *Warner Bros. First National Pictures Pty. Ltd.* v. *Federal Commissioner of Taxation* (2), per *Williams* J. : *Bankers & Traders' Insurance Co. Ltd.* v. *Federal Commissioner of Taxation* (3), per *Latham* C.J. : *Federal Commissioner of Taxation* v. *Miller*

(1) (1944) 69 C.L.R. 257, at p. 262.
(2) (1945) 72 C.L.R. 134, at p. 138.
(3) (1946) 73 C.L.R. 39, particularly at p. 54.

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Anderson Ltd. (1) : cf. *Redbank Meatworks Pty. Ltd.* v. *Commissioner of Taxes (Q.)* (2), at p. 326 per *Latham* C.J., at p. 332 per *Rich* J. and at p. 336 per *McTiernan* J. It needs no argument to establish that the share capital of an English company is expressed in English money, that is in sterling. The fact that Australia now has a separate monetary system and that, notwithstanding identity of nomenclature, the money of account of England and the money of account of Australia are not the same, has I think ceased to be open to doubt. It is a proposition that is not only true in fact but is now recognized in law and applied. In support of the statement it is unnecessary to do more than refer to the decisions of the Privy Council in *Payne* v. *Deputy Federal Commissioner of Taxation* (3) and *De Bueger* v. *Ballantyne & Co. Ltd.* (4), to the discussion by Dr. *F. A. Mann* in *The Legal Aspect of Money*, at pp. 43 et seq., and in this Court in *Bonython* v. *The Commonwealth* (5) and in *Goldsbrough Mort & Co.* v. *Hall* (6).

But if it needs no argument to establish that the capital, divided into shares, of a company incorporated in England must be expressed in the money of the United Kingdom it needs none to establish that the assessment of excess taxable profits for the purpose of a Commonwealth tax must be in the money of Australia. Section 20 of the *Income Tax Assessment Act* 1936-1944 provides that for all purposes of that Act income wherever derived and any expenses wherever incurred shall be expressed in terms of Australian currency. But the provision was unnecessary. The same thing had been said expressly by Lord *Russell* in *Payne's Case* (7). " There can be no manner of doubt that these Australian Acts, in referring to pounds and pence, are referring to those units of Australian currency known as pounds and pence respectively, and to nothing else. The income tax payable by a taxpayer to the Australian revenue is to be fixed by means of a calculation which involves the multiplication of an ascertained number of one kind of units of Australian currency by the scheduled number of another kind of units of Australian currency, the product being the resultant number of Australian pence. It seems necessarily to follow that to enable this calculation to be made, the assessable income of the taxpayer must, whatever be the currency in which he derives it, all be expressed in terms of Australian currency ; in other words if any portion of his assessable income is derived by him in French or Belgian currency, it must, before he can be properly assessed to Australian income tax, be

(1) (1946) 73 C.L.R. 341.
(2) (1944) 69 C.L.R. 315.
(3) (1936) A.C. 497.
(4) (1938) A.C. 452.
(5) (1948) 75 C.L.R. 589.
(6) (1948) 78 C.L.R. 1.
(7) (1936) A.C., at p. 508.

converted into its equivalent, at the time it was derived, in Australian currency. In exactly the same way, any income derived by him in British currency must be converted into its equivalent in Australian currency."

You cannot do this unless you convert into Australian money the component elements of the calculation of which the tax is the product. The war-time (company) tax is imposed upon the amount by which the taxable profit of a company exceeds the percentage standard. As the percentage standard is a percentage of capital employed or deemed to be employed, it would seem inexorably to follow that the capital itself must be reduced to an expression in Australian money. But the rates at which the tax is imposed provide, if that were possible, an even more decisive reason. For the rates are a graduated percentage of the capital employed. See ss. 4 and 5 and the Schedule of Act No. 91 of 1940 and the Schedule of Act No. 57 of 1941. All this appears strongly to support the view that the amount of the paid-up share capital of the taxpayer company must be converted into Australian money for the purpose of ascertaining the capital employed, with the consequence that its expression in pounds must be increased by twenty-five per cent. Such a conclusion is of course based on the assumption that you must take the accounting period as the time as at which you determine the Australian monetary equivalence of the paid-up English share capital.

For the commissioner it is not conceded that there are two moneys of account. It is a question which he hopes or fears (I do not know which) may not be finally closed. But the argument upon which he places more immediate reliance challenges the assumption that the accounting period is the time as at which the amount in sterling of the company's capital must be converted into Australian pounds. On the contrary, according to the contention on his behalf, you should look at the history of the undertaking. If you do so, you find that, subject to not very important exceptions, all the capital was paid up before the divergence between the monetary systems occurred, and so before there was any significant difference in exchange. Moreover, the greater part of the capital was raised in Australia and what was raised in the United Kingdom had, before that time, been invested in Australian assets. Of the paid-up capital of £3,625,000 an amount of £3,000,000 had been subscribed for and paid up before the year 1928. Very little of the amount was subscribed for out of Australia. In fact the amount that was paid up in Adelaide is £2,803,796 and the amount paid up in London £196,204. The remaining £625,000 consists of three issues. In

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1935 there was a capitalization of profits to the extent of £125,000. In the distribution of the bonus shares an amount of £123,094 was taken up in Adelaide. In 1937 and again in 1939 there were issues of preference capital in Adelaide. The two issues amounted to £500,000 and this sum was paid up in Australian money. It probably follows that, strictly speaking, these preference shares are not paid up to the full amount. But that is a point of comparatively little importance.

The assets side of the company's balance sheet for the accounting period ending 31st August 1941 shows funds invested in one way or another in the company's undertaking in South Australia amounting to £6,979,374. In addition there are £95,288 on deposit or at current account at the bankers. The other item on the assets side is a debenture stock sinking fund amounting to £66,567. The share capital may be taken to be represented in the undertaking and it was invested therein at or soon after the dates at which it was from time to time paid up.

What, from our present point of view, must seem a strange feature of the company's balance sheets and accounts is that items are shown thereon some in pounds sterling and some in pounds Australian without discrimination. On the assets side probably no significant item is expressed in pounds sterling. That is so because the undertaking is put down at cost and at the time when the expenditure thereon of subscribed capital or English debenture moneys took place exchange was a negligible matter, a matter dealt with as an expenditure incurred in transferring the money. But on the liabilities side, issued capital and English debenture stock are put down at the amount of their expression in English pounds, without conversion. At the head of the balance sheet there is a note—" Owing to the fact that the company is incorporated in England but carries on its business in Australia, some of the items in the following accounts are receivable or payable in English currency and others in Australian currency. Exchange has not been taken into account except in respect of moneys actually transmitted from one country to the other." In order to avoid a domicil in the United Kingdom and consequent exposure to British income tax on its Australian profits, the company had in 1921 taken every possible step to remove to Adelaide its central control and its seat, not only of operations, but of administration. The Board of Directors was constituted in Adelaide and all the functions of the company except the indispensable formalities of the law were performed there. Among other things a resolution had been adopted that dividends should be declared only at a general meeting " held

in Adelaide or elsewhere in Australasia " and should be " paid in and from Adelaide or elsewhere in Australasia." It was on the basis of this resolution that it was decided in *Adelaide Electric Supply Company Ltd.* v. *Prudential Assurance Co.* (1) that dividends on preference stock of the company might be satisfied by an amount of Australian money equal to the nominal amount of the dividend warrants. The word " Australasia " seems to have been read as equivalent to " Australia." At all events when Lord *Warrington* says " The place of payment is therefore Australasia " it cannot be supposed that he was speaking of Melanesia, Micronesia, Polynesia, New Caledonia and New Zealand as well as Australia and contemplating a division of the globe, in different parts of which dollars, francs, guilders and pounds are current. At all events the intention was held to be that the dividends should be payable in Australian money in the amount produced by the appropriate percentage on capital of the preference dividend.

With the advantage of this decision, it is understandable that the company should continue the practice of making up its accounts on the footing that no distinction need be drawn between items representing pounds Australian and items representing pounds sterling, notwithstanding the long period during which exchange between the two moneys has stood at its present pegged rate.

For the commissioner the facts I have stated are relied upon to show that the capital employed or deemed to be employed in Australia, so far as it consists of the capital of the company paid up, is composed of a fund properly expressed in Australian money without any addition for exchange. The value of the capital was ascertained, he says, when it was brought to Australia. It was ascertained in the money of Australia at that time and that money has continued to express its value. So far as the facts control the matter the commissioner's view is, I think, in substance that so much of the capital as was paid up in England was transferred to Australia without any increase in the number of pounds in which it was expressed, without any increase in " value " ; that it was properly regarded as indistinguishable from that which was paid up here ; that the whole formed one fund ; that it was transferred into Australian income-producing assets ; and that the whole was treated in the accounts as representing money uniform in expression because it had followed Australian money when the divergence of the two monetary systems took place. So far as the legal criterion goes, what is the amount of the paid-up capital is, according to the commissioner, a question of fact and it does not depend on the

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

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contractual rights between the company and the shareholders. It depends on what was paid up. The value of what was paid up is to be seen by its monetary expression when it was brought to Australia. He supports this contention by considerations arising from the territorial limitation which it has been decided must be imported into s. 24 from s. 3 : *Warner Bros. First National Pictures Pty. Ltd.* v. *Federal Commissioner of Taxation* (1) ; *Bankers and Traders' Insurance Co. Ltd.* v. *Federal Commissioner of Taxation* (2). How, it is asked, can you apply this limitation unless you conceive of the capital as transferred at a point of time ? The example of a large corporation a small part of whose funds is employed here is suggested. An alternative view presented is that you fix the relative values of the capital paid up in the country of incorporation and in Australia as at the time when it is paid up.

I think that these contentions should be rejected. Section 24 prescribes a specific formula for obtaining the capital employed. The items in the sum which are expressed in pars. (*a*), (*b*) and (*c*) of s. 24 (1) are not concerned with values or with anything but very well recognized and very definite items on the liabilities side of a company's balance sheet. It is only when you get to pars. (*d*) and (i) and the application they involve of sub-ss. (2), (3) and (4) that you reach any such question. Primarily, it may be remarked, the purpose of pars. (*d*) and (i) is to correct the result produced by pars. (*b*) and (*c*), though they may in some cases operate by way of encroachment upon par. (*a*). But except for this possibility, par. (*a*) provides a figure which, in the case of a company with a share capital, depends entirely on the extent to which the pecuniary liability upon the shares has been satisfied. The paid-up capital, paid up in money or by other valuable consideration, means the amount of the share which has been satisfied by one or other of these two considerations. The result of the share being so paid-up is to establish in favour of the shareholder what in a balance sheet is treated as a liability to be met by the assets. In *Archibald Howie Pty. Ltd.* v. *Commissioner of Stamps* (3) there is an explanation by *Williams* J. of the rights which the payment up of shares confers. It includes the following passage :—" A company obtains capital by the issue of its shares. These shares cannot be issued at a discount but may be issued subject to the payment of their nominal amount or at a premium. The amount payable may be satisfied by the payment of money or by some other proper consideration. But all shares must be paid for in full by money or money's worth.

(1) (1945) 72 C.L.R. 134.
(2) (1946) 73 C.L.R. 39.
(3) (1948) 77 C.L.R. 143, at p. 156.

When the person to whom the shares are allotted pays or assumes the liability to pay for the shares in money or money's worth full consideration in money or money's worth moves from him to the company for all the rights which he acquires under the memorandum and articles of association. Amongst the most valuable of these rights are the rights to share in the distributions of moneys and assets already mentioned. The declaration of a dividend and the taking effect of a special resolution to return capital create debts because the shareholders have acquired the legal right to be paid these moneys for valuable consideration." (1).

I shall repeat a statement that I made in that case :—" From the standpoint of company law the division of the capital of a company into shares and the payment up of shares issued are regarded as respectively significant and real. The shareholder contributes the amount of the share to the capital of the company. This contribution measures his right to any return of capital which the Company may make, either as a going concern or in a winding up. Subject to any regulation the articles may make as to the basis upon which assets in excess of share capital may be distributed, the amount of the share determines the proportion in which he shares with other shareholders in a distribution of excess assets " (2).

What I think must be looked at under s. 24 (1) (*a*) is the measure of the shareholders' claim against the assets. It is the pecuniary amount that is locked up in the concern. The shareholders in the present case have a claim upon the assets of £1 sterling for every £1 of paid-up capital. It is that which they expect the assets to return. It is that which should go into the liabilities side of the balance sheet. If the company had been Canadian, the stock would have been expressed in dollars. Why should not the stock-holders be regarded as having committed dollars to the company which continued at risk as dollars no matter where or at what date the funds of the company were invested ?

The argument that the territorial restriction upon the capital employed requires a different conclusion appears to me to lack cogency. In *Bankers and Traders' Insurance Co. Ltd.* v. *Federal Commissioner of Taxation* (3) the practical difficulties of applying the territorial limitation were recognized and weighed as a possible reason for rejecting the application of the definition containing it. They were considered by the majority of the Court to be insufficient. But no-one thought that these difficulties necessitated any modification of the admitted purpose or operation of pars. (*a*), (*b*) and (*c*)

(1) (1948) 77 C.L.R., at p. 157.
(2) (1948) 77 C.L.R., at p. 153.
(3) (1946) 73 C.L.R. 39.

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of s. 24 (1). I remarked that the practical difficulties of applying the territorial restriction to s. 24 (1) did not appear insuperable :— " After all, the categories covered by pars. (*a*), (*b*) and (*c*) of s. 24 (1) cover the ' funds ' of a company, though indicated by descriptions usually found on the liabilities side of a balance sheet. It ought not to be difficult to say to what extent the funds of a company have been committed to an Australian enterprise or undertaking. As a practical test there cannot often be much wrong in doing so by deducting the value of the assets which are known to be employed abroad " (1).

The purpose of s. 24 (1) (*a*), in my opinion, is to take into the computation of the capital employed so much of the amount of every share as has been paid up in discharge of the liability upon the share. You are to look at the amount which stands paid up during the accounting period. That amount must be reckoned in Australian money as at that date, if it stands paid up in another money. To my mind it can only be done by reference to the rate of exchange obtaining at the time.

I am therefore of opinion that the amount at which the paid-up capital is expressed should be converted notionally into Australian money and accordingly be expressed in the increased number of pounds which at the fixed rate of exchange of £A125 to £100 sterling the conversion would produce. This applies to the £3,000,000 but not, I think, to the £500,000 subscribed in Adelaide in 1937 and 1939 in pounds Australian. I imagine the capitalization of £125,000 in 1935 was effected by the application of profits amounting to £A125,000. If so that amount of paid-up share capital should not be notionally converted.

Two other questions were raised, but if the suggestion made by counsel is correct they cease to be of practical importance in view of the decision I have reached upon the chief question in the appeals. However I am not sure that this is so and in any case I think that I should mention them briefly. They each arise on par. (*b*) of s. 24 (1)—" accumulated profits . . . including amounts standing to the credit of the Profit and Loss Account at the commencement of the accounting period." It appears that the company made up its profit and loss account on the basis of the amounts owing to it at the end of a year for electric energy supplied to customers whose meter recordings had been by that date read and entered up. But at the end of an accounting period, as indeed at any other date, there always was a large amount owing, though not at once collectable in respect of energy supplied to

(1) (1946) 73 C.L.R., at p. 62.

customers whose meters had not yet been read. The meter recordings unread covered periods of consumption by customers varying from one day to three months. But while in its profit and loss account the company did not take credit for the estimated amount represented by these unread meter recordings, the Commissioner of Taxation for many years had taken them into the assessable income for purposes of income tax. His practice was to take the estimate of the value of the unread meter recordings in at the end of the accounting period, and to deduct that amount from the collections included in the account for the next accounting period. He could not tax the estimated collections from the unread meters in the one period and the actual collections in respect of the same readings when made in the next. The collections when made were not likely to fall much short of the amounts disclosed by the readings. But in any case it was enough to deduct in the next period the estimate included in the prior period. This went on for many years. But in reference to the accounting periods now in question the company informally objected to the inclusion of these estimates in the assessable income—" accrued revenue " was the title given to the item. Then the commissioner stopped the practice. The last estimate that he included formed an item in the assessable income for the period ending 31st August 1940. It amounted to £41,435. It was not deducted from the assessable income of the period ending 31st August 1941 and of course the estimate for that year was not included. The estimate amounted to £43,264. For the following accounting period the estimate was £49,828. If the practice had not been changed the taxable income of the first and second accounting periods would have been increased by the difference between the first and second estimate and the second and third estimate respectively and that would have been reflected in the taxable profit for war-time (company) tax. But the taxpayer company complains that the amounts should be considered as taken into the profit and loss account. At the end of the accounting period of twelve months from 1st September 1939 to 31st August 1940 the company had paid income tax on the whole of the above-mentioned £41,435. For it was built up from or composed of the first figure used as an estimate when the practice began and of all the successive increases in the estimate from one year to another. It therefore represented what on the commissioner's reconstruction of the account was an amount standing to the credit of profit and loss at the end of the preceding accounting period and that means the commencement of the following accounting period, that ending 31st August 1941. The commissioner says that it does not lie in

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the company's mouth to make this complaint. For he dropped his practice because of the objection of the company. I am not sure that that is a relevant answer. But in any case the complaint cannot be sustained. Paragraph (*b*) of s. 24(1) is concerned with the actual profit and loss account of the company—not with the commissioner's assessment of the company's taxable income or with his ruling of what is a " profit " for the purpose. The commissioner does not keep or construct the company's profit and loss account. The company has that responsibility. It is for the company to decide what are truly the earnings which may safely be treated as obtained or accrued so that they can be carried to an appropriation as profit. The claim fails on this simple ground.

The second matter arises in a different way, but it is affected in a like manner by the nature of the item described by par. (*b*) of s. 24 (1). A series of items amounting in all to £152,492 was expended by the company between 1906 and 1940 on a variety of legal and other matters, matters connected with preliminary expenses, the issue of further share capital and of debenture stock, the transfer of control to Adelaide and the premium and exchange on the repayment of debenture stock. They were debited some to Profit and Loss Account, some to Net Revenue Account and some or one to Share Premiums Account. The commissioner did not allow any of the items as deductions from the assessable income of the respective years in which they were incurred. Now, for the purpose of increasing the amount at the credit of profit and loss account, the company wishes to treat them, in conformity, as it would claim, with the commissioner's ruling, as not being an affair of revenue but of capital. By excluding them from profit and loss and revenue account, the amount at the credit of the profit and loss account would be increased. But the answer is the same as was made in respect of " accrued revenue." The profit and loss account as made up by the company does include the items as deductions. The account cannot now be ripped up and reconstructed for the purpose of obtaining this advantage. It was properly kept and the question whether the items should be debited to the account was a matter of accountancy judgment.

This objection therefore fails.

But upon the chief matter in dispute I am of opinion that the appeals should be allowed. I think that an appropriate order would be to declare that the amount of the paid-up capital of the company (except stock or shares amounting to £625,000 issued in or about May 1935, April 1937 and September 1939) is expressed in sterling and must, for the purpose of par. (*a*) of s. 24 (1), be converted into

Australian money at the proper rate of exchange. The order would remit the assessments to the commissioner for re-assessment consistently with this order and it would reserve liberty to apply. I shall allow the appeals with costs and I am prepared to make an order to the foregoing effect. But I shall direct that the order be not drawn up until the parties have had an opportunity of considering the matter.

His Honour made the following final order, to date from 23rd September 1949 :—

Appeals allowed with costs. Declare that the amount of paid-up capital of the appellant company except stock and shares amounting to £625,000 *issued as to* £125,000 *in or about May* 1935, *as to* £250,000 *in or about April* 1937, *and as to a further* £250,000 *in or about September* 1939 *is expressed in sterling and must for the purpose of par.* (*a*) *of sub-s.* (1) *of s.* 24 *of the War-time* (*Company*) *Taxation Assessment Act* 1940-1944 *be converted into Australian money at the proper rate of exchange applying during the respective accounting periods the subject of the above-named appeals. Remit assessments to the commissioner for re-assessment consistently with this order. Liberty to apply.*

Solicitors for the appellant : *Moulden & Sons*, Adelaide.

Solicitor for the respondent : *K. C. Waugh*, Acting Crown Solicitor for the Commonwealth.

E. F. H.