IN THE SUPREME COURT OF NEW ZEALAND

SC 83/2009
[2011] NZSC 36

BETWEEN	WESTPAC BANKING CORPORATION First Appellant
AND	BANK OF NEW ZEALAND Second Appellant
AND	ANZ NATIONAL BANK LIMITED Third Appellant
AND	THE COMMISSIONER OF INLAND REVENUE Respondent

Hearing: 18 February 2011

Court: Elias CJ, Blanchard, Tipping, McGrath and Anderson JJ

Counsel: J S Kós QC, J D Every-Palmer and A A O'Rourke for Appellants
D J Goddard QC and H L Dempster for Respondent

Judgment: 7 April 2011

JUDGMENT OF THE COURT

A The appeal is dismissed.

B The appellants are ordered to pay the respondent costs of $15,000 together with reasonable disbursements to be fixed if necessary by the Registrar.

REASONS

(Given by McGrath J)

Introduction

[1] The question in this appeal is whether the provisions of the Unclaimed Money Act 1971 apply to sums of money that are to be paid under certain financial instruments issued by the three appellant banks. The financial instruments concerned are foreign currency drafts and bank cheques which have not been presented for payment by payees within six years of their purchase. If the provisions of the 1971 Act apply, the appellants are required by the Act to record particulars of the unclaimed money arising over the past 12 months on a register and, if owners do not claim it, pay the money to the Commissioner of Inland Revenue.

[2] In 2004, in *Commissioner of Inland Revenue v Thomas Cook (New Zealand) Ltd*,[1] the Privy Council held that the appellant company was liable to the Commissioner of Inland Revenue under the 1971 Act in respect of similar instruments, in that case referred to as "international cheques". The appellants acknowledge that, in order to succeed in the present appeal, they have to persuade this Court that the Privy Council's reasoning was wrong and that the different reasons given in the judgment of the Court of Appeal in *Thomas Cook*[2] should be preferred.

Background facts

[3] The appellants are banks. In the course of business, they issue foreign currency drafts ("drafts") and bank cheques as a means for their customers to make payments. A draft is a direction by the drawer, a New Zealand bank, to the drawee, a foreign bank, to pay on presentment an amount denominated in a particular foreign currency. Payment must be made to the payee named in the draft, or in some circumstances its indorsee, on presentment. A draft is a bill of exchange in terms of the Bills of Exchange Act 1908. A bank cheque is a form of promissory note by which the drawer, a New Zealand bank, promises to pay a stipulated amount denominated in New Zealand dollars to the named payee, or its indorsee, on

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1 *Commissioner of Inland Revenue v Thomas Cook (New Zealand) Ltd* [2005] UKPC 53, [2005] 2 NZLR 722.

2 *Commissioner of Inland Revenue v Thomas Cook (NZ) Ltd* [2003] 2 NZLR 296 (CA).

presentment of the draft. The cheque is drawn by the bank against its own account. A bank cheque is not a bill of exchange. Under both instruments the named payee, in most cases, is not the customer of the bank who purchased the draft or bank cheque.

[4] The typical procedure involves a customer requesting from a New Zealand bank a draft for a specified amount in a stipulated currency to effect payment for an overseas transaction. The New Zealand bank will draw a draft on a drawee bank at the place where payment is to be made and make the draft available to the customer on receipt of payment, in New Zealand currency, covering the face value of the draft plus fees. The drawee bank will be one with which the New Zealand bank has an account, or has made other arrangements to provide funds, from which the drawee makes payment of the draft.

[5] Payees present drafts for payment to the drawee bank, normally using the services of payees' own banks to collect the money. In the great majority of cases, a draft will be presented and paid within a short time of issue. Drawees, in general, pay drafts whenever they are presented, regardless of their age. If they decline to do so on the grounds that the draft is stale the New Zealand bank will, on request, issue a new draft.

[6] Arrangements in respect of bank cheques are broadly the same but none of the appellants will dishonour a bank cheque, if presented, solely on account of its age.

[7] The evidence is that a very small minority of drafts and bank cheques are never presented for payment. It is these instruments that the respondent, the Commissioner of Inland Revenue, contends give rise to "unclaimed money" under the 1971 Act. The Commissioner argues that once they have remained unpresented for six years following the date of purchase, the provisions of the 1971 Act apply.

Unclaimed Money Act 1971

[8] The 1971 Act applies to "unclaimed money held or owing" by stipulated holders.[3] Such holders include companies incorporated in New Zealand and companies and banks carrying on business in New Zealand.[4] It is common ground that the appellants are holders under the Act. Holders are required on 1 June of each year to enter on a register particulars of unclaimed money arising during the previous 12 months.[5] They are also obliged to notify owners of unclaimed money entered on the register, at their last known address, of the money they are holding and that it is unclaimed money.[6] If, within four months of entry on the register, the owners do not claim the unclaimed money, the holders must pay it to the Commissioner.[7]

[9] Central to the obligations of holders is the definition of the term "unclaimed money" in s 4 of the Act, which relevantly provides:

> **4 Unclaimed money**
>
> (1) Subject to this section, unclaimed money shall consist of—
>
> (a) Money, including the interest or any amount in the nature of interest thereon, deposited with any holder so as to bear interest for a fixed term, which has been in the possession of the holder for the period of 6 years immediately following the date of expiry of the term:
>
> (b) Money, including the interest or any amount in the nature of interest thereon, deposited with any holder so as to bear interest—
>
> (i) Without limitation of time; or
>
> (ii) For a fixed term where, on the expiry of the fixed term, the money, if it is not withdrawn by the customer, is to be treated as reinvested,—
>
> where in either case the customer has not operated on the account for a period of 25 years, whether by deposit, or withdrawal, or instruction in writing:
>
> (c) Money deposited upon current account or otherwise with any holder and not bearing interest, where—

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3 Section 5.
4 Under s 5 and the definition of "holder" in s 2 of the 1971 Act.
5 Section 6.
6 Section 7.
7 Section 8.

(i) In any case where the holder is a savings bank, the customer has not operated on the account for a period of 25 years, whether by deposit, or withdrawal, or instruction in writing; and

(ii) In any other case, the customer has not operated on the account for a period of 6 years, whether by deposit, or withdrawal, or instruction in writing:

(d) Money payable or distributable on or in consequence of the maturity of a policy of life assurance, being money which has been in the possession of any holder for the period of 6 years immediately succeeding the date on which—

(i) The policy matured otherwise than by death; or

(ii) The holder first had reason to suppose that the policy has matured by death, whether such death has been legally proved or not,—

whichever date is the earlier, and notwithstanding that by the terms of the policy the money is not payable or distributable except on proof of death, or on proof of age or any other collateral matter:

(e) Any other money, of any kind whatsoever, which has been owing by any holder for the period of 6 years immediately following the date on which the money has become payable by the holder:

...

(2) Unclaimed money shall not include—

(a) Any dividends, not being dividends payable by a mutual association in relation to money deposited with the association, payable by a company to any of its shareholders:

(b) Any rebate payable by a mutual association (other than a holder of the kind referred to in paragraph (f) of subsection (1) of section 5 of this Act) to any of its members in relation to the trading transactions of the member with the association, not being a rebate payable in relation to money deposited with the association:

(c) Any benefits payable from any pension or superannuation fund.

...

[10] Unclaimed money is defined in the Act in terms that confine it to unclaimed money situated in New Zealand.[8]

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[8] Section 2.

[11] The question the Court has to decide is whether the moneys represented by drafts and bank cheques that remain unpresented after six years from their purchase become unclaimed money in terms of s 4(1)(e). The focus of argument accordingly is on whether from the time of purchase by customers of the instruments concerned money is "owing" and "payable" by the bank, within the meaning of s 4(1)(e). If so, six years thereafter, it becomes unclaimed money.

[12] The Court of Appeal[9] and the High Court[10] took the view that they were bound by the Privy Council judgment and upheld the Commissioner's contentions.

The *Thomas Cook* case

[13] It is convenient at this stage to refer to the judgments in the *Thomas Cook* case as they illustrate the different approaches that the parties in the present appeal take to the 1971 Act.

[14] The *Thomas Cook* case concerned instruments referred to in the proceedings as international cheques or international drafts. The documents specified a payee, an amount in foreign currency and the foreign bank which was to make payment to the payee. The instruments were not presented for payment within six years of their purchase and issue.

[15] In the High Court,[11] the Commissioner contended that, in these circumstances, the money held by Thomas Cook had become "payable" under s 4(1)(e) of the 1971 Act. He accepted that to start time running under s 4(1)(e), a cause of action against the holder must have arisen but argued that presentment of cheques for payment was not a precondition to that occurring. Thomas Cook accepted that it was the holder under the Act of money, but contended the money was not owing nor had it been payable for six years, so as to be unclaimed money under s 4(1)(e) of the 1971 Act.

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9 *Westpac Banking Corp v Commissioner of Inland Revenue* [2009] NZCA 376, (2009) 24 NZTC 23,755.

10 *Westpac Banking Corp v Commissioner of Inland Revenue* (2009) 24 NZTC 23,076.

11 *Commissioner of Inland Revenue v Thomas Cook (NZ) Ltd* [2002] NZAR 625 (HC).

[16] The High Court rejected the Commissioner's submission that the Bills of Exchange Act and the principles of banking law were of little assistance in interpreting the 1971 Act.[12] Chambers J said that the drafts were bills of exchange, the law concerning which was of fundamental importance as it determined the respective rights and obligations of holders, customers, payees and foreign banks. It was to be presumed that Parliament enacted the 1971 Act in light of the provisions of the Bills of Exchange Act and the general law.[13] It was a fundamental tenet of that law that bills "must be duly presented for payment".[14] Until then, a precondition to entitlement to payment was not satisfied. The Judge held that, as the international cheques had never been presented, the money they represented had not become "payable" by Thomas Cook in terms of s 4(1)(e).

[17] The Judge also rejected the Commissioner's further submission that drafts were "payable", despite non-fulfilment of the precondition of presentment, as being contrary to the leading decision of *N Joachimson (a firm name) v Swiss Bank Corp*.[15] In that case, the English Court of Appeal held that, although the relationship of customer and banker in respect of deposits with a bank was one of creditor and debtor, there was an implied term that the deposited money would not be payable until demand was made. Otherwise, the borrower would be liable to repay the moneys as soon as they were deposited. The Judge also rejected another submission by the Commissioner that the construction whereby money was not payable until presentment would defeat the purpose of the 1971 Act.[16] Chambers J held that, as the money had never become payable, it was not "unclaimed money" under that Act.

[18] In the Court of Appeal, the Commissioner's argument was more narrowly focused. Counsel accepted that money did not become payable under s 4(1)(e) unless, and until, a legal obligation to make payment arose. Counsel submitted that presentation of a cheque was merely a practical requirement for obtaining payment and not a legal precondition to the obligation arising. The liability of a drawer of a cheque to a payee was not conditional on presentment. The argument contrasted the

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12 At [15].
13 Ibid.
14 At [13]. Section 45(1) of the Bills of Exchange Act states that, subject to the Act, a bill must be duly presented for payment.
15 At [16] referring to *N Joachimson (a firm name) v Swiss Bank Corp* [1921] 3 KB 110 (CA).
16 At [18].

liability of drawers of cheques with that of drawers of other bills of exchange, emphasising the primary nature of the liability of the drawer of a cheque to the payee.

[19] The Court of Appeal considered this argument at some length, in the end rejecting it for reasons we need not elaborate. It is sufficient to say that the Court, in agreement with Chambers J, decided that demand by presenting the cheque was a precondition to the drawer's liability to pay. It was not merely a practical means of achieving payment.[17]

[20] The Commissioner was, however, successful on an alternative argument in the Court of Appeal. This argument was based on the premise that the cheques had become stale six months after they were issued. Accepting this argument, the Court of Appeal held that when the cheques became stale, the requirement for their presentation was dispensed with; the cheques being overdue and unpaid were deemed to be dishonoured.[18] At that point, Thomas Cook became liable for the money the cheques represented, without any need for demand. In consequence, the money became payable to the Commissioner after six years as unclaimed money under s 4(1)(e) of the 1971 Act.

[21] Thomas Cook appealed to the Privy Council. In dismissing the appeal, the Privy Council cast doubt on the Court of Appeal's reasoning and approached the matter on a different basis. In particular, the Privy Council gave a broader meaning to "payable" in s 4(1)(e) of the 1971 Act than that advanced to and adopted by the Court of Appeal. The Privy Council decided that "payable" in s 4(1)(e) meant no more than legally due if demanded. It was unnecessary that any demand should have been made or a cause of action for recovery of the money should have accrued for the money to be "payable" for the purposes of the 1971 Act. The meaning of "payable" in s 4(1)(e) did not turn on whether there had been a demand or indeed on any question of law under the Bills of Exchange Act.[19]

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17 At [27].
18 At [58] referring to section 47(1)(b) of the Bills of Exchange Act.
19 At [5] per Lord Brown.

[22] It followed that moneys unclaimed under the Thomas Cook international cheques or drafts were, for the purposes of the 1971 Act, owing and payable from the date of their issue. They were "payable" under s 4(1)(e) on the date of issue to customers, rather than the date of their presentation for payment.

[23] The judgment records that the parties' written cases submitted to the Privy Council did not address the issue whether, in the case of a cheque or other instrument payable on demand, there had to be a demand for payment for money to be payable within the section.[20] The argument which found favour in the Privy Council was raised by the Judges at the oral hearing and, on their promptings, eventually adopted by the Commissioner.

The parties' submissions

[24] Mr Kós QC, for the appellants, submitted to us that the plain meaning of "has become payable", in conjunction with "owing", in s 4(1)(e) requires that the holder has been under an obligation for at least six years to pay a fixed sum of money to another. The statutory language does not capture conditional liability. Counsel relied on the statutory history of the definition of "unclaimed money", and references to "payable" in earlier legislation, in support of that meaning. This line of argument led to his further submission that whether any money under a draft or bank cheque has become "payable" must be determined by reference to the Bills of Exchange Act, under which the liability of a drawer is dependent on the concepts of delivery, issue, presentment and, in the case of drafts, dishonour of the instrument. He submitted that at the time when an instrument is purchased and issued, liabilities are conditional only and moneys are not payable.

[25] In support of these submissions, which largely reflect the approach taken in the Court of Appeal's judgment in *Thomas Cook*, Mr Every-Palmer argued that the commercial consequences of alternative interpretations involving conditional liabilities would fall outside what Parliament had intended. He also contended, in

[20] Nor had the case been argued on that basis in the Court of Appeal.

the alternative, that "money" in s 4(1)(e) was confined to money in the nature of an investment fund or deposit.

[26] Mr Kós invited us to decide that the Privy Council's decision in *Thomas Cook* had been incorrectly reasoned. The Privy Council, he said, was in error in concluding that drawer banks were under a direct and immediate obligation from the time that drafts were purchased and issued, and that moneys paid by customers were held by drawer banks for the benefits of payees.

[27] Mr Goddard QC's submission for the Commissioner was that, consistently with the Privy Council's judgment in *Thomas Cook*, money was "payable" for the purposes of the 1971 Act if it would be legally due if demanded. He submitted that the term "payable" accordingly extended to contingent payment obligations where the contingency was merely a demand for payment, even if that were a prerequisite for a legal obligation to pay to arise or a cause of action to accrue. It followed that the money unclaimed under the draft or bank cheques was the money payable to the payee, who was entitled to demand payment from the time the instruments were supplied to customers.

[28] Mr Goddard also accepted that, although the policy of the 1971 Act required that the contingency of making demand for the money had to be disregarded, other contingencies might be relevant to whether money had become payable. In the present circumstances, however, if the payee demanded payment, the drawee bank would be required to make it in respect of drafts, with recourse to the New Zealand bank, and that was sufficient to make the money "payable" for the purposes of the 1971 Act, without any demand having to be made.

[29] Finally, Mr Goddard responded to the argument that the Commissioner's approach involved expropriation by submitting that the legislation did not deprive the holder of any money which it had a legitimate expectation that it would retain as its own. Rather it required the holder to pay to the Commissioner money to which the holder had no claim against the person actually entitled to payment.

Meaning of "payable" in relation to "unclaimed money"

[30] It is convenient to set out again the residual part of the definition of "unclaimed money" in s 4(1)(e) of the 1971 Act:

> (1) Subject to this section, unclaimed money shall consist of—
>
> ...
>
> (e) Any other money, of any kind whatsoever, which has been owing by any holder for the period of 6 years immediately following the date on which the money has become payable by the holder:
>
> ...

[31] The appellants have relied on the inclusion of "payable" in each of the provisions defining unclaimed money enacted in 1898, 1908, 1932 and 1971. They say that there is a discernible pattern of consistency in the intended meaning of "payable" in the provisions denoting a present obligation to pay. In the Finance Act 1932, the earlier meaning was reaffirmed, following the *Joachimson* decision, and the statutory history also indicates that in the 1971 Act the same meaning of "payable" is intended in s 4(1)(e). The respondent has emphasised the perceived purpose of the 1971 Act in arguing that "payable" simply means legally due if demanded.

[32] "Payable" in relation to a sum of money is capable of having a narrow or broad meaning. It can mean due or unpaid when due. The latter is the appellants' preferred meaning. Another meaning is that given in *Black's Law Dictionary*:[21]

> payable ... (Of a sum of money or a negotiable instrument) that is to be paid.
> • An amount may be payable without being due. Debts are commonly payable long before they fall due.

As both are tenable meanings of the term, the Court must ascertain the applicable meaning from the text of the enactment in light of its purpose.

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[21] Bryan A Garner (ed) *Black's Law Dictionary* (9th ed, West Publishing Co, St Paul, MN, 2009) at 1243.

[33] We start with the 1971 Act's purpose, which is outlined in the speech of the Minister of Finance when introducing the Bill. After saying that the measure was not a taxing statute, and explaining that its administration by the Commissioner of Inland Revenue was for reasons of economy, Hon Robert Muldoon said:[22]

> Turning now to the underlying principles of the Bill, first, money not claimed should not be regarded as potential revenue. Secondly, where money entrusted as an investment, or otherwise for safe keeping, is not claimed, it is proper that, subject to any claims being established by anyone entitled, the Crown should receive the money as custodian in the first instance. In the event that such money is never claimed, the Crown should hold it for the benefit of the community as a whole. Conversely, it is proper in a number of instances, such as unclaimed company dividends, that any benefit to be derived, other than by the lawful owner, from money not claimed should accrue to the group within which the money arises.

[34] The main purpose of the 1971 Act is expressed in the first underlying principle mentioned by the Minister, whereby money which is in the hands of another and not claimed by the owner is not to be retained and treated as the holder's revenue. The second principle is an instance of the application of the first: when a person holds money of another for investment or other safekeeping, and it is not claimed, the money should go to the Crown. Thirdly, the Crown should hold such money as custodian but ultimately, if it is never claimed, the money should be held for the benefit of the community. Finally, the Minister recognised there are situations to which the legislation is not to extend, the particular instance mentioned being unclaimed company dividends. Because such money has not been received from another for particular purposes associated with investment or safekeeping, but is paid out of profits of a company, the legislation excludes it from being unclaimed money.

[35] In the present case, the money in issue has been paid by customers to purchase drafts and bank cheques. It was provided to the banks to take up the facility they offered for making payments. Although in form the money is paid to the appellants by their customer to acquire an asset (the draft or cheque), in substance the customer is putting the appellants in funds, against which both parties expect a third party to draw (via another bank in the case of drafts). If that expectation is not fulfilled, the situation is one that is covered by the first principle of

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[22] (24 June 1971) 372 NZPD 1192.

the legislation identified by the Minister. That situation also fits within the ordinary meaning of the language of s 4(1)(e) as long as "payable" is given the meaning of payable if and when demand for the money is made. This, as we have seen, is an available meaning of payable and a meaning that is consistent with the statutory purpose.

[36] We next turn to the statutory history. The first unclaimed moneys legislation in New Zealand was the Unclaimed Moneys Act 1898. It defined "unclaimed moneys" in general terms:[23]

> "Unclaimed moneys" shall mean all principal and interest money, and all unforfeited dividends, bonuses, profits, and sums of money whatsoever owing to any person which at any time hereafter has been in the possession of any company for a period of six years or upwards after the time when the same has become payable, and in respect whereof no claim has been made by the owner against the company ...

This definition was repeated without material change in the Unclaimed Moneys Act 1908,[24] which was a consolidating statute.

[37] The appellants say that "payable" in the context of this legislation denoted a present liability to pay. We accept that correctly states the position. The statutory language explicitly stated that moneys were "payable" in terms of the definition, even though no claim had been made by the owner in respect of the money. That rider puts beyond doubt the meaning of "payable" in that Act.

[38] In 1921, in *Joachimson*, the English Court of Appeal decided that where money was held in a current account to the credit of a customer, under banking law principles a customer had to make demand before he had a cause of action against the bank. The appellants say that this judgment robbed the Unclaimed Moneys Act 1908 of its principal intended effect by indicating that, under banking law principles, moneys held on deposit were not "payable" until payment was demanded. Given the explicit provision that no claim to the money was required, it did not necessarily follow that the *Joachimson* decision had any effect on the meaning of the then definition of "unclaimed money". The judgment would, however, have provided

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[23] Section 2.
[24] Section 2.

scope for argument over whether bank deposits were "payable" moneys in terms of that definition and it is likely that the 1932 Act was passed to address that possibility.

[39] Part IV of the Finance Act 1932 enacted provisions that were to be "read together with and deemed part of the Unclaimed Moneys Act 1908".[25] Section 26 of the 1932 Act was itself a deeming provision applicable to specified types of account, where money had been deposited in accounts which had been dormant for six years or more. In relation to such moneys, s 26(1) provided:

> **26** (1) The following moneys deposited in any bank shall become unclaimed moneys within the meaning of the principal Act at the times hereinafter mentioned (*whether or not they have at any time theretofore become payable*), namely:—
>
> (a) Moneys deposited so as to bear interest for a fixed term — at the expiration of six years from the date when such fixed term expired:
>
> (b) Moneys deposited so as to bear interest without any limitation of time — at the expiration of twenty-five years from the date when the account was last operated on by the customer:
>
> (c) Moneys deposited upon current account or otherwise and not bearing interest — at the expiration of six years from the date when the account was last operated on by the customer in the case of a bank other than a savings-bank, and at the expiration of twenty-five years from such date in the case of the Post Office Savings-bank or any savings-bank within the meaning of the Savings-banks Act, 1908. (Emphasis added)

[40] Under s 26(2) proceeds of mature life insurance policies also could become unclaimed moneys under the principal Act:

> (2) The proceeds of any life-insurance policy shall become unclaimed moneys within the meaning of the principal Act on the expiration of six years after the date on which the company first has reason to suppose that the policy has matured by death, or from the date (if any) on which the policy matures otherwise than by death (whichever date is the earlier), whether such death has been legally proved or not, and *notwithstanding that by the terms of the policy the proceeds thereof are not payable except on proof of death, or on proof of age or any other collateral matter*. (Emphasis added)

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[25] Section 24.

[41] "Payable" appeared in the 1932 Act in particular contexts. Section 26(1) stipulated that moneys that are deposited in a bank become unclaimed moneys after accounts have been dormant for the stipulated periods, "whether or not they have at any time theretofore become payable". Section 26(2) provides that proceeds of mature policies of insurance are "payable" even though certain preconditions must still be fulfilled. The context in each case pointed strongly to an immediate liability to pay.

[42] The 1971 Act reconstructed the earlier statutory provisions concerning the definition of "unclaimed money", reorganising within a single new section what had previously been in the definition in the 1908 Act and s 26 of the 1932 Act. The provision made in s 4(1)(a), (b) and (c) of the 1971 Act for unclaimed deposited money includes, with some elaboration, what had been provided for in respect of such money in s 26(1). In respect of life insurance policies, s 4(1)(d) provides broadly for what was in s 26(2) of the 1932 Act. Section 4(1)(e) is expressed as a catch-all provision. Its drafting incorporates some elements of earlier general provisions and, in particular, the concept of money being owing for more than six years since it has become payable by the holder.

[43] Its long title indicates that the 1971 Act is:

> An Act to consolidate and amend certain enactments of the Parliament of New Zealand relating to unclaimed money

The 1971 Act is accordingly not to be read as if it were purely a consolidation.

[44] Section 4(1)(e) covers "[a]ny other money, of any kind whatsoever", which has not been addressed in the previous subparagraphs. It becomes "unclaimed money" when it has been held for six years following the date "on which the money has become payable by the holder".

[45] Where provisions in antecedent statutes reappear in a different context in an amending enactment, it is often the case that Parliament did not intend that the words should carry their previous meanings. The different context often signals that the

intention of the Legislature at the time of the new Act was to make a fresh start.[26] In this case, the context in which "payable" is used differs in the 1898 (and 1908), the 1932 and the 1971 statutes. The context within the 1971 Act does not point to a particular meaning of "payable" in relation to whether a present obligation has arisen. It is possible that the word could carry this meaning, but equally possible that it means payable on demand being made.

[46] In these circumstances, the purpose of the 1971 Act, as summarised above, is a more reliable aid to the meaning of "payable" than comparisons with its use in the earlier statutes. To adopt the technical rules of when liability arises, under which there would in all cases have to be a present obligation to pay, would defeat that purpose. And to read s 4(1)(e) as having effect in its application to money payable under foreign currency drafts and bank cheques only if demand is made for the dormant moneys would introduce a self-defeating element to the meaning of the definition that Parliament would not have contemplated. Nor can the meaning of "money" be confined to that in investment funds or on deposit or otherwise similar to the instances referred to in s 4, as the appellants submitted in their alternative argument. That would be contrary to the breadth of the opening words of s 4(1)(e).

[47] So read, s 4(1)(e) is consistent with the overall context and structure of s 4.[27] There is no suggestion in the other categories of unclaimed money, which are specified in s 4(a) to (d), that a cause of action must have arisen before time starts to run under the 1971 Act.[28]

[48] In answer to the appellants' concerns over the consequences of treating conditional liabilities to pay money as money that is payable under the 1971 Act, we should say that the present decision addresses the particular instruments involved where the only precondition to liability to pay is making demand for, that is claiming, the money. While the Act remains in its present form, the significance of other conditions would have to be addressed having regard to the general principles

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[26] As pointed out in JF Burrows and RI Carter *Statute Law in New Zealand* (4th ed, LexisNexis, Wellington, 2009) at 485.

[27] As noted in the concurring judgment of Baragwanath J in the Court of Appeal in *Westpac Banking Corp v Commissioner of Inland Revenue* at [41].

[28] A point made by the Privy Council in *Thomas Cook* at [13].

we have identified for interpretation of the term "unclaimed money" under the 1971 Act.

[49] For these reasons, we are satisfied that the approach taken to the Act by the Privy Council in *Thomas Cook* was the correct one. Had we favoured the appellants' approach to this difficult question of construction, it would have been necessary to consider whether our preference for that different view was sufficient to justify departure from the meaning which had been adopted by the Privy Council. That would have raised questions concerning, on the one hand, desirability of stability in the law and respect for the principle of stare decisis and, on the other, whether there are cogent reasons for reconsideration of, and departure from, that judgment. Having, however, had in this appeal the benefit of full argument on the interpretation of s 4(1)(e) of the 1971 Act, we are satisfied that the Privy Council's interpretation, expressed in *Thomas Cook*, is the correct one and that it applies to the foreign drafts and bank cheques in this case.

[50] For these reasons we dismiss the appeal.

Solicitors:
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