CURRENCY — MONEY OF PAYMENT — MONEY OF ACCOUNT — PROPER LAW — CONFLICT OF LAWS

THE chequered history of the case of *National Bank of Australasia Ltd. v. Scottish Union and National Insurance Co. Ltd.*, which culminated in a recent Privy Council decision[1] demonstrates that although the law relating to currency cases has now been settled, its application is still far from easy.

In 1897, by a scheme of arrangement sanctioned by all relevant courts, interminable inscribed stock was issued to the creditors of the Queensland National Bank. Stock-registers were established in both Australia and England and stock was issued in both countries. Stock could be paid off at either register. Provision was made for free interchange of stock between the two registers, and by 1947 some of the stock originally issued in England was on the Australian register and some originally issued in Australia was on the English register. Other stock had been changed from one register to the other, but had then been changed back to the original register. In 1897 the monetary systems of the two countries were identical, and no intention was expressed as to the money of account. In 1947 the Bank went into voluntary liquidation and, as the two monetary systems had diverged, the court was asked to find the money of account by which the Bank's obligations should be measured.

The Privy Council adopted the approach to these matters laid down in *Bonython v. The Commonwealth*.[2] The procedure is to ascertain the proper law of the transaction and then apply that law's rules of construction to determine the money of account. In this case the first step was avoided as the two relevant laws, English and Australian, had the same rules of construction.

A preliminary point was whether Australia and England had separate moneys of account.[3] In *Bonython v. The Commonwealth*, Lord Simonds said that even if the two countries had had similar monetary systems in 1895, once those systems diverged the two countries had separate moneys of account. In the instant case Lord Cohen carried these remarks even further. He said that provided two countries have independent monetary systems, even though they are identical in form, those countries have separate moneys of account. The conclusion, not apparent from Lord Simonds' re-

[1] [1952] A.L.R. 885.

[2] [1951] A.C. 201; see also *Bonython v. The Commonwealth* (H.C.) (1947) 75 C.L.R. 589, and *Goldsbrough Mort v. Hall* [1948] V.L.R. 145.

[3] See especially the views of Lord Wright and Lord Tomlin in *Adelaide Electric Supply Co. Ltd. v. Prudential Assurance Co. Ltd.* [1934] A.C. 122 and Dixon J. and Starke J. in *Bonython v. The Commonwealth* (H.C.) (1947) 75 C.L.R. 589.

marks, is that England and Australia had separate moneys of account in 1895 and 1897. This conclusion makes good sense.

Thus their Lordships had to decide which money of account governed the transaction. In the High Court[4] the majority had held that all the circumstances showed that the obligations attached to the English register were identified with England and had an English money of account and those attached to the Australian register likewise had an Australian money of account.[5] The Privy Council decided that the High Court placed too much reliance upon the situation of the registers and the fact that the stock could be paid off in either country. Lord Cohen's judgment may be taken as a warning that the presumption that the money of account is the money of payment is of little value in any case and certainly useless where there is more than one place of payment as was the case here. It may be suggested that in spite of this high disapproval the presumption will continue to be used where there is only one place of payment, as it has been used in the past.

The Privy Council concluded that it was not possible from the nature of the scheme for there to be two different moneys of account. They held that the scheme was identified in the main with Queensland law and that the money of account was Queensland money. Therefore the stock-holders were paid the face value of their stock in terms of Queensland currency. Thus the unfortunate litigants discovered that three courts could apply the same rules of law and reach three different results. The main difference between the Privy Council and the majority in the High Court appears to have been the former's reluctance to accept the proposition that one transaction could have more than one money of account; that is, the difference lay in the interpretation of the facts.

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[4](1951) 84 C.L.R. 177.

[5]Macrossan C.J. in the Queensland Court ([1950]St. R. Qd. 264) reached the same conclusion but thought that the relevant time to see to which register each obligation was attached was the beginning of the scheme, whereas the majority in the High Court looked at the registers at the date of the winding up.

CRIMINAL PROCEDURE — RECALL OF CROWN WITNESS AFTER CLOSE OF CASE FOR DEFENCE

Two recent cases, one Australian and the other English, have shed much light on the law concerning the power of a judge at a criminal trial to permit the Crown to adduce further evidence after the case for the defence has closed.

In *Shaw v. The Queen*[1] the trial judge had permitted the Crown

[1](1952) C.L.R. 365.