HIGH COURT OF AUSTRALIA

Wanganui-Rangitikei Electric Power Board

Vs.

Australian Mutual Provident Society

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

26 March 1934

Gavan Duffy C.J. and Starke J.

The Wanganui-Rangitikei Electric Power Board, constituted under the laws of New Zealand, borrowed, pursuant to statutory authority, by three separate loans, a total sum of £310,000 from the A.M.P. Society. The moneys were charged on a special rate upon the ratable value of all ratable property in the district of the Board in New Zealand, and were secured by deeds and a series of debentures. The deeds and the debentures provided that the principal moneys and interest thereby secured should be paid to the Society in Sydney, New South Wales, free of all charges for exchange or otherwise whatsoever, at the principal banking house of the Bank of New Zealand in Sydney.

In New South Wales an Act to reduce interest was passed. It is the *Interest Reduction Act 1931*, and applies only in respect of an obligation to pay interest created before the commencement of the Act. The obligations under the deeds and debentures already mentioned were created before the commencement of this Act, namely, in the years 1924, 1925, and 1926. By sec. 5 it is provided: "Subject to this Act an obligation to pay interest shall be deemed to be satisfied by payment of a sum equal to the amount which would have been payable as interest if this Act had not been enacted, less nine-fortieths of such amount." And by sec. 4 (5) it is enacted that "this Part of this Act shall take effect notwithstanding any agreement to the contrary."

By its Constitution New South Wales has plenary authority to make laws for the peace, welfare and good government of New South Wales. The constitutional validity of the Act cannot, therefore, be doubted (*Ashbury v. Ellis*[1]; *Delaney v. Great Western Milling Co.*[2]).

The question for determination is whether the operation of sec. 5 of the Act extends to the obligation to pay interest arising under the deeds and debentures already mentioned. That depends upon the interpretation of the section. The words of the enactment are general, and in themselves suggest no limitation, unless the words "deemed to be satisfied"—not "satisfied"—indicate that the Legislature contemplates satisfaction within its territory, whatever happens in other States and countries. But it is contended that the Act must receive some limitation, to avoid conflict with the rules which govern the extra-territorial recognition of rights, and the choice of the law with reference to which the rights of the parties are determined. Thus, according to the law administered in English Courts, that which measures and defines "the rights and liabilities of the parties to a contract" is the law or laws to which the parties intended, or may fairly be presumed to have intended, to submit themselves, or the proper law of the contract (*Foote, Private International Law*, 5th ed. (1925), p. 423; *Hamlyn & Co. v. Talisker Distillery*[3]). The validity of the discharge of a contract therefore depends upon this law. A discharge in accordance with the proper law of the

contract is accordingly said to be valid, whilst a discharge not in accordance with that law is invalid (*Dicey, Conflict of Laws*, 4th ed. (1927), p. 637). But, as *Dicey* says at p. 637, "all that can be absolutely laid down is that when a contract is made and to be performed in the same country, anything which discharges the liability under the law of that country will be held a good discharge by our Courts." (Cf. *Story, Conflict of Laws*, 1834 ed., pp. 280, 480; *Foote, Private International Law*, 5th ed. (1925), p. 483.) Again, it is said that the performance of a contract, when a special place for performing it is expressly or impliedly agreed upon, is regulated as to mode, time, and condition by the law of that place (*Chatenay v. Brazilian Submarine Telegraph Co.*[4]; *Jacobs v. Crédit Lyonnais*[5]; *Foote, Private International Law*, 5th ed. (1925), p. 477). On the other hand, all matters of procedure are governed by the *lex fori*, or the local law of the country wherein legal proceedings are taken.

The Acting Chief Justice of the Supreme Court of New South Wales has held that the proper law of the contract between the Wanganui-Rangitikei Electric Power Board and the A.M.P. Society, or the law by which the parties intended or may fairly be presumed to have intended the contract to be governed, was the law of New Zealand. It was assumed at the Bar that the contract was entered into in New Zealand. The principal moneys and interest secured by the contract are charged upon the rates of a local authority in New Zealand, though the place of payment of principal and interest is in New South Wales, according to the express stipulation of the contract. The most real connection of the contract is with New Zealand, and the Acting Chief Justice therefore rightly concluded that the proper law of the contract was that of New Zealand.

Further, the learned Judge concluded, and rightly, that the *Interest Reduction Act* purported to extinguish or discharge *pro tanto* obligations to pay interest, and did more than merely regulate procedure in the Courts of New South Wales. By its terms the Act prescribed that the obligation to pay interest shall be deemed to be satisfied by payment of a sum equal to the amount which would have been payable as interest if the Act had not been enacted, less nine-fortieths of the amount.

The learned Judge also held, following the rules regulating the choice of law as between the parties to the contract, that the Act was limited to obligations to pay interest which are governed by the law of New South Wales, and that the obligation in question here is governed, not by the law of New South Wales but by the law of New Zealand, or, in other words, that the proper law of the contract, or the law by which the parties intended or may fairly be presumed to have intended the contract to be governed, is the law of New Zealand. (Cf. *Shrichand & Co. v. Lacon*[6]; *Velchand v. Manners*[7].) But rules of this sort, when applied to legislative acts, must be used with some care, and not elevated into rules of law for the construction of statutes. If the statute is explicit, the statute must prevail. "Sometimes, though not often," says *Dicey* (*Conflict of Laws*, 4th ed. (1927), p. 593), "an Act of Parliament lays down a positive rule as to the validity or invalidity of a contract, wherever made." Every State has a right to regulate persons and things within its own territory according to its will and policy. In each case, the language of the Act, the object of the Act, and the mischief to be remedied must be considered. It is not unimportant to remember the circumstances in which the present Act was passed. At a conference in Melbourne between Ministers of the Commonwealth and of the States for devising measures for meeting the grave financial emergency existing in Australia, and thereby averting disastrous consequences, a plan was agreed upon for re-establishing the financial stability of the Commonwealth and the States and restoring industrial and general prosperity by means involving a common sacrifice. (See *Commonwealth Year Book* 1932, pp. 840-851; *Financial Emergency Act 1931* Vict. (No. 3961).) It is known as the Premiers' Plan. The measures agreed upon included a conversion of the internal debts of the Governments on a basis of twenty-two and one-half per cent reduction of interest, a reduction of bank and Savings

Bank rates of interest on deposits and advances, and relief in respect of private mortgages. Again, as already observed, the *Interest Reduction Act* is general in its terms and in itself suggests no limitation. The obligation to pay interest, under the deeds and debentures before mentioned, is an obligation to be performed within the territory of New South Wales; the object of the Act was to relieve the interest burden in New South Wales which threatened, or was thought to threaten, the financial stability of the Commonwealth and the States. Why then should not the Act extend to the performance of an obligation to pay interest in cases in which New South Wales was expressly agreed upon as the place of payment, or of performance of the obligation? It was conceded at the Bar, and rightly, we think, that the Act applied to all obligations to pay interest made *and* to be performed in New South Wales; but whether that was so because the law of New South Wales was treated as the proper law of the contract, or because of the plenary authority of Parliament, was not explicitly stated. It was denied, however, that the Act applied to the case of a loan of money in Australia by a person domiciled or resident outside New South Wales, if the contract stipulated that payment of the principal moneys and interest be made in New South Wales but that the governing law of the contract should be the law of the place of the lender's domicil or residence. The governing law of the contract, if the latter stipulation were effective (*Hamlyn & Co. v. Talisker Distillery*[8]), would not be the law of New South Wales, and so it was denied that the Act would apply to the case. Such a result seems to ignore the circumstances in which the Act was passed, and the mischief to be remedied; and it would lead to diversities in the operation of the Act according to the expressed intention of the parties. The words of the Act are wide enough and explicit enough to cover such a case, and should be so construed. The Act has nothing to do with the intention of the parties, but embodies a policy based upon a reduction of interest, for the advantage of the State itself. And the words of the Act, and its object or effect as gathered from its language, are wide enough and explicit enough to cover obligations to pay interest in New South Wales expressly stipulated by any contract to be there paid. Further it is not necessary to go on the present occasion. The rules governing the choice of law for the purpose of determining the rights of the parties as between themselves afford no sufficient reason for setting aside the golden rules of construction (1) that the object of the statute is to be considered, and (2) that the grammatical and ordinary sense of the words of a statute should be adhered to, unless such adherence would lead to some absurdity, or some repugnance or inconsistency with the rest of the statute.

The judgment of the Acting Chief Justice should be reversed, and the first question raised by the originating summons answered in the affirmative. The second question need not, and perhaps should not, be answered, though no objection was raised to the procedure by way of originating summons.

Dixon J.

The respondent Society derives its corporate existence from the laws of New South Wales, and its head office is in Sydney. It lent three large sums of money to the appellant Board which is constituted under statutes of the Dominion of New Zealand. The sums were provided in New Zealand and each was secured over an annual recurring special rate to be levied upon the ratable property in the district of the appellant Board. The security in each case was composed of a trust deed and debentures. These were given under the provisions of statutes of New Zealand applying to the Board. The respondent Society obtained under the statutes and the instruments elaborate powers exercisable in New Zealand under New Zealand law in respect of property or rights there situated. But the place at which the appellant Board is required to pay principal and interest is Sydney. Because of this circumstance, the appellant Board contends that the proper law of the obligation to pay is the law of New South Wales. In my opinion this contention is ill-founded. The whole transaction is intimately bound up with New Zealand and rests upon an elaborate structure of New

Zealand statute law. Except that the lender has its principal seat in New South Wales, and requires payment to be made there, the transaction has no connection with Australia. There is no trace of any actual intention that the governing law of the obligation shall be that of New South Wales, and the circumstance that the place of payment is there is, in my opinion, quite insufficient to overcome the effect of the considerations which identify the transaction with New Zealand. It was suggested that, as the debentures are separate instruments payable to bearer in Sydney, they were issued as transferable securities marketable in New South Wales, and should, therefore, be considered as prima facie governed by the law of that State. This suggestion is met, I think, by the circumstance that the debentures appear *ex facie* to be dependent upon the New Zealand statutes and the respective trust deeds. Regarded as an obligation *ex contractu*, the liability to pay interest appears to me to arise from the law of New Zealand as the proper law of the obligation. But the liability is not merely contractual. Sec. 32 of the *New Zealand Local Bodies' Loans Act* (No. 30 of 1913), which applies to the transaction, makes this provision: "The sum of money named in any debenture and in any coupon shall, on maturity, be a debt due to the holder thereof by the local authority that issued the same, and shall be payable at the place, within or out of New Zealand, named in the debenture, and at the time named therein, being not longer than fifty years from the issue thereof." The provision thus imposes a statutory obligation to pay the sum of money named in the debenture, that is, the full amount of the debenture, and the proper law of that obligation is from its very nature the law of the country enacting the statute. The sum named in the debentures is an amount which includes interest. It follows that the law of New South Wales is not the proper law of the obligation to pay interest.

The appellant Board nevertheless seeks the benefit of the *Interest Reduction Act 1931-1932 of New South Wales* on the ground that the statute includes every payment of interest required, according to the tenor of any obligation, to be paid in New South Wales, whether that obligation arises under the law of New South Wales, or under some other law. Sec. 5 of that Act is as follows: "Subject to this Act an obligation to pay interest shall be deemed to be satisfied by payment of a sum equal to the amount which would have been payable as interest if this Act had not been enacted, less nine-fortieths of such amount." By sec. 3 (1), "Obligation to pay interest" is defined to mean "an obligation to pay interest at a specified or ascertainable rate and includes an obligation to pay interest at a reduced rate in lieu thereof in case of punctual payment, or upon any other contingency." It is contended that these general words should be understood as including every obligation to pay interest which the Parliament of New South Wales was constitutionally competent to affect by its legislation. This means that the provision comprehends every debt that might be affected by properly framed legislation which the Courts of New South Wales would be bound to regard as valid, even although in Courts of other places, as, for instance, New Zealand or some other Australian State, the obligation would be treated as beyond the New South Wales Legislature's competence according to the rules of private international law. Conformably with this contention, the appellant resorted to the Courts of New South Wales to obtain a decision that the statutory reduction of interest operated upon the obligations under the securities it had given to the respondent Society.

Under the State Constitution the Legislature of New South Wales might validly enact a law reducing the interest upon any debt which was for any reason so connected with New South Wales that the statute could not be treated as wholly relating to a subject with which New South Wales had no possible concern. So long as the statute selected some fact or circumstance which provided some relation or connection with New South Wales, and adopted this as the ground of its interference, the validity of an enactment reducing interest would not be open to challenge. The residence or domicil in New South Wales of debtor or creditor would, for instance, suffice. In the present case there can

be no doubt that the fact that the place of payment is in New South Wales would enable the New South Wales Legislature, by a statute grounded on that circumstance, constitutionally to reduce the interest payable. But, because there are such a number and such a variety of ways in which a transaction may be connected with the State sufficiently to found the constitutional jurisdiction, the territorial limitation of legislative power gives no guidance when it is necessary to construe perfectly general words which select or indicate none of these grounds. I find no further assistance in the existence of the general protective provision contained in sec. 2. Nor does sec. 17 of the *Interpretation Act 1897* N.S.W. supply any guide as to the exact nature of the limitation to be placed upon the general words of sec. 5 of the *Interest Reduction Act 1931*. The concluding words of sec. 17 of the *Interpretation Act* provide that "all references to localities, jurisdictions and other matters and things shall, unless the contrary intention appears, be taken to relate to such localities, jurisdictions, and other matters and things in and of New South Wales."

If the "obligation to pay interest" is a "matter or thing" within this provision, the question remains: When is it a matter or thing in and of New South Wales? It appears to me that it is necessary in such a case to rely upon the ordinary rules of the common law for a rule of interpretation which will supply the restriction subject to which the words will be read. The case is one for applying what I believe to be the well settled rule of construction. The rule is that an enactment describing acts, matters or things in general words, so that, if restrained by no consideration lying outside its expressed meaning, its intended application would be universal, is to be read as confined to what, according to the rules of international law administered or recognized in our Courts, it is within the province of our law to affect or control. The rule is one of construction only, and it may have little or no place where some other restriction is supplied by context or subject matter. But, in the absence of any countervailing consideration, the principle is, I think, that general words should not be understood as extending to cases which, according to the rules of private international law administered in our Courts, are governed by foreign law. As the present statute deals with the discharge *pro tanto* of obligations, it ought to be understood as confined to those obligations which arise under the law of New South Wales. (See *Barcelo's Case*[9] and *Merwin Pastoral Co. Pty. Ltd. v. Moolpa Pastoral Co. Pty. Ltd.*[10].) The reasoning by which I am led to this conclusion is set out in my own judgment in *Barcelo's Case*[11], and I refer to it without repeating it. The form of sec. 5 lends a little confirmation to the conclusion, because it suggests that the object was to give a complete discharge available everywhere. The circumstances of the present case illustrate the soundness of the presumption by which, unless a contrary intention appears, statutory provisions are understood as having no application to matters governed by foreign law. For, even if the New South Wales enactment were construed as extending to obligations having some other proper law, in no forum out of New South Wales would it be recognized as affecting them. Thus, the respondent Society would remain entitled, subject to the operation of legislation of New Zealand, to enforce the security according to its tenor notwithstanding the construction given to the New South Wales statute, a matter which in any view might make it proper to decline to give the relief sought in these unusual proceedings.

For these reasons, I think that sec. 5 should be confined by construction to those obligations of which the governing or proper law is that of New South Wales.

I think that the judgment of *Harvey* C.J. in Eq. was right and the appeal should be dismissed.

Evatt J.

The question upon this appeal from the Supreme Court of New South Wales (*Harvey* A.C.J.) is

whether certain obligations of the plaintiff Electric Power Board to pay various sums of interest, which were included in the amount of certain debentures issued to, and held by, the defendant are affected, directly or indirectly, by the terms of the New South Wales *Interest Reduction Act 1931*.

The case came before the Supreme Court in Equity by way of originating summons issued by the plaintiff against the defendant. The Supreme Court decided, in effect, that the plaintiff's obligation to pay interest in accordance with the terms of the debentures was quite unaltered by the New South Wales statute. From that decision the plaintiff appeals.

The plaintiff is a corporation constituted under the laws of the Dominion of New Zealand, where it controls a public electric light and power undertaking. The defendant Society is incorporated under a New South Wales Act of Parliament.

It is necessary to refer shortly to one of the typical transactions which have furnished the occasion of the present controversy. In December 1924 it was agreed that the plaintiff should borrow from the defendant the sum of £149,999, and that such sum, together with interest thereon, should be payable by instalments secured by seventy-three debentures, each for the amount of £4,935 16s. 9d., the last instalment being payable in 1961. In New Zealand the plaintiff Board duly affixed its seal to the seventy-three debentures, and the defendant duly advanced to the plaintiff the agreed sum. The plaintiff Board executed the original agreement of loan in New Zealand, the defendant Society did so in New South Wales. But the Court is not informed as to the order of time in which these events occurred. By the deed, the plaintiff covenanted that the principal and interest moneys secured by the debentures should be paid to the Society in Sydney, New South Wales, "free of all charges or deductions for exchange or otherwise whatsoever."

A typical debenture (No. 11 of the series) is in evidence. It refers upon its face to the Board's raising of the special loan of £150,000 in 1924. It states that the loan is secured and charged with interest thereon on a special rate upon the ratable value of all ratable property in the electric power district under the jurisdiction of the Board. It further states that the debenture is payable in Sydney, New South Wales, and that, upon presentation of the debenture at a named bank in Sydney, on or after a specified date, the borrower of the debenture will be entitled to receive the sum of £4,935 16s. 9d. It further states that upon receipt of this sum the holder must surrender the debenture. The debenture also refers to the deed between the Board and the Society, and it contains the following important statement: "Issued by the Board of the Wanganui-Rangitikei Electric Power District under The Local Bodies' Loans Act 1913, The Finance Act 1921 and The Electric-power Boards Act 1918."

Under the *Local Bodies' Loans Act of New Zealand*, certain provisions govern the raising of special loans. By sec. 20 (3) it is provided that every special rate "shall be levied year by year, without further proceeding by the local authority, until the loan in respect of which the special rate was made is paid off." Provision is also made for the appointment of agents, within or without New Zealand, for raising and managing any loan authorized to be raised under the Act. Then sec. 32, dealing with the repayment of the loan, provides as follows:

The sum of money named in any debenture and in any coupon shall, on maturity, be a debt due to the holder thereof by the local authority that issued the same, and shall be payable at the place, within or out of New Zealand, named in the debenture, and at the time named therein, being not longer than fifty years from the issue thereof.

Sec. 42 provides that, if the sum secured by any debenture or any coupon is not paid upon presentation thereof at the place where, and the time when, the same is payable, or at such place at any time thereafter, the holder thereof may apply to a Judge of the Supreme Court of New Zealand for summary relief, and the Judge may appoint a receiver of such part of the local fund or other property of the local authority as is liable under the provisions of the Act for the payment of the debenture or coupon.

The first question is whether the proper or governing law of the transaction between the plaintiff and the defendant is that of New South Wales or that of New Zealand. I am clearly of opinion that the proper law is that of New Zealand and not that of New South Wales.

It is quite correct, as Mr. *Bonney* has contended, that a transaction may in certain respects, such as the mode of performance, be governed by the law of one country although it is governed by the law of another country in other respects. For instance, the present debentures are payable in New South Wales to the holder for the time being, and, although the governing law of the transaction is that of New Zealand, the form of currency which may be lawfully tendered to the holder will be determined by the local law in force in New South Wales. But this does not mean that there are two different systems of law which can simultaneously govern and determine the general obligation of the contract, including the question of interpretation whether what has been done amounts to a performance of the obligation of the contract. On the contrary, the whole theory which lies at the root of private international law, however difficult that theory may be in application, is that the law of one country, and one country alone, can be the proper or governing law of the contract; so that, to pursue the illustration given, although the law of country A is the proper or governing law of the contract, and the law of country B may be referred to in order to determine the method and incidents of performance of the contract, this is because the law of country A itself requires or concedes that the methods and incidents of performance should depend upon the law in force at the locality of performance, that is, country B.

Now the elements of the present series of transactions which are associated with New South Wales are (1) that in New South Wales payment is to take place, (2) that in New South Wales the debenture is to be presented and surrendered upon payment, and (3) that the lender is a New South Wales corporation. But these three elements are not unrelated. Although the debentures are made negotiable, it is reasonably clear that the A.M.P. Society intended, not to negotiate them, but to hold them as an investment. It was for this reason, no doubt, that provision was made for payment to be made at Sydney, where the Society carries on its business. Therefore, although the place fixed for payment is not to be neglected in determining the governing law of the transaction, the reason for its selection by the present parties is to be found in the circumstances I have mentioned.

But the predominant feature of the arrangement is that the obligation of the borrower to pay the sum of money named in the debenture is expressly created by sec. 32 of the New Zealand statute. That statute itself makes the debt payable at the place named in the debenture, whether within or without New Zealand. Therefore, although in this case the debt is payable in Sydney, that is because the New Zealand Legislature, in creating the obligation, expressly provided for its being performed at the place to be mentioned in the debenture. Further, there is no provision in the deed or the debenture by which the parties evinced any intention to exclude New Zealand as the place to which the proper law of the contract should be referred. The borrower was a New Zealand public authority. It carried on no business outside New Zealand, and, upon default, the creditor was to look for security to rates and property situated entirely within New Zealand. It was also contemplated by the statute that the New Zealand Supreme Court would be approached by a creditor upon default

occurring.

Adopting the principle to which I had occasion to refer recently in *Merwin Pastoral Co. Pty. Ltd. v. Moolpa Pastoral Co. Pty. Ltd.*[12], I reach the conclusion in this case that the country "with which the transaction was most intimately concerned" is New Zealand, so that the proper law of the contract is that of New Zealand. This conclusion accords with that of the Permanent Court of International Justice in the somewhat analogous case of the Serbian Loans (*Decisions P.C.I.J,* Series A, Nos. 20 and 21, at pp. 41, 42).

Had it been otherwise, and had the Court determined that the proper law of these transactions was that of New South Wales, the necessary corollary would have been that the obligation of the contract would fall to be determined by the system of law in force in New South Wales, including the provisions of the *Interest Reduction Act 1931*, whatever are the precise limitations in respect of territory to be ascribed to the statute, and although it was passed after the making of the present contracts. In that event, New South Wales tribunals, at least, would have accepted the present appellant's contention. This "necessary corollary," as I call it, was discussed in my judgment in *Barcelo v. Electrolytic Zinc Co. of Australasia*[13], and it was, I think, accepted, impliedly at least, by this Court in *Merwin Pastoral Co. Pty. Ltd. v. Moolpa Pastoral Co. Pty. Ltd.*[14].

The result of the opinion that the proper law of the present contracts is that of New Zealand, not that of New South Wales, is that the *Interest Reduction Act 1931* is not tacitly incorporated into the reciprocal rights and obligations of the parties. Nevertheless, it is still possible that the *Interest Reduction Act* may, entirely of its own force, apply to and control the present contracts. That question is purely one of construction of that Act, and to it I now turn.

Sec. 5 of the Act provides:

Subject to this Act an obligation to pay interest shall be deemed to be satisfied by payment of a sum equal to the amount which would have been payable as interest if this Act had not been enacted, less nine-fortieths of such amount.

And sec. 12 of the Act also provides:

Every payment of interest by a debtor made at a rate ascertained in pursuance of section 5 or section 6 of this Act, or in accordance with any order made under section 7 of this Act, shall be a full discharge of such debtor's liability to pay interest in respect of the period to which such payment relates.

It seems clear that sec. 12 should be regarded as incidental to the substantive command contained in sec. 5, which is, to a large extent, merely repeated in sec. 12.

Now, sec. 5 is addressed to the alteration and partial destruction of what is called "an obligation to pay interest." The section declares that an obligation to pay interest shall be deemed to be satisfied although in law and in fact there has not been a satisfaction. It describes the condition upon the fulfilment of which the obligation is to be treated as satisfied. That condition is the payment of thirty-one fortieths of the amount of interest otherwise payable. A mere reading of the section shows

that neither the place where the sum is payable, nor the place where it is actually paid, is regarded as being of any special significance. That is to say, the statute works a discharge of the obligation *whenever* (and also *wherever*) the condition has been fulfilled. The result is that all existing obligations are altered by reducing the amount of interest payable, but altered in no other respect. This interpretation may also, perhaps, be expressed by saying that the subject matter dealt with by the Legislature in sec. 5 is the existing obligation or liability to pay interest. Although that obligation or liability may require payment in a particular place, the section is dealing with existing obligations in order to alter them, and it is only concerned with payments as incidents of existing obligations. With the places of payment as such the section is not concerned at all.

The question still remains, what obligations was the New South Wales Legislature attempting to alter? It is perfectly obvious that the Legislature of New South Wales was not interested in dealing with and altering obligations which were quite unconnected with New South Wales.

In the absence from the statute itself of any clear definition of the necessary degree of relationship between New South Wales and the obligations dealt with, one turns to the general *Interpretation Act* which provides, *inter alia*, that in New South Wales Acts "all references to localities, jurisdictions, and other matters and things shall, unless the contrary intention appears, be taken to relate to such localities, jurisdictions, and other matters and things in and of New South Wales" (*Interpretation Act 1897*, sec. 17).

I see no reason for refusing to follow the guidance afforded by the *Interpretation Act* where the Legislature itself has not provided any other guidance.

It therefore follows that the obligations which the Legislature was endeavouring to vary were obligations "in and of New South Wales."

In his able argument, Mr. *Bonney* contended that the true and only limitation was suggested by sec. 2 (1) of the *Interest Reduction Act*, which provides that

this Act shall be read and construed subject to the Commonwealth of Australia Constitution Act and so as not to exceed the legislative power of the State, to the intent that where any provision of this Act or the application thereof to any person or circumstances is held invalid the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected.

He sought to deduce from this provision that the Legislature of New South Wales was intending to exert the full limits of its constitutional power over every interest transaction connected in any way with that State. It is quite correct that, if this view were accepted, the Courts of New South Wales (and this Court exercising appellate jurisdiction therefrom) would regard the Legislature of New South Wales as being constitutionally competent to deal with every interest transaction so long as there was any relevant connection between New South Wales and the transaction. According to this view, the residence or domicile of a borrower in New South Wales, the residence or domicile of a lender in New South Wales, the making of the contract of loan in New South Wales, the fact that the proper law of the contract was that of New South Wales, the fact that the interest was payable in New South Wales, and the fact that the interest was actually paid in New South Wales, each and all of these circumstances would be sufficient to attract and found the jurisdiction of its Legislature, and so might bring the provisions of the *Interest Reduction Act* into operation in each and every

instance.

But, in my opinion, sec. 2 (1) of the Act provides no warrant for adopting this construction. That sub-section only seeks to guard against the risk that provisions otherwise valid may be infected by the presence of provisions which are invalid. It requires the Court so to exercise its function of interpretation that in the result the Legislature will "not ... exceed" its jurisdiction, having regard to the overriding provisions of the Commonwealth Constitution. It is not justifiable to infer from such a provision that the Legislature was intending to exercise to the full its constitutional authority over every interest transaction. On the contrary, as I have endeavoured to show previously, the subject matter to which it was addressing itself was that of obligations to pay interest; and I reach the conclusion that, in so dealing with obligations to pay interest, the Legislature was intending to confine its attention to obligations which were "in and of" the State of New South Wales.

I therefore ask myself this final question, was the obligation of the appellant to pay interest to the A.M.P. Society in the manner previously described, an obligation "in and of" the State of New South Wales? Clearly it was not an obligation "of" New South Wales. It came into existence by virtue of the statute of the Parliament of New Zealand. It is accurately described as an obligation "of" New Zealand. As *Holland* has pointed out:—

An obligation, as its etymology denotes, is a tie; whereby one person is bound to perform some act for the benefit of another. In some cases the two parties agree thus to be bound together, in other cases they are bound without their consent. In every case it is the law which ties the knot, and its untying, "solutio," is competent only to the same authority (*Elements of Jurisprudence*, 12th ed. (1916), p. 241).

Nor was the obligation, regarded as such, an obligation "in" New South Wales. No doubt the obligation created by the New Zealand statute turned out to be an obligation to pay money in the State of New South Wales and, if regarded merely as titles to property, the debentures themselves were all situated "in" New South Wales. But, in dealing with a subject matter like "obligations," it is often misleading to ascribe a situation to them at the place where they are to be performed to the exclusion of other territories. In my opinion, an obligation like the present one, created by a New Zealand statute, imposed upon a New Zealand public body, secured upon New Zealand property, and made enforceable in a New Zealand Court, cannot be sufficiently or accurately referred to as an obligation "in" New South Wales, merely because the obligation is to be discharged by payment in that State.

Accordingly it follows that the obligations here in question cannot be described as obligations "in and of" New South Wales within the meaning of sec. 17 of the *Interpretation Act*.

For these reasons I think that the *New South Wales Interest Reduction Act* does not, of its own force, operate to discharge any part of the obligations created by sec. 32 of the New Zealand statute.

In my opinion, the appeal should be dismissed.

McTiernan J.

The question for decision is whether the obligation to pay interest expressed in the deeds and debentures in suit is varied by the *Interest Reduction Act 1931-1932 of New South Wales*.

By the deed made on 18th December 1924 the appellant Board agreed in pursuance of its statutory authority to borrow from the respondent the sum of £149,999 at the rate of £5 15s. per cent per annum. This sum and interest thereon were made repayable by instalments secured by seventy-three debentures of £4,935 16s. 9d. each, which included principal and interest. The appellant Board covenanted to pay principal and interest to the respondent in Sydney. The latter covenanted to take up the debentures and for that purpose to advance the sum of £149,999 at Wanganui in exchange for the debentures, which were to be handed to it at its branch office in Wellington. Both these places are in New Zealand. The deed empowered the respondent or the holders of the debentures which had not matured to demand payment thereof from the appellant by notice in writing to it whenever default should be made in the payment of the sum secured by any one debenture. Sydney is not nominated as the place of payment under this condition. Each debenture is payable in Sydney. It provides that upon presentation of it at the office of a bank in Sydney the bearer will be entitled to receive £4,935 16s. 9d., and that on receipt thereof the bearer must surrender the debenture. This sum includes an amount for interest. It is unnecessary to refer to the provisions of the other deeds and the debentures issued pursuant thereto respectively. The common seals of the appellant and the respondent were affixed to all these instruments. The head office of the appellant is in New Zealand, that of the respondent in Sydney.

The appellant Board was constituted under the *Electric-power Boards Act 1918 of New Zealand*, which authorizes it to borrow money necessary for its undertaking and renders the *Local Bodies' Loans Act 1913 of New Zealand*, with the exception of certain Parts of the Act, applicable to the loan. The rate of interest must not exceed five and one-half per cent per annum unless the Minister of Finance approves of a higher rate (*Electric-power Boards Act*, sec. 40). *The Local Bodies' Loans Act* provides for securing principal and interest by levying and pledging a special rate for that purpose (sec. 19); for raising the loan by the issue of debentures in the prescribed form (sec. 26); for making the debentures payable by periodical drawings (sec. 33); and for the appointment of a receiver of such part of the local funds and other property of the borrower as is liable under the provisions of the Act for the repayment of the debentures if default be made in payment (sec. 42). Sec. 32 says that "the sum of money named in any debenture and in any coupon shall, on maturity, be a debt due to the holder thereof by the local authority that issued the same, and shall be payable at the place, within or out of New Zealand, named in the debenture, and at the time named therein, being not longer than fifty years from the issue thereof."

The appellant's obligation to pay interest to the respondent is therefore the creature of the New Zealand law and legislation which authorized the loan at interest, regulated the rate of interest, constructed security for the due payment of principal and interest over local funds in New Zealand, bound the appellant to pay the sum which included interest named in each debenture as a debt due to the holder, and made that sum payable at the place, whether in or out of New Zealand, and at the time, named in the debenture. In determining what is the proper law of the obligation, there is to be set against these matters a condition in the instruments that the moneys due thereunder were to be paid in Sydney, and particularly a condition in each debenture that the amount thereof, which includes interest, was to be paid on its due date in Sydney, and that upon receipt thereof each debenture was to be surrendered by the holder. But this circumstance is quite insufficient to justify the view that the parties intended to submit themselves to the law of New South Wales. The condition as to payment in Sydney loses some of its weight as a factor to be taken into account, when it is noticed that although the money was to be repaid in Sydney it was provided for the appellant in New Zealand, and that although the debentures provide for payment of the amount thereof in Sydney on the due date, there is a further condition that whenever default is made in the payment of any debenture the holders of the others are at liberty to demand payment of them before

the due date from the appellant Board in New Zealand. The law of New South Wales is not, in my opinion, the proper law of the obligation. The *Interest Reduction Act of New South Wales*, therefore, does not apply as part of the law to which it is to be presumed that the parties submitted themselves.

But the appellant also contends that, apart from any question as to the proper law of the obligation to pay interest, it is retrenched by the operation of sec. 5 of the *Interest Reduction Act*. This section is in these terms: "Subject to this Act an obligation to pay interest shall be deemed to be satisfied by payment of a sum equal to the amount which would have been payable as interest if this Act had not been enacted, less nine-fortieths of such amount." The word "payment" is correlative, I think, to the words "to pay." The object to which the section is directed is "an obligation to pay interest" but not to "payment" *per se* as a mode of discharging an obligation. Sec. 12 provides that "every payment of interest made by a debtor" at the rate mentioned "shall be a full discharge of such debtor's liability to pay interest in respect of the period to which such payment relates." This section is, in my opinion, accessory to sec. 5. Payment is not the object of legislative concern either in addition to, or as distinguished from, "obligation to pay interest." The Act has not adopted payment in New South Wales as the criterion of the application of sec. 5. No criterion is expressed for identifying the obligations to pay interest to which the Legislature intended sec. 5 to apply. The considerations expressed in the *East India Interest Case*[15] are perhaps too speculative in the present case to determine this appeal against the appellant Board. But nevertheless they tend strongly in that direction.

Sec. 5 and sec. 12 are expressed in general terms which are capable by their literal force of including the "obligation to pay interest" which is now in question. But the ambit of these sections is confined by sec. 17 of the *Interpretation Act 1897*, of New South Wales, which says: "Wherever in an Act any officer or office is referred to, the same shall be taken to refer to the officer or office of the description designated in and for New South Wales, and all references to localities, jurisdictions, and other matters and things shall, unless the contrary intention appears, be taken to relate to such localities, jurisdictions, and other matters and things in and of New South Wales." The matter or thing which is the object of legislative concern in secs. 5 and 12 is an obligation to pay interest. Payment is dealt with as a matter accessory to those obligations which the Legislature intended to affect. In *Barcelo v. Electrolytic Zinc Co. of Australasia*[16] we were not referred to any enactment which has an effect like that of sec. 17 of the *Interpretation Act of New South Wales*. The phrase "in and of" imports both situation and a close identification of the matter or thing with New South Wales. The phrase is a composite one and perhaps should not be divided. But it is unnecessary in the present case to inquire whether upon any technical view the obligation to pay interest can be said to be "in" New South Wales. There is not, in my opinion, any association between the obligation to pay interest expressed by the instrument in suit and New South Wales which would justify the view that it was "in and of" New South Wales. Its only association with New South Wales is that the borrower remits the money which is necessary to discharge it from New Zealand to Sydney, where the head office of the lender is situated. This circumstance in the present case is not of sufficient weight to determine the territorial connection of the transaction, and does not detract from its complete association with New Zealand or its complete dependence on New Zealand law. The obligation cannot, in my opinion, be said to be "in and of" New South Wales. It has these characteristics:—(1) It is the creature of legislation passed in another country. (2) Its peculiar nature is determined by that legislation. (3) Its payment is secured by that legislation on "local funds" in New Zealand. (4) The legislation expressly makes it payable in or out of that country, as a debt. (5) That legislation provides for its enforcement in that country. (6) It is the obligation of a corporation rooted in that country. (7) The activities of that corporation are restricted to that country. (8) In the event of default payment can be demanded, in that country, of the obligation contained in the

outstanding debentures.

Sec. 2 of the *Interest Reduction Act* shows that the Legislature adverted to the danger of exceeding the limits of its jurisdiction. But it does not exhibit any intention that the ambit of the Act should on all sides be exactly coincident with those limits. Sec. 2 is not, in my opinion, the expression of a contrary intention within the meaning of sec. 17 of the *Interpretation Act*.

The appeal should, in my opinion, be dismissed.

Appeal dismissed.

Solicitors for the appellant, Gill, Oxlade & Clegg.

Solicitors for the respondent, Stephen, Jaques & Stephen.

[1] (1893) A.C. 339, at p. 344.

[2] [1916] HCA 46; (1916) 22 C.L.R. 150.

[3] (1894) A.C. 202.

[4] (1891) 1 Q.B., at p. 83.

[5] (1884) 12 Q.B.D. 589, at p. 601.

[6] (1906) 22 T.L.R. 245.

[7] (1909) 25 T.L.R. 329.

[8] (1894) A.C. 202.

[9] [1932] HCA 52; (1932) 48 C.L.R. 391.

[10] [1933] HCA 31; (1933) 48 C.L.R. 565.

[11] (1932) 48 C.L.R., at pp. 423-429.

[12] (1933) 48 C.L.R., at p. 587.

[13] (1932) 48 C.L.R., at pp. 436, 437.

[14] [1933] HCA 31; (1933) 48 C.L.R. 565.

[15] [1825] EngR 129; (1825) 3 Bing. 193; 130 E.R. 488.

[16] [1932] HCA 52; (1932) 48 C.L.R. 391.

</html</htm