STATUTORY INTERPRETATION AND PRIVATE INTERNATIONAL LAW

KAYS LEASING CORPORATION v. *FLETCHER*[1]

In July, 1960, Mr. and Mrs. Fletcher entered an agreement with Kay's Leasing Corporation Pty. Ltd. for the purchase of a tractor on hire-purchase terms.[2] It was a contract closely connected with New South Wales. Mr. and Mrs. Fletcher were, at all relevant times, residents of New South Wales. They carried on business in New South Wales as contractors. They intended to use, and did in fact use, the tractor for that business. They made payments under the hire purchase agreement amounting to £1099. These payments were accepted by the hiring company in New South Wales. The contract expressly stipulated the law of Victoria as the proper law of the contract. The Company was incorporated in Victoria and its principal place of business was in Melbourne. But in the absence of an express choice of law, New South Wales law would clearly have been the proper law of the contract.

Mr. and Mrs. Fletcher defaulted in making further payments under the agreement and were sued by the hire purchase company in the Supreme Court of New South Wales. There was no dispute as to the default and the only issue before the court that is here relevant was whether ss. 26C[3] and 31[4] of the Hire Purchase Agreements Act (1941-1957) of New South Wales applied to the agreement. It was clear that the charges under the agreement were in excess of those stipulated by s. 26C of the Act. It was also clear that the hiring Company had not obtained a deposit as prescribed by s. 31 of the Act. The effect of infringement of either of those provisions was that the whole agreement was avoided and hiring charges paid were refundable to the hirer of the goods. Both the Full Supreme Court of New South Wales[5]

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[1] (1964-5) N.S.W.R. 25 (Supreme Court); (1964) 38 A.L.J.R. 335 (High Court).

[2] This article concerns only the private international law aspect of the case. For this purpose it will be assumed that the two separate agreements for hire and option to purchase constitute one agreement within the meaning of both New Souh Wales and Victorian Acts dealing with hire purchase agreements. The High Court held, by a majority (Kitto and Menzies, JJ. dissenting), that the agreements in question constituted a hire-purchase agreement within the meaning of the Hire Purchase Act, 1959 (Vict.), affirming the decision of the N.S.W. Supreme Court on this point. Since in the view of the majority the N.S.W. provisions were inapplicable, it was not necessary to decide whether the agreements constituted a hire-purchase agreement under the N.S.W. Act.

[3] 26C. (2) The hiring charges in relation to a hire purchase agreement . . . shall not, when calculated as a rate per centum per annum in accordance with the formula set out in this subsection, exceed a rate per annum of . . . where the goods comprised in the agreement, not being secondhand goods at the time when the agreement is entered into, are any one or more of the following only, namely, industrial machinery, farm equipment or a motor vehicle (other than a motor cycle) — seven per centum.
(4) A hire-purchase agreement . . . which is entered into . . . in contravention of subsection two of this section . . . shall be void: Provided that all moneys paid and the value of any other consideration provided by the purchaser under the agreement shall be recoverable as a debt due to him by the vendor.

[4] 31. (1) A vendor who enters into a hire purchase agreement without having first obtained from the purchaser or proposed purchaser thereunder in current coin or bank notes or by a cheque drawn by a banker or by the purchaser or proposed purchaser or the spouse of the purchaser or proposed purchaser on a banker a deposit of . . . not less than one tenth of the cash-price of the goods the subject of the agreement . . . shall be guilty of an offence against this Part.
(3) A hire purchase agreement entered into after the commencement of the Hire Purchase Agreements (Amendment) Act (1957) in contravention of this section shall be void: Provided that all moneys paid and the value of any other consideration provided by the purchaser under the agreement shall be recoverable as a debt due to him by the vendor.

[5] (1964-5) N.S.W.R. 25. The matter came to the Full Court by way of special case stated by the Trial Judge for the opinion of the Full Court under s. 55 of the Common Law Procedure Act (1899-1957).

and the High Court of Australia[6] held that neither section applied to the agreement in question.

The Supreme Court[7] held that the sections only applied to hire purchase agreements, the proper law of which was the law of New South Wales. The proper law of the agreement was the law of Victoria, and the Act could have no application to the agreement. The effect of the decision was, as Kitto, J. pointed out, that salutary reforms were "set at nought by the simple expedient adopted in the present case of inserting in an agreement a stipulation that validity should be a matter for the law of some other country".[8] It was "a result which the legislature was not in the least likely to have intended".[9]

The High Court[10] held that the sections only applied to hire purchase agreements which were made in New South Wales.[11] The agreement in the present case had been accepted by the hiring Company at its Victorian office and, as a result, it was executed in Victoria. Again, one might have thought, salutary reforms were set at nought by the simple expedient adopted in the present case of accepting the agreement outside New South Wales. Again, it was a result which the legislature was not in the least likely to have intended.

I THE DECISIONS

The issue was one of statutory interpretation: what is the ambit of ss. 26C and 31 of the Hire Purchase Agreements Act? If this was all that was involved, the interpretation of two obscure sections in a statute which is now repealed, the case might well be forgotten. But the determination of the scope of the particular sections involves the larger and more important question: how does a court determine whether statutory provisions apply to a particular set of facts when those facts involve foreign extraterritorial elements? This question is of abiding importance and it is the light which the case throws upon it that makes the decision of interest.

The Supreme Court of New South Wales held that ss. 26C and 31 of the Act were to be applied only to agreements the proper law of which, according to the principles of private international law observed by New South Wales, was the law of that State.[12] The Court adopted the rule of construction that a statute affecting contractual rights and liabilities *prima facie* applies only to contracts governed by the law of which the statute formed part.[13] The Court found nothing in the sections or the Act to displace this *prima facie* rule of construction. The proper law of the agreement was held to be the law of Victoria because of the express term in the agreement that it should take effect and be construed in accordance with the law of Victoria.[14] The Supreme Court regarded this express choice of the proper law as conclusive, subject only to the nebulous qualifications mentioned by Lord Wright in *Vita Foods Products* v. *Unus Shipping Co.*[15] The result was that the

[6] (1964) 38 A.L.J.R. 335. The matter came to the High Court on appeal from the Full Supreme Court of New South Wales.

[7] (1964-5) N.S.W.R. 25. The unanimous judgment of the Court on the point was delivered by Walsh, J.

[8] (1964) 38 A.L.J.R. at 341.

[9] *Ibid.*

[10] (1964) 38 A.L.J.R. 335. Three separate judgments were delivered: the joint judgment of Barwick, C.J., McTiernan and Taylor, JJ., the judgment of Kitto, J. and the dissenting judgment of Menzies, J. The last is remarkable for its brevity on the point.

[11] There is slight difference in reasoning between the majority judgment and that of Kitto, J. discussed *infra*. But the result is the same in each case.

[12] (1964-5) N.S.W.R. at 33.

[13] *Ibid.*

[14] *Ibid.* at 34.

[15] (1939) A.C. 277 at 290. The qualifications had no application in the present case. The Full Court made no reference to the dead horse which Denning, L.J. (*Boissevain* v. *Weil* (1949) 1 K.B. 482 at 491) and Cheshire (*Private International Law*, 6: ed., 221)

sections did not apply to the agreement.

The majority of the High Court[16] denied that the proper law of the contract was relevant to the determination of the ambit of the operation of ss. 26C and 31. Section 31(1) makes it a criminal offence to enter a hire purchase agreement without first having obtained an adequate deposit. The Court considered that this section should only apply to hire purchase agreements which were entered into in New South Wales and that s. 31(3) which was dependent on its operation for the contravention of s. 31(1) applied to cases where a vendor enters, in New South Wales, into a hire purchase agreement without having first obtained an adequate deposit. The majority of the Court applied a similar construction to s. 26C,[17] even though that section did not involve any criminal offence. The scope of s. 26C(4) is determined by s. 26C(2) and for some reason, which does not appear from their judgment,[18] s. 26C(2) must be confined to cases in which a person has, *within New South Wales*, in relation to a hire purchase agreement made hiring charges in excess of those prescribed by that section. As both agreement and hiring charges were made in Victoria, the sections had no operation in this case.

The majority judgment in the High Court appears to deny that any question of private international law is involved in the case at all.[19] It is, in their view, simply a case of statutory interpretation to which principles of private international law are irrelevant. But the problems involved in the application of the rules of private international law do not disappear as a result of such treatment. It simply means that their explicit examination is postponed and their solution delayed. Thus there seem to be three questions of general importance arising in cases such as this:

(i) Is there a rule of construction that statutes in general terms affecting contractual rights and liabilities are deemed to apply only to those contracts whose proper law is the law of the statute?

(ii) If there is such a rule of construction, in what circumstances, if any, will it be displaced?

(iii) If the rule of construction is displaced, what considerations ought the Court to take into account when it is deciding to what contracts the statute does apply?

By regarding the case as involving only statutory interpretation, the Court does not avoid answering these questions. It means that the answers are implicit rather than explicit. It means that the task of unravelling its answers to the questions is left to subsequent tribunals.

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are trying to flog back into life, viz., that the express choice of the proper law will not be conclusive in cases other than those specified by Lord Wright.

[16] (1964) 38 A.L.J.R. at 337.

[17] The similarities and dissimilarities of the sections should be noted. Both s. 26C(4) and s. 31(3) avoid contracts which are entered into in contravention of prior provisions, that is, s. 26C(2) and s. 31(1) respectively. The scope, therefore, of the avoiding provisions, s. 26C(4) and s. 31(3), may well depend on the scope of the prior provisions, s. 26C(2) and s. 31(1) respectively. Infringement of s. 31(1), by the entering of a hire purchase contract by a hirer of goods without receiving a sufficient deposit, is, by virtue of the provision, a criminal offence. But s. 26C(2) does not create any criminal offence. It merely provides that the hiring charges in relation to a hire purchase contract shall not exceed a specified rate. This difference is important because there is a strong presumption that a New South Wales statutory provision creating criminal offences only creates criminal offences in respect of conduct within New South Wales. Whereas this strong presumption would apply to s. 31(1), it should have no application to s. 26C(2). Therefore, while there is much authority for supporting the restriction of s. 31(1) to cases in which the contract was entered into in New South Wales, there are no such strong presumptions affecting s. 26C(2). Although this article will concern itself more with the interpretation of s. 26C rather than s. 31, most of the arguments are applicable to both sections alike, providing a distinction is drawn between civil and criminal effects of the provisions.

[18] Possible reasons are considered *infra*.

[19] (1964) 38 A.L.J.R. at 337.

The judgment of Kitto, J. in the High Court does give explicit consideration to all three of these questions.[20] His Honour acknowledged the existence of the rule of construction, that statutes in general terms affecting contractual rights and liabilities are deemed to apply only to those contracts which are governed by the law of which the statute forms part. His Honour considered that the rule of construction had no application in the present case because the statute embodied a specific policy directed against practices which the legislature has deemed oppressive or unjust. For reasons which will be considered *infra*, His Honour held that both sections should apply to hire purchase agreements which were executed in New South Wales. As the agreement in the case was executed in Victoria, the sections had no application to it.

II THE EXISTENCE OF THE RULE OF CONSTRUCTION

There can be little doubt that there is such a rule of construction as mentioned above. Thus on a general level the rule is stated by Dixon, J. in *Wanganui-Rangitikei Electric Power Board* v. *A.M.P. Society*:[21]

> 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.[22]

This general dictum leads to the more particular proposition that there is a rule of construction that a New South Wales statute which modified contractual rights and obligations *prima facie* applies only to rights and obligations arising under a contract whose proper law is the law of New South Wales.[23]

The existence of the rule of construction was accepted by Walsh, J. in the Supreme Court[24] and by Kitto, J. in the High Court.[25] It was not adverted to by the majority of the High Court, although it was clear that they thought it had no application in relation to the statutory provisions in this case. It could hardly be thought that they intended to overrule the long line of cases to which the rule of construction owes its existence.

III THE DISPLACEMENT OF THE RULE OF CONSTRUCTION

If the rule of construction, that a statute affecting contractual rights and liabilities applies only to those contracts which are governed by the law of which the statute forms part, is well established, the question is in what circumstances it will be displaced.

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[20] *Ibid.* at 341.

[21] (1934) 50 C.L.R. 581 at 601.

[22] The proposition has substantial support: *Bloxam* v. *Farre* (1883) 8 P.D. 101 at 107; *Niboyet* v. *Niboyet* (1878) 4 P.D. 1 at 7, 20; *Forster* v. *Forster* (1907) V.L.R. at 168; *In re Price* (1900) 1 Ch. 442 at 451.

[23] There is also ample authority supporting the existence of the rule in its more particular form. *Barcelo* v. *Electrolytic Zinc Co.* (1932) 48 C.L.R. 391; *Merwin Pastoral Co.* v. *Moolpa Pastoral Co.* (1933) 48 C.L.R. 565; *McClelland* v. *Trustees Executors and Agency Co. Ltd.* (1936) 55 C.L.R. 483.

[24] (1964-5) N.S.W.R. at 33.

[25] (1964) 38 A.L.J.R. at 341.

(1) *Kitto J.*

In the view of Kitto J., it will be displaced if the court holds that the legislature intended the statutory provision to apply to transactions, regardless of the intention of the parties involved in those transactions. His Honour refers to the proposition laid down in the *Vita Foods Case*[26] that the parties to a contract may, subject to certain nebulous exceptions, conclusively determine for themselves what the proper law of the contract shall be. It is the very fact that the parties have this choice that is "the strongest possible reason for rejecting the proper law of the contract as the test for determining to what agreements enactments such as Section 26C and 31 of the New South Wales Hire Purchase Agreements Act should be understood as intended to apply".[27] Sections 26C and 31 "embody a specific policy directed against practices which the legislature had deemed oppressive or unjust". The sections are designed as "salutary reforms" which should not be set at nought by the mere intention of the parties.[28]

How does the court determine that the sections represent the specific policy of the legislature, which should not be set at nought by the mere intention of the parties to the transaction affected? How does the court distinguish the specific policy in this case from the specific policy in other cases, such as those involving moratorium provisions as in the *Wanganui Case?*[29] Kitto, J. would appear to look at the nature of the sanctions imposed by the legislature to enforce its policy. If, as in the *Wanganui Case*,[30] the legislature is content with modifying or avoiding contractual rights and obligations, and such modification or avoidance is enacted as an end in itself, the rule will not be displaced. But in this case the avoidance was not enacted as an end in itself: it was a sanction for the contravention of the statutory requirements. Thus the legislature did not merely prevent the insertion of provisions in the agreement which contravened its policy, while leaving the agreement standing. In this case the whole agreement was void. It would, however, seem that the final test is whether the provision represents the specific policy of the legislature. The imposition of sanctions, though not in itself decisive is a strong indication that the provision in the statute does represent the specific policy of the legislature.

(2) *Supreme Court of New South Wales (Walsh, J.)*

The Supreme Court did not accept the view that the circumstance that the sections embody a specific policy of the legislature is sufficient reason to displace the rule of construction that a statutory provision affecting contractual rights and liabilities applies to those contracts which are governed by the law of which the statute forms part. In fact it seems difficult to imagine Walsh, J. accepting that the rule of construction could be displaced by anything less than an express provision in the statute that some other point of connection is to be the test of applicability.[31] Thus counsel for the hirers, Mr. and Mrs. Fletcher, argued that "a New South Wales Court must enforce the local law because the Act lays down a policy in regard to these

[26] (1939) A.C. 277 at 290. Kitto, J.'s reference to *Boissevain* v. *Weil* (1949) 1 K.B. 482 at 491 seems difficult to follow. Denning, L.J.'s argument was that *Vita Foods* was wrong in that the parties are not free to choose the proper law of the contract. Kitto, J., however, accepts *Vita Foods*: it is because *Vita Foods* is correct and because, as a necessary consequence of the correctness of *Vita Foods*, the parties are free to choose the proper law, that the test of applicability of the statute should not be the proper law of the contract.

[27] (1964) 38 A.L.J.R. 341.

[28] *Ibid.*

[29] (1934) 50 C.L.R. 581.

[30] *Ibid.*

[31] Despite protestations to the contrary (1964-5) N.S.W.R. at 33.

transactions and lays it down in such terms that it could be described as a penal law. Therefore, the parties in New South Wales cannot evade the Act and a local court will refuse to give effect to any attempt to do so".[32] This is the argument that Kitto, J. accepted, that where the sections embody the specific policy of the legislature, there is no room for the presumption that the sections only apply to those contracts whose proper law is that of the statute. It is an argument as to how the sections should be interpreted. But Walsh, J. does not see it as such:

> The argument rests upon some misconceptions. Of course New South Wales Courts must enforce a New South Wales statutory provision, if it is applicable to the case before it, although, in certain circumstances, that law might be ignored by a court of another jurisdiction if the decision of the rights and obligations of the parties came before it for decision. . . . But the whole question is whether the New South Wales Act is applicable. The tests for determining this I have already endeavoured to state. If the Act is not held to be applicable, then of course, it will not be applied.[33]

Walsh, J. does not deny that the sections embody the specific policy of the legislature directed against practices which the legislature had deemed oppressive or unjust. The fact is that Walsh, J. does not consider this relevant to the *interpretation* of the statute or that it is a circumstance sufficient to displace the rule of construction that the proper law of the contract is the test of applicability. What Walsh, J. is looking for is an intention of the legislature "to make some different connection with New South Wales the test of applicability".[34] The circumstance that the sections represent the specific policy of the legislature is not sufficient indication of this intention. It is difficult not to conclude that Walsh, J. will accept nothing less than an express indication of such intention.

(3) *Majority in the High Court*

The majority judgment of the High Court does not directly discuss the circumstances in which the proper law of the contract would be the test of applicability of the statute. It does make it clear that the rule has no application in the present case. Walsh, J. was castigated for "a much more general consideration of the operation of the Act, and its many and varied provisions, than was either necessary or desirable".[35] This, perhaps, refers to the fact that Walsh, J. was unable to see, in the particular sections, sufficient grounds for the displacement of the rule of construction that the proper law of the contract is the test of applicability. The majority of the High Court did not find, in the particular sections, sufficient grounds for even mentioning the rule of construction.

The majority of the High Court referred to *Boissevain* v. *Weil*.[36] This case concerned the avoidance of a loan made to a British subject in Monaco in 1944 by the Defence (Finance) Regulations. The enabling Act provided that the Regulations made under the Act would apply *inter alia* to all persons being British subjects, subject to certain exceptions which are not here relevant. The House of Lords accepted the inference that the rule of construction, that the proper law of the contract is the test of applicability of the statute, was excluded by the express provision of a different point of connection as the test of applicability. Their Lordships simply accepted this express test of

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[32] (1964-5) N.S.W.R. at 35.
[33] *Ibid.*
[34] (1964-5) N.S.W.R. at 33.
[35] (1964) 38 A.L.J.R. 337.
[36] (1950) A.C. 327.

applicability. In *Kay's Leasing Corporation*, the question of whether the proper law of the contract was displaced as the test of applicability of the contract was quite different because there was no express test of applicability prescribed by the statute. Moreover, in *Kay's Leasing Corporation*, once the proper law of the contract was excluded as the test of applicability, there remained the question which other test of applicability should be adopted. But in *Boissevain* v. *Weil* this question was already settled by the words of the statute itself. The question in that case was whether some further territorial limitation should be implied. The decision was that no such territorial limitation should be implied, whereas in *Kay's Leasing Corporation* the High Court did imply a narrow territorial limitation (and not because of constitutional limitation). *Kay's Leasing Corporation* was a case where the natural meaning of the words of the statute was restricted, whereas *Boissevain* v. *Weil* was a case where the Court would not imply any such restriction. In *Boissevain* v. *Weil* the House of Lords accepted the extra-territorial effect of the statute. In *Kay's Leasing Corporation* the High Court refused to accept the extra-territorial effect of the statute. The only link between the two cases is that in each case the proper law was excluded as the test of applicability. But the grounds upon which, and the circumstances in which, it was excluded were entirely different.

IV THE RULE OF CONSTRUCTION DISPLACED

On the reasoning of Kitto, J., once the proper law has been displaced as the point of connection, the court has then to determine to what contracts the sections do apply. On Walsh, J.'s approach, this question would never arise, for the only ground on which the proper law can be displaced as the point of connection, is the fact that the legislature has indicated that some other specific point of connection is to be the test of applicability. The majority judgment of the High Court, on the other hand, never seems seriously to consider that the proper law could be the point of connection.

It might be thought that the sections, which were introduced to impose economic policies on hire purchase agreements in New South Wales and to protect New South Wales hirers, should be applied to contracts which are to be performed in New South Wales. This conclusion is supported by a number of considerations. *Firstly*, the legislature has left the scope of the sections undetermined. As Kitto, J. said, the Act "does not specify in what way the generality of its language is to be reconciled with the geographical limitation to which the legislative power of the State Parliament is subject".[37] A literal rendering of the sections will not assist the interpretation. If we reject the view that the statute applies to all contracts, we must accept the view that the sections are ambiguous in that they do not clearly prescribe which contracts they are applicable to. *Secondly*, this inherent ambiguity is such that the court is justified in looking at the policy which the legislature is trying to implement.[38] This case should be a proper case for the application of the mischief rule, when the literal rule of interpretation is, *ex hypothesi*, inapplicable. *Thirdly*, of all the possible points of connection that a hire purchase agreement might have with New South Wales, the place of performance is the one with which the contract has the closest connection with the policies that the legislature is trying to implement. The economic policies are policies concerning the economy of New South Wales, that is, concerning things done in New South Wales. Likewise, New South Wales hirers are most likely to be protected if the statute protects hirers who are to perform the contract in New South Wales.

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[37] (1964) 38 A.L.J.R. 340.
[38] *Heydon's Case* (1584) 3 Rep. 7a.

It is not submitted that the *only* reasonable interpretation of the sections is that they apply to contracts which are performed in New South Wales. It may be that interpretations based on the residence of the purchasers in New South Wales or the situation of the goods in New South Wales would be preferable. But it is submitted that the limitation found by the High Court, namely, that the sections applied to contracts which were made in New South Wales, is not one which would be found if the object of the statute was taken into account. But the High Court did not adopt this type of reasoning. Thus Kitto, J. says:

> Under Section 26C(4) the invalidating circumstance is the entering into a hire-purchase agreement in relation to which the hiring charges exceed the prescribed rate. In each case it is at the point of the making of the agreement that the legislature is concerned to see that an objectionable practice is not being given legal effect. The intention, I think, must be that the statute shall step in at the point, and therefore whenever an offending hire purchase agreement is entered into in New South Wales.[39]

The reasoning of the majority of the High Court is not substantially different.[40]

In the writer's view there are several objections to this type of reasoning in private international law cases. *Firstly*, it assumes that the "objectionable practice" is the entering of a contract (or the making of hire purchase charges) and that the sections only prohibit this "objectionable practice" when it occurs in New South Wales. Section 26C(2) is general in its terms: it provides that the hiring charges in relation to a hire purchase agreement shall not exceed a certain rate. The objectionable practice is the inclusion of hiring charges in a hire purchase contract beyond a certain rate. What it does not do is specify *which particular hire purchase contracts* are affected. The seizing on the aspect of entering the contract or making charges as the relevant aspect is not justified by the words of the section. *Secondly*, the court has chosen the aspect which enables the easiest evasion of the policy of the statute. The reason that the proper law was excluded as the test of applicability was that the legislature could not have intended a test of applicability which could be so easily manipulated by the parties. The reason which excluded the proper law as the test of applicability should also have eliminated the place of execution. *Thirdly*, the territorial limitation chosen by the Court is difficult to justify in terms of advancement of the legislature's policies. Whether the contract is executed in New South Wales or not, the New South Wales legislature has no interest in protecting hirers unless they are hiring the goods in New South Wales. Whether the contract is executed in New South Wales, the New South Wales legislature has no interest in enforcing its economic policies unless the contract will affect the economy of New South Wales. *Fourthly*, the results of the decision illustrate the capricious effects of the interpretation which the Court adopted. It seems not unreasonable to suppose that Mr. and Mrs. Fletcher were precisely the type of hirers that the legislature was intending to protect. Yet, by the interpretation which the Court placed on the statute, they received no protection.

But the fundamental objection is to the view that it was a question of interpretation to which questions of the choice of law were not relevant. The tendency of the court is to divide its decision into two independent questions: first the interpretation of the statute involved, and then, the resolution of choice of law problems, if any remain. The "interpretation" of the

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[39] (1964) 38 A.L.J.R. 341.

[40] In each case, the question considered is: what *act* is prohibited by the section and consequent restriction of the operation of the section to cases where the *act* occurs in N.S.W. The dispute over whether the prohibited act is the entering of the contract or the making of the charges is immaterial. The link between the reasoning is that both judgments see the section as prohibiting an *act*.

statute is such that usually no choice of law problems remain. But both interpretation problems and choice of law problems depend for their solution upon the same principles. Interpretation is really one small part of choice of law. Thus the choice of law problem is: what laws out of the laws of all the various countries with which the contract is connected should be applied to this contract? The interpretation problem is the more particular question: should this particular New South Wales law be applied to the contract? It is not enough simply to look at the words of the statute. It is necessary to look to fundamental principles both of choice of law[41] and statutory interpretation.[42] Failure to regard these principles as relevant can result in a decision unrelated to the real questions of justice involved.

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CONTROL OF THE ADMINISTRATOR

HALL & CO. LTD. v. *SHOREHAM-BY-SEA URBAN DISTRICT COUNCIL AND ANOTHER*

Included in the armoury of ancient and modern weapons which the judiciary may be prepared to use to strike down administrative action are those which require a finding that the administrator has acted "unreasonably" or has failed to act with "certainty". Emphasis must be placed on the word "may" since many *dicta* may be found to the effect that such findings do not justify judicial interference with administrative decisions. Judicial interference was nevertheless sought in *Hall & Co. Ltd.* v. *Shoreham-by-Sea Urban District Council and Anor.*,[1] with rather unexpected results.

The Case

The plaintiff owned a strip of land lying between the north bank of the River Adur and the main Brighton Road, a road which carries a large volume of traffic. It applied to the defendants[2] for permission to develop part of its land for industrial purposes, and for permission to establish a new means of access from the Brighton Road to the land to be developed. The United Kingdom Town and Country Planning Act, 1947, now incorporated in the Town and Country Planning Act, 1962, provided:

> Subject to this and the next following section, where application is made to the local planning authority for permission to develop land, that authority may grant permission either unconditionally or subject to such conditions as they think fit, or may refuse permission; and in dealing with any such application the local planning authority shall have regard to the provisions of the development plan, so far as material thereto, and to any other material considerations.[3]

The defendants granted permission for the proposed development subject to a number of conditions, those contested being:

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[41] Such as the appropriate role of the proper law of the contract.

[42] Such as recognition of the inherent ambiguity and the necessity of applying some form of the mischief rule.

[1] (1964) 1 All E.R. 1.

[2] Or rather, to the defendant Urban District Council as authorised delegate of the defendant County Council.

[3] S. 14(1).