PC
20, 1952

No. 8 of 1952.

In the Privy Council.

ON APPEAL

FROM THE HIGH COURT OF AUSTRALIA IN ITS APPELLATE JURISDICTION

UNIVERSITY OF LONDON
W.C.1.
21 JUL 1953
INSTITUTE OF ADVANCED
LEGAL STUDIES

IN THE MATTER of " The Companies Acts 1931 to 1942 "
and
IN THE MATTER of The Queensland National Bank Limited (In Voluntary Liquidation)
and
IN THE MATTER of an application by Fred Pace as Liquidator of The Queensland National Bank Limited (In Voluntary Liquidation) for an order under Section 258 of the said Acts to determine questions arising in the winding up of the said The Queensland National Bank Limited.

BETWEEN

THE NATIONAL BANK OF AUSTRALASIA LIMITED . . . . . *Appellant*

AND

THE SCOTTISH UNION AND NATIONAL INSURANCE COMPANY LIMITED and
THE NATIONAL MUTUAL LIFE ASSOCIATION OF AUSTRALASIA LIMITED and
EDWARD ROBERT CROUCH and
FRED PACE as Liquidator of the said The Queensland National Bank Limited . *Respondents.*

RECORD OF PROCEEDINGS

VOLUME 1.

(PAGES 1—130)

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The Solicitors' Law Stationery Society Limited, Law and Parliamentary Printers, Abbey House, S.W.1.
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No. 8 of 1952.

In the Privy Council.

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ON APPEAL

FROM THE HIGH COURT OF AUSTRALIA IN ITS APPELLATE JURISDICTION.

UNIVERSITY OF LONDON
W.C.1.
21 JUL 1953
INSTITUTE OF ADVANCED LEGAL STUDIES

IN THE MATTER of The Companies Acts 1931 to 1942

and

IN THE MATTER of THE QUEENSLAND NATIONAL BANK LIMITED (in Voluntary Liquidation)

and

IN THE MATTER of an application by FRED PACE as Liquidator of The Queensland National Bank Limited (in Voluntary Liquidation) for an Order under Section 258 of the said Acts to determine questions arising in the winding up of the said The Queensland National Bank Limited.

BETWEEN

THE NATIONAL BANK OF AUSTRALASIA LIMITED . . *Appellant*

AND

THE SCOTTISH UNION AND NATIONAL INSURANCE COMPANY LIMITED on behalf of and for the benefit of all holders of Interminable Inscribed Deposit Stock of The Queensland National Bank Limited whose stock was at the date of the commencement of the winding up of the said Bank and was at all times prior thereto registered on the register of stock kept by the said Bank in London

AND

THE NATIONAL MUTUAL LIFE ASSOCIATION OF AUSTRALASIA LIMITED on behalf of and for the benefit of all holders of such stock whose stock was at the date of the commencement of the winding up of the said Bank registered on the London register and was at the date of issue thereof registered on the said London register but had been at an intermediate period registered on a register of stock kept by the said Bank in Australia

AND

EDWARD ROBERT CROUCH on behalf of and for the benefit of all holders of such stock whose stock was at the date of issue thereof registered on the register of stock kept by the said Bank in London but the registration whereof was subsequently transferred to a register of stock kept by the said Bank in Australia

AND

FRED PACE as Liquidator of the said The Queensland National Bank Limited . . . . *Respondents.*

RECORD OF PROCEEDINGS

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5	Certificate of Treasurer of payment into Court as security for costs ..	18th November 1949

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7	Copy Summons for Leave to have Record roneographed	28th April 1950
8	Affidavit of James Henry Lalor in support	28th April 1950
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11	Affidavit of James Henry Lalor in support	12th May 1950
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	" AV " Copy of Balance Sheet of the Q.N. Bank as at 30th June 1944	—	2	
	" AW " Copy of report of the Directors of the Q.N. Bank	17th July 1944 ..	2	
	" AX " Copy of Statement of Accounts of the London Branch of the Q.N. Bank as at 30th June 1945	—	2	
	" AY " Copy of Balance Sheet of the Q.N. Bank as at 30th June 1945	—	2	
	" AZ " Copy of Report of the Directors of the Q.N. Bank	16th July 1945 ..	2	
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No. 8 of 1952.

In the Privy Council.

ON APPEAL

FROM THE HIGH COURT OF AUSTRALIA IN ITS APPELLATE JURISDICTION.

IN THE MATTER of The Companies Acts 1931 to 1942

and

IN THE MATTER of THE QUEENSLAND NATIONAL BANK LIMITED (in Voluntary Liquidation)

10 and

IN THE MATTER of an application by FRED PACE as Liquidator of The Queensland National Bank Limited (in Voluntary Liquidation) for an Order under Section 258 of the said Acts to determine questions arising in the winding up of the said The Queensland National Bank Limited.

BETWEEN

THE NATIONAL BANK OF AUSTRALASIA LIMITED *Appellant*

AND

THE SCOTTISH UNION AND NATIONAL INSURANCE
20 COMPANY LIMITED on behalf of and for the benefit of all holders of Interminable Inscribed Deposit Stock of the Queensland National Bank Limited whose stock was at the date of the commencement of the winding up of the said Bank and was at all times prior thereto registered on the register of stock kept by the said Bank in London

AND

THE NATIONAL MUTUAL LIFE ASSOCIATION OF AUSTRALASIA LIMITED on behalf of and for the
30 benefit of all holders of such stock whose stock was at the date of the commencement of the winding up of the said Bank registered on the London Register and was at the date of issue thereof registered on the said London register but had been at an intermediate period registered on a register of stock kept by the said Bank in Australia

AND

EDWARD ROBERT CROUCH on behalf of and for the benefit of all holders of such stock whose stock was at the date of issue thereof registered on the register of stock kept by the said Bank in London but the registration whereof was subsequently transferred to a register of stock kept by the said Bank in Australia

AND

FRED PACE as Liquidator of the said The Queensland National Bank Limited . . . . *Respondents.*

RECORD OF PROCEEDINGS

10

VOLUME 1

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 1. Originating Summons, 21st December 1948.

No. 1.

ORIGINATING SUMMONS.

LET ALL PARTIES CONCERNED attend at the Chambers of His Honour The Chief Justice . . . at the Supreme Court House Brisbane on Wednesday the twenty-second day of December 1948 at ten o'clock in the forenoon on the hearing of an application on the part of the abovenamed Fred Pace the Liquidator of the said The Queensland National Bank Limited (In Voluntary Liquidation) for an order authorising :—

1. That the Scottish Union and National Insurance Company Limited of 35 St. Andrew Square Edinburgh Scotland one of the registered holders of Interminable Inscribed Deposit Stock of the said Bank whose stock is registered on the register of stock kept by the said Bank in London may be sued and directing that the said The Scottish Union and National Insurance Company Limited shall defend on behalf of and for the benefit of all holders of such Interminable Inscribed Deposit Stock whose stock was at the date of the commencement of the voluntary winding up of the said Bank registered on the register of stock kept by the said Bank in London.

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2. That the National Mutual Life Association of Australasia Limited of Melbourne in the State of Victoria a registered holder of Interminable Inscribed Deposit Stock of the said Bank whose stock was at the date of the commencement of the voluntary winding up of the said Bank registered on the register of stock kept by the said Bank in London but part of which said stock was prior to the date of such voluntary winding up transferred by the said The National Mutual Life Association of Australasia Limited from a register of stock kept by the said Bank in Australia to the register of such stock kept by the said Bank in London may be sued and directing that the said The National Mutual Life Association of Australasia Limited shall defend on behalf of and for the benefit of all stockholders whose stock is registered on the register of stock kept by the said Bank in London and whose stock

40

was prior to the date of the commencement of the voluntary winding up of the said Bank transferred from an Australian Register to the said London register and was at the date of the said voluntary winding up registered on the London Register of the said Bank.

3. That one of the registered holders of Interminable Inscribed Deposit Stock of the said Bank whose stock is registered on a register of stock kept in Australia by the said Bank may be sued and directing that such registered holder shall defend on behalf of and for the benefit of all holders of Interminable Inscribed Stock whose stock was at the date of the commencement of the voluntary winding up of the said Bank registered on a register of stock kept by the said Bank in Australia in respect of an application intended to be made to this Honourable Court under the provisions of Section 258 of The Companies Acts 1931 to 1942 by the said Fred Pace as such Liquidator for the determination of the following and such other questions as he may be advised which arise in the winding up of the said Bank namely Whether as such Liquidator as aforesaid he should pay—

(*a*) the principal and/or (*b*) the interest moneys secured or represented by or payable in respect of the Interminable Inscribed Deposit Stock of the said The Queensland National Bank Limited (In Voluntary Liquidation) in English or Australian Currency to—

(i) those holders of the said Bank's Interminable Inscribed Deposit Stock which was at the commencement of the voluntary winding up of the said Bank registered on the register of stock kept by the said Bank in London

(ii) those holders of the said Bank's Interminable Inscribed Deposit Stock which was at the commencement of the voluntary winding up of the said Bank registered on the register of stock kept by the said Bank in London but whose stock was prior to the commencement of the voluntary winding up of the said Bank transferred to the said London register from a register of stock kept by the said Bank in Australia

(iii) those holders of the said Bank's Interminable Inscribed Deposit Stock which was at the commencement of the voluntary winding up of the said Bank registered on a register of stock kept by the said Bank in Australia

and for such other order as the Court or Judge shall think fit.

Dated at Brisbane this twenty-first day of December 1948.

For the Registrar.

(L.S.) W. M. DOYLE,
Clerk.

This Summons was taken out by Messrs. FLOWER & HART of 398–400 Queen Street Brisbane Solicitors to the Applicant Fred Pace who resides at Westminster Road Indooroopilly near Brisbane aforesaid. It is not intended to serve this Summons on any person.

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 2.
Order on Originating Summons, 22nd December 1948.

No. 2.

ORDER ON ORIGINATING SUMMONS.

IN THE MATTER of The Companies Acts 1931 to 1942

and

IN THE MATTER of THE QUEENSLAND NATIONAL BANK LIMITED (in Voluntary Liquidation)

and

IN THE MATTER of an application by FRED PACE as Liquidator of The Queensland National Bank Limited (in Voluntary Liquidation) for an Order under Section 258 of the said Acts to determine questions arising in the winding up of the said The Queensland National Bank Limited. 10

UPON HEARING Mr. McGill K.C. with him Mr. Fahey of Counsel for the Applicant the above-named Fred Pace the Liquidator of The Queensland National Bank Limited (In Voluntary Liquidation) AND UPON READING the affidavit of the said Fred Pace filed herein on the twenty-first day of December One thousand nine hundred and forty-eight I DO ORDER

1. That the Scottish Union and National Insurance Company Limited of 35 St. Andrew Square Edinburgh Scotland one of the 20 registered holders of Interminable Inscribed Deposit Stock of the said Bank whose stock is registered on the register of stock kept by the said Bank in London may be sued and that the said The Scottish Union and National Insurance Company Limited shall defend on behalf of and for the benefit of all holders of such Interminable Inscribed Deposit Stock whose stock was at the date of the commencement of the voluntary winding up of the said Bank and was at all times prior thereto registered on the register of stock kept by the said Bank in London.

2. That the National Mutual Life Association of Australasia 30 Limited of Melbourne in the State of Victoria a registered holder of Interminable Inscribed Deposit Stock of the said Bank whose stock was at the date of the commencement of the voluntary winding up of the said Bank registered on the register of stock kept by the said Bank in London but part of which said stock was prior to the date of such voluntary winding up transferred by the said The National Mutual Life Association of Australasia Limited from a register of stock kept by the said Bank in Australia to the register of such stock kept by the said Bank in London may be sued and that the said The National Mutual Life Association of Australasia Limited 40 shall defend on behalf of and for the benefit of all stock holders whose stock is registered on the register of stock kept by the said Bank in London and whose stock was prior to the date of the commencement of the voluntary winding up of the said Bank transferred from an Australian register to the said London register

and was at the date of the said voluntary winding up registered on the London Register of the said Bank in respect of an application intended to be made to this Honourable Court under the provisions of Section 258 of The Companies Acts 1931 to 1942 by the said Fred Pace as such Liquidator for the determination of the following and such other questions as he may be advised which arise in the winding up of the said Bank namely Whether as such Liquidator as aforesaid he should pay—

(A) the principal and/or

10 (B) the interest moneys secured or represented by or payable in respect of the Interminable Inscribed Deposit Stock of the said The Queensland National Bank Limited (In Voluntary Liquidation) in English or Australian currency to—

(i) those holders of the said Bank's Interminable Inscribed Deposit Stock which was at the commencement of the voluntary winding up of the said Bank registered on the register of stock kept by the said Bank in London

(ii) those holders of the said Bank's Interminable Inscribed Deposit Stock which was at the commencement of the voluntary
20 winding up of the said Bank registered on the register of stock kept by the said Bank in London but whose stock was prior to the commencement of the voluntary winding up of the said Bank transferred to the said London register from a register of stock kept by the said Bank in Australia

(iii) those holders of the said Bank's Interminable Inscribed Deposit Stock which was at the commencement of the voluntary winding up of the said Bank registered on a register of stock kept by the said Bank in Australia.

3. That the hearing of the rest of the summons dated twenty-
30 first day of December One thousand nine hundred and forty-eight herein be adjourned generally.

AND I DO FURTHER ORDER that a copy of this order be served on A. J. B. Tickle or his Solicitors Messieurs Feez Ruthning & Co. within seven days from the date hereof AND I DO FURTHER ORDER that the costs of this application be reserved.

Dated this Twenty-second day of December 1948.

(L.S.) NEAL MACROSSAN, C.J.

W. M. VON PLOENNIES
Associate
40 23.12.48.

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 3. Notice of Motion as amended, 24th December 1948.

No. 3.

NOTICE OF MOTION AS AMENDED.

TAKE NOTICE that this Honourable Court will be moved before the Honourable the Chamber Judge on Tuesday the 22nd day of March 1949 or as soon thereafter as Counsel can be heard, by Counsel on behalf of Fred Pace of Westminster Road Indooroopilly near Brisbane the Liquidator of The Queensland National Bank Limited (In Voluntary Liquidation) for an order determining certain questions arising in the winding up of the said The Queensland National Bank Limited (In Voluntary Liquidation) namely :—

1. Whether the registered holders of Interminable Inscribed Deposit Stock issued by The Queensland National Bank Limited pursuant to a Scheme of Arrangement made between the said Bank and certain of its creditors and sanctioned by the Supreme Court of Queensland on the 12th day of May 1897 whose stock was, at the date of the commencement of the voluntary winding up of the said Bank and was at all times prior thereto registered on the London Register of the said Bank are entitled to be paid on the winding up of the said Bank the principal and/or interest moneys secured or represented by or payable in respect of such stock in English currency or in Australian currency.

2. Whether the registered holders of such stock whose stock was at the date of the commencement of the voluntary winding up of the said Bank registered on the London register of stock kept by the said Bank but which said stock was prior to the date of such voluntary winding up transferred from a register of stock kept by the said Bank in Australia to the register of such stock kept by the said Bank in London are entitled to be paid on the winding up of the said Bank the principal and/or interest moneys secured or represented by or payable in respect of such stock so transferred in English currency or in Australian currency ; and

3. Whether the registered holders of such stock whose stock was at the date of the commencement of the voluntary winding up of the said Bank registered on a register of stock kept by the said Bank in Australia are entitled to be paid on the winding up of the said Bank the principal and/or interest moneys secured or represented by or payable in respect of such stock in English currency or in Australian currency.

1. Whether the registered holders of Interminable Inscribed Deposit Stock issued by The Queensland National Bank Limited pursuant to a Scheme of Arrangement made between the said Bank and certain of its creditors and sanctioned by the Supreme Court of Queensland on the twelfth day of May 1897, whose stock was at the date of the commencement of the voluntary winding up of the said Bank and was at all times prior thereto registered on the London register of the said Bank, are entitled to be paid or to prove in the winding up of the said Bank for the principal and/or interest monies secured or represented by or payable in respect of such stock on the basis that they receive the equivalent of the face value of the said principal and/or interest monies in English or Australian currency.

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 3. Notice of Motion as amended, 24th December 1948, *continued.*

2. Whether the registered holders of such stock whose stock was at the date of the commencement of the voluntary winding up of the said Bank registered on the London register of stock kept by the said Bank and whose stock was at the date of issue thereof on a register of stock kept by the said Bank in Australia and the registration of which was subsequently transferred to the London Register are entitled to be paid or to prove in the winding up of the said Bank for the principal and/or interest monies secured or represented by or payable in respect of such stock the registration of which was so transferred on the basis that they
10 receive the equivalent of the face value of the said principal and/or interest monies in English or Australian currency.

3. Whether the registered holders of such stock whose stock was at the date of the commencement of the voluntary winding up of the said Bank and was at all times prior thereto registered on a register of stock kept by the said Bank in Australia are entitled to be paid or to prove in the winding up of the said Bank for the principal and/or interest monies secured or represented by or payable in respect of such stock on the basis that they receive the equivalent of the face value of the said principal and/or interest monies in English or Australian currency.

20 4. Whether the registered holders of such stock whose stock was at the date of the commencement of the voluntary winding up of the said Bank registered on a register of stock kept by the said Bank in Australia and whose stock was at the date of issue thereof on the said London register and the registration of which was subsequently transferred to a register of stock kept by the said Bank in Australia are entitled to be paid or to prove in the winding up of the said Bank for the principal and/or interest monies secured or represented by or payable in respect of such stock the registration of which was so transferred on the basis that they receive the equivalent of the face value of the principal and/or interest monies in
30 English or Australian currency.

5. Whether the registered holders of such stock whose stock was at the date of commencement of the voluntary winding up of the said Bank registered on a register of stock kept by the said Bank in Australia and whose stock was at the date of issue thereof on a register of stock kept by the said Bank in Australia but had been at an intermediate period registered on the said London register are entitled to be paid or to prove in the winding up of the said Bank for the principal and/or interest monies secured or represented by or payable in respect of such stock the registration of which was so transferred on the basis that they receive
40 the equivalent of the face value of the said principal and/or interest monies in English or Australian currency.

6. Whether the registered holders of such stock whose stock was at the date of the commencement of the voluntary winding up of the said Bank registered on the said London register and was at the date of issue thereof on the said London register but had been at an intermediate period registered on a register of stock kept by the said Bank in Australia are entitled to be paid or to prove in the winding up of the said Bank for the principal and/or interest monies secured or represented by or

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 3. Notice of Motion as amended, 24th December 1948, *continued.*

payable in respect of such stock the registration of which was so transferred on the basis that they receive the equivalent of the face value of the said principal and/or interest monies in English or Australian currency.

7. Whether, if any registered holder of such stock is entitled to be paid the principal and/or interest monies secured or represented by or payable in respect of such stock on the basis that such holder receive the equivalent of the face value of the said principal and/or interest monies in English currency, such equivalent is to be ascertained as of the date of the commencement of the winding up or as of the date of payment or as of any other and if so what date ? 10

Dated this twenty-fourth day of December 1948.

FLOWER & HART,
Solicitors for the Applicant.

To : The Scottish Union and National Insurance Company Limited of 35 St. Andrew Square Edinburgh Scotland and of 127 Eagle Street Brisbane on behalf of and for the benefit of all holders of the said Interminable Inscribed Deposit Stock whose stock was at the date of the commencement of the voluntary winding up of the said Bank and was at all times prior thereto registered on the Register of Stock kept by the said Bank in London. 20

And to : The National Mutual Life Association of Australasia Limited Melbourne in the State of Victoria on behalf of and for the benefit of all Stock holders whose stock is registered on the Register of Stock kept by the said Bank in London and whose stock was prior to the date of the commencement of the voluntary winding up of the said Bank transferred from an Australian Register to the said London Register and was at the date of the said voluntary winding up registered on the London Register of the said Bank.

And to : Their Solicitors Messrs. Henderson and Lahey of Queen Street Brisbane. 30

And to : The National Bank of Australasia Limited Queen Street Brisbane and to their Solicitors Messrs. Thynne and Macartney of Queen Street Brisbane.

This Notice of Motion was issued by Flower & Hart whose address for service is 398–400 Queen Street, Brisbane, Solicitors to the Applicant Fred Pace, who resides at Westminster Road, Indooroopilly near Brisbane. On the hearing of this Motion the Applicant intends to read the affidavit of the said Fred Pace filed herein on the twenty-first day of December 1948.

No. 4.

ORDER MADE BY MACROSSAN, C.J.

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 4. Order made by Macrossan, C.J., 15th February 1949.

IN THE MATTER of The Companies Acts 1931 to 1942
and

IN THE MATTER of THE QUEENSLAND NATIONAL BANK LIMITED (in Voluntary Liquidation)

and

IN THE MATTER of an Application by FRED PACE as Liquidator of The Queensland National Bank Limited (in Voluntary
10 Liquidation) for an Order under Section 258 of the said Acts to determine questions arising in the winding up of the said The Queensland National Bank Limited.

UPON HEARING Mr. Fahey of Counsel for the Applicant the above-named Fred Pace the Liquidator of The Queensland National Bank Limited (In Voluntary Liquidation) and UPON READING the two several affidavits of the said Fred Pace filed herein on the Twenty-first day of December One thousand nine hundred and forty-eight and on the Fourteenth day of February One thousand nine hundred and forty-nine respectively I DO ORDER that Edward Robert Crouch of Brisbane in the State of
20 Queensland a Solicitor of this Court one of the registered holders of Interminable Inscribed Deposit Stock of the said Bank whose stock is and was at the date of the commencement of the voluntary winding up of the said Bank registered on a Register of Stock kept in Australia by the said Bank may be sued and that the said Edward Robert Crouch shall defend on behalf of and for the benefit of all holders of Interminable Inscribed Deposit Stock whose stock was at the date of the commencement of the voluntary winding up of the said Bank registered on a Register of Stock kept by the said Bank in Australia in respect of an application intended to be made to this Honourable Court under the provisions of Section 258
30 of The Companies Acts 1931 to 1942 by the said Fred Pace as such Liquidator for the determination of the following and such other questions as he may be advised which arise in the winding up of the said Bank namely Whether as such Liquidator as aforesaid he should pay—

(*a*) the principal and/or (*b*) the interest moneys secured or represented by or payable in respect of the Interminable Inscribed Deposit Stock of the said The Queensland National Bank Limited (In Voluntary Liquidation) in English or Australian Currency to—

(i) Those holders of the said Bank's Interminable Inscribed Deposit Stock which was at the commencement of the voluntary
40 winding up of the said Bank registered on the register of stock kept by the said Bank in London ;

(ii) Those holders of the said Bank's Interminable Inscribed Deposit Stock which was at the commencement of the voluntary winding up of the said Bank registered on the register of stock kept by the said Bank in London but whose stock was prior to the commencement of the voluntary winding up of the said Bank transferred to the said London register from a register of stock kept by the said Bank in Australia ;

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 4. Order made by Macrossan, C.J., 15th February 1949, *continued.*

(iii) Those holders of the said Bank's Interminable Inscribed Deposit Stock which was at the commencement of the voluntary winding up of the said Bank registered on a register of stock kept by the said Bank in Australia.

AND I DO FURTHER ORDER that the costs of this application be reserved.

Dated this Fifteenth day of February 1949.

(L.S.) NEAL MACROSSAN, C.J.

W. M. VON PLOENNIES,
Associate,
15.2.49.

J.J.H.

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No. 5. Affidavit of James Tait Campbell, 16th March 1949.

No. 5.

AFFIDAVIT OF JAMES TAIT CAMPBELL.

I, JAMES TAIT CAMPBELL of 395 Collins Street Melbourne in the State of Victoria, General Manager, being duly sworn make oath and say as follows :—

1. I am the General Manager of The National Mutual Life Association of Australasia Limited, a company duly incorporated under the laws of the State of Victoria, and am duly authorised by the said company to make this affidavit on its behalf.

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2. I crave leave to refer to the affidavit of Fred Pace sworn the Twenty-first day of December 1948 and filed on behalf of the applicant herein, and with reference to paragraph 66 thereof I say that at the date of commencement of the voluntary winding up of The Queensland National Bank, The National Mutual Life Association of Australasia Limited was registered on the said Bank's London register as the holder of Interminable Inscribed Deposit Stock of a face value of £339,833. Of the said stock, stock of a face value of £76,418 was acquired by the said Association on the said London register, and such stock remained at all times registered on the London register ; stock of a face value of £129,168 was acquired by the said Association on a register of such stock kept by the said Bank in Australia and was subsequently transferred from such Australian register to the London register ; and stock of a face value of £134,246 (including stock of a face value of £118,803 which was purchased by the said Association in London with English policy holders' funds) was transferred to an Australian register after having been formerly registered on the London register, and was subsequently retransferred to the London register prior to the said date of commencement of the voluntary winding up of the said Bank.

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40

3. Referring to paragraph 63 of the said affidavit of the said Fred Pace, I say that at all times material prior to the said liquidation of the said Queensland National Bank, the said Bank paid to the said Association interest on its said stock from time to time registered on the said London register, in London in English currency of an amount or value equivalent to the full nominal amount of the interest from time to time becoming payable and without any deduction on account of the rate of exchange from time to time ruling between England and Australia.

4. Referring to paragraph 67 of the said affidavit of the said Fred Pace, I say that the transfer in 1944 of stock of the said Association from registers in Australia to the London register of the said Bank, was effected by the said Bank upon request in that regard by the said Association. Such transfer was effected by the Bank as aforesaid consequent upon correspondence between the Association and the Bank, of which the following is a true copy :—

(A) Letter dated 2nd June 1944 from the Association to the Bank :—

10 " The General Manager,
The Queensland National Bank Ltd.,
Queen Street,
Brisbane. Q'land.

Dear Sir,

The Association is desirous of transferring to your London Register its holding of 3½% Interminable Inscribed Deposit Stock now registered in its name on the Brisbane Register and amounting to £263,415.3.10.

20 The permission of the Commonwealth Bank necessary under the National Security Regulations has been obtained, and the formal consent of the Bank is attached hereto.

I shall be glad of your advice concerning the additional formalities necessary to complete the transfer.

Yours truly,
(Signed) T. P. SCOTT,
Assistant General Manager."

(B) Letter dated 9th August 1944 from the Bank to the Association :—

" The General Manager,
30 National Mutual Life Association of
Australasia Ltd.,
Collins & Queen Streets,
Melbourne.

Dear Sir,

Interminable Inscribed Deposit Stock.

With further reference to your letter of 2nd June last, we have been giving your request mature consideration, as we feel sure you will appreciate that the par transfer of over £260,000 from Australia to London is a matter of considerable moment
40 to the Bank with the exchange rate at its present high premium.

We strongly feel that the Bank should not be penalised by giving effect to your wishes, but before coming to a final decision, we would appreciate your advices as to whether you would be agreeable to the following if the transfer were approved :—

(a) Give the Bank an assurance that your Company would not dispose of the Stock in London to any party other than the Bank itself. While we are strongly influenced by the

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 5. Affidavit of James Tait Campbell, 16th March 1949, *continued.*

friendly relationship that has always existed between us, this would not necessarily apply to any third party who may acquire the Stock by purchase.

(b) Accept payment of the interest on the Stock (either in London or Australia as you may desire) in Australian currency at present.

Yours faithfully,
(Signed)
General Manager."

(c) Letter dated 18th August 1944 from the Association to the Bank :— 10

" The General Manager,
The Queensland National Bank Ltd.,
Queen Street,
Brisbane. Q'land.

Dear Sir,

Interminable Inscribed Deposit Stock.

I have to acknowledge receipt of your letter of 9th instant and to advise you that your comments and enquiries regarding the Association's request for the transfer of its holding of 20 $3\frac{1}{2}\%$ interminable inscribed deposit stock to the London Register were fully considered by my Directors at their Meeting on 15th instant.

The happy relations which have always existed between our two institutions are not in question. We have approached this matter as a purely business transaction in terms of the scheme of arrangement relating to the stock. Needless to say we fully appreciate the precise character of and the implications inherent in our request. In our view the Bank is not in any sense being 'penalised.' Of course the effect of a transfer for the time being 30 will be to increase the cost to the Bank of the service of the stock but in this regard the position of the Bank's shareholders is in no way different to that of the Members of this Association who have to provide very substantial amounts of money in consequence of the present high exchange premium. Indeed, part of this annual cost to the Association arises from the very fact that Interminable Inscribed Stock of your Bank was in years gone by purchased with the Association's London funds and transferred to your Australian Registers as a result of which your Bank has experienced a very material saving over the last 40 14 years.

As there is no objection to the transfer to the London Register under the National Security (Exchange Control) Regulations my Directors can see no valid reason why the transfer should not be effected. In this connection I am authorised to say that the Association has no intention of parting with its holding either now or in the near future. We are permanent holders of the stock for income purposes. In the event of the Association desiring to dispose of its holding either in whole or

in part we would have no objection to giving the Bank the first refusal of the Stock at the price of the day. My Directors are of the opinion that their acceptance of the suggestions contained in your letter under reply would place the Association in a worse position than it is at present. In effect it would mean that the stock would remain an Australian currency security (subject to a special disability) and the entry in your London Register would have no real significance.

10 In the circumstances I trust that on further consideration the Bank will give effect to our request.

Yours faithfully,

(Sgd.) J. T. CAMPBELL,
General Manager."

(D) Letter dated 23rd August 1944 from the Bank to the Association together with enclosure :—

" The General Manager,
National Mutual Life Association of
Australasia Ltd.,
Collins & Queens Streets,
20 Melbourne.

Dear Sir,

Interminable Inscribed Deposit Stock.

I acknowledge receipt of your letter of 18th instant and note your advices.

The matter was placed before my Board of Directors today, and after full consideration of all the circumstances it was agreed to approve your request for transfer of the Stock.

To this end I enclose two application forms for completion by your Company and return to this office together with the
30 relative Certificates for the Stock.

It is desired to mention that interest due for the half-year ending 30th September next will be paid by our London Office immediately on registration of the Stock in their books, but owing to the period taken in transit it may perhaps be some little time subsequent to the date mentioned before actual payment is made. The alternative would be to delay the transfer until after the interest payment on 30th proximo, and it is assumed you will not prefer this course.

It has been recorded that, in the event of your desiring to
40 dispose of any portion of the Stock at some future date, you will give the Bank first offer at current market rate.

Yours faithfully,

(Signed)

General Manager."

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 5. Affidavit of James Tait Campbell, 16th March 1949, *continued.*

" THE QUEENSLAND NATIONAL BANK LIMITED.

395 Collins Street,
Melbourne.
29th August, 1944.

Sir,

I hereby require the registration of £263,415.3.10 of the Interminable Inscribed Deposit Stock of The Queensland National Bank Limited registered in my name at the office of the said Bank at Brisbane to be transferred to the Register kept at the office thereof at London and I hereby offer to pay the costs and expense of such transfer. 10

The Common Seal of the National Mutual Life Association of Australasia Limited was hereto affixed by order of the Directors.

(Signed) HAROLD LUXTON,
Chairman of Directors.

(L.S.)

(Signed)
General Manager. 20

To

The Manager,
The Queensland National Bank Limited,
Brisbane."

(E) Letter dated 30th August 1944 from the Association to the Bank :—

" The General Manager,
The Queensland National Bank Ltd.,
Queen Street,
Brisbane. Queensland. 30

Dear Sir,

Interminable Inscribed Deposit Stock.

I have received your letter of 23rd August and note with pleasure the decision of your Board. My Directors desire me to express their thanks to you and to the Board of the Bank for their acceptance of our application.

I return the application forms in duplicate duly completed under the seal of the Association and enclose the certificates, as shown on the attached statement, in respect of £135,845.2.10 of the Stock. The remaining certificates covering £127,570.1.0 40 of Stock will be presented to you by our Queensland Branch.

It is desired that the interest due for the half-year ending 30th September next be paid to our London Office upon registration of the stock in your London books and in advising our London Office of the transfer we will inform them of the

unavoidable delay in the payment of the interest and also of the undertaking given to the Bank by the Association regarding the sale of any portion of the Stock. It is assumed that in due course a new stock certificate will be delivered to our London Office. Their temporary War-time address is 16 The Grange, Wimbledon, S.W.19.

Yours truly,

(Signed) J. T. CAMPBELL,

General Manager."

10 (F) Letter dated 4th September 1944 from the Bank to the Association :—

" The General Manager,
National Mutual Life Association of
Australasia Ltd.,
Queen & Collins Streets,
Melbourne.

Dear Sir,

Interminable Inscribed Deposit Stock.

I acknowledge receipt of your letter of 30th ultimo, 20 together with enclosures as set out, and note your advices for which I thank you.

As assumed, the new Certificate issued by our London Office will be forwarded direct to your London Branch immediately on registration.

Yours faithfully,

(Signed)

General Manager."

All the facts and circumstances above deposed to are within my knowledge and means of knowledge save where the same are deposed to 30 from information only and my means of knowledge and sources of information appear on the face of this my affidavit.

Signed and Sworn by the above-named Deponent at Melbourne in the State of Victoria this 16th day of March 1949 } J. T. CAMPBELL

Before me :—

W. H. WADDELL, J.P.,

A Justice of the Peace.

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 6. Affidavit of Fred Pace, 11th August 1949.

No. 6.

AFFIDAVIT OF FRED PACE.

I, FRED PACE, of Westminster Road, Indooroopilly, Brisbane, in the State of Queensland, Retired Bank Official, being duly sworn make oath and say as follows :—

1. I am the Liquidator of the above-named The Queensland National Bank Limited (In Voluntary Liquidation).

2. The said The Queensland National Bank Limited (hereinafter referred to as the Q.N. Bank) was incorporated in the Colony (now the State) of Queensland under the Companies Acts 1863 on the 30th day of March 1872 and was registered in England as a foreign Company under the provisions of Section 35 of the English Companies Act of 1907 on the 25th day of September 1908. 10

3. A print of the Memorandum and Articles of Association of the Q.N. Bank dated 1897 is now produced and shown to me and is marked with the letter " A."

4. A print of the Memorandum and Articles of Association of the Q.N. Bank as at the date of the passing of the Special Resolution to wind up the Q.N. Bank as hereinafter referred to is now produced and shown to me and is marked with the Letter " B." 20

5. On 3rd June, 1872 the Q.N. Bank commenced to carry on the ordinary business of a trading Bank in Brisbane aforesaid and later opened Branches for the transaction of ordinary Banking business elsewhere in the State of Queensland. The Q.N. Bank on the 8th day of March 1881 opened a branch at Sydney in the Colony (now State) of New South Wales.

6. By a resolution of the shareholders of the Q.N. Bank held on the 4th day of April 1876 the nominal capital of the Q.N. Bank was increased to the sum of £1,000,000 by the issue of 50,000 shares of £10 each and at the same meeting it was resolved that the Directors be authorised to apply to the Parliament of Queensland for an Act enabling the Q.N. Bank to open and keep Registers of Shareholders in places beyond Queensland and to do all things necessary or expedient for the accomplishment of that object. 30

7. By an Act of The Parliament of Queensland which was assented to on the 4th day of October 1876 the Q.N. Bank was authorised to open and keep Registers of Shareholders in places beyond Queensland and the Q.N. Bank during the year 1878 opened a Register of Shareholders in London in England and such register in London aforesaid was kept until the Q.N. Bank went into voluntary liquidation as hereinafter mentioned. 40

8. At Extraordinary general meetings of the Q.N. Bank held on the 24th day of December 1877 and the 24th day of January 1878 a special resolution was passed rescinding original Article 104 and inserting the following article in lieu thereof, viz. :—

> 104. The directors may delegate under the Seal of the Company or by writing not under Seal to any Local Committee Local Directors

Agents and other officers respectively appointed by them for carrying on the business of any such Branch office or Agency either in the Colony of Queensland or elsewhere any of the powers which the Directors and ~~the~~ General Manager may themselves either together or separately exercise and which in the discretion of the Directors may be deemed expedient for the due conduct management and regulation of the business or any of the affairs of the Company including if deemed expedient authority to provide and use a duplicate Seal and the Directors may from time to time revoke all or any of the powers so delegated but all such Local Committees Local Directors Agents and other officers respectively shall in the exercise of the powers so delegated to them conform to any regulations which may be imposed on them by the Directors.

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 6. Affidavit of Fred Pace, 11th August 1949, *continued.*

A.L.R. J.P.

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9. The Q.N. Bank on the 28th day of February 1878 opened a branch in London. The functions performed by the Q.N. Bank's London Branch consisted mainly of providing the Q.N. Bank's customers in Australia with facilities for financing their overseas purchases and sales. In addition to raising share capital the London Branch of the Q.N. Bank in common with the other Australian Banks canvassed for deposits from persons in the British Isles, the moneys being utilised to assist the Q.N. Bank in carrying on its banking business in Queensland and New South Wales.

20

10. The Q.N. Bank duly appointed a London Board of Directors and the paper writing now produced and shown to me and marked with the letter "C" is a copy of a Power of Attorney dated the 2nd day of February 1881 which was given by the Q.N. Bank to its London Board of Directors.

11. On the said 28th day of February 1878 the subscribed capital of the Q.N. Bank was the sum of £500,000 and was represented by 50,000 shares of £10.0.0 each upon each of which the sum of £5.0.0 per share had been paid up leaving an uncalled liability in respect of such 50,000 shares of £5.0.0 each.

30

12. While the English interest rates ruling between the years 1878 and 1893 varied considerably from time to time (the Bank of England rate during that period ranging between 2% and 6%) the investment of moneys whether by way of share capital or on deposit in Banks and financial institutions which had for their object the development of Great Britain's Colonial possessions presented a more lucrative form of investment.

13. The Q.N. Bank prior to the Old Scheme of Arrangement being sanctioned as hereinafter referred to appointed agents in England, Scotland and Ireland with a view to enabling persons who had moneys to invest to deposit their moneys with the Q.N. Bank on deposit. Only a very small portion of the moneys so deposited with the Q.N. Bank was used in connection with the Banking business conducted by the Q.N. Bank's London Branch but the major portion of such moneys was applied by the Q.N. Bank in financing Queensland Government overseas transactions and in financing the production in Queensland and the export from Queensland to England of primary products. The moneys so deposited

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In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 6. Affidavit of Fred Pace, 11th August 1949, *continued.*

with the Q.N. Bank in manner aforesaid were mainly for terms of from one to five years and carried interest at the rate of £4 to £5 per cent. per annum.

14. The records of the Q.N. Bank in my possession do not disclose the methods employed by the said agents. I have been informed by the Manager of the Princes Street Branch of The National Bank of Australasia Limited formerly the Manager of the London Branch of the Q.N. Bank that he has made a search in his office for information regarding such methods or instructions but that he was unable to find any.

15. The Q.N. Bank's principal Agents in the under-mentioned places were as follows, viz. 10

In Edinburgh (Scotland)—Messrs. Sprot and Wordie

and

Messrs. Torrie Brodie & Maclagan.

In Glasgow (Scotland)—Messrs. William Ewing & Co.
In Dundee (Scotland)—Messrs. Hendry & Pollock.
In Dublin (Ireland)—Messrs. Guinness Mahon & Co.

16. Prior to the Old Scheme of Arrangement hereinafter referred to being sanctioned the Bank's said Agents were paid a commission on the amounts of deposits influenced by them but subsequently the Bank's 20 Agents in Edinburgh, Glasgow, Dundee and Dublin were paid annual salaries. The activities of the Bank's agents are set out in the correspondence contained in Exhibit " B Q ". The services of all the Q.N. Bank's Agents were dispensed with prior to the year 1903.

17. The fixed deposits of the Q.N. Bank in London grew from £1,010 in September 1878 to £4,041,206 in March 1891, receding to £2,971,817 in March 1893. It was officially published in the last mentioned year that the total deposits outside Australia of the various Banks trading in Australia amounted to over £38,000,000.

18. The paper writing now produced and shown to me and marked 30 " D " is a copy of the Statement of Accounts of the London Branch of the Q.N. Bank as at the 31st day of March, 1893.

19. In or about the month of May 1893 the Q.N. Bank with other Banks trading in Australia found itself in financial difficulty and it was compelled to suspend payment on the 15th day of May 1893. The Minutes of the Board of Directors disclose that the following Banks suspended payment in 1893 prior to the suspension of the Q.N. Bank viz. :—

Commercial Bank of Australia Limited
English Scottish & Australian Chartered Bank
Australian Joint Stock Bank and 40
London Chartered Bank of Australia

all of which suspended payment in the month of April 1893, and

National Bank of Australasia
Colonial Bank of Australasia and
Bank of Victoria Limited

all of which suspended payment in the month of May 1893.

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 6. Affidavit of Fred Pace, 11th August 1949, *continued.*

A.L.R. J.P.

20. The paper writing now produced and shown to me marked with the letter "E" is a copy of a circular dated the 15th day of May 1893 which was addressed by the General Manager of the Q.N. Bank to its 10 shareholders.

21. On the said 15th day of May 1893 a petition was presented to this Honourable Court by Robert Porter petitioning that the Q.N. Bank might be wound up by the Court and that a provisional liquidator be appointed.

22. On the 17th day of May 1893 an order was made by this Honourable Court appointing Edward Robert Drury to be the provisional liquidator of the Q.N. Bank and conferring certain powers on him of taking possession of and protecting the assets of the Q.N. Bank. The 25th day of May 1893 was fixed as the date for the hearing of the said petition but the date of hearing of the said petition was adjourned from time to time 20 by orders of this Honourable Court.

23. Prior to the Q.N. Bank suspending payment on the said 15th day of May 1893 the Q.N. Bank transacted the General Government banking business of the Colony (now the State) of Queensland. The Parliament of Queensland in 1893 passed The Queensland National Bank Limited Agreement Act of 1893 which was expressed to be "An Act to Authorise the Treasurer of the Colony to enter into an agreement with The Queensland National Bank Limited in respect of certain moneys of the Government now on deposit therein." The said Act received the Royal Assent on the 29th day of June 1893, but the said Act was repealed by 30 The Queensland National Bank Limited (Agreement) Act of 1904.

24. On the thirtieth day of June 1893 the Q.N. Bank propounded and submitted to this Honourable Court for its sanction a scheme of arrangement with its creditors and the date of hearing the said Petition was adjourned from time to time in order that consideration might be given to the said Scheme.

A.L.R. J.P.

25. By an order of this Honourable Court dated the 30th day of June 1893 this Honourable Court directed that meetings of the creditors of the Q.N. Bank should be called in London aforesaid and Brisbane aforesaid 40 for the purpose of considering the scheme of arrangement so submitted by the Q.N. Bank as aforesaid.

26. A meeting of shareholders of the Q.N. Bank was held in Brisbane on the 18th day of July 1893 for the purpose of considering the said Scheme but was duly adjourned as appears by the Minutes of the said meeting a copy whereof is now produced and shown to me and marked with the letter "F."

27. A meeting of the Q.N. Bank's creditors was duly held in London on the 24th day of July 1893 and was attended either personally or by proxy by 1,238 creditors of the Q.N. Bank whose debts amounted to £857,302. A resolution was unanimously passed at the said meeting agreeing to the said Scheme of Arrangement so submitted by the Q.N. Bank but with certain amendments. A copy of the said Scheme of Arrangement as so passed at ~~submitted to~~ the said meeting in London showing the deletion of the parts objected to by the British depositors ~~said meeting~~ and the amendments agreed to by the British depositors and shareholders ~~at the said meeting~~ is now produced and shown to me and is marked with the letter " G."

A.L.R. J.P.

A.L.R. J.P.

28. The said scheme as so amended was also unanimously agreed to at a meeting of the shareholders of the Q.N. Bank held in London aforesaid on the said 24th day of July 1893 which was attended either personally or by proxy by 474 shareholders of the Q.N. Bank holding a total of 34751 shares.

29. A meeting of the Q.N. Bank's creditors was duly held in Brisbane on the 27th day of July 1893 and was attended either personally or by proxy by 4949 creditors of the Q.N. Bank whose debts amounted in the whole to £954,978.10.0. The said Scheme of Arrangement as so amended by the Q.N. Bank's creditors ~~at the meeting held in London on the said 24th day of July 1893~~ was unanimously approved, the resolution (other than part of it which sets out the Scheme of Arrangement) being to the following effect viz. :

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> " That the creditors of the Queensland National Bank Limited present personally or by proxy at this meeting hereby approve of the Scheme of Arrangement now proposed and submitted by the Provisional Official Liquidator being the Scheme of Arrangement adopted and approved of by creditors of the said Bank at a meeting held in London on the Twenty-fourth day of July 1893."

The said Edward Robert Drury the Provisional Official Liquidator of the Q.N. Bank and the Chairman of the said meeting subsequently reported to the Court that the question submitted to the said meeting was whether the Creditors of the Q.N. Bank approved of the Scheme of Arrangement adopted and approved of by the Creditors of the Q.N. Bank at a meeting held in London according to the directions of the said order on the twenty-fourth day of July 1893.

30. At a meeting of the shareholders of the Q.N. Bank held in Brisbane aforesaid on the said 27th day of July 1893 at 3 o'clock in the afternoon the said Scheme of Arrangement as so amended as aforesaid was also approved. A copy of the Minutes of the said meeting is now produced and shown to me marked with the letter " H."

31. On the said 27th day of July 1893 a petition was presented by the Q.N. Bank to this Honourable Court for its sanction to the said Scheme of Arrangement as so amended and adopted as aforesaid a copy of which said Petition is now produced and shown to me and marked with the letters " HH."

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 6. Affidavit of Fred Pace, 11th August 1949, *continued.*

32. On the 31st day of July 1893 by an order of this Honourable Court the said Scheme of Arrangement with certain minor amendments by the Court was sanctioned by the said Court and was declared to be binding upon all the creditors of the Q.N. Bank and upon the provisional liquidator and the contributories of the Q.N. Bank and is hereinafter referred to as the Old Scheme of Arrangement a copy whereof is now produced and shown to me and marked "I."

33. By an order of this Honourable Court dated the said 31st day of July 1893 the provisional liquidator appointed by the order of this 10 Honourable Court referred to in paragraph 22 of this my affidavit was discharged and all proceedings under the petition referred to in paragraph 21 of this my affidavit were stayed.

34. On the said 15th day of May 1893 a Petition was presented to the Supreme Court of New South Wales in its Equity Jurisdiction by one Charles William Little a creditor of the Q.N. Bank praying that the Q.N. Bank be wound up under the provisions of the Companies Acts of 1874–1891 in force in New South Wales and that a provisional liquidator be appointed.

35. By an order of the said Supreme Court of New South Wales 20 dated the said 15th day of May 1893 Lewis Alexander Johnstone of Sydney aforesaid Bank Manager was appointed provisionally to be the official liquidator of the Q.N. Bank and certain powers of collecting protecting and getting in the assets of the Q.N. Bank and other powers were conferred on the said Provisional Official Liquidator pending the hearing of the petition referred to in paragraph 34 hereof.

36. By an order of the said Supreme Court of New South Wales dated the 4th day of August 1893 the said Lewis Alexander Johnstone was ordered to convene a meeting of the creditors of the Q.N. Bank to be held in Sydney on the 10th day of August 1893 for the purpose of considering 30 and if thought fit agreeing to (subject to confirmation or variation by the said Supreme Court of New South Wales) the Scheme of compromise and arrangement proposed to be made between such creditors of the Q.N. Bank a copy whereof was attached to the Notice of Motion on which this order was made and which said scheme was identical in every respect with the Old Scheme of Arrangement which was sanctioned by this Honourable Court on the 31st day of July 1893. The said meeting was duly held and was attended by 83 creditors in person or by proxy whose debts amounted in the whole to £20,421.15.10 and the Old Scheme of Arrangement was unanimously assented to by all creditors present either in person or by 40 proxy.

37. On the 11th day of August 1893 a Petition was presented to the said Supreme Court of New South Wales by the Q.N. Bank for the sanction of the Supreme Court of New South Wales to the Old Scheme of Arrangement and on the said 11th day of August 1893 the Supreme Court of New South Wales ordered that the Old Scheme of Arrangement or compromise be and the same was sanctioned and approved by the said Court.

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Affidavit of Fred Pace, 11th August 1949, *continued.*

38. By a further order of the said Supreme Court of New South Wales dated the said 11th day of August 1893 the said Court ordered that the Petition of the said Charles William Little referred to in paragraph 34 of this my affidavit should stand dismissed out of the said Court and that the said Lewis Alexander Johnstone be discharged as provisional official liquidator of the Q.N. Bank.

39. The paper writings now produced and shown to me and marked with the letter " J " are and contain copies of the petitions and orders on the files of the Supreme Court of New South Wales in relation to the Old Scheme of Arrangement. 10

40. Certain liquidation proceedings with a view to winding up the Q.N. Bank were instituted in England and in order to place before this Honourable Court full details of any such proceedings taken in England I instructed my solicitors Messrs. Flower & Hart of Brisbane to endeavour to obtain through Messrs. Murray Hutchins & Co. the Q.N. Bank's London Solicitors copies of all relevant documents relating to the liquidation proceedings so taken in England as aforesaid.

41. I have been advised by the said Flower & Hart that they have since received from the said Messrs. Murray Hutchins & Co., photostatic copies of all documents now on the file of the High Court of Justice in 20 England (Companies Winding Up) in relation to the Old Scheme of Arrangement and the New Scheme of Arrangement hereinafter referred to but that such file does not now contain many of the documents which of necessity must have been on such file. In a letter received by the said Flower & Hart from the said Murray Hutchins & Co. and which I have perused the said Murray Hutchins & Co. stated (inter alia) that—

> " With further reference to your letter of the 19th instant we have made enquiries in the Companies Winding-Up Department, but unfortunately none of the documents you require are now on the file. It appears that during the war old documents on the files 30 of this Department were sorted out and those which were considered to be of no further use were sent away for pulping. In the case of the Queensland National Bank's file, the official who dealt with the sorting apparently got confused and some of the 1893 documents which could have been sent away for pulping were retained, whilst some which should not have been sent away were, in fact, destroyed. There is no other Department in the Courts where copies of the required documents can be obtained."

I have perused the photostatic copies of the documents so received by the said Flower & Hart from the said Messrs. Murray Hutchins & Co. 40

42. On the said 15th day of May 1893 a petition was presented in Her Majesty's High Court of Justice (Companies Winding Up) by Henry Darley Livingstone of 34 De Vere Gardens in the County of London to have the Q.N. Bank wound up under the provisions of the Companies Acts 1862 to 1890 and that for such purpose all necessary and proper directions might be given.

43. On or about the 16th day of May 1893 a petition was presented to Her Majesty's said High Court of Justice by Reginald Byard Buchanan Clayton of 88 Bishopsgate Street Within in the City of London praying that the Q.N. Bank might be wound up under the provisions of the Companies Acts 1862 to 1890 and that for such purpose all necessary and proper directions might be given.

44. By an Order dated the 26th day of May 1893 of Mr. Justice Gorell Barnes sitting as Vacation Judge in the High Court of Justice (Companies Winding Up) Charles John Stewart the official Liquidator
10 attached to such Court was appointed Provisional Liquidator of the Q.N. Bank and certain powers of taking possession and protecting the assets of the Q.N. Bank were thereby conferred on him.

45. The photostatic copies of the other documents now on the said file of The High Court of Justice do not embrace copies of any orders of that Court sanctioning the Old Scheme of Arrangement or staying the proceedings under the petitions referred to in paragraphs 42 and 43 of this my affidavit but from a photostatic copy of a certain Notice of Motion still on the file in England and from photostatic copies of certain documents on the file in England in relation to the New Scheme hereinafter referred
20 to and which have been shown to me by the said Flower & Hart I verily believe that the said High Court of Justice by Order dated 13th September 1893 sanctioned the Old Scheme of Arrangement and stayed all proceedings then before that Court in relation to the winding up of the Q.N. Bank.

46. The paper writings now produced and shown to me and marked with the letter " K " are and contain copies of the documents now on the file of the High Court of Justice in England (Companies Winding Up) in relation to the Old Scheme of Arrangement.

47. The Deposit Receipts Negotiable Deposit Receipts and Inscribed Deposit Stock referred to in the Old Scheme of Arrangement were duly
30 issued and the Q.N. Bank re-opened for business on the second day of August 1893.

48. The amount due to depositors (apart from the sum of approximately £2,186,547 owing to the Queensland Government) at the time the Old Scheme of Arrangement was sanctioned by this Honourable Court was £4,868,569 made up as follows viz. :

To creditors in respect of deposits in Queensland as at 31/7/93	£1,860,628
To creditors in respect of deposits in N.S.W. (Sydney) Branch as at 31/7/93	110,322
40 To creditors in respect of deposits in London as at 25/7/93	2,897,619
Total ..	£4,868,569

49. An Agreement in pursuance of the provisions of Section 3 of the said " The Queensland National Bank Limited Agreement Act of 1893 "

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No. 6. Affidavit of Fred Pace, 11th August 1949, *continued.*

referred to in paragraph 23 of this my affidavit was duly entered into between the Colonial Treasurer of Queensland and the Q.N. Bank on the 20th day of September 1893. A copy of such agreement is now produced and shown to me marked with the letter " L ".

50. The paper writing now produced and shown to me and marked with the letter " M " is a true copy of a circular letter dated the 3rd day of November, 1893, and numbered 331 which was sent by the Q.N. Bank to the Managers of its several branches in Australia.

51. The paper writing now produced and shown to me and marked with the letter " N " is a copy of an agreement entered into between the Colonial Treasurer of Queensland and the Q.N. Bank on the 13th day of December, 1893.

52. The paper writings now produced and shown to me and marked " O " " P " and " Q " are photostatic copies of the following documents respectively, viz. :

(A) A deposit Receipt dated 31st day of July, 1893, issued in Queensland by the Q.N. Bank in pursuance of the Old Scheme of Arrangement ;

(B) A specimen of the form of Deposit Receipt issued by the London Branch of the Q.N. Bank dated the 30th day of September 1893 in pursuance of the Old Scheme of Arrangement ;

(C) A specimen of the form of Deposit Receipt to Bearer issued by the London Branch of the Q.N. Bank dated 30th day of September, 1893, in pursuance of the Old Scheme of Arrangement.

Although I have caused a diligent search to be made I have been unable to find in the records of the Q.N. Bank in my possession a copy of a form of Inscribed Deposit Stock certificate issued under the Old Scheme of Arrangement. Furthermore I have been informed by Frederick Charles Mead the Manager of the branch of The National Bank of Australasia Limited Princes Street London formerly the Manager of the London Branch of the Q.N. Bank that although he has made a diligent search for a form of such Inscribed Deposit Stock certificate he has been unable to find one.

53. No Inscribed Deposit Stock was, so far as I can ascertain, issued in Australia under the Old Scheme of Arrangement and the proportion of Inscribed Deposit Stock issued in London as against that issued by the Bank on Deposit Receipts and Negotiable Deposit Receipts was very small as the Chairman of the Bank in his report to Shareholders dated 24th January 1895 in respect of the half year ended 31st December 1894 stated " The total amount of Extended Deposits on 31st December (London balances to the 30th September being included) was £6,387,371.5.0 made up as follows :—

Government Fixed Deposits	£2,000,000. 0. 0
Private Fixed Deposits	4,050,619.12. 4
Private Negotiable Deposit Receipts	198,119. 1.10
Private Receipts not yet applied for	88,185. 0. 0
Private Inscribed Deposit Stock	50,447.10.10
	£6,387,371. 5. 0

The following schedule shows a dissection of the above figures.

	Queensland	*New South Wales*	*London*
Govt. Fixed Deposits	£1,340,000. 0. 0		£660,000. 0. 0
Private Fixed Deposits ..	1,416,029.12. 9	£100,106. 7. 7	2,534,483.12. 0
Private Negotiable Deposit Receipts			198,119. 1.10
Private Receipts not yet applied for			88,185. 0. 0
10 Private Inscribed Deposit Stock			50,447.10.10
	£2,756,029.12. 9	£100,106. 7. 7	£3,531,235. 4. 8

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54. An Act intituled " The Queensland National Bank Limited Guarantee Act of 1896 " which was expressed to be an Act to authorise a temporary Guarantee by the Government of certain deposits in the Queensland National Bank Limited and for other purposes connected therewith was passed by the Parliament of Queensland and received the Royal Assent on the 13th day of November, 1896.

55. An Act intituled " The Queensland National Bank Limited (Agreement) Act of 1896 " and expressed to be an Act to authorise the 20 Treasurer to enter into an agreement or agreements with reference to any moneys due and owing or to become due and owing by The Queensland National Bank Limited to the Government and for other purposes in connection therewith was passed by the Parliament of Queensland and received the Royal Assent on the 17th day of December 1896. In pursuance of the provisions of this Act an Agreement dated the 24th day of November 1897 was entered into between the Treasurer of Queensland and the Q.N. Bank a copy whereof is now produced and shown to me and marked " R." The said The Queensland National Bank Limited (Agreement) Act of 1896 was repealed by The Queensland National Bank Limited (Agreement) 30 Act of 1904.

56. After this Honourable Court sanctioned the Old Scheme of Arrangement and when the Scheme had been carried out by the reduction and calling up of capital the paid up capital of the Q.N. Bank was £928,528 on the 31st day of December 1896. Of that sum approximately £675,103 of paid up capital was registered on the Brisbane register of shareholders and approximately £253,425 of paid up capital was registered on the London register of shareholders.

57. The Q.N. Bank found it was impossible to invest or employ its funds in reasonably safe securities producing a rate of interest sufficiently 40 remunerative to enable the Q.N. Bank out of its revenue to pay the interest payable under the provisions of the Old Scheme of Arrangement in respect of the Deposit Receipts Negotiable Deposit Receipts and Inscribed Stock mentioned in the Old Scheme of Arrangement.

58. The paper writing now produced and shown to me and marked with the letter " S " is and contains a copy of a report dated the 6th day

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of March 1896 by the Acting General Manager of the Q.N. Bank to the Chairman of Directors of the Q.N. Bank. The enclosures referred to in the said report are not in my possession.

59. In his address to the annual meeting of shareholders in respect of the report and balance sheet for the half year ending on 30th June 1896 the Chairman of Directors of the Q.N. Bank stated (inter alia) " It is therefore evident under present conditions that the Bank must make other arrangements in regard to its deferred payments. This matter has had the earnest attention of your directors for some time past and with 10 the prospect of a still further reduction in lending rates we feel under present circumstances, and as far as it is possible to forecast the future, it is impracticable for us to continue to pay 4½% interest on the deferred deposits and at the same time compete successfully with any Banks obtaining money at considerably lower rates. It will therefore be necessary to seek forthwith in common with many other reconstructed Banks some modification of the terms agreed to in 1893."

60. The paper writing now produced and shown to me and marked with the letter " T " is a copy of the report (with appendices " A " " B " and " C " thereto) dated 12th day of November 1896 of a Committee 20 appointed by the Queensland Government to ascertain the position of the affairs of the Q.N. Bank.

61. The paper writing now produced and shown to me and marked with the letter " U " is a copy of an affidavit by Walter Vardon Ralston dated the 9th day of February, 1897 and which was filed in this Honourable Court on the same day.

62. The Q.N. Bank on the said 9th day of February 1897 submitted another Scheme of Arrangement for the sanction of this Honourable Court and by an order dated the 9th day of February 1897, a copy whereof is now produced and shown to me and marked with the letter " V " this 30 Honourable Court directed that a meeting of creditors in respect of Deposit Receipts Negotiable Deposit Receipts and Inscribed Deposit Stock issued in pursuance of the Old Scheme of Arrangement be held in Brisbane on the 22nd day of March 1897 for the purpose of considering the said Scheme of Arrangement.

63. Such meeting of creditors was duly held and the said Scheme of Arrangement was with certain amendments duly approved by the creditors. The said Scheme of Arrangement as so amended and which is hereinafter referred to as the New Scheme of Arrangement was provisionally sanctioned by this Honourable Court on the 26th day of March 1897 40 and was on the 12th day of May 1897 finally sanctioned by this Honourable Court and declared to be binding upon all creditors of the Q.N. Bank in respect of Deposit Receipts Negotiable Deposit Receipts and Inscribed Deposit Stock and upon the Q.N. Bank and its contributories. A copy of the New Scheme of Arrangement is contained in the print of the Q.N. Bank's Memorandum and Articles of Association contained in Exhibit " B " hereto.

64. The total amount due to creditors of the Q.N. Bank under the Old Scheme of Arrangement (apart from the amount owing to the Queensland Government) shortly before the New Scheme of Arrangement was sanctioned by this Honourable Court was approximately the sum of £4,163,401 made up as follows :—

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To creditors of the Q.N. Bank under the Old Scheme of Arrangement in respect of deposits in Queensland as at 29/3/97	£1,352,362
To creditors of the Q.N. Bank under the Old Scheme of Arrangement in respect of Deposits in N.S.W. as at 29/3/97	99,610
To creditors of the Q.N. Bank under the Old Scheme of Arrangement in respect of Deposits in England as at 27/3/97	£2,711,429
	£4,163,401

The above figures are gross, that is to say before 5/- in £ was written off. At the date of the New Scheme of Arrangement the Queensland Government was a creditor of the Q.N. Bank to the extent of £1,833,326, and it claimed to rank as a creditor in priority to all other creditors of the Q.N. Bank.

65. Upon Motion before the Supreme Court of New South Wales in its Equity Jurisdiction the said Court by an order dated 31st March 1897 directed a meeting of the Q.N. Bank's creditors to be held in Sydney in the said State of New South Wales on the 14th day of April 1897 for the purpose of considering and if thought fit of agreeing to the new Scheme of Arrangement referred to in paragraph 63 of this my affidavit. The said meeting was duly held and the New Scheme of Arrangement was adopted thereat.

66. By a Petition dated the 14th day of April 1897 the Q.N. Bank petitioned the said The Supreme Court of New South Wales (in Equity) to sanction the New Scheme of Arrangement and on the 15th day of April 1897 the New Scheme of Arrangement was by order of the said Supreme Court of New South Wales (in Equity) sanctioned and approved by it.

67. The paperwritings now produced and shown to me and marked with the letter " W " are and contain copies of the petition and orders on the files of the Supreme Court of New South Wales in relation to the New Scheme of Arrangement.

68. On or about the 17th day of May 1897 the Q.N. Bank presented a petition to Her Majesty's said High Court of Justice (Companies Winding Up) praying that the Q.N. Bank might be wound up by the said Court under the provisions of the Companies Acts 1862 to 1890. There was attached to the said Petition a copy of the New Scheme of Arrangement. The said petition disclosed that the New Scheme of Arrangement had been sanctioned by the Supreme Court of Queensland and that if the Q.N. Bank

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were to continue its business under the then present conditions without obtaining alterations in the Old Scheme of Arrangement it would be compelled to suspend payment and would become bankrupt. The said petition further disclosed that the adoption of the New Scheme of Arrangement was the only means of averting bankruptcy but that in order to have the New Scheme of Arrangement sanctioned by the Court in England it was necessary that the Q.N. Bank should first be wound up.

69. On the 17th day of May 1897 the said High Court of Justice appointed George Stapylton Barnes one of the official receivers attached to the said Court to be the provisional liquidator of the Q.N. Bank. 10

70. On the 27th day of May 1897 the said High Court of Justice ordered that the Q.N. Bank should be wound up by that Court under the provisions of The Companies Acts 1862 to 1890 and that George Stapylton Barnes the Senior Official Receiver attached to the Court be continued as provisional liquidator of the affairs of the Q.N. Bank and it was further ordered by the said Court that no steps or proceedings be taken under the order without the sanction of the said Court.

71. By another order dated the said 27th day of May 1897 the said High Court of Justice ordered the said George Stapylton Barnes to convene a meeting of the creditors of the Q.N. Bank in respect of Deposit Receipts 20 Negotiable Deposit Receipts and Inscribed Deposit Stock of the Q.N. Bank sanctioned by the High Court of Justice on the 13th day of September 1893 for the purpose of considering and if thought fit approving the New Scheme of Arrangement and by the said order the said High Court of Justice directed that the said meeting should be held in London on the 2nd day of June 1897.

72. On or about the 2nd day of June 1897 Thomas Dence of London a creditor of the Q.N. Bank in respect of deposits to the amount of £15,964.8.2 and Charles Edward Keyser of Reading in England a creditor of the Q.N. Bank in respect of deposits to the amount of £10,000 presented 30 a petition to the said High Court of Justice wherein it was disclosed (inter alia) that the meeting of creditors referred to in the last preceding paragraph of this my affidavit was duly held and the New Scheme of Arrangement was approved by a majority considerably in excess of 3/4ths in value of the creditors attending the meeting and whereby the said Thomas Dence and Charles Edward Keyser prayed that the New Scheme of Arrangement might be considered and if approved sanctioned by the said Court.

73. By an order dated the 4th day of June 1897 the said High Court of Justice sanctioned the New Scheme of Arrangement and declared the same to be binding on all creditors of the Q.N. Bank in respect of 40 Deposit Receipts Negotiable Deposit Receipts and Inscribed Deposit Stock issued by the Q.N. Bank in pursuance of the Old Scheme of Arrangement and on the contributories of the Q.N. Bank and also on the Official Receiver and provisional Liquidator thereof and it was also ordered that all further proceedings relating to the winding up of the Q.N. Bank be stayed except for the purpose of carrying such order and the New Scheme of Arrangement into effect.

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No. 6. Affidavit of Fred Pace, 11th August 1949, *continued.*

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and marked with the letter " X "

74. The paper writings now produced and shown to me ʎ are and contain copies of the documents now on the file of the High Court of Justice in England (Companies Winding Up) in relation to the New Scheme of Arrangement.

75. In pursuance of Clause 3 of the first part of the New Scheme of Arrangement the Q.N. Bank allotted to and amongst the registered holders of Deposit Receipts the holders of Negotiable Deposit Receipts with the coupons appertaining thereto and the registered holders of
10 Inscribed Deposit Stock issued or given to creditors of the Q.N. Bank under or in pursuance of the Old Scheme of Arrangement or which were then held by the Q.N. Bank on behalf of such creditors or as security for any advances made to them by the Q.N. Bank and all other similar documents held by creditors of the Q.N. Bank at the date of such Scheme and which had not been surrendered in exchange for any of the said securities under or in pursuance of the terms of the Old Scheme of Arrangement Interminable Inscribed Deposit Stock of the Q.N. Bank to an amount equal to 75% of the principal monies secured or represented by their said securities after deducting from such principal moneys any
20 fractional part of £1 owing to such registered holders respectively. The total amount of Interminable Inscribed Deposit Stock so issued by the Q.N. Bank was of a face value of £3,116,621.5.0.

76. The following table shows the amount of Interminable Inscribed Deposit Stock originally issued on the Q.N. Bank's Colonial and London Registers respectively, the amounts paid off in cash and the amounts purchased by the Q.N. Bank from time to time, the amounts the registration of which was transferred from Australian registers to the London register and from the London register to Australian registers.

INTERMINABLE INSCRIBED DEPOSIT STOCK

30 After allowing for fractions of £ (paid in cash) Deposit Receipts Negotiable Deposit Receipts and Inscribed Deposit Stock were

	Colonial	*London*	*Total*
	1,444,129	2,711,366	4,155,495
Less 5/- in £ written off ..	361,032	677,842	1,038,874
Interminable Inscribed Deposit Stock	1,083,097	2,033,524	3,116,621

The £1,038,874 was repaid in cash between 1900 and 1918 both inclusive.

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INTERMINABLE INSCRIBED DEPOSIT STOCK

	Colonial	*London*
Original amount	1,083,097	2,033,524
Transfers London to Australia	754,662	754,662
	1,837,759	1,278,862
Transfers Australia to London	731,720	731,720
	1,106,039	2,010,582
Less Purchases by the Q.N. Bank	376,770	180,765
	729,269	1,829,817
		729,269
Present Total (Face Value) ..		£2,559,086

10

77. The paper writing now produced and shown to me marked "XX" is a true copy of a circular letter dated the 27th day of March, 1897 and numbered 394 which was sent by the Q.N. Bank to the Managers of its several branches in Australia.

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78. The Interminable Inscribed Deposit Stock certificates issued in pursuance of the New Scheme of Arrangement other than that part thereof relating to the places of issue and the forms of Attestation thereof were in the form prescribed by the New Scheme and such form of certificate has been used from the date of commencement of the New Scheme of Arrangement up to the date of liquidation of the Q.N. Bank.

20

79. The paper writings now produced and shown to me and marked with the letters "Y" "Z" "AA" "AB" "AC" and "AD" are photostatic copies of the following documents respectively viz.:

(A) An Interminable Inscribed Deposit Stock Certificate issued by the Head Office of the Q.N. Bank in Brisbane under the Common Seal of the Q.N. Bank in pursuance of the New Scheme of Arrangement.

(B) An Interminable Inscribed Deposit Stock Certificate issued by the London Branch of the Q.N. Bank under the duplicate seal of the Q.N. Bank in pursuance of the New Scheme of Arrangement.

30

(C) An Interminable Inscribed Deposit Stock Certificate issued by the London Branch of the Q.N. Bank under the duplicate seal of the Q.N. Bank in pursuance of the New Scheme of Arrangement and dated 1897.

(D) An Interminable Inscribed Deposit Stock Certificate issued by the London Branch of the Q.N. Bank under the duplicate seal of the Q.N. Bank in pursuance of the New Scheme of Arrangement and dated 1897 and in which the letters "stg." appear after the wording of the amount of such certificate.

40

(E) An Interminable Inscribed Deposit Stock Certificate issued by the Sydney Branch of the Q.N. Bank under the signature of the Manager and Accountant of the said Branch in pursuance of the New Scheme of Arrangement.

(F) An Interminable Inscribed Deposit Stock Certificate issued by the St. George Branch of the Q.N. Bank under the hands of the Manager and Accountant of the said Branch in pursuance of the New Scheme of Arrangement and dated 1897 and in which the letters " stg." appear after the wording of the amount of such
10 certificate.

80. A search has been made of the Australian transfers of stock between July 1897 and September 1898 and, of the cancelled certificates dated 1897 attached to such transfers, seventy-five had the letters " stg." or the word " sterling " stated therein after the wording of the amount set out in the certificate but in the remaining 234 the letters " stg." or the word " sterling " did not appear. The 75 cancelled certificates containing the letters " stg." or the word " sterling " were issued by the Q.N. Bank branches as follows viz. :—

By Brisbane Office	18
,, Bundaberg	6
,, Cloncurry	2
,, Geraldton	1
,, Hughenden	3
,, Gympie	6
,, Port Douglas	7
,, Rockhampton	9
,, St. George	16
,, Sandgate	1
,, Tambo	3
,, Thursday Island	1
,, Townsville	2

20

30

The search above referred to further revealed that in the case of Interminable Inscribed Deposit Stock Certificates issued by Tambo Branch of the Q.N. Bank of the certificates above referred to 22 of such certificates each dated 13th May 1897 were issued of which 3 had the letters " stg." or the word " sterling " inserted in them while the remaining 19 did not and of 26 certificates issued by the St. George Branch of the Q.N. Bank each dated 13th May 1897 16 of them had the letters " stg." or the word " sterling " inserted in them while the remaining 10 did not. Some of
40 the certificates issued in London and dated 1897 contained the letters " stg." and some did not. A search of 74 cancelled Interminable Inscribed Deposit Stock Certificates issued by the London Branch of the Q.N. Bank since 1931 and which are in my possession discloses that in no case did the letters " stg." or the word " sterling " appear therein.

81. It was common practice in Australia prior to the year 1931 for persons to insert frequently the letters " stg." or the word " sterling " in cheques issued by them after the wording of the amounts for which the cheques were drawn. Up till about the year 1931 the rate of exchange between England and Australia varied from time to time sometimes being

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in favour of England and sometimes in favour of Australia. In 1931 however the rate of exchange between Australia and England was fixed by the Commonwealth Bank of Australia at £130 Australian to £100 English and later in that year at £125 Australian to £100 English (which latter rate is still in force) and as a consequence the Q.N. Bank in common with other trading Banks issued instructions to its officers to refrain from using the letters "stg." or the word "sterling" on all documents with the exception of drafts on London or on Foreign Agents where recoupment was to be effected through the Bank's London office. The Q.N. Bank and the other trading banks in Australia generally advised their customers to act similarly in regard to the use of the letters "stg." or the word "sterling" on cheques drawn by them on Australian accounts.

82. According to the Statements of Account of the Q.N. Bank's London Branch the total amounts of New fixed deposits held by the Q.N. Bank at such Branch between the dates of the Old Scheme of Arrangement and the 30th September 1899 were as follows viz.:—

March 1894	£100
September 1894	£100
March 1895	£200
September 1895	£375
March 1896	£600
September 1896	£900
March 1897	£800
September 1897	£800
March 1898	£700
September 1898	£700
March 1899	£700
September 1899	£575

83. After this Honourable Court sanctioned the New Scheme of Arrangement and when the Scheme had been carried out by the reduction and calling up of capital and paid up capital of the Q.N. Bank was £412,823 on the 31st day of December 1900 of that sum approximately £287,153 was registered on the Brisbane register of shareholders and approximately £125,670 was registered on the London register of shareholders.

84. An Act intituled "The Queensland National Bank Limited (Agreement) Act of 1904" being an Act expressed to authorise the Treasurer to enter into an agreement or agreements with reference to any moneys owing or to become due and owing by the Q.N. Bank to the Government and for other purposes in connection therewith was passed by the Queensland Parliament and received the Royal Assent on the 16th November 1904. This Act repealed The Queensland National Bank Limited Agreement Act of 1893 and The Queensland National Bank Limited (Agreement) Act of 1896. In pursuance of the provisions of The Queensland National Bank Limited (Agreement) Act of 1904 an agreement dated the 14th day of December 1904 was entered into between The Treasurer of Queensland of the one part and the Q.N. Bank of the other part in the form of that now produced and shown to me marked

with the letters "AE." The whole of the moneys owing by the Q.N. Bank to the Government of Queensland in terms of such agreement were repaid prior to the year 1919.

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85. In pursuance of clause 1 of the second part of the new Scheme of Arrangement the Q.N. Bank has kept at its head office in Brisbane and at its branches in the State of Queensland and also at its Sydney and London Branches and at its Melbourne Branch which was opened subsequent to 1897, registers of stock issued in pursuance of the New Scheme of Arrangement at which the securities in exchange for which such stock
10 was allotted were at the time of such allotment payable or at the office of the Q.N. Bank to which the registration of such stock might be transferred in the manner thereinafter provided. The sum of 5/– in the £ upon the principal moneys secured or represented by the securities issued by the Q.N. Bank under the Old Scheme of Arrangement so sanctioned by this Honourable Court as aforesaid and which was payable to holders of Interminable Inscribed Deposit stock issued by the Q.N. Bank by virtue of section 7 (2) of the first part of the New Scheme of Arrangement was paid to such holders by instalments from time to time in the currency of the Country in which such Interminable Inscribed Deposit Stock was
20 for the time being registered the final payment being made in 1918.

86. I have examined the registers of the holders of Deposit Receipts issued by the Q.N. Bank which were opened in Brisbane immediately after the Old Scheme of Arrangement was sanctioned and a return furnished to the Q.N. Bank by its Sydney branch of Deposit Receipts issued in Sydney immediately after the Old Scheme of Arrangement was sanctioned. Such registers and return disclose that the addresses of some of the holders of such Deposit Receipts were in Queensland and New South Wales respectively and that the addresses of others of such holders were at places outside Queensland and New South Wales respectively, viz., some in
30 other parts of Australia and the British Empire and some in foreign countries. I have been informed by the said Frederick Charles Mead that he has examined the registers of holders of Deposit Receipts and Inscribed Deposit Stock opened by the Q.N. Bank in London when the Old Scheme of Arrangement was sanctioned and that such registers disclose that the addresses of some of the holders of such Deposit Receipts and Inscribed Deposit Stock were in Great Britain and that the addresses of others of such holders were at places outside Great Britain, viz., in Australia and in other parts of the British Empire and some in foreign countries. The Registers of Interminable Inscribed Deposit Stock issued
40 in pursuance of the New Scheme of Arrangement ~~were~~ kept by the Q.N. Bank contain the addresses of the holders of such Interminable Inscribed Deposit Stock. I have examined the registers of such Interminable Inscribed Deposit Stock which were opened in Brisbane immediately after the New Scheme of Arrangement was sanctioned and a return furnished to the Q.N. Bank by its Sydney branch of stock registered on the register of stock opened in Sydney immediately after the New Scheme of Arrangement was sanctioned. Such Registers and return disclose that the addresses of some of the holders of such stock were in Queensland and New South Wales respectively and that the addresses of others of the holders of such
50 stock were at places outside Queensland and New South Wales

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respectively, viz., some in other parts of Australia and the British Empire and some in foreign countries. I have been informed by the said Frederick Charles Mead that he has examined the Register of Stock opened by the Q.N. Bank in London when the New Scheme of Arrangement was sanctioned and that such register discloses that the addresses of some of the holders of such stock were in Great Britain and that the addresses of others of the holders of such stock were at places outside Great Britain viz., in Australia and in other parts of the British Empire and some in foreign countries.

87. In pursuance of clause 3 of the second part of the New Scheme of Arrangement registered holders of stock have from time to time transferred the registration of their stock from one register to another and on the 30th day of October 1947 (the date of the commencement of the voluntary winding up of the Q.N. Bank as hereinafter referred to) the total amount of the Q.N. Bank's Interminable Inscribed Deposit Stock which was outstanding amounted to the sum of £2,559,086.7.3 whereof the sum of £729,269.4.9 was registered in the Q.N. Bank's registers in Australia and the balance, viz., the sum of £1,829,817.2.6 was registered in the Bank's register at its Branch in London aforesaid. 10

88. The paper writing now produced and shown to me marked with the letters "AF" is a Schedule setting out the principal movements in regard to the capital of the Q.N. Bank and showing the paid up capital of the Q.N. Bank on the London register at the several dates quoted in the said Schedule. The resolutions authorising the principal features of such movements of the Q.N. Bank's capital are contained in Exhibit "B" hereto. 20

89. The paper writing now produced and shown to me and marked with the letters "AG" is a copy of the report of the Directors of the Q.N. Bank to shareholders dated 15th day of January 1897.

90. The paper writings now produced and shown to me marked with the letters "AH" "AI" "AJ" and "AK" contain respectively copies of the following documents:— 30

(A) Accounts of the London Branch of the Q.N. Bank as at 31st March 1897.

(B) The balance sheet of the Q.N. Bank as at 30th June 1897.

(C) Directors' report on such last mentioned balance sheet.

(D) Minutes of the half yearly meeting of the proprietors of the Q.N. Bank held on 29th July 1897.

91. The paper writings now produced and shown to me marked with the letters "AL" "AM" and "AN" contain respectively copies of the following documents:— 40

(A) Accounts of the London Branch of the Q.N. Bank as at 31st March 1898.

(B) The Balance sheet of the Q.N. Bank as at 30th June 1898.

(C) The Directors' report on such last mentioned balance sheet.

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92. Until the year 1920 the half yearly balancing dates of the London branch of the Q.N. Bank were the 31st day of March and the 30th day of September in each year but the general half yearly balancing dates of the Bank were the 30th day of June and the 31st day of December in each year and contained the necessary particulars set out in the half yearly accounts of the several branches of the Q.N. Bank including the London Branch of the Q.N. Bank. The half yearly accounts of the London Branch were made up at the immediately preceding 31st day of March and 30th day of September in each year but the half-yearly accounts of the other branches of the Q.N. Bank were made up to the 30th day of June and 31st day of December in each year.

93. At the 30th day of June 1920 the London Branch accounts were brought into line in the general balance sheet of the Bank and thereafter the balance sheets of the Bank were presented annually.

94. The paper writings now produced and shown to me and marked with the letters " AO " " AP " and " AQ " contain respectively copies of the following documents viz. :—

(A) Accounts of the London Branch of the Q.N. Bank as at 30th June 1941.

(B) The balance sheet of the Q.N. Bank as at 30th June 1941.

(C) Directors' report on such last mentioned balance sheet.

95. The paper writings now produced and shown to me and marked with the letters " AR " " AS " and " AT " contain respectively copies of the following documents viz. :—

(A) Accounts of the London Branch of the Q.N. Bank as at 30th June 1942.

(B) The Balance sheet of the Q.N. Bank as at 30th June 1942.

(C) Directors' Report of the Q.N. Bank on such last mentioned balance sheet.

96. The paper writings now produced and shown to me and marked with the letters " AU " " AV " and " AW " contain respectively copies of the following documents viz. :—

(A) Accounts of the London Branch of the Q.N. Bank as at 30th June, 1944.

(B) The Balance sheet of the Q.N. Bank as at 30th June 1944.

(C) Directors' report on such last mentioned Balance sheet.

97. The paper writings now produced and shown to me and marked with the letters " AX " " AY " and " AZ " contain respectively copies of the following documents, viz. :—

(A) Accounts of the London Branch of the Q.N. Bank as at 30th June, 1945.

(B) The Balance sheet of the Q.N. Bank as at 30th June 1945.

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(c) Directors' report of the Q.N. Bank on such last-mentioned Balance sheet.

98. The assets and liabilities of the London Branch of the Q.N. Bank other than interbranch and ~~Profit and Loss~~ Accounts were at all times made up in the currency circulating in London without any adjustment for exchange on any other centre or country and all advances made at the London Branch and all debts and liabilities owing to the public at that branch were shown in such currency.

99. Up to and including its accounts for the year ended 30th June 1941 the Bank in incorporating the accounts other than inter-branch and Profit and Loss accounts of the London Branch in the General Accounts of the Bank made no adjustment for the variation in the rate of exchange prevailing between Australia and London.

100. In compiling the Balance sheet of the Q.N. Bank as at the 30th day of June 1942 the assets and liabilities including Interminable Inscribed Deposit Stock registered on the London register were as required by Regulation 12 of the National Security (Wartime Banking Control) Regulations expressed in Australian currency which had the effect of increasing the liability shown in such balance sheet of the Q.N. Bank in respect of Interminable Inscribed Deposit Stock to £3,005,496 . 4 . 0 expressed in terms of Australian pounds.

101. The balance sheets for the years subsequent to 1942 were prepared in a similar manner in terms of the said regulations until the Banking Act 1945 came into force and thereafter pursuant to the provisions of that Act.

102. At the Annual Meeting of the Q.N. Bank held on the 13th day of August 1942 the following remarks (inter alia) were made by the Chairman—

> "Doubtless you will have observed that the Balance Sheet is set out in a somewhat different form from that of previous years, and is expressed in Australian currency, the new formula being that approved for Trading Banks under National Security Regulations. One item which might deserve special explanation is the increase in the total of our Interminable Inscribed Deposit Stock. A substantial portion of this Stock is held on our London Register and the increase is accounted for by conversion of this London total from Sterling to Australian pounds a necessary procedure under the new Balance sheet formula. In complying with the latter, amended procedures preclude comparison of the relative figures of Deposits and Advances with those of the previous year, but this should not be a recurring factor in future years."

and such remarks were recorded in the Report of the said Annual Meeting of the Q.N. Bank which was printed in Australia together with the Directors' Report and Balance Sheet of the Q.N. Bank for the said year and was then circulated to shareholders on the Brisbane Register and stockholders on the Australian Registers of the Q.N. Bank as well as to the Brisbane, Sydney and Melbourne Stock Exchanges.

103. At the annual general meeting of the Q.N. Bank held on the twelfth day of August 1943 Mr. W. H. Hart the Chairman of Directors of the Q.N. Bank in his address to the meeting as Chairman made inter alia the following remarks :—

> " Turning to the Report and Balance Sheet a copy of which has been in your hands for some weeks I will with your approval take them as read. In accordance with the practice initiated last year all items are expressed in Australian currency the main effect of which as I mentioned previously is to materially increase the face value of our Interminable Inscribed Deposit Stock £1,387,992 (English) of which is held on our London register."

and

> " Another factor which it may be desirable to mention here is the cost of our Interminable Inscribed Deposit Stock which as you know carries interest at $3\frac{1}{2}\%$. As previously mentioned more than half of the total stock is held on our London Register and after allowing for exchange on the interest paid in London the cost over all our Stock works out at approximately 3.97% as compared with a present maximum rate of 2% on money lodged with the Bank at Fixed Deposit."

A typewritten copy of the Chairman's address at the said meeting was made available subsequently to the press and the Chairman's address was subsequently printed and distributed to shareholders on the Brisbane Register of the Q.N. Bank.

104. At the annual general meeting of the Q.N. Bank held on the seventeenth day of August 1944 Mr. W. H. Hart the Chairman of Directors of the Q.N. Bank in his address to the meeting as Chairman made (inter alia) the following remark : " Following our practice in recent years all items are expressed in Australian currency."

105. At the annual General meeting of the Q.N. Bank held on the sixteenth day of August 1945 Mr. W. H. Hart the Chairman of Directors of the Q.N. Bank in his address to the meeting as Chairman made (inter alia) the following remark : " As previously pointed out all amounts are expressed in Australian currency."

106. At the annual General Meeting of the Q.N. Bank held on the fifteenth day of August 1946 Mr. F. E. Loxton the Chairman of Directors of the Q.N. Bank in his address to the meeting as Chairman made (inter alia) the following remark : " I again mention that all amounts in the balance sheet are expressed in Australian currency." Copies of the Chairman's address at the said Annual General meetings held on the 17th day of August 1944, the 16th day of August 1945 and the 15th day of August 1946 respectively were printed and distributed to shareholders on the Brisbane Register of the Q.N. Bank.

107. At all times after the Q.N. Bank commenced to carry on its business and up to date of liquidation each Branch of the Q.N. Bank has

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kept separate accounts in respect of its business transactions and affairs and of its assets and liabilities and such accounts of each such Branch have been at all times balanced half-yearly or annually.

108. At all times after the date of the adoption of the New Scheme of Arrangement until the date of liquidation of the Q.N. Bank the half-yearly or annual accounts of all branches of the Q.N. Bank (including the London Branch) at which Interminable Inscribed Deposit Stock was registered contained (inter alia) the following main heading and sub-headings which set out amongst the liabilities in the accounts of such branch :— 10

" CASH DEPOSITED BEARING INTEREST " (in the case of the London Branch)

or

DEPOSITS BEARING INTEREST (in the case of other branches)
Current Accounts ....
Fixed Deposits ....
Interminable Inscribed Deposit Stock .... "

and in each of such accounts the total amount shown for Interminable Inscribed Deposit Stock in such sub-heading included both Interminable Inscribed Deposit Stock originally registered at such branch and which 20 still remained registered thereon and Interminable Inscribed Deposit Stock the registration of which had been transferred to such branch from another branch except in the case of the Melbourne branch which was opened subsequent to 1897.

109. The books half-yearly or annual accounts of each Branch including the London Branch of the Q.N. Bank from the year 1898 onward until the date of liquidation set out as a liability the face value of the stock registered on the register of such branch.

110. The paper writing now produced and shown to me and marked 30 with the letters " BA " is and contains a schedule containing the rates of exchange between Australia and London at the dates mentioned in such Schedule. The rates of exchange quoted have been supplied to me by The National Bank of Australasia Limited and have so I am informed by the said The National Bank of Australasia Limited been taken from the records of the Associated Banks (Victoria).

111. In Exhibit " BA " the rates shown under the expressions " Buying " and " Selling " represent those at which the Banks would purchase amounts payable in London and would sell amounts payable in London respectively—i.e. to construe the table, the transaction must be 40 viewed as to whether the Bank is " buying " or " selling "—not from the customer's angle. Rates of exchange between Australia and London quoted on a Buying " Discount " (below par) or Selling " Premium " (above par) basis, mean that, on the buying side, the Banks would pay to their Australian customers, less than the amount receivable in London, and on the selling side receive from their Australian customers, a greater amount than that to be disbursed by the Bank in London, the charge in both cases

being calculated at the relative rates quoted for the day. If the buying rate is quoted at a premium and selling rate at a discount, the converse applies. The following examples will illustrate the matter :—

In 1878 the Banks would have paid the Australian customer £100.10.0 (10/- premium) for the right to acquire £100 in England, and charged the Australian customer £102.10.0 (50/- premium) for a disbursement in London by draft of £100. These rates were on a sight or seamail transit time basis.

In March 1900, for buying a telegraphic transfer the Banks would 10 have paid the Australian customer £99.12.6 (7/6 discount) for each £100 receivable in London, and sold £100 payable in England at a cost to the Australian customer of £101.2.6 (22/6 premium).

As at 14th January 1924, for buying a telegraphic transfer the Banks would have paid the Australian customer £98.10.0 (30/- discount) for each £100 receivable in London, and sold £100 payable in London at a cost to the Australian customer of £99.10.0 (10/- discount).

Telegraphic transfer rates were not quoted prior to 1899, and the Telegraphic Transfer selling rate gives the measure for a practically simultaneous receipt by the Bank in Australia and disbursement by it in 20 London, thus providing a truer reflex of the relative value of the funds in the two places than ordinary mail transactions where an element of interest (which may vary from time to time) for the time of completion enters into the calculation of the exchange rate.

To-day such rates of exchange between Australia and England are quoted as follows :—

Buying Telegraphic Transfer	A.£125	..	..	..	E.£100
Selling do. do.	A.£125.10.0		..	..	E.£100

112. At the time the New Scheme of Arrangement became effective Interminable Inscribed Deposit Stock was issued by the Q.N. Bank and 30 was registered on registers of Stock kept by the Q.N. Bank at Brisbane and at the Branches of the Q.N. Bank at London Sydney and throughout Queensland and stock certificates were issued by each such branch of the Q.N. Bank in respect of stock registered at such branch and such certificates were handed to the holders of the stock in satisfaction and discharge of securities issued by the Q.N. Bank in 1893 and payable at such branch and transfers of the registration of holdings of the said Interminable Inscribed Deposit Stock between registers have taken place as provided for in clause 3 of the Schedule to the New Scheme of Arrangement.

40 113. At all times after the date of the adoption of the New Scheme of Arrangement until the date of liquidation of the Q.N. Bank as hereinafter referred to when application was made to transfer the registration of Interminable Inscribed Deposit Stock from the register at one branch of the Bank to another register the applicant was required to surrender for cancellation his existing certificate for Interminable Inscribed Deposit Stock and after the transfer of the registration of Interminable Inscribed Deposit Stock from the register of one branch of the Bank to the register

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at another branch of the Bank had been completed the cancelled certificate for the Interminable Inscribed Deposit Stock the registration of which had been so transferred was retained by the Bank and a new certificate was issued to the holder of the Interminable Inscribed Deposit Stock showing the Branch to which the registration of such Interminable Inscribed Deposit Stock had been transferred.

114. Where the registration of stock was transferred from one branch to another the stock the registration of which was so transferred ceased to be shown as a liability in the books of the transferor branch and the face value of such holding of the stock was thereafter shown as a liability in the books of account of the transferee branch. 10

115. All Interminable Inscribed Deposit Stock originally registered on the London Register of such stock pursuant to the New Scheme of Arrangement was issued by the said Q.N. Bank in satisfaction and discharge of securities issued by the said the Q.N. Bank in 1893 and payable at the London Branch of the said the Q.N. Bank.

116. The register of stock kept at each Branch of the Q.N. Bank was complete in itself and no duplicate of the register kept at any branch was held at the head office of the Bank.

117. The total amount of stock registered at each branch was balanced weekly and prompt advices furnished to the Head Office of the Q.N. Bank of transfers of the registration of stock from one branch to another. 20

118. No distinction was made in the payment of interest and bonus between stock originally registered on any such register and stock the registration whereof was subsequently transferred thereto.

119. Circular instructions were issued by the Q.N. Bank to its branches in Australia that where any warrant in respect of interest on stock registered on an Australian register was presented to a branch in Australia other than the issuing branch such warrant might be cashed or negotiated free of inland Australian exchange. By circular dated the 20th day of July 1900 and issued by the Branch Accountant of the Q.N. Bank instructions were issued to the branch managers of the Q.N. Bank in Australia to the effect (inter alia) that repayment warrants might be cashed or collected free of exchange on the same conditions as interest warrants. No records are available in regard to negotiating a warrant for payment of interest or a repayment warrant issued in London presented to a branch of the Q.N. Bank in Australia. I am advised by the said Frederick Charles Mead that when a warrant for the payment of interest or a repayment warrant issued in Australia was presented to the London Branch of the Q.N. Bank the Q.N. Bank would negotiate such warrant at the prevailing rate of exchange between Australia and London. I am informed by an officer of the Brisbane branch of the Q.N. Bank and verily believe that the practice of the Brisbane branch 30 40

of the Q.N. Bank was to charge residents in England the prevailing rate of exchange Australia on London when remitting interest payable on stock registered on the register of stock kept by the Q.N. Bank in Brisbane.

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120. The amount of £1,829,817.2.6 (face value) of Interminable Inscribed Deposit Stock on the Q.N. Bank's London Register referred to in paragraph 76 of this my affidavit is held in varying amounts by approximately 1959 individual stockholders including the National Mutual Life Association of Australasia Limited and the Scottish Union and National Insurance Company two of the representative respondents in 10 these proceedings.

121. The amount of £729,269.4.9 (face value) of Interminable Inscribed Deposit Stock on Australian Registers referred to in paragraph 76 of this my affidavit is held in varying amounts by approximately 924 individual stockholders including Edward Robert Crouch one of the representative respondents in these proceedings.

122. Of the total holding of the stock of £339,833 held by The National Mutual Life Association of Australasia Limited and registered on the Q.N. Bank's London register of stock £76,418 was acquired by the said Association on the London register. The balance of £263,415 thereof 20 was formerly registered on registers in Australia but on the eighth day of September 1944 the registration of the same was transferred to the London register and such total holding of the stock is still registered on the London register. In addition to the £76,418 of the stock acquired as aforesaid by the said Association on the London register a holding of the stock of £2,500.10.0 was acquired by the said Association on the said London register the registration of which was transferred to a register in Australia by the said Association subsequent to the acquisition thereof and such holding continued to be registered on a register in Australia until the said Association transferred the registration of all the stock held by it 30 on registers in Australia to the London register on the eighth day of September 1944 as aforesaid. Certificate of stock number 5004 was issued by the Q.N. Bank to the said Association in Brisbane on the twenty-third day of January 1912 in respect of the said holding of the stock after the transfer of the registration of the said holding to a register in Australia as aforesaid and the said certificate of stock number 5004 was among the certificates of stock cancelled when certificate of stock number 10129 was issued by the Q.N. Bank to the said Association on the sixth day of September 1944 in respect of its total holding of the stock registered on registers in Australia. The original holder or holders of £2,500.10.0 of 40 the stock whose holding was or whose holdings were purchased by the said Association as aforesaid was a creditor or were creditors of the Q.N. Bank in 1897 and a registered holder or holders of 1893 securities issued by the said Q.N. Bank who accepted the said holding or holdings of the stock in satisfaction and discharge of his or their said 1893 securities which said 1893 securities were payable at the London branch of the Q.N. Bank and the said original holder or holders was a creditor or were creditors of the Q.N. Bank as aforesaid at the time of the sanction of the

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new Scheme of Arrangement by the Supreme Court of Queensland and by the High Court of Justice in England and was a party or were parties to such scheme and/or subject to it.

123. With the object of establishing one representative case I have made a search and have been able to trace that among the certificates of stock which were surrendered by the said Association and cancelled in return for certificate of stock number 10129 as aforesaid was a certificate of stock in respect of a holding of the stock originally registered on the London register in 1897 the holder whereof disposed of such holding so that the registration thereof was transferred to a register in Australia in the name of the said holder and was subsequently transferred into the name of the said Association in Australia.

124. I am informed by the said Frederick Charles Mead that the Certificate of Interminable Inscribed Deposit Stock issued to The National Mutual Life Association of Australasia Limited for the holding of £263,415.3.10 in respect of the stock the registration of which was transferred from the Brisbane registers to the London register in 1944 referred to in paragraph 122 of my said affidavit is numbered 13898 dated the 3rd day of November 1944 and signed by E. C. Ruggles Brise and Frances Durling Brough.

125. The paper writing now produced and shown to me and marked with the letters " BB " is I am informed by Messrs. Henderson & Lahey the Solicitors to The National Mutual Life Association of Australasia Limited and verily believe a copy of Certificate No. 13898 issued under the duplicate Seal of the Q.N. Bank at London to the said Association in respect of the stock transferred by it to London in 1944.

126. Certificate No. 737 representing a holding of £15,000 of Interminable Inscribed Deposit Stock standing in the name of the Scottish Union and National Insurance Company was issued to that Company in 1897 and this holding of the stock is and always has been registered on the London Register. Such stock was issued in satisfaction and discharge of securities under the Old Scheme of Arrangement which securities in their turn were payable at the London branch of the Q.N. Bank and were accepted by the said Company as a creditor of the Q.N. Bank in respect of a deposit of £20,000 at the London Branch of the Q.N. Bank, in accordance with the Old Scheme of Arrangement.

127. The said the Scottish Union and National Insurance Company and the members of the class represented by it or their predecessors in title have had all their dealings with the Q.N. Bank in regard to payment of interest and bonuses, transfers transmissions and changes of name in respect of their said Interminable Inscribed Deposit Stock at the London Branch of the Q.N. Bank and not in Australia.

128. It would be a colossal task, if not an impossible one in many instances, to ascertain the place of original issue of each holding of Interminable Inscribed Deposit Stock at present held by London and Australian stockholders respectively. In cases where the registration of

Interminable Inscribed Deposit Stock has been transferred from London to Australia and vice versa some of the stock will undoubtedly be found to have been intermingled so as to make it impossible to determine the place of original issue of all or portion of every individual stockholder's present holding.

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129. With the object of establishing representative cases I have made a search and ascertained that the following persons are holders of stock on an Australian Register the registration of which has been transferred from London and which has not either prior to transfer or since been
10 mixed with any other stock on an Australian Register ~~are~~—

Name	Address	Amount of present holding	Register on which held
Mrs. Neilina Begg	" Rothesay, " The Broadway, Punchbowl, N.S.W.	£150	Sydney
Mrs. Nora Patience Shillinglaw and/or Godfrey Vigne Shillinglaw	" Dundrenan," 492 St. Kilda Road, Melbourne.	£500	Melbourne
Miss Minnie Louise Elizabeth Baynes	106 Barnard St., North Adelaide, S.A.	£1,457.10.0	Melbourne

20

130. I have traced the holdings of G. V. Shillinglaw and Mrs. N. Begg and find that their holdings of stock were both original London holdings in other names in 1897 the registrations of which were subsequently transferred to Melbourne and Sydney registers respectively. I have been able to trace that one Eleanor Adamson has a holding of stock on the Melbourne register part of which said holding of the stock was originally registered on an Australian register and the registration of which was
30 subsequently transferred to London and was again subsequently transferred to the Melbourne register.

131. The paper writing now produced and shown to me and marked with the letters " BC " is a printed copy of an Agreement (hereinafter called the Share Exchange Agreement) made the 26th day of March 1947 between Frederick Ewen Loxton of Brisbane aforesaid on behalf of himself and all other members of the Q.N. Bank who assented thereto of the first part and the Q.N. Bank of the second part and The National Bank of Australasia Limited (hereinafter referred to as The National Bank) of the third part.

40 132. Up to the 30th day of June 1947 a date within 4 months of the date of the making by The National Bank to shareholders of the Q.N. Bank of the offer to exchange shares in the National Bank for shares in the Q.N. Bank as contained in the Share Exchange Agreement

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No. 6. Affidavit of Fred Pace, 11th August 1949, *continued.*

(Exhibit " BC ") such offer was approved by holders of not less than 9/10ths in value of the shares in the Q.N. Bank and by Notice in writing dated the 31st day of July 1947 The National Bank gave notice to dissenting shareholders in The Q.N. Bank pursuant to the provisions of Section 163 of the Companies Act in the form of that contained in the paper printing now produced and shown to me marked with the letters " BD ".

133. No application was made to this Honourable Court by any dissenting shareholders to the said Agreement in pursuance of such notice and on the 10th day of September 1947 The National Bank transmitted 10 a copy of the Notice referred to in the last preceding paragraph of this my affidavit to the Q.N. Bank and handed to the Q.N. Bank scrip certificates in favour of dissenting shareholders of the Q.N. Bank for 5 fully paid up shares of £1 each in The National Bank for each fully paid up share of £5 in the Q.N. Bank held by dissenting shareholders in the Q.N. Bank and the Q.N. Bank thereupon registered the National Bank as the holder of all the shares held by all dissenting shareholders of the Q.N. Bank and The National Bank is the holder either in its own name or in the name of its nominees of all the shares in the Q.N. Bank.

134. In pursuance of the provisions of Clause 4 of the said Share 20 Exchange Agreement an Extraordinary General Meeting of the members of the Q.N. Bank was held at the registered office of the Q.N. Bank on the 26th day of June 1947 when the following Special Resolutions were duly passed :—

" That the Articles of Association of the Company be altered in manner following, that is to say :—

(A) That Article 28 be deleted.

(B) That Article 65 be amended by deleting the words 'at least five members' and by substituting the words 'any member or members' therefor. 30

(C) That Article 66 be amended by deleting the words 'five or more members' and by substituting the words 'any member or members' therefor.

(D) That Article 68 be deleted and the following Article substituted therefor :—

Upon a poll every member present in person or by proxy or attorney shall have one vote for every share held by him.

(E) That Article 55 be amended by deleting the words 'not less than one-fifth in number' and substituting the words 'any one or more' therefor." 40

135. The paper writing now produced and shown to me and marked with the letters " BE " is a true copy of a declaration of solvency of the Q.N. Bank which was filed in the office of the Registrar of Companies on the 11th day of September 1947.

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 6. Affidavit of Fred Pace, 11th August 1949, *continued.*

136. The paper writing now produced and shown to me and marked with the letters " BF " is a true copy of a requisition dated the 10th day of September 1947 addressed to the Directors of the Q.N. Bank and which was signed by sixteen members of the Q.N. Bank and in pursuance of the said requisition an Extraordinary General Meeting of the members of the Q.N. Bank was duly convened for the 8th day of October 1947 and the paper writing now produced and shown to me and marked with the letter " BG " is a true copy of the Notice convening such meeting.

137. Such meeting was adjourned and further adjourned from time 10 to time as follows viz.: from the 8th day of October 1947 to the 15th day of October 1947 and from the 15th day of October to the 22nd day of October 1947 and from the 22nd day of October 1947 to the 30th day of October on which said last-mentioned date the following Resolution was duly passed as a Special Resolution namely—

> " That the Company be wound up voluntarily and that Fred Pace of Brisbane in the State of Queensland Bank Inspector be appointed Liquidator for the purposes of such winding up."

All members of the said Q.N. Bank were present either personally or by proxy at the meeting held on the said 30th day of October 1947 and they 20 all voted in favour of the said Resolution.

138. A copy of the Special Resolution referred to in paragraph 137 of this my affidavit was filed in the office of the Registrar of Companies on the 31st day of October 1947. Notice of my appointment as liquidator was filed in the office of the said Registrar on the 4th day of November 1947 and a certified copy thereof is now produced and shown to me and marked with the letters " BH ".

139. Notice of the passing of the Special Resolution referred to in paragraph 137 of this my affidavit was published in the Queensland Government Gazette on the 12th day of November 1947 and a copy of 30 such Gazette is now produced and shown to me and marked with the letters " BI ".

140. None of the Q.N. Bank's Interminable Inscribed Deposit Stock has been paid since the Q.N. Bank went into voluntary liquidation and the registration of none of the said stock has since been transferred from one register to another register.

141. By virtue of clause 5 of the 1st part of the New Scheme of Arrangement Interminable Inscribed Deposit Stock of the Q.N. Bank became immediately payable (inter alia) on an effective Resolution being passed for the winding up of the Q.N. Bank and the following questions 40 have arisen which I desire to have determined by this Honourable Court under the provisions of Section 258 of the Companies Acts of 1931–1942 namely—

> " 1. Whether the registered holders of Interminable Inscribed Deposit Stock issued by The Queensland National Bank Limited pursuant to a Scheme of Arrangement made between the said Bank and certain of its creditors and sanctioned by the Supreme

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 6. Affidavit of Fred Pace, 11th August 1949, *continued.*

Court of Queensland on the twelfth day of May, 1897, whose stock was at the date of the commencement of the voluntary winding up of the said Bank and was at all times prior thereto registered on the London register of the said Bank, are entitled to be paid in the winding up of the said Bank the principal and/or interest monies secured or represented by or payable in respect of such stock on the basis that they receive the equivalent of the face value of the said principal and/or interest monies in English or Australian currency.

2. Whether the registered holders of such stock whose stock was at the date of the commencement of the voluntary winding up of the said Bank registered on the London register of stock kept by the said Bank and whose stock was at the date of issue thereof on a register of stock kept by the said Bank in Australia and the registration of which was subsequently transferred to the London Register are entitled to be paid in the winding up of the said Bank the principal and/or interest monies secured or represented by or payable in respect of such stock the registration of which was so transferred on the basis that they receive the equivalent of the face value of the said principal and/or interest monies in English or Australian currency.

3. Whether the registered holders of such stock whose stock was at the date of the commencement of the voluntary winding up of the said Bank and was at all times prior thereto registered on a register of stock kept by the said Bank in Australia are entitled to be paid in the winding up of the said Bank the principal and/or interest monies secured or represented by or payable in respect of such stock on the basis that they receive the equivalent of the face value of the said principal and/or interest monies in English or Australian currency.

4. Whether the registered holders of such stock whose stock was at the date of the commencement of the voluntary winding up of the said Bank registered on a register of stock kept by the said Bank in Australia and whose stock was at the date of issue thereof on the said London register and the registration of which was subsequently transferred to a register of stock kept by the said Bank in Australia are entitled to be paid in the winding up of the said Bank the principal and/or interest monies secured or represented by or payable in respect of such stock the registration of which was so transferred on the basis that they receive the equivalent of the face value of the said principal and/or interest monies in English or Australian currency.

5. Whether the registered holders of such stock whose stock was at the date of commencement of the voluntary winding up of the said Bank registered on a register of stock kept by the said Bank in Australia and whose stock was at the date of issue thereof on a register of stock kept by the said Bank in Australia but had been at an intermediate period registered on the said London register are entitled to be paid in the winding up of the said Bank the principal and/or interest monies secured or represented by or

payable in respect of such stock the registration of which was so transferred on the basis that they receive the equivalent of the face value of the said principal and/or interest monies in English or Australian currency.

6. Whether the registered holders of such stock whose stock was at the date of the commencement of the voluntary winding up of the said Bank registered on the said London register and was at the date of issue thereof on the said London register but had been at an intermediate period registered on a register of stock kept by 10 the said Bank in Australia are entitled to be paid in the winding up of the said Bank the principal and/or interest monies secured or represented by or payable in respect of such stock the registration of which was so transferred on the basis that they receive the equivalent of the face value of the said principal and/or interest monies in English or Australian currency.

7. Whether, if any registered holder of such stock is entitled to be paid the principal and/or interest monies secured or represented by or payable in respect of such stock on the basis that such holder receive the equivalent of the face value of the said principal 20 and/or interest monies in English currency, such equivalent is to be ascertained as of the date of the commencement of the winding-up or as of the date of payment or as of any other and if so what date ? "

142. Prior to liquidation of the Q.N. Bank interest on its Interminable Inscribed Deposit Stock was paid in the currency of the country where the stock was registered but since the date of liquidation of the Q.N. Bank I have paid the interest on the Q.N. Bank's Interminable Inscribed Deposit Stock in Australian currency but The National Bank has borne the cost of transferring Australian money to London to meet the interest payable 30 to stock-holders on the London Register. The paper writings now produced and shown to me and marked with the letters " BJ " " BK " " BL " " BM " " BN " and " BO " are copies of circular letters which were sent by me to stockholders of the Q.N. Bank when advising them of interest credited or forwarding them interest cheques in respect of interest accrued due since the date of the Q.N. Bank's voluntary liquidation.

143. I have sufficient assets out of which to pay all the Interminable Inscribed Deposit Stock of the Q.N. Bank irrespective of the currency in which the same is to be paid and the cost of any proceedings taken to determine the questions arising herein.

40 144. I have been advised by my legal advisers that the persons affected by the aforesaid questions are :—

(A) Those holders of the Q.N. Bank's Interminable Inscribed Deposit Stock whose stock was at the date of the commencement of the voluntary winding up of the Q.N. Bank and was at all times prior thereto registered on the Register of Stock kept by the Q.N. Bank in London.

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 6. Affidavit of Fred Pace, 11th August 1949, *continued.*

(B) Those holders of the Q.N. Bank's Interminable Inscribed Deposit Stock whose stock was at the date of issue thereof registered on a Register of Stock kept by the Q.N. Bank in Australia the registration of which was subsequently transferred to the Register of Stock kept by the Q.N. Bank in London.

(C) Those holders of the Q.N. Bank's Interminable Inscribed Deposit Stock whose stock was at the date of the commencement of the voluntary winding up of the Q.N. Bank and was at all times prior thereto registered on the Register of Stock kept by the Q.N. Bank in Australia. 10

(D) Those holders of the Q.N. Bank's Interminable Inscribed Deposit Stock whose stock was at the date of issue thereof registered on the Register of Stock kept by the Q.N. Bank in London the registration of which was subsequently transferred to a Register of Stock kept by the Q.N. Bank in Australia.

(E) Those holders of the Q.N. Bank's Interminable Inscribed Deposit Stock whose stock was at the date of the commencement of the voluntary winding up of the Q.N. Bank registered on a Register of Stock kept by the Q.N. Bank in Australia and whose stock was at the date of issue thereof on a Register of Stock kept 20 by the Q.N. Bank in Australia but had been at an intermediate period registered on the said London Register.

(F) Those holders of the Q.N. Bank's Interminable Inscribed Deposit Stock whose stock was at the date of the commencement of the voluntary winding up of the Q.N. Bank registered on the said London Register and was at the date of issue thereof registered on the said London Register but had been at an intermediate period registered on a Register of Stock kept by the Q.N. Bank in Australia.

(G) The National Bank. 30

145. The paper writing now produced and shown to me and marked with the letters " BP " is a copy of a circular letter dated 16th March 1949 which I have sent to all holders of Interminable Inscribed Deposit Stock of the Q.N. Bank. I have not received any advice from any stockholder that he objects to either the classes of stockholders represented in these proceedings or to the respondents joined to represent such stockholders and I have been advised by the Managers of Brisbane, London, Sydney and Melbourne Branches of The National Bank formerly the Q.N. Bank that no objections thereto have been lodged at their offices. The total amount of stock on such registers amounts to £2,505,959 out of a total 40 of £2,559,086.

146. The book now produced and shown to me and marked with the letters " BQ " contains copies of certain correspondence (omitting formal parts thereof) which passed between the General Manager of the Q.N. Bank and its London Board and the Manager of the London Branch of the Q.N. Bank and between such Manager and certain of the Bank's

agents and other persons as set out in such book and extracts from minutes of meetings of the Bank's Directors held in Brisbane and of meetings of the Q.N. Bank's London Board of Directors.

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 6. Affidavit of Fred Pace, 11th August 1949, *continued.*

Certain of the facts herein deposed to are within my own knowledge but such of the facts as are not within my own knowledge have been deposed to from records of the Q.N. Bank which are in my possession as Liquidator of the said Bank or from a search in the files of the Supreme Court in relation to the Schemes of Arrangement entered into by the Q.N. Bank in the years 1893 and 1897 respectively and from photostatic
10 copies of documents on the file of the High Court of Justice in England copies of papers on the file of the Supreme Court of New South Wales which have been shown to me by my Solicitors and which have, I am informed, been received by them from their agents in Sydney and from information supplied to me and my means of knowledge and sources of information appear on the face of this my affidavit.

Signed and Sworn by the above-named Deponent Fred Pace at Brisbane this Eleventh day of August 1949 } F. PACE

Before me :

20 A. L. RAFF, J.P.,

A Justice of the Peace.

No. 7.

EXHIBITS to affidavit of Fred Pace.

No. 7. Exhibits to Affidavit of Fred Pace.

(Separate Documents, and see Volume 2.)

No. 8.

AFFIDAVIT of Fred Pace.

I FRED PACE of Westminster Road Indooroopilly Brisbane in the State of Queensland Retired Bank Official, being duly sworn make oath and say as follows :—

1. I am the deponent mentioned and described in an affidavit filed herein on the fifteenth day of August 1949 to which affidavit I beg leave to refer.

2. In relation to Paragraph 146 of the said affidavit the following extracts are extracts of minutes of meetings of the Board of Directors of the Q.N. Bank held in Brisbane on the 26th day of April 1893 and the 3rd and 11th days of May 1893 respectively :—

26th April 1893 — " Position of the Bank.—The Board gave careful consideration to the position of the Bank and saw no immediate cause of apprehension so far as the Colonial business was concerned. They fear that the false statements published by the ' London Standard Newspaper ' will have a prejudicial effect on the minds of British depositors."

3rd May 1893 — " Position of Bank.—The Board reviewed the position of the Bank. So far no sign of panic has shown itself in Queensland, but the state of affairs in London causes serious anxiety. The Board cordially approve of the action taken by the London Board in causing Writs to be issued against the ' London Standard,' ' Echo ' and ' St. James Gazette '."

11th May 1893 — " Affairs of the Bank.—The Board discussed the position of affairs, the General Manager reporting that no run had been made on the Bank at any of its branches, but that at Charters Towers a larger number of notes than usual had been presented for coin."

3. The rates of exchange charged by the Q.N. Bank for the transfer of moneys—

(A) from places in Queensland to other places in Queensland and—

(B) from places in Queensland to places elsewhere in Australia outside Queensland

have varied from time to time but forward and backward rates of such exchange between any two given places within Australia have always been similar at any given time.

4. Annexed hereto and marked " BR " is a schedule which shows the amounts held by depositors and interminable inscribed deposit stock-holders whose addresses were in the places mentioned in the headings

of the second, third, fourth, fifth, sixth, seventh and eighth columns of the said schedule and whose holdings were registered respectively on the relative registers kept at the places and in the years set forth in the first column of the said schedule.

Signed and Sworn by the above-named deponent Fred Pace at Brisbane aforesaid this twenty-sixth day of September 1949 before me : } F. PACE.

A. L. RAFF, J.P.,
10 A Justice of the Peace.

ANNEXURE B.R. TO AFFIDAVIT OF FRED PACE.

	Australia	*New Zealand*	*Canada*	*South Africa*	*Eire*	*India*	*Foreign Countries*
London 1893 ..	£1.470	£168	£900	£100	£60.344	£3.010	£7.395
London 1897 ..	1.470	268	1.000	100	61.644	3.510	6.370
London 1947 ..	8.177	292	1.935	3.788	7.328	815	23.780
	Great Britain						
Brisbane 1893 ..	5.557	28	Nil	Nil	Nil	Nil	32
20 Brisbane 1897 ..	5.517	21	Nil	Nil	Nil	Nil	24
Brisbane 1947 ..	Nil	1.043	Nil	Nil	Nil	Nil	533
Sydney 1893 ..	12.849	184	Nil	Nil	Nil	Nil	270
Sydney 1897 ..	8.343	138	Nil	Nil	410	Nil	203
Sydney 1947 ..	139	Nil	Nil	Nil	Nil	Nil	Nil
Melbourne 1947 ..	Nil	2.014	Nil	Nil	Nil	Nil	Nil

ON REVERSE]

This is the schedule marked " BR " mentioned and referred to in the annexed affidavit of Fred Pace sworn at Brisbane in the State of Queensland this twenty-sixth day of September 1948 before me :

30 F. PACE
Deponent

A. L. RAFF, J.P.
A Justice of the Peace.

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 9.
Reasons of Macrossan, C.J., for Order.

No. 9.

REASONS of Macrossan, C.J., for Order.

IN THE MATTER of The Companies Acts 1931 to 1942

AND IN THE MATTER of THE QUEENSLAND NATIONAL BANK LIMITED (In Voluntary Liquidation).

This is an application by the Liquidator of The Queensland National Bank Limited (hereinafter called the Bank) in Voluntary Liquidation for an order under Section 258 of the Companies Acts to determine certain questions arising in the winding up of the Bank.

The questions concern the obligations of the Bank to several categories 10 of the holders of Interminable Inscribed Deposit Stock (hereinafter called the said stock) created by the Bank in 1897 in pursuance of a scheme of Arrangement finally sanctioned by this Court on the 12th May, 1897.

The question to be decided is—What is the money of account by which the obligation of the Bank to pay to the holders of the said stock the principal moneys secured or represented by the said stock is to be ascertained ?

The holders of the said stock whose rights have to be determined fall into the following categories :—

(A) Those whose stock was at the date of the commencement 20 of the voluntary winding up of the Bank and at all times prior thereto registered on the Register of Stock kept by the Bank in London ;

(B) Those whose stock was at the date of issue thereof registered on a Register of Stock kept by the Bank in Australia the registration thereof being subsequently transferred to the Register of Stock kept by the Bank in London ;

(C) Those whose stock was at the date of the commencement of the voluntary winding up of the Bank and at all times prior thereto registered on a Register of Stock kept by the Bank in 30 Australia ;

(D) Those whose stock was at the date of issue thereof registered on the Register of Stock kept by the Bank in London the registration thereof being subsequently transferred to a Register of Stock kept by the Bank in Australia ;

(E) Those whose stock was at the date of issue thereof and also at the date of the commencement of the voluntary winding up of the Bank registered on a Register of Stock kept by the Bank in Australia, the stock having been at an intermediate period registered on the Register of Stock kept by the Bank in London ; 40 and

(F) Those whose stock was at the date of issue thereof and at the date of the commencement of the voluntary winding up of the Bank registered on the Register of Stock kept by the Bank in London, the said stock having been at an intermediate period registered on a Register of Stock kept by the Bank in Australia.

The questions which the Liquidator has submitted to this Court for determination are :—

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 9. Reasons of Macrossan, C.J., for Order, *continued.*

" 1. Whether the registered holders of Interminable Inscribed " Deposit Stock issued by The Queensland National Bank Limited " pursuant to a Scheme of Arrangement made between the said " Bank and certain of its creditors and sanctioned by the Supreme " Court of Queensland on the twelfth day of May, 1897, whose " stock was at the date of the commencement of the voluntary " winding up of the said Bank and was at all times prior thereto " registered on the London register of the said Bank, are entitled " to be paid in the winding up of the said Bank the principal and/or " interest monies secured or represented by or payable in respect " of such stock on the basis that they receive the equivalent of the " face value of the said principal and/or interest monies in English " or Australian currency ?

" 2. Whether the registered holders of such stock whose stock " was at the date of the commencement of the voluntary winding " up of the said Bank registered on the London register of stock " kept by the said Bank and whose stock was at the date of issue " thereof on a register of stock kept by the said Bank in Australia " and the registration of which was subsequently transferred to the " London Register are entitled to be paid in the winding up of the " said Bank the principal and/or interest monies secured or " represented by or payable in respect of such stock the registration " of which was so transferred on the basis that they receive the " equivalent of the face value of the said principal and/or interest " monies in English or Australian currency ?

" 3. Whether the registered holders of such stock whose stock " was at the date of the commencement of the voluntary winding " up of the said Bank and was at all times prior thereto registered " on a register of stock kept by the said Bank in Australia are " entitled to be paid in the winding up of the said Bank the " principal and/or interest monies secured or represented by or " payable in respect of such stock on the basis that they receive " the equivalent of the face value of the said principal and/or " interest monies in English or Australian currency ?

" 4. Whether the registered holders of such stock whose stock " was at the date of the commencement of the voluntary winding " up of the said Bank registered on a register of stock kept by the " said Bank in Australia and whose stock was at the date of issue " thereof on the said London register and the registration of which " was subsequently transferred to a register of stock kept by the " said Bank in Australia are entitled to be paid in the winding up " of the said Bank the principal and/or interest monies secured or " represented by or payable in respect of such stock the registration " of which was so transferred on the basis that they receive the " equivalent of the face value of the said principal and/or interest " monies in English or Australian currency ?

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 9. Reasons of Macrossan, C.J., for Order, *continued.*

" 5. Whether the registered holders of such stock whose stock " was at the date of commencement of the voluntary winding up " of the said Bank registered on a register of stock kept by the " said Bank in Australia and whose stock was at the date of issue " thereof on a register of stock kept by the said Bank in Australia " but had been at an intermediate period registered on the said " London register are entitled to be paid in the winding up of the " said Bank the principal and/or interest monies secured or repre- " sented by or payable in respect of such stock the registration of " which was so transferred on the basis that they receive the 10 " equivalent of the face value of the said principal and/or interest " monies in English or Australian currency ?

" 6. Whether the registered holders of such stock whose stock " was at the date of the commencement of the voluntary winding up " of the said Bank registered on the said London register and was " at the date of issue thereof on the said London register but had " been at an intermediate period registered on a register of stock " kept by the said Bank in Australia are entitled to be paid in the " winding up of the said Bank the principal and/or interest monies " secured or represented by or payable in respect of such stock the 20 " registration of which was so transferred on the basis that they " receive the equivalent of the face value of the said principal " and/or interest monies in English or Australian currency ?

" 7. Whether, if any registered holder of such stock is entitled " to be paid the principal and/or interest monies secured or " represented by or payable in respect of such stock on the basis " that such holder receive the equivalent of the face value of the " said principal and/or interest monies in English currency, such " equivalent is to be ascertained as of the date of the commence- " ment of the winding up or as of the date of payment or as of any 30 " other and if so what date ? "

Orders were made on the 22nd December, 1948, and the 15th February 1949, under Order 3, Rule 10, of The Rules of the Supreme Court for the appointment of representative members of the several classes of stock-holders defined above to be parties to this proceeding for the purpose of having the rights of the several classes determined.

The Bank was incorporated in Queensland under " The Companies Act 1863 " of the then Colony of Queensland in 1872. It was registered in England as a Foreign Company under the provisions of Section 35 of " The English Companies Act 1907 " in 1908 ; it commenced to carry on 40 the ordinary business of a trading Bank in Brisbane and elsewhere in Queensland in 1872, and it opened a branch at Sydney in New South Wales in 1881. By an Act of the Parliament of Queensland assented to in 1876 the Bank was authorised to open and keep registers of share-holders in places beyond Queensland. In 1878 it opened a register of shareholders in London which was kept until it went into voluntary liquidation. In 1878 the Bank opened a branch in London. The functions performed by this branch consisted mainly of providing the Bank's customers in Australia with facilities for financing their overseas purchases

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 9. Reasons of Macrossan, C.J., for Order, *continued.*

and sales. The London branch of the Bank also received money on deposit from persons in the British Isles. The Bank appointed a Local Board of Directors in London and it delegated certain powers to the Local Board. The Articles of Association of the Bank provided that Local Directors in the exercise of delegated powers should conform to any regulations imposed upon them by the Directors of the Bank.

The moneys received by the Bank in London on fixed deposit carried interest at the rate of Four to Five pounds per centum per annum the terms of the deposit being from one to five years.

10 In March 1891 the Bank held over £4,000,000 on Fixed Deposit in London and in March 1893 it so held there over £2,970,000. In May 1893 the Bank found itself in financial difficulty and suspended payment on the 15th May, 1893. Seven other Banks carrying on business in Australia also suspended payment in the months of April and May 1893. On the 15th May, 1893, a Petition was presented to this Court for the winding up of the Bank by the Court and on the 17th May, 1893, this Court appointed a Provisional Liquidator of the Bank. The date of hearing the Petition for winding up was adjourned from time to time by Orders of this Court. On the 30th June, 1893, the Bank submitted to this Court for its sanction
20 a Scheme of Arrangement with its creditors and on that day the Court directed that meetings of the creditors of the Bank should be called in Brisbane and in London for the purpose of considering the Scheme of Arrangement submitted. On the 24th July, 1893, a meeting of the Bank's British creditors was held in London and was attended either personally or by proxy by 1,238 creditors whose debts amounted to over £857,000. A resolution was unanimously passed at this meeting agreeing to the said Scheme of Arrangement with certain amendments. A meeting of the English shareholders of the Bank held in London on the same day also unanimously agreed to the said Scheme as so amended; this meeting was
30 attended either personally or by proxy by 474 shareholders of the Bank holding 34,751 shares. On the 27th July, 1893, a meeting of the Bank's creditors was held in Brisbane and was attended either personally or by proxy by 4,949 creditors whose debts amounted to £954,978. This meeting unanimously approved the said Scheme of Arrangement as so amended. On the same day a meeting of the shareholders of the Bank held in Brisbane also unanimously approved the said Scheme of Arrangement as amended. On the 31st July, 1893, this Court sanctioned the said amended Scheme of Arrangement with certain minor amendments, discharged the Provisional Liquidator, and stayed all proceedings on the Petition for
40 winding up. The Scheme of Arrangement so sanctioned by this Court is hereinafter called the old Scheme of Arrangement. Proceedings were also taken in the Supreme Court of New South Wales and in Her Majesty's High Court of Justice (Companies Winding up) in England to obtain the sanction of the said Courts to the old Scheme of Arrangement. An Order was made by the Supreme Court of New South Wales on the 11th August, 1893, sanctioning the old Scheme of Arrangement and an Order was made by the said High Court of Justice on the 13th September, 1893, sanctioning the old Scheme of Arrangement and staying all proceedings then before that Court in relation to the winding up of the Bank.

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 9. Reasons of Macrossan, C.J., for Order, *continued.*

Under the relevant English legislation then in force, namely, "The Joint Stock Companies Arrangement Act 1870," the assistance of the Court to sanction such a Scheme of Arrangement could not be invoked except in a winding up compulsory, voluntary or under supervision.

It seems to be clear that the winding up proceedings taken in England were taken only for the purpose of enabling the compromise of the Bank with its creditors to be sanctioned by the Court and that if an effective winding up order had been made in England it would have been ancillary to a winding up in Queensland. See *In re Vocalion (Foreign) Ld.* [1932] 2 Ch. 196 per Maugham, J., at 207. "The view of this Court is that the 10
" principal winding up should be in the principal domicil of the Corporation,
" and that any other winding up order should be ancillary to the principal
" winding up: See Orders and Cases referred to in Palmer, Part II,
" Winding up, 13th ed. at pp. 150–1. And see *In re Commercial Bank of*
" *South Australia* 33 Ch. D. 174." See now Palmer Part II 15th edn. p. 127 where reference is made to the Order of Vaughan Williams, J., of the 8th July, 1893, in the winding up proceedings in England in relation to the Bank whereby he ordered that no steps or proceedings were to be taken under the Order for winding up without the sanction of the Court.

The following provisions of the old Scheme of Arrangement have, 20 I think, a bearing on the determination of the questions which now fall to be decided.

"5. Debts owing by the Bank to Her Majesty's Government
" at the date of the suspension of the Bank shall be paid by the
" Bank in terms of an agreement whereby it has been agreed that
" the said Government (without prejudice to any preferential rights
" which the said Government may possess in respect of such debts
" in the event of the Bank being wound up at any time hereafter)
" as to £2,000,000 part of such debts will accept twelve deposit
" receipts of the Bank, each for one-twelfth of the said sum of 30
" £2,000,000 payable at intervals of six calendar months, commencing
" six years from the time when this Scheme is sanctioned by the
" Supreme Court, and bearing interest from the same date at the
" rate of 4½ per cent. per annum, payable half-yearly. And as to
" £360,000 balance of such debts as aforesaid will not during any
" one period of six consecutive calendar months withdraw any sum
" or sums exceeding in the whole the amount of £100,000 and will
" not make any such withdrawals without giving the Bank six
" calendar months' notice of their intention to make the same
" respectively. Provided, that from and after the time when this 40
" scheme is sanctioned by the Supreme Court interest at a rate not
" exceeding 4½ per centum per annum shall be payable by the
" Bank half-yearly in respect of so much of the said sum of
" £360,000 for the time being remains due and owing.

"6. Save as herein otherwise provided, and excepting Her
" Majesty's Government (for whom provision is made by the last
" preceding clause), and the holders of the bank notes of the Bank,
" and preference creditors not hereinbefore mentioned (who shall
" be paid in full as early as is practicable), every creditor of the
" Bank shall, for such of his claims and demands against the Bank 50

" as are not represented by negotiable deposit receipts or inscribed
" deposit stock as hereinafter provided, accept twelve deposit
" receipts of the Bank, each for one-twelfth of the balance of
" principal moneys now due to him by the Bank; the first of which
" deposit receipts shall become payable at the expiration of six years
" from the time when this scheme is sanctioned by the Supreme
" Court, and the remaining eleven at intervals of six calendar
" months; and each of such deposit receipts as represents debts
" now bearing interest shall bear interest up to the time when the
" existing deposits are now payable, at the rate of interest now
10 " payable in respect thereof; and thereafter at the rate of 4½ per
" cent. per annum, payable half-yearly, on the same days as the
" interest is now payable under the existing debts; and each of
" such deposit receipts as represents debts not now bearing interest
" shall bear interest from the time when this scheme is sanctioned
" by the Supreme Court at the rate of 4½ per cent. per annum,
" payable half-yearly.

In the Supreme Court of Queensland in its Equitable Jurisdiction.

No. 9. Reasons of Macrossan, C.J., for Order, *continued.*

" The interest now due, and accruing due, on deposits of the
" Bank now bearing interest, shall be paid as regards interest which
" has accrued, or shall accrue due on or before the time when this
20 " scheme is sanctioned by the Supreme Court, on the day after the
" Bank recommences business; and, as regards interest which shall
" accrue after that date, on such day as the same would have become
" due under the existing deposits; and all payments of principal
" and interest shall be made at the places where the same are now
" payable.

" 7. If any of the creditors of the Bank shall so desire, the
" Bank shall be at liberty to issue to such creditors, either in lieu of
" or in exchange for the deposit receipts to be issued pursuant to
" the last preceding clause; (A) negotiable deposit receipts payable
30 " to bearer, with interest coupons attached payable to bearer, and
" representing a similar amount and payable in the same manner,
" and at the same times as such deposit receipts; or (B) inscribed
" deposit stock repayable only at the option of the Bank, on six
" calendar months' notice after all the instalments of the substituted
" deposit receipts shall have been paid, and bearing interest at the
" rate of 4½ per cent. per annum payable half-yearly.

" All such negotiable deposit receipts and inscribed deposit
" stock shall be issued subject to such conditions as may be imposed
" by the Directors of the Bank.

40 " 9. Save as herein otherwise provided, the creditors of the
" Bank, except as aforesaid, shall accept the provisions made for
" them in this scheme in satisfaction and discharge of all claims
" and demands against the Bank and shall at the time of their
" application for new deposit receipts, negotiable deposit receipts,
" or inscribed deposit stock as aforesaid, deliver up to the Bank all
" deposit receipts and drafts or other similar documents issued by
" them by the Bank to be cancelled."

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 9. Reasons of Macrossan, C.J., for Order, *continued.*

At the date when the old Scheme of Arrangement was sanctioned by this Court the Bank owed the Government of Queensland approximately £2,186,000 and owed creditors in respect of deposits in Queensland, New South Wales and London, respectively, approximately £1,860,000, £110,000, and £2,897,000.

On the 29th June, 1893, the Parliament of Queensland enacted " The Queensland National Bank Limited Agreement Act of 1893 " which authorised the Treasurer of the Colony to enter into an agreement with the Bank for the repayment of the money due and owing from the Bank to the Government of Queensland at the date of the Bank's suspension of payment in the terms set out in Clause 5 of the old Scheme of Arrangement quoted above, and on the 20th September, 1893, an agreement was entered into between the Treasurer of Queensland and the Bank in pursuance of the provisions of the last-mentioned Act for the repayment by the Bank to the Government of Queensland of the moneys owing by the Bank to the Government on the terms set out in the old Scheme of Arrangement. In pursuance of the old Scheme of Arrangement the Bank duly issued to its creditors deposit receipts, negotiable deposit receipts payable to bearer or inscribed deposit stock in accordance with the provisions of Clauses 6 and 7 of the old Scheme of Arrangement. In the main deposit receipts were issued. So far as can be ascertained no inscribed deposit stock was issued in Australia. Such stock to the amount of approximately £50,000 was issued in London as against deposit receipts for approximately £4,050,000 and negotiable deposit receipts for approximately £198,000 issued to creditors of the Bank in England and in Australia other than the Government of Queensland.

As at the 31st December, 1894, the Bank owed on Fixed Deposit to the Government of Queensland £1,340,000 in Queensland, and £660,000 in London, and to private creditors approximately £1,516,000 in Queensland and New South Wales and approximately £2,534,000 in London.

The forms of Deposit receipt issued by the London Branch of the Bank are in the following terms :—

> " Receive from the sum of
> " as a Fixed Deposit to be accounted for to the depositor herein-
> " before named repayable in London on
> " bearing interest from at the rate of 4½ per
> " centum per annum payable half yearly on the thirtieth June and
> " the Thirty-first December."

And the form of Deposit receipt to Bearer issued by the London Branch of the Bank in pursuance of the old Scheme of Arrangement was in this form :—

> " The Queensland National Bank Limited hereby acknowledges
> " to have received from the sum of
> " as a deposit to be repayable in London
> " at the Office of the Bank to the bearer thereof on
> " and to bear interest from the 30th June, 1893, at the rate of
> " 4½ per centum per annum payable half yearly on the First January
> " and First July."

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 9. Reasons of Macrossan, C.J., for Order, *continued.*

Each of the interest coupons attached to the form of deposit receipt payable to bearer specify that the interest is payable at the office of the Bank in London.

The Liquidator of the Bank has been unable to find any copy of a form of inscribed deposit stock certificate issued under the old Scheme of Arrangement. The Bank found itself unable to carry out the provisions of the old Scheme of Arrangement.

On the 6th March, 1896, the Acting General Manager of the Bank reported to the Chairman of Directors that in his opinion without material 10 assistance from the depositors of the Bank under the old Scheme of Arrangement it would be impossible for the Bank to carry on beyond the date when the first deferred payments were due as the Bank would not be able to meet them without calling in liquid advances to an extent that would so contract its earnings as to be absolutely ruinous and from the effects of which the Bank could never recover and that attempting such a course could only result in ultimate liquidation.

The Government of Queensland appointed a committee to ascertain the position of the affairs of the Bank and the Report of this Committee which is dated the 12th November, 1896, was presented to both Houses of 20 Parliament of Queensland. From this Report it appears that in the opinion of the Committee the liabilities of the Bank exceeded its assets by approximately £2,435,423; that after treating the whole of the paid up capital as lost there was still a deficiency of £1,252,810, and that if the Bank had to go into liquidation this deficit would of necessity be largely increased because their estimates of values had been made on the basis that the assets should be realised judiciously and not by forced sales.

On the 9th February, 1897, the Bank submitted another Scheme of Arrangement for the sanction of this Court, and the Court directed that a meeting of creditors in respect of deposit receipts, negotiable deposit 30 receipts and inscribed deposit stock issued in pursuance of the old Scheme of Arrangement be held in Brisbane on the 22nd March, 1897, for the purpose of considering the said Scheme of Arrangement. This meeting of creditors was duly held and the said Scheme of Arrangement, with certain amendments, was duly approved by the creditors at the meeting. The said Scheme of Arrangement as so amended (which is hereinafter referred to as the new Scheme of Arrangement) was on the 12th May, 1897, finally sanctioned by this Court and declared to be binding upon all creditors of the Bank in respect of deposit receipts, negotiable deposit receipts and inscribed deposit stock and upon the Bank and its contributories.

40 In passing, it should be mentioned that it was not necessary in Queensland that winding up proceedings should be taken against the Bank to clothe the Court with jurisdiction to sanction and make binding the Scheme of Arrangement. See "The Companies Act Amendment Act of 1889" Section 35; "The Companies Act of 1893," Section 2; and "The Companies Act of 1896," Section 2.

On the 31st March, 1897, the Supreme Court of New South Wales in its Equity Jurisdiction directed a meeting of the Bank's creditors to be held in Sydney for the purpose of considering and if thought fit of agreeing

In the Supreme Court of Queensland in its Equitable Jurisdiction

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to the new Scheme of Arrangement. This meeting was duly held, the new Scheme of Arrangement was duly agreed to thereat, and on the 15th April, 1897, it was, by Order of the Supreme Court of New South Wales in Equity, sanctioned and approved.

On the 17th May, 1897, the Bank presented a Petition to Her Majesty's High Court of Justice in England praying that the Bank might be wound up by the Court under the provisions of "The Companies Acts 1862 to 1890." There was attached to this Petition a copy of the new Scheme of Arrangement. The Petition disclosed that the new Scheme of Arrangement had been sanctioned by the Supreme Court of Queensland, that the adoption of the new Scheme of Arrangement was the only means of averting bankruptcy, and that in order to have it sanctioned by the Court in England it was necessary that the Bank should first be wound up.

On the 27th May, 1897, the said High Court of Justice ordered that the Bank should be wound up, continued the appointment of a Provisional Liquidator, and ordered that no steps or proceedings should be taken under the Order without the sanction of the Court.

On the same day it ordered the Provisional Liquidator to convene a meeting of the creditors of the Bank in respect to deposit receipts, negotiable deposit receipts and inscribed deposit stock of the Bank for the purpose of considering and, if thought fit, approving the new Scheme of Arrangement. This meeting of creditors was duly held and the new Scheme of Arrangement was approved by a majority considerably in excess of three-fourths in value of the creditors attending the meeting.

On the 4th June, 1897, the said High Court of Justice sanctioned the new Scheme of Arrangement and declared it to be binding on all creditors of the Bank in respect of deposit receipts, negotiable deposit receipts and inscribed deposit stock issued by the Bank in pursuance of the old Scheme of Arrangement and on the contributories of the Bank. It further ordered that all further proceedings relating to the winding up of the Bank be stayed except for the purpose of carrying out the Order and the new Scheme of Arrangement into effect.

It is on the construction of the new Scheme of Arrangement that the questions submitted to the Court fall for determination. It is therefore necessary to refer in some detail to several provisions of the Scheme.

Clause 1 provided that certain terms should have certain meanings in the Scheme and in the Schedule thereto unless there was something in the subject or context inconsistent therewith, namely, "The Government"—Her Majesty's Government of Queensland. "Court"—The Supreme Court of Queensland. "Stock"—Interminable Inscribed Deposit Stock of the Bank created in pursuance of Clause 3 of the Scheme. "The said securities"—Deposit Receipts, Negotiable Deposit Receipts, with the coupons appertaining thereto, and Inscribed Deposit Stock issued or given to creditors of the Bank under or in pursuance of the old Scheme of Arrangement or held by the Bank on behalf of such creditors as security for any advances made to them by the Bank, and all other similar documents held by creditors of the Bank at the date of the last-mentioned Scheme which have not been surrendered in exchange for any of the said securities under or in pursuance of the terms of such Scheme.

Clause 2 provides :—

" Subject to the provisions of this Scheme, the Government " (without prejudice to any preferential rights which it may possess) " shall accept in full satisfaction and discharge of all principal " moneys and interest owing or to become owing by the Bank to " the Government under the terms of the old agreement ; (A) A " sum equal to 15s. in the £ upon the amount of such principal " moneys which said sum of 15s. in the £ (unless sooner paid at " the option of the Bank as hereinafter provided) shall be payable 10 " in five equal annual instalments commencing on the 1st day of " July, 1917, and shall carry interest from and after the 31st day " of March, 1897, at the rate of $3\frac{1}{2}$ per cent. per annum, provided " that the amount for the time being payable for interest shall " never be less than the minimum amount prescribed by The " Queensland National Bank Limited (Agreement) Act of 1896 " with reference to an agreement made under the authority of " that Act ; and (B) A further sum equal to 5s. in the £ upon the " amount of such principal moneys as aforesaid, which said sum " of 5s. in the £ shall be payable out of such part of the half-yearly 20 " profits of the Bank as hereinafter provided, and shall not carry " any interest : Provided that, if the said sum of 5s. in the £ should " not be sooner paid out of such profits as aforesaid or otherwise " at the option of the Bank as hereinafter provided the same or so " much thereof as for the time being remains unpaid shall become " and be payable on the 1st day of July, 1921.

" The interest on the said sum of 15s. in the £ or on so much " thereof as for the time being remains unpaid, shall be payable " on the 30th day of June and the 31st day of December in each " year, and the Bank shall pay any interest payable under the 30 " terms of the old agreement up to the end of the 31st day of " March, 1897."

Clause 3 provides :—

" As soon as may be, and within six months after this Scheme " is finally sanctioned by the Court, the Bank shall create and allot " to and amongst the registered holders of the said securities " respectively stock to an amount equal to 75 per cent. of the " principal moneys secured or represented by their said securities " after deducting from such principal moneys any fractional part " of £1 owing to such registered holders respectively.

40 " The said stock shall carry interest from and after the 31st day " of March, 1897, at the rate of $3\frac{1}{2}$ per cent. per annum."

Clause 4 provides :—

" Subject to the provisions of this scheme, each of the registered " holders of the said securities shall accept, in satisfaction and " discharge of his said securities and of all principal moneys and " interest secured or represented thereby, an amount of the said " stock equal to 15s. in the £ upon the principal moneys secured " or represented by his said securities after deducting from such " principal moneys any fractional part of £1.

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Reasons of Macrossan, C.J., for Order, *continued.*

" Any such fractional part of £1 shall be paid by the Bank in " Cash.

" Upon receiving notice of the allotment of such stock, the " allottee shall forthwith surrender to the Bank his securities " aforesaid, together with any coupons appertaining thereto, and " shall be entitled in exchange therefor to a certificate of the stock " so allotted to him as aforesaid.

" The interest on the said stock shall be payable half-yearly " on the 30th day of September, and the 31st day of March in " each year at the respective offices of the Bank in Queensland, 10 " Sydney, and London, at which such stock is registered ; and the " Bank shall pay any interest due in respect of the surrendered " securities up to the end of the 31st day of March, 1897, upon such " surrender.

" In addition to such interest as aforesaid, registered holders " of stock shall be entitled by way of bonus to such part of the " half-yearly profits of the Bank as hereinafter provided."

Clause 5 provides :—

" The principal moneys payable to the Government under the " terms of this Scheme, and the principal moneys secured or 20 " represented by the said stock shall immediately become payable— " (A) If the Bank makes default for a period of six months in the " payment of any interest payable thereon at the times and in the " manner hereinbefore provided, and if after such default the " Government or registered holders of stock to an amount equal to " two-thirds of the stock for the time being unredeemed, calculated " at its par value, by notice in writing to the Bank, call in such " principal moneys ; or (B) If an order is made, or an effective " resolution is passed, for the winding-up of the Bank."

Clause 6 provides :— 30

" The said stock shall be issued and held subject to the pro- " visions of this Scheme and to the conditions set forth in the " schedule hereto, and such provisions and conditions shall be " binding on the Bank and the registered holders of stock and all " persons claiming through or under them respectively."

Clause 7 provided for the application of the profits of the Bank and in particular provided that the balance of profits arising from the business of the Bank in each half year after setting aside an amount for contingencies should be dealt with by paying twenty-five per cent. of the balance to the Government until the sum of 5s. in the £ in clause 2 referred to had been 40 duly paid ; fifty per cent. of the balance, or after payment to the Government of the said sum of 5s. in the £ seventy-five per cent. of the balance was to be carried to a special fund to be paid and distributed in the discretion of the Directors amongst the registered holders of stock rateably until an aggregate amount or bonus equal to 5s. in the £ upon " the principal moneys secured or represented by the said securities " has been made good out of such balance of profits, and thereafter are to be applied in payment to the Government of any moneys payable to the Government under this Scheme. After these payments had been made such seventy-five

per cent. of the balance of profits was to be dealt with in any manner authorised by the regulations of the Bank for the time being in force; the remaining twenty-five per cent. of the balance of profits was for a period of at least ten years from the 31st March 1897, to be carried to the ordinary reserve fund of the Bank; thereafter it might be dealt with in any manner authorised by the regulations of the Bank.

Clause 8 gave the Bank an option at any time after the expiration of five years from the date when the Scheme was finally sanctioned by the Court to pay off the Government subject to certain conditions.

10 Clause 10 gave the Bank an option after payment of the amount due to the Government to give the registered holders of the said stock, or any of them, six calendar months' notice of its intention to redeem the stock held by them, or any portion thereof, " at its market value, but at not less than its par value," together with 5s. in the £ upon the amount of the principal moneys secured or represented by the said securities in exchange for which such stock was allotted, or so much of such 5s. in the £ as had not been previously paid. At the expiration of the notice every registered holder of stock to whom the notice was given was bound to surrender to the Bank to be cancelled the amount of his stock which was to be so
20 redeemed and to deliver up his certificate of stock for cancellation; and the Bank thereupon pay to the registered holder of such stock the redemption money therefor calculated at the price aforesaid together with all interest for the time being due in respect of such stock. Such surrender delivery and payment shall be made at the office of the Bank at which such stock is registered.

Clause 12 provided :—

" As soon as proper provisions in that behalf can be made in " the Articles of Association, and so long as stock to the amount " of £500,000 is unredeemed, one member of the London Board of
30 " Directors shall be appointed by the registered holders of stock " and need not be a member or shareholder of the Bank, and the " Board of Directors of the Bank at Brisbane shall consist of five " persons, three of whom shall be elected by the registered holders " of the said stock, and need not be members or shareholders of " the Bank; and for the purpose of electing such last-mentioned " Directors the registered holders of stock shall be entitled to have " notice of and to attend meetings of the Bank at which such " Directors are to be elected, and to vote in person or by proxy " according to the following scale, that is to say :—

40 " Registered holders of stock for an amount of " not less than £500 .. .. One vote.

" Registered holders of stock for an amount of " not less than £2,000 .. .. .. Two votes.

" Registered holders of stock for an amount of " not less than £5,000 .. .. .. Three votes.

" Registered holders of stock for an amount " exceeding £5,000 .. .. Four votes.

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" Provided that all proxies given by registered holders of " stock shall be deposited at the office of the Bank at which such " stock is registered not less than three days before the date of the " meeting at which such proxies are intended to be used. Particulars " of all proxies so deposited at any office other than the Head Office " of the Bank at Brisbane, sufficient to enable such proxies to be " used at such meetings may be sent by telegram to the General " Manager of the Bank in Brisbane."

Clause 13 provided :—

" As soon as conveniently may be after this Scheme is finally " sanctioned by the Court, the nominal capital of the Bank shall " be reduced from £1,600,000 divided into 200,000 shares of £8 each " to £1,000,000 divided into 200,000 shares of £5 each.

" The reduction shall be effected by cancelling paid up capital " to the extent of £3 per share upon each of the 160,000 shares " which have been issued, and by reducing the nominal amount of " all shares in the Bank's capital from £8 to £5 per share ; but shall " not involve the diminution of any liability in respect of unpaid " capital or the payment to any member of the Bank of any paid up " capital."

Clause 14 provided :—

" The Bank shall, as soon as practicable, after this Scheme " has been finally sanctioned by the Court, amend or alter its " Articles of Association so far as may be necessary for the purpose " of giving effect to the provisions of this Scheme."

Clause 15 provided :—

" All such other provisions as by The Queensland National " Bank Limited (Agreement) Act of 1896 are prescribed in the case " of an agreement made under the authority of that Act shall be " deemed to be incorporated in this Scheme."

The Schedule to the new Scheme of Arrangement contained, inter alia, the following provisions :—

" 1. Registers of Stock will be kept by the Bank at its Head " Office in Brisbane, or at its Branch Offices in Queensland, Sydney, " or London (as the case may be), at which the securities in exchange " for which such Stock was allotted were at the time of such " allotment payable, or at the office of the Bank to which such " Stock may be transferred in manner hereinafter provided.

" 2. In every Register of Stock so kept by the Bank aforesaid " there will be entered—

" (A) The names, addresses, and description of the registered " holders for the time being of such Stock ;

" (B) The particulars and amount of the Stock held by every " such registered holder ; and

" (C) The date at which every snch registered holder was " entered in the Register in respect of the Stock standing in his " name, or any part thereof.

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No. 9. Reasons of Macrossan, C.J., for Order, *continued.*

" Any change of name or address on the part of any registered " holder of Stock shall forthwith be notified to the Manager of the " office at which such Stock is registered, who, upon being satisfied " thereof, shall alter the Register accordingly.

" 3. The registered holder of any Stock may, upon application " in writing addressed to the Manager at the office where such " Stock is registered, require that the registration of such Stock " shall, at his cost and expense, be transferred to the Register kept " at any other office ; and upon such transfer being effected the " said Stock shall be deemed to be registered at the last-mentioned " office.

" 4. No notice of any trust, expressed, implied, or constructive, " shall be entered on the Register in respect of any Stock.

" 5. Every registered holder of Stock will be entitled to a " certificate of his title to such Stock, which certificate shall be in " the form or to the effect following, that is to say :—

" THE QUEENSLAND NATIONAL BANK LIMITED.

" Interminable Inscribed Deposit Stock.

" No. £

" Bearing interest at the rate of 3½ per cent. per annum, payable " on the 31st day of March and the 30th day of September in " each year.

" This is to certify that

" of is the registered holder of

" of the above Stock, which Stock is " constituted pursuant to the provisions of the Scheme of " Arrangement sanctioned by the Supreme Court of Queensland " on the 12th day of May, 1897, and is issued subject to the " provisions and conditions therein, and in the Schedule thereto " respectively contained.

" NOTE : The Bank will not register a transfer of any Stock " without the production of the certificate relating to such Stock, " which certificate must be surrendered before any transfer, " whether of the whole or any portion thereof, can be registered, " or before a new certificate can be issued in exchange.

" A fee not exceeding 2s. 6d. will be charged on the registration " of any transfer.

" 10. Every registered holder of Stock shall be entitled to " transfer the same or any part thereof by an instrument in writing " in the form following, or as near thereto as the circumstances " will admit :—

" THE QUEENSLAND NATIONAL BANK LIMITED.

" I, of

" in consideration of the sum of £ paid

" to me by , of ,

" do hereby transfer to the said

" (hereinafter called the transferee)

" of the Stock of the above-named Bank, to hold the same unto

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No. 9. Reasons of Macrossan, C.J., for Order, *continued.*

" the transferee subject to the several conditions on which I held
" the same immediately before the execution hereof; and I,
" the transferee, do hereby agree to take the said Stock subject
" to the same conditions.

" As witness our hands this day of

" WITNESS

" 12. Every instrument or transfer must be left at the office
" of the Bank at which the Stock to be transferred is registered
" for registration, accompanied by the certificate of the Stock for
" cancellation and such other evidence as the Bank may require to 10
" prove the title of the transferor or his right to transfer the Stock.

" 13. All instruments of transfer which shall be registered shall
" be retained by the Bank.

" 14. A fee not exceeding 2s. 6d. will be charged for the
" registration of each transfer, and must, if required by the Bank,
" be paid before the registration of the transfer.

" 19. The interest on Stock and all other moneys payable in
" respect thereof may be paid by cheque or warrant sent through the
" post to the registered address of the holder, or, in the case of joint
" holders, to the registered address of that one of the joint holders 20
" who is first named on the Register in respect of such Stock.
" Every such cheque or warrant shall be made payable to the order
" of the person to whom it is sent, and payment of the cheque or
" warrant, if duly endorsed, shall be a satisfaction of the interest
" and such other moneys as aforesaid, and a good discharge to the
" Bank therefor."

In pursuance of Clause 3 of the new Scheme of Arrangement the Bank allotted to and amongst the registered holders of deposit receipts, negotiable deposit receipts and the registered holders of inscribed deposit stock issued to creditors of the Bank in pursuance of the old Scheme of Arrangement 30 interminable inscribed deposit stock of the Bank of a face value of £3,116,621.5.0, being an amount equal to seventy-five per cent. of the principal moneys secured or represented by the said deposit receipts, negotiable deposit receipts and inscribed deposit stock. Of this £1,083,097.0.0 was issued in Australia and £2,033,524.0.0 in London. The twenty-five per cent. of the principal moneys written off was repaid in cash between 1900 and 1918 the repayment amounting to £1,038,874.

The following table shows the amounts of the stock originally issued the registration of which was transferred from an Australian Register to the London Register, and from the London Register to an Australian 40 Register, and also the amounts purchased by the Bank from time to time, and the amount outstanding on the 30th October, 1947, the date of the commencement of the voluntary winding up of the Bank. All the interminable inscribed deposit stock originally registered on the London Register of such stock pursuant to the new Scheme of Arrangement was issued by the Bank in satisfaction and discharge of securities issued by the Bank in 1893 and payable at the London Branch of the Bank.

" INTERMINABLE INSCRIBED DEPOSIT STOCK.

	Australia	*London*
" Original amount	1,083,097	2,033,524
" Transfers London to Australia .	754,662	754,662
	1,837,759	1,278,862
" Transfers Australia to London .	731,720	731,720
	1,106,039	2,010,582
" Less Purchases by the Q.N. Bank .	376,770	180,765
	729,269	1,829,817
" Present Total (Face Value) . .		£2,559,086 "

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No. 9. Reasons of Macrossan, C.J., for Order, *continued.*

10

Six photostatic copies of interminable inscribed deposit stock certificates issued by the Bank in pursuance of the new Scheme of Arrangement in Brisbane, London, Sydney and St. George are exhibited to the affidavit of the Liquidator. In two of these, one issued in London and one issued at St. George in Queensland, the letters " stg." appear after the wording of the amount specified in the certificate. In my opinion nothing turns upon the use of the word " sterling " or the letters " stg." in some of the certificates issued by the Bank up to the year 1931, and I did not understand that any of the parties placed any reliance upon the use of these words in some of the certificates.

20

The Affidavit of the Liquidator states, and it was not disputed that it was common practice in Australia prior to the year 1931 for persons to insert frequently the letters " stg." or the word " sterling " in cheques issued by them after the wording of the amounts for which the cheques were drawn.

Up to about the year 1931 the rate of exchange between England and Australia varied from time to time, sometimes in favour of England, and sometimes in favour of Australia. In 1931 the rate of exchange between Australia and England was fixed by the Commonwealth Bank of Australia at £130 Australian to £100 English and later in that year at £125 Australian to £100 English, which latter rate is still in force. In consequence, the Bank, in common with other trading Banks, issued instructions to its officers to refrain from using the letters " stg." or the word " sterling " on all documents with the exception of drafts on London or on Foreign Agents where recoupment was to be effected through the Bank's London Office. Further, a search by the Liquidator of 74 cancelled interminable inscribed deposit stock certificates issued by the London Branch of the Bank since 1931 and which are now in the Liquidator's possession disclosed that in no case did the letters " stg." or the word " sterling " appear therein.

30

40

Prior to the year 1919 the Bank repaid to the Government of Queensland the whole of the moneys owing by the Bank to the Government referred to in Clause 2 of the new Scheme of Arrangement. In pursuance of Clause 1 of the Schedule to the new Scheme of Arrangement the Bank

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has kept at its Head Office in Brisbane and at its Branches in Queensland, Sydney, London and Melbourne, registers of stock issued in pursuance of the new Scheme of Arrangement, and in pursuance of Clause 3 of the said Schedule, registered holders of stock have from time to time transferred the registration of their stock from one register to another.

An examination of the registers of the holders of deposit receipts issued by the Bank which were opened in Brisbane immediately after the old Scheme of Arrangement was sanctioned and of the registers of interminable inscribed deposit stock issued in pursuance of the new Scheme of Arrangement shows that in many instances the address of the holder of such stock was not in the State or Country in which the stock was registered.

The sum of 5s. in the £ upon "the principal moneys secured or represented by the said securities" referred to in Clause 7 (2) of the new Scheme of Arrangement was paid to the holders of interminable inscribed deposit stock by instalments from time to time in the currency of the Country in which such stock was for the time being registered, a final payment being made in 1918.

At all times after the date of the adoption of the New Scheme of Arrangement until the date of liquidation of the Q.N. Bank as hereinafter referred to when application was made to transfer the registration of Interminable Inscribed Deposit Stock from the register at one branch of the Bank to another register the applicant was required to surrender for cancellation his existing certificate for Interminable Inscribed Deposit Stock and after the transfer of the registration of Interminable Inscribed Deposit Stock from the register of one branch of the Bank to the register at another branch of the Bank had been completed the cancelled certificate for the Interminable Inscribed Deposit Stock the registration of which had been so transferred was retained by the Bank and a new certificate was issued to the holder of the Interminable Inscribed Deposit Stock showing the Branch to which the registration of such Interminable Inscribed Deposit Stock had been transferred.

Where the registration of stock was transferred from one branch to another the stock the registration of which was so transferred ceased to be shown as a liability in the books of the transferor branch and the face value of such holding of the stock was thereafter shown as a liability in the books of account of the transferee branch.

The register of stock kept at each branch of the Q.N. Bank was complete in itself and no duplicate of the register kept at any branch was held at the head office of the Bank.

No distinction was made in the payment of interest and bonus between stock originally registered on any such register and stock the registration whereof was subsequently transferred thereto.

The practice of the Brisbane Branch of the Bank was to charge residents in England the prevailing rate of exchange Australia on London when remitting interest payable on stock registered on the register of stock kept by the Bank in Brisbane.

In the Supreme Court of Queensland in its Equitable Jurisdiction.

No. 9. Reasons of Macrossan, C.J., for Order, *continued.*

The affidavit of the Liquidator states that in some instances it may be impossible to ascertain the place of original issue of certain holdings of the stock and that in cases where the registration of the stock has been transferred from London to Australia or vice versa, some of the stock will undoubtedly be found to have been intermingled so as to make it impossible to determine the place of original issue of all or portion of an individual stockholder's present holding.

In 1947 an agreement was made between the Bank, its shareholders, and the National Bank of Australasia Limited (hereinafter referred to as 10 the National Bank) whereby, inter alia, the shares of the shareholders of the Bank were exchanged for shares in the National Bank and the National Bank became the holder either in its own name or in the names of its nominees of all the shares in the Bank.

On the 30th October, 1947 an effective resolution was passed at a meeting of members of the Bank that the Bank be wound up voluntarily and that Mr. Fred Pace be appointed Liquidator for the purposes of the winding up. The Liquidator has sufficient assets out of which to pay all the interminable inscribed deposit stock of the Bank irrespective of the currency in which the same is to be paid and the costs of any proceedings 20 taken to determine the questions arising herein. The winding up of the Bank is a members' voluntary winding up.

In order to determine the obligations of the Bank to the holders of interminable inscribed deposit stock it is necessary first to decide what is the proper law to be applied in construing the contract between the Bank and the shareholders.

" The proper law of the contract means that law which the English " or other Court is to apply in determining the obligations under the " Contract. English law in deciding these matters has refused to treat as " conclusive, rigid or arbitrary, criteria such as lex loci contractus or 30 " lex loci solutionis, and has treated the matter as depending on the " intention of the parties to be ascertained in each case on a consideration " of the terms of the contract, the situation of the parties, and generally " on all the surrounding facts. It may be that the parties have in terms " in their agreement expressed what law they intend to govern, and in that " case prima facie their intention will be effectuated by the Court. But " in most cases they do not do so. The parties may not have thought of the " matter at all. Then the Court has to impute an intention, or to determine " for the parties what is the proper law which, as just and reasonable " persons, they ought or would have intended if they had thought about the 40 " question when they made the contract. No doubt there are certain " prima facie rules to which a Court in deciding on any particular contract " may turn for assistance, but they are not conclusive. In this branch of " law the particular rules can only be stated as prima facie presumptions. " It is not necessary to cite authorities for these general principles." *Mount Albert Borough Council* v. *Australasian T. & G. Mutual Life Assurance Society Limited* [1938] A.C. 224 at 240.

The proper law of a contract is the law of the place with which, to use the words of many cases, it has the most real connection. That place is usually the place where the contract is made but if it is to be performed

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 9. Reasons of Macrossan, C.J., for Order, *continued.*

in another place it may be the law of that place. The actual intention of the parties if expressed is prima facie decisive of the question. In all cases it is a question of the intention actual or presumed of the parties. The fact that a Government is a contracting party is a weighty circumstance in determining what is the proper law of a contract. *Bonython* v. *The Commonwealth*, 75 C.L.R. 589, per Dixon, J., at 601–602.

I do not think there can be any doubt that the proper law of the contract is the law of Queensland. The Bank was a Company incorporated in Queensland and conducting its operations in the main in Queensland. The Scheme of Arrangement originated in Queensland and owes its validity primarily to the sanction of this Court, the Supreme Court of the jurisdiction in which the Bank was incorporated. 10

It is true that the Scheme was also sanctioned by the High Court of Justice in England after it had been agreed to by the creditors in England and it is also true that if the Scheme had not been sanctioned in England an English creditor or English creditors could have taken proceedings in England for the winding up of the Bank notwithstanding that the Scheme of Arrangement had been sanctioned by the Supreme Court of Queensland. But those proceedings in England could only operate in England and in relation to assets of the Bank which were subject to the jurisdiction of the English Courts. It is also true that the winding up proceedings in Queensland would not have been a bar to an action by a non-assenting creditor in England against the Bank if the Scheme had not received the sanction of the English Court. *New Zealand Loan and Mercantile Agency Company Limited* v. *Morris* [1898] A.C. 349. However, the Scheme of Arrangement which originated in Queensland and was sanctioned by this Court did in fact thereafter receive the sanction of the English Court and become binding upon English creditors. That cannot, in my opinion, make any alteration to the proper law of the contract which had at that time received the sanction of this Court. 20 30

In relation to the Scheme, although the aggregate amount of the debts due to creditors of the Bank other than the Government of Queensland showed a preponderance of amount in favour of English creditors, if the debt due to the Government of Queensland is taken into consideration, the balance of indebtedness of the Bank was substantially greater to Queensland creditors than to English creditors and the debt due to the Government of Queensland must necessarily be taken into account. In fact, the existence of this debt was a dominating factor in the situation because the Government of Queensland claimed that it had preferential right to be paid its debt in priority to the debt of any other creditor. The existence of this claim by the Government is referred to in the new Scheme of Arrangement and it was a claim which in 1897 was clearly a valid claim. 40

In *In re Henley & Company*, 9 Ch. D 469, the Court of Appeal in England held that the provisions of " The Companies Act 1862 " did not bind the Crown and therefore the Crown had a right to payment in full of a debt due by a Company for property tax before the commencement of the winding up of the Company in priority to other creditors. So, in Queensland, " The Companies Act 1863 " did not bind the Crown. This was recognised by the Full Court of this State in *In re Baynes & Ors.;* 50

ex parte The Attorney-General, 9 Q.L.J. 33 at 46, where the Court said: "It is important, however, to point out that this conclusion is in no way "inconsistent with the decision cited to us showing that in the winding up "of a Company Crown debts have priority. In a winding up there is no "transfer of property from the Company until actual sale. The Companies "Acts do not bind the Crown and there is consequently nothing to "interfere with the operation of the Crown right to recover Crown debts "owing by the Company by process of law in priority to debts due to "subjects." And in *Food Controller* v. *Cork* [1923] A.C., the correctness of the decision in *In re Henley & Co.* was recognised by Lord Wrenbury. See his Opinion at pp. 671–2.

But the fact that the proper law applicable to the interpretation of the new Scheme of Arrangement is the law of Queensland is not decisive of the question—What is the money of account by which the obligations of the Bank under this Scheme are to be measured ?

A contract may be made in Australia between Australian parties requiring the payment of dollars in America or francs in France, and as is pointed out by Latham C.J. in *Bonython's* case at p. 602 even if English law were held to be the governing law in construing the contract it would not affect the rights and duties of the parties because there is no difference between the English law and the law of Queensland with respect to the interpretation of contracts.

In deciding what is the money of account applicable to the discharge by the Bank of its obligations to the holders of interminable inscribed deposit stock, I am now bound by authority to hold that the monetary systems of Australia and England are no longer one. In *Adelaide Electric Supply Co. Limited* v. *Prudential Assurance Co. Limited* [1934] A.C. 122, a majority of the Lords responsible for the decision were of opinion that up to 1932 the moneys of account of Australia and England had not diverged but were still one, notwithstanding that at that time the exchange was £25.5.0 per cent. in favour of English sterling as against Australian £s. However, in *Bonython's* case, *supra*, the High Court of Australia held that by 1945 at any rate it was impossible to doubt that the monetary systems of Australia and England were no longer one. See per Latham C.J. at 599–600, and Dixon J. at 619. And in *Goldsborough Mort & Co. Ltd.* v. *Hall* (1949) A.L.R. 235 it was recognised that it was then no longer possible to argue in the Courts of this country that there was still a common money of account in England and Australia. See per Starke J. at 246.

When the new Scheme of Arrangement was entered into it was not in the contemplation of any of the parties to the Scheme that the currencies of Queensland and England would, or might, diverge, and therefore the Scheme makes no provision in express words for the happening of that event. Consequently the problem of determining what is the appropriate money of account for the discharge of the Bank's obligations under the Scheme can only be solved by making an implication derived from all the circumstances of the transaction as to the intention which can most fairly and reasonably be imputed to the parties. *Goldsborough Mort & Co. Ltd.* v. *Hall*, *supra*, per Latham C.J. at 242, and per Dixon J. at 255.

The question then is—What is the meaning of the phrase "the principal moneys secured or represented by the said Stock" in Clause 5

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No. 9. Reasons of Macrossan, C.J., for Order, *continued.*

of the new Scheme of Arrangement? In my opinion, the phrase "the principal moneys" in this clause means the same thing as the phrase "principal moneys" in Clause 4 of the Scheme, and the principal moneys referred to in Clause 4 were, without doubt in the case of the holder of deposit receipts negotiable deposit receipts or inscribed deposit stock, issued under the old Scheme of Arrangement in England, moneys which were owing as an English debt, and in the case of the holders of such securities issued under the old Scheme of Arrangement in Queensland or elsewhere in Australia a debt owing in the particular Colony in which the securities were issued. 10

It follows, therefore, I think, that the money of account applicable to the discharge of the obligation of the Bank to pay the principal moneys secured or represented by the stock issued under the new Scheme of Arrangement should be in the case of stock originally issued and registered in London, English money, and in the case of stock originally issued and registered on an Australian register, Australian money, and that any subsequent changes of the place of registration of the stock should have no effect on the determination of the money of account applicable to the payment of the principal moneys secured or represented by the stock.

This appears to me to be the implication derived from all the 20 circumstances of the transaction as to the intention of the parties to the new Scheme of Arrangement which can most fairly and reasonably be imputed to them. Supposing the creditors of the Bank at the time when the new Scheme of Arrangement was implemented knew that at the time of the happening of the event upon which the provisions of Clause 5 of the new Scheme of Arrangement would become operative the moneys of account of England and Australia would have diverged, but did not know which money of account would, at that time, be the more valuable, can there be any doubt that the fair and reasonable provision to be made would be that the creditors whose rights were founded on the 30 fact of their having lent money to the Bank in Australia should be paid in Australian currency, and that the creditors whose rights were founded on the fact of their having lent money to the Bank in England should be paid in English currency?

In my opinion, the construction of the contract which I have held should be given to it, should not be affected by the fact, if it be the fact, that in some cases it may not be possible to ascertain the place of original issue of some holdings of interminable inscribed deposit stock. That result has followed from the system adopted by the Bank in the keeping of its Registers of Stock, but I do not think it is implicit in the provisions 40 for the keeping of the Registers of Stock contained in the Schedule to the new Scheme of Arrangement that the identification of the place of original registration of the stock should be lost. Of course, until the currencies of England and Australia diverged it was not a matter of practical importance from the point of view of the Bank or of the holder of the stock that evidence of the place of original registration of the stock should be preserved. In 1897 nobody contemplated that the currencies of the two Countries would, or might, in the future, diverge, and in fact they did not diverge materially in value for thirty years after 1897. Consequently in those years nobody was concerned to make sure that complete evidence of 50 the place of original registration of every parcel of stock should be preserved.

The possible alternative implications to be made in construing the provisions of Clause 5 of the new Scheme of Arrangement are :—

(A) That all the principal moneys secured or represented by the stock should be paid in Australian money of account.

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 9. Reasons of Macrossan, C.J., for Order, *continued.*

This seems to be obviously unjust to creditors of the Bank in England who received their stock in satisfaction and discharge of the principal moneys due to them on loans which they made to the Bank in England.

(B) That all the principal moneys secured or represented by the stock should be paid in English money of account.

10 This would clearly give to creditors who received and accepted their stock in Australia in satisfaction and discharge of the principal moneys owing to them on loans made by them to the Bank in Australia and who always retained their stock on an Australian Register an obvious advantage and a windfall which, in my view, could by no possibility have been in the contemplation of the parties to the new Scheme of Arrangement.

It is impossible to think that it is either a fair or a reasonable implication that the rights of creditors, parties to a Scheme of Arrangement entered into in Queensland between a Queensland Company and those Queensland creditors and sanctioned by a Queensland Court should be 20 quantified in English money of account when, so far as those creditors are concerned, no element of the transaction has any connection with any place but Queensland.

(C) That the place of registration of the stock at the date when an effective resolution was passed for the winding up of the Bank should determine the money of account applicable in relation to that stock.

If this is the correct implication it would, in effect, enable the stockholder to alter the quantum of the monetary obligation in his favour by changing the place of registration of the stock from one Country to another 30 and to do so from time to time at his will.

I do not think that the provisions in the Schedule to the new Scheme of Arrangement for the transfer of the registration of the Stock from one Register to another were intended to have this effect. I think those provisions were inserted for the convenience of stockholders, but not for the purpose of enabling them to change the substance of the obligation. The principle that the mode of performance of a contract is prima facie to be governed by the law of the place of performance is limited to matters which can be fairly described as being the mode or method of performance, and is not to be extended so as to change the substantive or essential 40 conditions of the contract. If the stockholder could by changing the place of registration of his stock change the identity of the relevant money of account that would, in my view, be to enable him to change the substance of the obligation.

It necessarily follows from what I have said that the interest on the stock should be quantified in the same money of account as the principal. The rate of interest is expressed as being $3\frac{1}{2}$ per centum per annum, that is £$3\frac{1}{2}$ for every £100 of the principal, consequently whatever account of £ English or Australian is applicable to the principal it must be equally applicable to the interest.

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 9.
Reasons of Macrossan, C.J., for Order, *continued.*

The conduct of the Bank in two respects was relied on in support of the argument that the place of registration for the time being of the stock should determine the money of account applicable in relation to that stock. The first was that the Bank in paying interest on stock registered on the London Register paid the interest in English currency at the rate of $3\frac{1}{2}$ per centum per annum on the face value of the number of £s represented by the stock. The other was that in compiling its Balance Sheets as at the 30th June in the year 1942 and in each later year so long as the Bank continued to carry on business it expressed its liability in respect of stock registered on the London Register in Australian currency on the basis that the liability on such stock in Australian currency was 25 per cent. greater than the face value of that Stock.

No such differentiation by the Bank between stock registered on the London register and stock registered on Australian registers was made by the Bank until the 30th June, 1942, and this change made by the Bank in the manner of keeping its accounts was made in intended compliance with an Order made by the Treasurer of the Commonwealth appearing in the Commonwealth Government Gazette of the 3rd September, 1942, in pursuance of the powers conferred on him by Regulations 12 and 16 of the National Security (War-time Banking Control) Regulations. This Order required that if any annual balance sheet of a Bank included any assets or liabilities realisable or payable in any currency other than Australian currency and the value of that asset or liability was not the equivalent in Australian currency (calculated at the rate of exchange current on the date as at which the balance sheet was prepared) of the value of that asset or liability in that other currency, the balance sheet should show what the effect on each relevant item of the balance sheet would have been if the value of that asset or liability had been converted into Australian currency at that rate of exchange.

In my view the conduct of the Bank in relation to neither of these matters is of any assistance in construing the Scheme of Arrangement. First, as to interest, Clause 4 of the Scheme provided that interest on the Stock should be payable half-yearly at the respective Offices of the Bank at which the stock was registered. The clause is silent as to the money of account applicable for the obvious reason that at the time when the Scheme of Arrangement was made there was only one money of account in all the places where the Bank had registers of stock and no one contemplated that in the future there might be more than one relevant money of account. Until 1926 the currencies of England and Australia were substantially of equal value. Therefore, for twenty-nine years at least there was no occasion for the Bank to direct its attention to the possible difference in its obligation to different classes of holders of stock in relation to this matter which might be caused by one or other construction of the contract. Its subsequent conduct after that lapse of time in paying interest on the basis that one of the several possible constructions of the contract was the correct one cannot, in my view, be called in aid to determine the true construction of a contract made in 1897. For the same reason, and a fortiori, the Bank's method of presentation in its accounts of its liability in respect of stock registered in London, applied for the first time in 1942, cannot affect the construction of the Scheme of Arrangement made in

1897, forty-five years earlier. It shows no more than an opinion held by the responsible officers of the Bank in 1942 on the matter of the construction of the Scheme of Arrangement.

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 9. Reasons of Macrossan, C.J., for Order, *continued.*

The questions submitted by the Liquidator for the determination of the Court should be answered as follows :—

1. The registered holders of the stock referred to in this question are entitled to be paid in the winding up of the Bank the principal and interest moneys secured or represented by or payable in respect of such stock on the basis that they receive the equivalent of the face value of the said principal and interest moneys in English currency.

2. The registered holders of the stock referred to in this question are entitled to be paid in the winding up of the Bank the principal and interest moneys secured or represented by or payable in respect of such stock on the basis that they receive the equivalent of the face value of the said principal and interest moneys in Australian currency.

3. The registered holders of the stock referred to in this question are entitled to be paid in the winding up of the Bank the principal and interest moneys secured or represented by or payable in respect of such stock on the basis that they receive the equivalent of the face value of the said principal and interest moneys in Australian currency.

4. The registered holders of the stock referred to in this question are entitled to be paid in the winding up of the Bank the principal and interest moneys secured or represented by or payable in respect of such stock on the basis that they receive the equivalent of the face value of the said principal and interest moneys in English currency.

5. The registered holders of the stock referred to in this question are entitled to be paid in the winding up of the Bank the principal and interest moneys secured or represented by or payable in respect of such stock on the basis that they receive the equivalent of the face value of the said principal and interest moneys in Australian currency.

6. The registered holders of the stock referred to in this question are entitled to be paid in the winding up of the Bank the principal and interest moneys secured or represented by or payable in respect of such stock on the basis that they receive the equivalent of the face value of the said principal and interest moneys in English currency.

7. The equivalent of the face value of any principal or interest moneys payable in English currency is to be ascertained as of the date of the commencement of the winding up of the Bank. *Syndic in Bankruptcy of Salim Nasrallah Khoury* v. *Khayat* [1943] A.C. 507 ; *Bonython* v. *The Commonwealth,* 75 C.L.R. 589, per Latham, C.J., at 605.

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 10. Reasons of Macrossan, C.J., for Order as to costs.

No 10.

REASONS of Macrossan, C.J., for Order as to Costs.

IN THE MATTER of THE QUEENSLAND NATIONAL BANK LIMITED (in Voluntary Liquidation).

JUDGMENT OF THE CHIEF JUSTICE AS TO COSTS.

16th November 1949.

Since this matter was raised before me on 31st October (1949) I have devoted some time to considering it and having now heard the additional arguments submitted I feel that I am in a position to deal with it without any further consideration. 10

I think that the substance of the contentions which have been addressed to me by Mr. McGill and Mr. Lucas is correct. The Order that I am asked to make would, in my opinion, clearly be an order against the individual stockholders in the several classes.

The Order that is sought for is :—

> " That the costs of the liquidator and the National Bank of Australasia Limited taxed as between solicitor and own client be paid out of the general funds of the company and that the costs of the other respondents be taxed (1) as between solicitor and client and (2) as between solicitor and own client and that the former 20 be paid out of the general funds of the company and that the difference between the former and the latter be paid pro rata out of the several sums of money payable to the respective respondents and the persons whom they respectively represent in satisfaction of their rights as holders of interminable inscribed deposit stock in the said company."

To carry out that order, the first part, the double taxation, would not present any difficulty, I should think. It ought not to present great difficulty and the ascertainment of the difference between the costs on the two scales would, therefore, not present any difficulty. But when that 30 had been done, to carry out the proposed order the liquidator would first have to ascertain who were the members of the respective classes represented by the several representatives who are before me now and the amount of their holdings in the several classes. Until that was done it would not be possible to know what would be the contribution to be made by each individual. Because, obviously, the liability of each member of a class in respect of the amount to be ascertained pro rata could not be ascertained until it was known, in relation to each individual, what amount was due to him as a member of that class.

When that was done, what would have to be deducted in relation to 40 each individual would be part of the money contractually due to him.

The rights of the stockholders against the Bank are contractual rights. They depend on the terms of the Deed of Arrangement. In the result, then, the liquidator would be holding on behalf of each individual stockholder in a class a certain sum of money and would be authorised and required to deduct from that sum of money contractually due to the stockholder a certain amount for costs.

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 10. Reasons of Macrossan, C.J., for Order as to costs, *continued.*

In my view, that would be, in essence, an order against the individual stockholders. I think, on the authorities, it is clear that such an order cannot properly be made against individual stockholders who, although they are represented here under the orders that I made for representation, are not parties for the purpose of being made personally liable for costs.

I cannot see any distinction in principle between the order which Mr. Bennett asks for and an order that each individual stockholder should pay a *pro rata* amount. The proposed order is only a summary way of recovering that money from the individual and a much more effective 10 way, possibly, in some cases than an order for payment made directly against the individual stockholder would be.

So much then, for the legal aspect of the order that Mr. Bennett proposes. Then, as has been pointed out, there would be a practical difficulty which would involve great delay in determining and in satisfying just claims and rights of the shareholders. That is not the same as the difficulty which, admittedly, may arise under the order which I have made on the construction of the Deed of Arrangement. It is not the same as the difficulty which might arise in some cases in determining whether or not a particular stockholder is in a particular category of the 20 represented classes in relation to parts or the whole of his holding. That difficulty I think might cause considerable delay, in relation to a particular individual, in ascertaining his rights. But it would not cause any delay in satisfying the just claims of the majority, the very great majority I should think, of the individual stockholders who clearly fall without any difficulty into one class or another. This delay however would involve the whole of the stockholders in each particular class. Because until all the holdings of the whole number were accurately disposed between the classes it would be impossible to ascertain what would be the exact proportion of the additional costs for which each one was liable, 30 and it would be impossible to say how much should be deducted from a debt undoubtedly owing to him.

I have not been referred to any case comparable to this one, any case of liquidation of a company where such an order as Mr. Bennett has asked for has been made.

There is no doubt of the jurisdiction of the Court to make an order for costs as between solicitor and client against a fund. And there is no doubt about the jurisdiction of the Court, on the authorities, to make an order for the payment of solicitor and client costs out of the general funds of the company. But this order is not sought on that basis. It is 40 an unusual order which Mr. Bennett has asked for. He asks for costs between solicitor and client out of the general funds and that the difference between solicitor and client and solicitor and own client costs incurred by the representative of each class be divided pro rata between the members of that class.

I have not been referred to any relevant authority in which such an order has been made and I see no reason why, in this case, such an order should be made.

There is another consideration in relation to the justice of the matter which I think is not unimportant although it has not been referred to by 50 any counsel. It is this : that in relation to the allowance of costs as between solicitor and own client such costs may be greatly increased by special

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 10. Reasons of Macrossan, C.J., for Order as to costs, *continued.*

arrangements made by litigants with their legal representatives. A litigant may make an express binding agreement with his solicitor, for instance, to pay special counsel's fees provided that he has been properly apprized of the fact that such abnormal fees may not be allowed on taxation and has clearly shown, and given in proper form, his approval of the payment of such fees with full knowledge of what he is doing. I do not know whether or not this is a case in which such arrangements have been made. But it is a case in which such an arrangement may well have been made. Such additional costs would be quite properly costs payable by that litigant on a taxation as between solicitor and own client. I cannot see on what 10 principle of justice the burden of such an arrangement made by a representative party could be fairly made to fall upon the members of the class represented who had never been consulted about the arrangement and who, therefore, had been powerless to approve or disapprove of the arrangement and who had not consented to be bound by it.

It appears to me that the difference between solicitor and client costs and solicitor and own client costs in such a case as this—if there is any difference—should be borne by the respective representative parties who have incurred them.

Mr. Bennett asks as an alternative than an order should be made 20 for costs as between solicitor and own client in favour of all parties out of the fund. I do not see any reason why, in this case, such an unusual order should be made. I think that on the authorities and the facts as they have been shown to be here, the proper order to make would be an order in the terms of the first part of the order asked for.

Mr. Bennett referred to authorities dealing with the position of a next friend and a guardian ad litem. I think those authorities have no bearing on the matter which I have to determine in this case. A next friend and a guardian ad litem are persons who are performing the duty of representation of litigants who cannot themselves appear. 30

Neither a next friend nor a guardian ad litem as such is personally interested in the litigation. Each is really, for all practical purposes, in the same position as a trustee performing a duty in the performance of which he has no personal interest. For that reason it is proper and just (and it has been so held by authority) that persons in that category should be fully indemnified for all costs which they may incur properly in the performance of their duty.

The representative parties in this case are not in that position. They are persons who have a personal interest in the matter in controversy. Because they have that personal interest they have been selected and in 40 fact have consented to be parties to the proceedings for the purpose of having their rights determined as well as the rights of others in the same category as themselves.

For that reason I think the authorities relating to the position of a next friend, a guardian ad litem and a trustee have no relevance to the present matter. I therefore think the proper order as to costs should be that the costs of the liquidator and of the National Bank of Australasia Limited, taxed as between solicitor and own client, be paid out of the general funds of the company and that the costs of the other respondents, taxed as between solicitor and client, be paid out of the general funds of the 50 company.

That is the order which I make.

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 11.
Order of the Supreme Court of Queensland made by Macrossan, C.J., 16th November 1949.

No. 11.

ORDER of the Supreme Court of Queensland made by Macrossan, C.J.

IN THE MATTER of The Companies Acts 1931 to 1942

and

IN THE MATTER of THE QUEENSLAND NATIONAL BANK LIMITED (in Voluntary Liquidation)

and

IN THE MATTER of an Application by FRED PACE as Liquidator of The Queensland National Bank Limited (in Voluntary Liquidation) for an Order under Section 258 of the said Acts to determine questions arising in the winding up of the said The Queensland National Bank Limited.

THE SIXTEENTH DAY OF NOVEMBER 1949.

UPON MOTION made unto the Court before The Honourable The Chief Justice on the third, fourth, fifth and sixth days of October One thousand nine hundred and forty-nine by Mr. McGill K.C. with Mr. Fahey of Counsel for the Applicant Fred Pace the Liquidator of The Queensland National Bank Limited (In Voluntary Liquidation) AND UPON HEARING Mr. Bennett K.C. with him Mr. Stable of Counsel for the Respondent the Scottish Union and National Insurance Company on behalf of and for the benefit of the registered holders of Interminable Inscribed Deposit Stock issued by the said Bank pursuant to a Scheme of Arrangement made between the said Bank and certain of its creditors and sanctioned by the Supreme Court of Queensland on the twelfth day of May One thousand eight hundred and ninety-seven whose stock was at the date of the commencement of the voluntary winding up of the said Bank and was at all times prior thereto registered on the London Register of the said Bank, Mr. Lynam with him Mr. Gibbs of Counsel for the Respondent The National Mutual Life Association of Australasia Limited on behalf of and for the benefit of the registered holders of such stock whose stock was at the date of the commencement of the voluntary winding up of the said Bank registered on the London register of stock kept by the said Bank and whose stock was at the date of issue thereof on a Register of Stock kept by the said Bank in Australia and the registration of which was subsequently transferred to the London Register, Mr. Hanger of Counsel for the Respondent Edward Robert Crouch on behalf of and for the benefit of the registered holders of such stock whose stock was at the date of the commencement of the voluntary winding up of the said Bank and was at all times prior thereto registered on a Register of Stock kept by the said Bank in Australia, Mr. Hart of Counsel for the said Edward Robert Crouch on behalf of and for the benefit of the registered holders of such stock whose stock was at the date of the commencement of the voluntary winding up of the said Bank registered on a Register of Stock kept by the said Bank in Australia and whose stock was at the date of issue thereof on the said London Register and the registration of which was subsequently transferred to a Register of Stock kept by the said Bank in Australia and Mr. Mack

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 11. Order of the Supreme Court of Queensland made by Macrossan, C.J., 16th November 1949, *continued.*

with him Mr. Lucas of Counsel for the Respondent The National Bank of Australasia Limited AND UPON READING the affidavit of James Tait Campbell filed herein on the eighteenth day of March One thousand nine hundred and forty-nine and the two several affidavits of the said Fred Pace filed herein on the fifteenth day of August One thousand nine hundred and forty-nine and the twenty-sixth day of September One thousand nine hundred and forty-nine respectively THIS COURT DID ORDER that the matter stand for judgment and the same standing for judgment in the paper on the thirty-first day of October One thousand nine hundred and forty-nine in the presence of Counsel for the parties THIS COURT DOTH ORDER that the questions submitted by the Liquidator for the determination of the Court should be answered as follows :—

QUESTION 1 : Whether the registered holders of Interminable Inscribed Deposit Stock issued by The Queensland National Bank Limited pursuant to a Scheme of Arrangement made between the said Bank and certain of its creditors and sanctioned by the Supreme Court of Queensland on the twelfth day of May 1897, whose stock was at the date of the commencement of the voluntary winding up of the said Bank and was at all times prior thereto registered on the London register of the said Bank, are entitled to be paid or to prove in the winding up of the said Bank for the principal and/or interest moneys secured or represented by or payable in respect of such stock on the basis that they receive the equivalent of the face value of the said principal and/or interest moneys in English or Australian currency.

ANSWER : The registered holders of the stock referred to in this question are entitled to be paid in the winding up of the Bank the principal and interest moneys secured or represented by or payable in respect of such stock on the basis that they receive the equivalent of the face value of the said principal and interest moneys in English currency.

QUESTION 2 : Whether the registered holders of such stock whose stock was at the date of the commencement of the voluntary winding up of the said Bank registered on the London register of stock kept by the said Bank and whose stock was at the date of issue thereof on a register of stock kept by the said Bank in Australia and the registration of which was subsequently transferred to the London register are entitled to be paid or to prove in the winding up of the said Bank for the principal and/or interest moneys secured or represented by or payable in respect of such stock the registration of which was so transferred on the basis that they receive the equivalent of the face value of the said principal and/or interest moneys in English or Australian currency.

ANSWER : The registered holders of the stock referred to in this question are entitled to be paid in the winding up of the Bank the principal and interest moneys secured or represented by or payable in respect of such stock on the basis that they receive the equivalent of the face value of the said principal and interest moneys in Australian currency.

QUESTION 3 : Whether the registered holders of such stock whose stock was at the date of the commencement of the voluntary winding up of the said Bank and was at all times prior thereto registered on a register

of stock kept by the said Bank in Australia are entitled to be paid or to prove in the winding up of the said Bank for the principal and/or interest moneys secured or represented by or payable in respect of such stock on the basis that they receive the equivalent of the face value of the said principal and/or interest moneys in English or Australian currency.

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 11. Order of the Supreme Court of Queensland made by Macrossan, C.J., 16th November 1949, *continued.*

ANSWER: The registered holders of the stock referred to in this question are entitled to be paid in the winding up of the Bank the principal and interest moneys secured or represented by or payable in respect of such stock on the basis that they receive the equivalent of the face value
10 of the said principal and interest moneys in Australian currency.

QUESTION 4: Whether the registered holders of such stock whose stock was at the date of the commencement of the voluntary winding up of the said Bank registered on a register of stock kept by the said Bank in Australia and whose stock was at the date of issue thereof on the said London register and the registration of which was subsequently transferred to a register of stock kept by the said Bank in Australia are entitled to be paid or to prove in the winding up of the said Bank for the principal and/or interest moneys secured or represented by or payable in respect of such stock the registration of which was so transferred on the basis
20 that they receive the equivalent of the face value of the principal and/or interest moneys in English or Australian currency.

ANSWER: The registered holders of the stock referred to in this question are entitled to be paid in the winding up of the Bank the principal and interest moneys secured or represented by or payable in respect of such stock on the basis that they receive the equivalent of the face value of the said principal and interest moneys in English currency.

QUESTION 5: Whether the registered holders of such stock whose stock was at the date of commencement of the voluntary winding up of the said Bank registered on a register of stock kept by the said Bank in
30 Australia and whose stock was at the date of issue thereof on a register of stock kept by the said Bank in Australia but had been at an intermediate period registered on the said London register are entitled to be paid or to prove in the winding up of the said Bank for the principal and/or interest moneys secured or represented by or payable in respect of such stock the registration of which was so transferred on the basis that they receive the equivalent of the face value of the said principal and/or interest moneys in English or Australian currency.

ANSWER: The registered holders of the stock referred to in this question are entitled to be paid in the winding up of the Bank the principal
40 and interest moneys secured or represented by or payable in respect of such stock on the basis that they receive the equivalent of the face value of the said principal and interest moneys in Australian currency.

QUESTION 6: Whether the registered holders of such stock whose stock was at the date of the commencement of the voluntary winding up of the said Bank registered on the said London register and was at the date of issue thereof on the said London register but had been at an intermediate period registered on a register of stock kept by the said

In the Supreme Court of Queensland in its Equitable Jurisdiction

No. 11. Order of the Supreme Court of Queensland made by Macrossan, C.J., 16th November 1949, *continued.*

Bank in Australia are entitled to be paid or to prove in the winding up of the said Bank for the principal and/or interest moneys secured or represented by or payable in respect of such stock the registration of which was so transferred on the basis that they receive the equivalent of the face value of the said principal and/or interest moneys in English or Australian currency.

ANSWER: The registered holders of the stock referred to in this question are entitled to be paid in the winding up of the Bank the principal and interest moneys secured or represented by or payable in respect of such stock on the basis that they receive the equivalent of the face value of the said principal and interest moneys in English currency. 10

QUESTION 7: Whether, if any registered holder of such stock is entitled to be paid the principal and/or interest moneys secured or represented by or payable in respect of such stock on the basis that such holder receive the equivalent of the face value of the said principal and/or interest moneys in English currency, such equivalent is to be ascertained as of the date of the commencement of the winding up or as of the date of payment or as of any other and if so what date?

ANSWER: The equivalent of the face value of any principal or interest moneys payable in English currency is to be ascertained as of the date of the commencement of the winding up of the Bank. 20

AND THE COURT DOTH ORDER AND ADJUDGE accordingly and that the question of costs be adjourned to a date to be fixed and upon hearing this day Counsel for the parties THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the costs of the Liquidator and of The National Bank of Australasia Limited taxed as between Solicitor and own client and the costs of the other Respondents taxed as between Solicitor and client be paid out of the general funds of the said The Queensland National Bank Limited. (In Voluntary Liquidation.)

By the Court 30

J. S. EMERSON,
Deputy Registrar.

No. 12.
Notice of Appeal to High Court, 18th November 1949.

No. 12.

NOTICE OF APPEAL to High Court in Australia.

TAKE NOTICE that the High Court of Australia will be moved by way of appeal at its next sittings to be held at Brisbane on the thirteenth day of June 1950 or as soon thereafter as Counsel may be heard by Counsel on behalf of the above-named appellant that so much of the judgment or order of his Honour the Chief Justice of Queensland pronounced on the thirty-first day of October 1949 upon the hearing of a motion by the above-named Fred Pace the liquidator of The Queensland National Bank Limited 10 (In Voluntary Liquidation) for an order under section 258 of " The Companies Acts 1931 to 1942 " to determine questions arising in the winding up of The Queensland National Bank Limited namely :—

1. Whether the registered holders of Interminable Inscribed Deposit Stock issued by The Queensland National Bank Limited pursuant to a Scheme of Arrangement made between the said Bank and certain of its creditors and sanctioned by the Supreme Court of Queensland on the twelfth day of May 1897 whose stock was at the date of the commencement of the voluntary winding up of the said Bank and was at all times prior thereto registered on the 20 London register of the said Bank are entitled to be paid or to prove in the winding up of the said Bank for the principal and/or interest monies secured or represented by or payable in respect of such stock on the basis that they receive the equivalent of the face value of the said principal and/or interest monies in English or Australian currency.

2. Whether the registered holders of such stock whose stock was at the date of the commencement of the voluntary winding up of the said Bank registered on the London register of stock kept by the said Bank and whose stock was at the date of issue thereof on a 30 register of stock kept by the said Bank in Australia and the registration of which was subsequently transferred to the London register are entitled to be paid or to prove in the winding up of the said Bank for the principal and/or interest monies secured or represented by or payable in respect of such stock the registration of which was so transferred on the basis that they receive the equivalent of the face value of the said principal and/or interest monies in English or Australian currency.

3. Whether the registered holders of such stock whose stock was at the date of the commencement of the voluntary winding up 40 of the said Bank and was at all times prior thereto registered on a register of stock kept by the said Bank in Australia are entitled to be paid or to prove in the winding up of the said Bank for the principal and/or interest monies secured or represented by or payable in respect of such stock on the basis that they receive the equivalent of the face value of the said principal and/or interest monies in English or Australian currency.

4. Whether the registered holders of such stock whose stock was at the date of the commencement of the voluntary winding up of the said Bank registered on a register of stock kept by the said

In the High Court of Australia in its Appellate Jurisdiction

No. 12. Notice of Appeal to High Court, 18th November 1949, *continued.*

Bank in Australia and whose stock was at the date of issue thereof on the said London register and the registration of which was subsequently transferred to a register of stock kept by the said Bank in Australia are entitled to be paid or to prove in the winding up of the said Bank for the principal and/or interest monies secured or represented by or payable in respect of such stock the registration of which was so transferred on the basis that they receive the equivalent of the face value of the principal and/or interest monies in English or Australian currency.

5. Whether the registered holders of such stock whose stock was at the date of the commencement of the voluntary winding up of the said Bank registered on a register of stock kept by the said Bank in Australia and whose stock was at the date of issue thereof on a register of stock kept by the said Bank in Australia but had been at an intermediate period registered on the said London register are entitled to be paid or to prove in the winding up of the said Bank for the principal and/or interest monies secured or represented by or payable in respect of such stock the registration of which was so transferred on the basis that they receive the equivalent of the face value of the said principal and/or interest monies in English or Australian currency.

6. Whether the registered holders of such stock whose stock was at the date of the commencement of the voluntary winding up of the said Bank registered on the said London register and was at the date of issue thereof on the said London register but had been at an intermediate period registered on a register of stock kept by the said Bank in Australia are entitled to be paid or to prove in the winding up of the said Bank for the principal and/or interest monies secured or represented by or payable in respect of such stock the registration of which was so transferred on the basis that they receive the equivalent of the face value of the said principal and/or interest monies in English or Australian currency.

7. Whether if any registered holder of such stock is entitled to be paid the principal and/or interest moneys secured or represented by or payable in respect of such stock on the basis that such holder receive the equivalent of the face value of the said principal and/or interest moneys in English currency such equivalent is to be ascertained as of the date of the commencement of the winding up or as of the date of payment or as of any other and if so what date

and in which motion by an order of the said Chief Justice dated the twenty-second day of December 1948 it was ordered that the above-named respondent the Scottish Union and National Insurance Company Limited might be sued and that the said Company should defend on behalf of and for the benefit of all holders of the said Interminable Inscribed Deposit Stock whose stock was at the date of the commencement of the voluntary winding up of the said Bank and was at all times prior thereto registered on the register of stock kept by the said Bank in London

and that the above-named respondent The National Mutual Life Association of Australasia Limited might be sued and that the said Association should defend on behalf of and for the benefit of all holders of

the said stock whose stock was registered on the register of stock kept by the said Bank in London and whose stock was prior to the date of the commencement of the voluntary winding up of the said Bank transferred from an Australian register to the said London register and was at the date of the said voluntary winding up registered on the London register of the said Bank

and by a further order of the said Chief Justice dated the fifteenth day of February 1949 it was ordered that Edward Robert Crouch of Brisbane in the State of Queensland Solicitor might be sued and that the said 10 Edward Robert Crouch should defend on behalf of and for the benefit of all holders of the said Interminable Inscribed Deposit Stock whose stock was at the date of the commencement of the voluntary winding up of the said Bank registered on a register of stock kept by the said Bank in Australia

in respect of the said motion

whereby the said Chief Justice did answer the questions hereinbefore set out and numbered 1 4 and 6 to the effect that the registered holders of stock referred to in the said questions numbered 1 4 and 6 were entitled to be paid in the winding up of the said Bank the principal and interest moneys secured or represented by or payable in respect of such stock on the 20 basis that they receive the equivalent of the face value of the said principal and interest moneys in English currency

and whereby the said Chief Justice did answer the question set out above and numbered 7 to the effect that the equivalent of the face value of any principal or interest moneys payable in English currency was to be ascertained as of the date of the commencement of the voluntary winding of the said Bank may be set aside and in lieu thereof that the said questions numbered 1 4 and 6 may be answered to the effect that the registered holders of stock referred to in such questions are entitled to be paid in the winding up of the said Bank the principal and interest moneys 30 secured or represented by or payable in respect of such stock on the basis that they receive the equivalent of the face value of the said principal and interest moneys in Australian currency and that it may be declared that it is unnecessary to answer the said question numbered 7 and in the alternative that the said question may be answered to the effect that the said equivalent is to be ascertained as at a date later than the date of the commencement of the said winding up

and that judgment may be entered accordingly for the appellant upon the following grounds

1. That the said judgment or order is contrary to law

40 2. That the said judgment or order is contrary to the evidence and the weight of evidence

3. And in particular and without prejudice to the generality of the foregoing upon the grounds :

(A) That His Honour was wrong in holding that the intention should be imputed to the parties that the obligation in respect of some of the stock should be measured in one money of account and the obligation in respect of the rest of the stock in another money of account

In the High Court of Australia in its Appellate Jurisdiction

No. 12.
Notice of Appeal to High Court, 18th November 1949,
continued.

(B) That His Honour should have held that all the obligations to pay money which arose under the Scheme of Arrangement sanctioned by the Supreme Court of Queensland on the twelfth day of May 1897 were originally and continued at all times to be measured in the same money of account namely the money of account of Queensland

(C) That His Honour was wrong in holding that the language of Clause 5 of the said scheme showed that the obligations in respect of stock originally issued and registered in London were to be measured in English money of account 10

(D) That His Honour was wrong in holding that the implication to be derived from all the circumstances was that the intention should be imputed to the parties that the obligations in respect of stock originally issued and registered in London were to be measured in English money of account

(E) That His Honour was wrong in holding that the construction of the contract should not be affected by the impossibility of ascertaining the place of original issue of some of the stock

(F) That His Honour was wrong in holding that to measure 20 the obligations in respect of the stock in Australian money of account would be unjust to creditors of the Bank in England who received their stock in satisfaction and discharge of moneys due to them on loans made to the Bank in England there being no evidence that the present holders of stock originally issued in London paid more for it than the face value in Australian money or the corresponding sum in English money less exchange at 25%

(G) That His Honour was wrong in holding that there is no longer a common money of account in England and Australia 30 and that His Honour should have held that the obligation arising under clause 5 (B) of the said Scheme by virtue of the commencement of a winding up of the Bank in Queensland should be discharged in such winding up by the payment to all stockholders of the face value of their stock in Australian currency and that none of the stockholders was entitled to any further or other payment in respect of that obligation.

Dated this eighteenth day of November 1949.

THYNNE & MACARTNEY,
Solicitors for the Appellant, 40
National Mutual Chambers,
Queen Street,
Brisbane.

To the above-named Respondents

And to their Solicitors,

Messrs. Henderson & Lahey,
National Mutual Chambers,
Queen Street, Brisbane,
Solicitors for The Scottish Union and National Insurance Company Limited and The National Mutual Life Association of Australasia Limited.

Messrs. Crouch & Paterson,
10 Commerce House,
Adelaide Street, Brisbane,
Solicitors for Edward Robert Crouch.

Messrs. Flower & Hart,
400 Queen Street, Brisbane,
Solicitors for Fred Pace.

In the High Court of Australia in its Appellate Jurisdiction

No. 13. Affidavit of James Henry Lalor, 18th November 1949.

No. 13.

AFFIDAVIT of James Henry Lalor.

I JAMES HENRY LALOR of Okeden Street Toowong Brisbane in the State of Queensland Solicitor make oath and say as follows :—

1. I am a Solicitor of the Supreme Court of Queensland and a member of the firm of Messrs. Thynne & Macartney of National Mutual Chambers Queen Street Brisbane aforesaid the Solicitors on the record for The National Bank of Australasia Limited the above-named appellant.

2. On the thirty-first day of October 1949 his Honour the Chief Justice of Queensland pronounced a judgment or order upon the hearing of a motion by the above-named Fred Pace the Liquidator of The Queensland National Bank Limited for the determination of certain questions arising in the winding up of the said Bank. Such questions were as to whether the several classes described in the notice of the said motion of the holders of Interminable Inscribed Deposit Stock issued by the said The Queensland National Bank Limited in pursuance of a Scheme of Arrangement made between the said Bank and certain of its creditors and sanctioned by the Supreme Court of Queensland on the twelfth day of May 1897 were entitled to be paid or to prove in the winding up of the said Bank for the principal and/or interest moneys secured or represented by or payable in respect of the said stock on the basis that they should receive the equivalent of the said principal and/or interest moneys in English or Australian currency.

3. By the said Judgment or order the said the Chief Justice of Queensland answered the said questions to the effect that certain classes of the holders of the said stock were entitled to payment of the said principal and interest moneys in English currency and that others of the said classes were entitled to payment as aforesaid in Australian currency.

4. The said judgment or order of the said the Chief Justice of Queensland now appealed from to this Honourable Court is in respect of a sum considerably in excess of the sum of Three Hundred Pounds.

Signed and Sworn by the above-named Deponent at Brisbane aforesaid this Eighteenth day of November 1949 } J. H. LALOR.

Before me,

R. BROWN, J.P.,
A Justice of the Peace.

In the High Court of Australia in its Appellate Jurisdiction

No. 14.

NOTICE of Cross Appeal

[*Not printed*]

No. 14. Notice of Cross Appeal. [Not printed]

No. 15.

REASONS for Judgment of Latham, C.J.

No. 15. Reasons for Judgment of Latham, C.J.

This is an appeal from an order of the Supreme Court of Queensland (Macrossan, C.J.) made under sec. 258 of the Companies Acts 1931–1942 in order to determine questions arising in the winding up of the Queensland National Bank Limited. The bank suspended payment in 1893 and a
10 scheme of arrangement was authorised by the Supreme Court but the scheme failed. In 1897 another scheme of arrangement was authorised by the Supreme Court of Queensland and was adopted also by the Supreme Court of New South Wales and the High Court of Justice in England. Under this scheme there were special provisions for paying the debt due to the Government of Queensland. There were other creditors who were depositors in the bank in Australia and in Great Britain. Under the earlier scheme they had been given, and had been compelled to accept in discharge of their debts, either deposit receipts, or negotiable deposit receipts payable to bearer, or inscribed deposit stock. The scheme of
20 arrangement which was approved by the courts in 1897 provided for the creation of interminable inscribed deposit stock. The creditors of the bank who held the securities issued under the old scheme were required to accept such stock bearing interest at 3½% per annum in satisfaction of their debts. The new scheme provided for stock registries in Queensland, Sydney and London. The original holders have in many cases transferred their stock to other persons, and stock has also been transferred from an original registry to another registry and sometimes transferred again to its original registry. The bank is now in liquidation and the question has arisen whether a holder of, e.g., £100 stock, is entitled to be paid £A100 or
30 £E100. Macrossan, C.J. has held that the answer to the question depends upon the place of original issue and registry of the stock, with the result that stock which was originally registered in England must be paid off at its face value in English currency, whereas the liability on stock which was originally issued and registered in Australia will be discharged by payment in Australian currency. There are now practical difficulties in ascertaining the original place of registry of much of the stock, but this fact cannot affect the legally ascertained liability of the bank. The questions submitted to the Supreme Court of Queensland enquired as to the currency in which the deposit receipts were to be paid off in six
40 separate cases. I propose to tabulate the various classes of stockholders, to state how they are represented upon this appeal and to state the decision of the Supreme Court in each case as to the liability to pay the face value of the stock.

Classes of Stockholders	Represented by	Decision of Supreme Court	Remarks
1. Stock originally issued and at all subsequent times registered in London	Scottish Union & National Insurance Co., Ltd.	Payable in English currency	This party supports judgment of Supreme Court.
2. Stock originally issued and registered in Australia but subsequently transferred to London Registry and now on that Registry	National Mutual Life Association of Australasia Limited	Payable in Australian currency	This party has cross-appealed against this decision, contending that such holders are entitled to payment in English currency because they are now on the London Registry.
3. Stock which at all times has been on the Australian Registry		Payable in Australian currency	There is no appeal against this decision.
4. Stock originally issued and registered in London, subsequently transferred to Australia and still on the Australian Registry	E. R. Crouch	Payable in English currency	This party supports this decision.
5. Stock originally issued and registered in Australia, then transferred to London and then to Australia	E. R. Crouch	Payable in Australian currency	No appeal.
6. Stock originally issued and registered in London, transferred to Australia, then to London	National Mutual Life Association of Australasia Limited	Payable in English currency	This party supports this decision.

The liquidator also asked the advice of the court as to the date at which the equivalent in English currency of Australian money (whether principal or interest) should be ascertained. It was held that the relevant date was the date of the commencement of the winding up of the bank, and there is no appeal as to this matter.

The other parties to the proceedings are the Appellant the National Bank of Australasia, Ltd., which now owns or controls through its nominees all the shares in the Queensland National Bank, Ltd., and the liquidator of the latter bank.

10 The Appellant the National Bank contends that all payments in redemption of the interminable inscribed deposit stock should be made in Australian currency. The Respondents other than the Liquidator, who has not argued exclusively for any particular view, support the Order as made by the learned Chief Justice, except that the National Mutual Life Association contends that in the case of stock now on the London Registry, whatever may have been its previous history, payment should be made in English currency.

The Queensland National Bank, Ltd., was incorporated in 1872 under the Queensland Companies Acts 1863. It was registered in England as a 20 foreign company under the English Companies Act 1907, sec. 35, on 25th September 1908. The bank had shareholders in Queensland, elsewhere in Australia and in Great Britain. It accepted deposits in all those places. Registers of shareholders were kept in Australia and in England.

On 15th May 1893 the Bank was unable to meet its liabilities and suspended payment. A petition for winding up was presented to the Supreme Court in Queensland and a provisional liquidator was appointed. Ultimately, after meetings of creditors and shareholders had been held in Brisbane, Sydney and London, a Scheme of Arrangement was sanctioned by the Supreme Court in Queensland, by the Supreme Court in New South 30 Wales and by the High Court of Justice in England. The amount due to depositors in July 1893 in respect of deposits in Queensland was £1,860,628, in New South Wales £110,322, and in respect of deposits in London £2,897,619. A special agreement (authorised by a Queensland statute—The Queensland National Bank Limited (Agreement) Act 1893) was made with the Government of Queensland, which was a creditor for £2,000,000. The capital of the company was reduced and capital was called up in accordance with the scheme approved by the court, but the Bank was unable to carry on under the terms of that scheme. Accordingly another Scheme of Arrangement was devised and was approved by the three courts mentioned 40 after meetings of creditors had considered and approved it.

By the Order of the Supreme Court of Queensland made on 12th May 1897 the new Scheme of Arrangement was declared to be binding upon all creditors of the Bank in respect of deposit receipts, negotiable deposit receipts and inscribed deposit stock (the securities issued under the old scheme) and upon the Bank and its contributories. Under the new scheme it was provided that interminable inscribed deposit stock should be issued to the creditors who held those securities.

On 15th April 1897 the new Scheme of Arrangement was sanctioned and approved in identical terms by the Supreme Court of New South 50 Wales.

In the High Court of Australia in its Appellate Jurisdiction

No. 15. Reasons for Judgment of Latham, C.J., *continued.*

On 27th May the High Court of Justice in Great Britain ordered that the bank should be wound up by that court. On 4th June 1897 the High Court of Justice sanctioned and approved the new scheme of arrangement in identical terms and it was ordered that all further proceedings in the winding up should be stayed except for the purpose of carrying the order and the new scheme of arrangement into effect.

The amount of interminable inscribed deposit stock issued under the new scheme amounted originally to £3,116,621. The amount now outstanding is £2,559,086.

The following is the form of certificate of title to interminable inscribed deposit stock prescribed by the scheme of arrangement. (I have filled in a number for the certificate, an amount in pounds and a name of a holder) :—

"THE QUEENSLAND NATIONAL BANK LIMITED
INTERMINABLE INSCRIBED DEPOSIT STOCK.

No. 150. £100

Bearing interest at the rate of $3\frac{1}{2}$ per cent. per annum, payable on the 31st day of March and the 30th day of September in each year.

This is to certify that John Smith of
is the registered holder of £100 of the above Stock, which Stock is constituted pursuant to the provisions of the Scheme of Arrangement sanctioned by the Supreme Court of Queensland on the 12th day of May, 1897, and is issued subject to the provisions and conditions therein, and in the Schedule thereto respectively contained.

NOTE.—The Bank will not register a transfer of any Stock without the production of the certificate relating to such Stock, which certificate must be surrendered before any transfer, whether of the whole or any portion thereof, can be registered, or before a new certificate can be issued in exchange.

A fee not exceeding 2s. 6d. will be charged on the registration of any transfer."

In the certificates as actually issued there appeared before the "Note" in some cases the following : "Given under the Common Seal of the Company this day of by order of the Board" etc. In other cases the place of issue was stated : "Given under the Common Seal of the Queensland National Bank Limited at London" or Sydney or at a place in Queensland. There is no evidence that any certificate specified any place for payment.

I proceed to examine the details of the scheme of arrangement for the purpose of ascertaining the meaning of the word "pounds" or the symbol therefor—"£"— in such a certificate.

This is a question of interpreting the terms of the certificate in order to ascertain the rights and obligations of the bank and of the holder of a certificate. I do not apply the principles relating to the interpretation of contracts in order to answer this question. The obligation created by the issue of the certificate and its subsequent transfer to other persons is not

in my opinion contractual in character. It is true that the scheme was adopted by the Supreme Court of Queensland and by the courts in New South Wales and Great Britain only after meetings of creditors had been held at which consent, in some cases unanimous, in others by a majority, was given to the proposed scheme, but the operation of the scheme was not and is not dependent in any way upon the consent of the creditors and therefore it is not contractual in character. If the obligation were held to be an obligation of a contractual nature it is in my opinion plain that the governing law of the contract would be the law of Queensland. The obligation represented by the certificate was, however, created by the order of the Supreme Court of Queensland to which the certificate refers, and an order of a Queensland court must be interpreted in accordance with the law of Queensland. That order was adopted in identical terms by the Supreme Court of New South Wales and the High Court of Justice in Great Britain. The order did not change its meaning when it was so adopted. Accordingly, whether the obligation is regarded as contractual in character or as arising independently of any consent of the parties from an order or orders made by a court or courts of competent jurisdiction, the law of Queensland is the law which determines the interpretation of the scheme of arrangement and the interpretation of certificates issued in pursuance of that scheme. In the present case the result will be the same whether it is held that the construction of the contract is to be determined according to the law of Queensland, of New South Wales or of Great Britain, for the principles of interpretation of documents in all three countries are the same.

The ascertainment of the law in accordance with which the scheme of arrangement is to be construed does not in itself determine the currency to which reference is to be made to measure the extent of an obligation to pay money. The ascertainment of that law only introduces the enquirer to the principles of interpretation to be applied in order to determine the content of the obligations created by the document. That document is to be construed in accordance with the principles of interpretation prescribed by that law. Those principles of interpretation may, in the case of an obligation to pay money, bring about the result that the obligation is to be measured in terms of the currency of the country the law of which is applicable for the purpose stated and this will generally be the case. But, on the other hand, the application of that law may show that the relevant currency is the currency of some other country; for example, when some years ago the State of Queensland borrowed money in the United States and promised to pay dollars in redemption of the loan, there is no doubt that the obligation was to pay an amount measured in dollars, even though the governing law of the contract might have been the law of Queensland. Thus the ascertainment of the law governing an obligation does no more than refer the parties to the rules of interpretation prescribed by that law. The question, therefore, is a question of the meaning of the word "pounds" and the symbol for pounds in the certificates according to the principles of interpretation to be found in the law of Queensland—which are the same in New South Wales and Great Britain.

One of those principles of interpretation is that each provision in a document must be interpreted in its context. Therefore I examine the whole scheme of arrangement in order to ascertain the meaning of "pounds" in that scheme.

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No. 15. Reasons for Judgment of Latham, C.J., *continued.*

In doing so it is not necessary to be concerned with any distinction between money of account and money of payment. No difficulty whatever arises in the present case as to money of payment. At the date of the order for liquidation of the company (which, it is conceded, is the relevant date) the rate of exchange between Australia and Great Britain was £A125 to £E100. If the substance of the obligation in a £100 certificate is to pay £E100, then in an action on a certificate in an English court judgment would be given for £100, which would be English pounds, and if the action were brought in an Australian court the judgment would be for £125 Australian pounds. If, on the other hand, the substance of the obligation is to pay £A100 the judgment in an English court would be for £E80, and in an Australian court for £A100. The question to be determined is simply that of the substance of the obligation, that is whether the obligation is to pay £E100 or £A100.

The new scheme of arrangement, which was made effective in the three jurisdictions mentioned, consisted of two Parts, Paragraph 1 of the First Part defined the word " court " where used in the Scheme as meaning the Supreme Court of Queensland. " The said securities " were defined as the deposit receipts, negotiable deposit receipts with coupons and inscribed deposit stock issued under the old scheme and sanctioned by the Supreme Court of Queensland in 1893.

Paragraph 2 made provision for the discharge of the debt to the Government of Queensland. This paragraph referred to the agreement made as part of the old scheme of arrangement between the Government of Queensland and the bank and varied the terms upon which the debt was to be satisfied subject to the provisions of a Queensland statute entitled the Queensland National Bank Limited (Agreement) Act of 1896. Paragraph 2 provided for the payment of a sum equal to 15/– in the pound upon the amount of the principal moneys owed by the bank to the Government under the old agreement and for payment of interest thereon and of a further sum equal to 5/– in the pound upon the amount of the principal moneys to be payable out of a specified part of the half-yearly profits of the bank.

With respect to the other creditors, being the registered holders of " the said securities," the scheme provided in paragraph 3 that the bank should create and allot to and among such creditors an amount equal to 75% of the principal moneys secured or represented by their " said securities," omitting fractional parts of pounds.

Paragraph 4 provided that the registered holders of the said securities should accept in satisfaction and discharge of their securities and of all principal moneys and interest secured or represented thereby an amount of the said stock equal to 15s. in the pound upon the principal moneys. This paragraph also provided that the former securities should be surrendered and that interest should be payable on specified dates at the offices of the bank in Queensland, Sydney, and London, at which the stock was registered. Further, " In addition to such interest as aforesaid, registered holders of stock shall be entitled by way of bonus to such part of the half-yearly profits of the Bank as hereinafter provided."

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No. 15. Reasons for Judgment of Latham, C.J., *continued.*

Paragraph 5 provided for two events upon which the principal moneys should become payable. They were, first, if the bank made default for a period of six months in the payment of interest and, after such default, the Government or " registered holders of stock to an amount equal to two-thirds of the stock for the time being unredeemed, calculated at its par value, by notice in writing to the Bank, (should) call in such principal moneys " ; and, secondly, " if an order is made, or an effective resolution is passed, for the winding-up of the Bank." Paragraph 10 provided for a further event upon which the moneys represented by the stock should become payable. That paragraph provided that at any time after the Bank had paid the sum of 15s. in the pound payable under the agreement referred to in paragraph 2, the Bank might give to the registered holders of the stock or any of them six calendar months' notice of intention to redeem the stock or any portion thereof at its market value but not less than its par value, together with 5s. in the pound upon the amount of the principal moneys secured or represented by the securities in exchange for which the stock was allotted or so much of such 5s. in the pound as had not been previously paid out of the profits as aforesaid. It was provided that if this provision was put into operation the Bank should pay the registered holder the redemption money and that the holder of the stock should surrender to the Bank for cancellation the amount of redeemed stock and should deliver up his certificate of cancellation—" Such surrender delivery and payment shall be made at the office of the Bank at which such stock is registered."

Paragraph 6 provided that the stock should be issued and held subject to the provisions of the scheme and to the conditions set forth in the schedule (that is, the Second Part) and that such provisions and conditions should be binding on the Bank and the registered holders of stock and persons claiming through or under them respectively.

Paragraph 7 was a provision relating to the application of the profits of the Bank to which paragraphs already mentioned made reference. The profits were to be applied half-yearly in the manner set out in the paragraph. It is not necessary to state those provisions in detail. They were to the effect that 25 per cent. of what was called the balance of profits should be paid to the Government of Queensland until the sum of 5s. in the pound referred to in paragraph 2 had been duly paid ; 50 per cent. of the balance, or, after the Government had been paid the 5s. in the pound, 75 per cent. was to be carried to a special fund which was to be distributed as a bonus amongst the registered holders of stock rateably until an aggregate or bonus equal to 5s. in the pound on the principal moneys had been made good out of such balance or profits. The paragraph contained other provisions referring to the profits of the Bank as ascertained from half-year to half-year.

Paragraph 8 provided that the Bank might, on giving notice to the Treasurer of Queensland, pay off the sum of 15s. in the pound before the time fixed for the payment, minimum payment to be £25,000.

The substance of paragraph 10 has already been stated.

Paragraph 11 provided that no dividend should be payable until the sum of 5s. in the pound had been made good to the Government and the

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Reasons for Judgment of Latham, C.J., *continued.*

registered holders of stock respectively and that no larger dividend than 3½ per cent. should be payable until all moneys payable to the Government under the scheme had been duly paid.

Paragraph 12 provided that, subject to necessary amendments of the articles of association and so long as stock to the amount of £500,000 was unredeemed, one member of the London Board of Directors should be appointed by the registered holders of stock. Those holders, it was provided, should be entitled to vote upon the following basis :—

Registered holders of stock	for an amount of	not less than	£500	One vote
Do.	do.	do.	£2,000	Two votes
Do.	do.	do.	£5,000	Three votes
Do.	do.	exceeding	£5,000 ..	Four votes

Paragraph 13 provided for a reduction of the nominal capital of the Bank from £1,600,000 divided into 200,000 shares of £8 each to £1,000,000 divided into 200,000 shares of £5 each. The reduction was to be effected by cancelling paid-up capital to the extent of £3 per share upon the shares issued and reducing the nominal amount of all shares from £8 to £5.

Paragraph 15 provided that " All such provisions as by the Queensland National Bank Limited (Agreement) Act of 1896 are prescribed in the case of an agreement made under the authority of that Act shall be deemed to be incorporated in this scheme." The Act to which reference was made provided that the Auditor-General should prepare and certify lists of creditors of the Bank and that the due payment of the debts of the Bank, but not exceeding in the whole the sum of £800,000, should be guaranteed to the creditors, out of the consolidated revenue of the colony if the Bank failed to pay them.

The Second Part of the scheme contained the schedule to the new Scheme of Arrangement. Paragraph 1 provided that registers of stock should be kept by the Bank at its head office in Brisbane or at its branch offices in Queensland, Sydney or London, at which the securities in exchange for which such stock was allotted were at the time of such allotment payable, or at the office of the Bank to which such stock might be transferred in manner provided. Stock was issued at the various places mentioned and registers of stock were kept in Queensland at various places, in New South Wales and in London.

Paragraph 2 provided for entry of particulars in the register and paragraph 3 provided that the registered holder of stock could, upon application in writing addressed to the manager at the office where such stock was registered, require that the registration of such stock should at his cost and expense be transferred to the register kept at any other office and that upon such transfer being effected the stock should be deemed to be registered at the last-mentioned office. Paragraph 5 provided for the form of certificate which has already been set out.

Paragraph 6 provided that every certificate of stock registered at the head office of the Bank in Brisbane should be given under the seal of the Bank, that every certificate of stock registered at the London office should be given under the duplicate seal of the Bank, and that certificates registered at any other office should be signed by the manager and countersigned by the accountant of the branch of the Bank at the office at which

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the stock is registered. The second part contained other details as to registration, transfers, recognition of transmissions of title, etc., to which it is not necessary to refer. Paragraph 19 provided that the interest on stock and all other moneys payable in respect thereof might be paid by cheque or warrant sent through the post to the registered address of the holder.

In *Bonython* v. *The Commonwealth of Australia* (not yet reported) the Privy Council held that a contract made by debentures issued in 1895 between the Government of Queensland and a lender of money to pay
10 £100 sterling in 1945 would be properly performed by payment of £A100. In 1895 the only law applicable in Queensland with respect to currency and legal tender was Imperial legislation which derived its authority entirely from enactment of the Parliament of the United Kingdom. But it was held that as Queensland was a self-governing colony with power to make laws for its own peace, order and good government, the monetary systems of Queensland and Great Britain were " in a real sense two monetary systems " even in 1895 and that they are now two monetary systems. In view of this decision it is not necessary to state again the reasons which in more than one case have led this Court to a conclusion
20 which was the same as the latter conclusion reached by the Privy Council. The question to be answered in *Bonython's* case was stated, in terms taken from the case of *The Auckland Corporation* v. *Alliance Assurance Co.* [1937] A.C. 587, as being " What currency on the true construction of the contract was connoted by the use of the word ' pound ' ? " or, to express the same question in another form, " Within the framework of what monetary or financial system should the instrument be construed ? " This is the criterion which has been applied by this Court in determining cases of this type, though there have sometimes been differences of opinion in its application to particular facts: *Bonython's* case in this Court,
30 75 C.L.R. 589 ; *Goldsborough Mort & Co., Ltd.* v. *Hall*, 78 C.L.R. 1. In *Bonython's* case at the time when the contract was made with the Queensland Government (just as in the present case at the time when the Scheme of Arrangement was imposed upon creditors and shareholders by the Courts) nobody contemplated a divergence in the value of the Queensland pound and the English pound. It was held that it was clear that, if no such divergence was thought of, it could not have been intended that the debenture-holder should obtain a different measure or value or the Queensland Government be placed under a different liability according to the place of payment—in other words, it was clear that the same
40 substantial obligation was imposed on the Queensland Government whatever the place chosen for payment, the choice being given to the debenture-holder clearly as a matter of convenience. It was stated that the position was entirely different from that which would arise where the creditor was expressly given an option, not only as to the place of payment, but also as to currency in which it should be made. There is no such option in the present case. Paragraph 19 of the second part of the Scheme authorises the Bank to pay by cheque, but that is an option given to the Bank and not to the creditor, and the Scheme certainly does not contain any express term which gives the creditor an option to require
50 payment at any particular place or in either English or Australian currency as he may elect.

In the High Court of Australia in its Appellate Jurisdiction

No. 15. Reasons for Judgment of Latham, C.J., *continued.*

In *Bonython's* case emphasis was placed upon the fact that the Government of Queensland was one of the contracting parties, and that it was at least unlikely that the legislature of a self-governing colony should undertake to pay money in terms of a currency other than its own. As already stated, in fact the State of Queensland has in the past made such contracts, but there is no such feature in the present case. The word "pounds" has been at all times completely and properly applicable to the currency circulating in Queensland, formerly under laws passed by the Parliament of the United Kingdom and now under laws passed by the Commonwealth Parliament. Further, in the present case there are special provisions relating to the discharge of the debt owed by the Bank to the Government. Those provisions depend upon the payment of moneys described as 5s. and 15s. in the pound and payments made out of the half-yearly profits of the Company. The dividends which are allowable are stated as percentages of profits. It is plain that the debt to the Government (and the payment in respect thereof) would at all times be calculated in the currency of Queensland and not in the currency of any other country and that the application of the provisions just mentioned as to profits and dividends would depend upon the use of "pounds" in the accounts of the Company in the sense of Queensland currency.

I now turn to the other provisions of the Scheme in which the word "pounds" is used. As already stated, the question is not one of interpreting a contract, but of determining the meaning of the Order of the Supreme Court of Queensland which was adopted in identical terms by Courts in New South Wales and in Great Britain. Paragraphs 3, 4, 5 and 10 of the first part and paragraph 5 of the second part (prescribing the form of certificate) are the paragraphs particularly requiring attention. They are the paragraphs which specify the rights of the stockholders.

In my opinion an examination of the Scheme in detail shows that the word "pounds" must necessarily be construed as relating to Australian currency in some cases and that the Scheme as a whole would be incoherent and not fully intelligible if the word "pounds" were not construed in the same sense wherever it appears in the scheme. Reference has already been made to paragraph 2 of the first part, dealing with the rights of the Government. Here the word "pounds" must be construed as meaning Australian currency. In paragraph 7, dealing with the ascertainment and distribution of the half-yearly balance of profits in the case of a bank carrying on business in Queensland, it is plain that the profits must be ascertained in the currency of Queensland, that the percentages of profits mentioned in the paragraph must be similarly ascertained, and that the distributions amongst the registered holders of stock rateably must be ascertained by reference to the amount of stock which they hold. If some holders of stock had their holdings reckoned in English currency and others in Australian currency, but the profits and the percentages of the profits were ascertained in Australian currency, it would not be practicable to apply the provisions of paragraph 7 according to its terms.

Paragraph 8 provided that if the Bank paid off the Government before the time fixed for payment the amount repaid to the Government at any one time should not be less than £25,000. This reference to £25,000

must necessarily be a reference to money payable in Australian currency. Paragraph 11 provided for the limitation of dividends until the sum of 5s. in the pound had been paid to the Government and to the holders of stock. The pound to which reference is here made must be the same pound as the pounds in which the debt due to the Government has been expressed and therefore the reference must be to Australian currency.

In the High Court of Australia in its Appellate Jurisdiction

No. 15. Reasons for Judgment of Latham, C.J., *continued.*

The substance of paragraph 12 has been quoted. It referred to the voting rights of registered holders of stock. This paragraph contemplated that votes should be given in accordance with the face value of the stock, 10 and in my opinion requires the ascertainment of the face value of the stock in the same way in the case of all holders. It has not been argued in the present case that, for example, holders of stock which has always been on the Australian register are entitled to payment otherwise than in Australian currency and that they should have the value of their stock diminished for voting purposes under paragraph 12, but not for other purposes. If this is so, the holders of all the other stock should, at least for the voting purposes mentioned in paragraph 12, be treated in the same manner, i.e., should have votes according to the face value of their stock and not according to that value increased by 25 per cent.

20 Paragraph 13 provided for the reduction of the nominal capital of the Bank and the cancellation of paid-up capital. The figures stated in paragraph 13 must necessarily, in the case of a company incorporated in Queensland and carrying on business in Queensland and having a capital as prescribed by the Queensland Companies Act, be figures referring to the currency of the country where the company is incorporated, i.e., to the currency of Queensland. The word " pounds " in paragraph 13 must be interpreted as meaning £A. The scheme is a coherent and intelligible scheme only if " pounds " is given the same interpretation in all the other provisions.

30 Paragraph 15 referred to the Queensland National Bank Limited (Agreement) Act of 1896. As already stated, that Act contained provisions relating to pounds to be paid and the word " pounds " there, on the reasoning in *Bonython's* case, must be held to refer to Australian currency.

The word " pounds " should, prima facie, be given the same meaning in all the provisions of the Scheme. If a different meaning is given to the word " pounds " in the certificates from that which it must bear in the body of the Scheme, the Scheme loses all symmetry and coherence. In many of the provisions the word necessarily means Australian pounds. The word should be given the same meaning in other provisions unless a 40 contrary intention clearly appears. No such intention appears.

Accordingly I am of opinion that all holders are entitled to be paid the face value of their stock only in Australian currency, that the appeal should be allowed, the cross-appeal dismissed and that the answers to all of the questions submitted to the Court should be to the effect stated, i.e., that all payments should be made according to the face value of the stock in Australian currency.

No. 16.

REASONS for Judgment of Dixon, J.

In a new form this appeal presents a question of a kind which twice recently has come before the Court. The question arises out of the difference, as measures of value, between the Australian pound and the English pound in terms of one another. That difference did not, of course, prevail until the last two decades and the question concerns obligations which were incurred before the divergence took place and which have now become due and payable. They are obligations having a connection with both countries and they are expressed in pounds, then a single or common expression or measure of value, but now capable of applying to either of the two differing measures of value. The question is which of the two monetary systems provides the standard of value according to which the obligations are to be measured. The two previous cases in which questions of this description have been decided by the Court are *Bonython* v. *The Commonwealth*, 1948, 75 C.L.R. 589, and *Goldsborough Mort & Co. Ltd.* v. *Hall*, 1949, 78 C.L.R. 1, affirming the judgment of Fullagar, J., in the Supreme Court, 1948, V.L.R. 145 ; 1948, 1 Argus L.R. 201. The decision in *Bonython's* case has been affirmed in the Privy Council since the argument in this case took place. We have delayed our decision in order that we might have the advantage of their Lordships' reasons, a print of which we have now seen.

It is now finally settled that in spite of a common nomenclature Australian money is not now the same as English money as a measure of value or money of account. There is a separate monetary system in Australia.

As the substance of the obligation is measured in money and must for that purpose depend on one money of account or the other and as the expression pound may relate to either and in that sense has become quite equivocal, the problem is to determine to which of the two it must be taken to refer. The question is to be solved as one of interpretation. The presumed intention is to be collected from the instruments in which the transaction is embodied, from its general character and purpose, from the circumstances surrounding and leading up to it and the closeness of connection it possesses with one or other country. Weight must be given to the fact that the distinction between the two monetary systems comes from the existence of two law-making powers rather than to the identity or similarity of the money or moneys of account ; from the beginning the power of each of the Australian colonies and afterwards of the Commonwealth was capable of exercise so as to destroy that identity or similarity.

The appeal relates to the interminable inscribed deposit stock created by a banking company, the principal moneys having become payable owing to the winding up of the Company. Registers of stock were kept in Australia and in London and stockholders were entitled to transfer stock from one register to another. The stock represented liabilities some of which had been contracted in Australia, but the greater part of which had been contracted in the United Kingdom. The case presents the question in a new form because the problem it raises is whether stock associated with the United Kingdom, either in virtue of registration or of the

liabilities it represents or otherwise, is to be taken to refer to the pound sterling as the money of account while correspondingly the remaining stock is taken to refer to the pound Australian or on the contrary all the stock is to be taken to refer to the pound Australian.

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No. 16. Reasons for Judgment of Dixon, J., *continued.*

If the former alternative is adopted it will be seen that, before the winding up, the right to transfer the stock from an Australian register to the register in the United Kingdom or vice versa amounted in effect to an option to go not merely from one place of payment to another, but from one measure of the quantum or substance of the obligation to another.
10 In other words, it amounts really to an *option de change* or option of payment and not merely to an *option de place.* See The Legal Aspect of Money, Dr. F. A. Mann, pp. 147–150. Speaking of a creditor's claim to a power " by its own election to determine directly or indirectly the money of account by reference to which the debt is to be discharged " Fullagar, J., in the case cited, said : " It is extremely unlikely any such option as to the measure of the obligation would be intended to be given to either party." And Dr. Mann (pp. 79 and 167*n*) speaks of the avoidance of substituting an option of payment for an option of place where an option of payment has not been stipulated. But Professor Nussbaum in his book
20 Money in the Law (1950), pp. 393–4, in speaking of a situation where there is an option clause couched in ambiguous currency terms such as " francs," as for instance if a bond calling simply for a payment of " francs " is payable in Paris, Brussels or Zurich, says : " In such a situation the presence of an *option de place* is indicated where a definite amount is stated in one currency only, while the sums to be paid in the other currencies are to be computed at the rate of exchange of the former currency. Otherwise an *option de change* should be held to exist. This view casts a burden upon the issuer if he is domiciled in the country where the money is depreciated. However, if he has appealed to the investors of a foreign capital market, by
30 instituting and advertising agencies for the service of the loan there and has employed the name of the money current in that country, it is fair to assume that the prospective investors interpreted that name to refer to their national currency and that the issuer expected them so to understand the reference. To put it another way, the promise here, too, must be construed under the circumstances in which it was understood at the place of payment."

It will be seen from the foregoing very general account of the question raised by the present appeal that everything depends upon the facts. The interminable inscribed deposit stock was created in pursuance of a
40 Scheme of Arrangement sanctioned by the Court. The banking company is the Queensland National Bank Limited, now in liquidation. The Scheme of Arrangement was adopted on 30th April 1897 and it was sanctioned by the Supreme Court of Queensland on 12th May 1897 and by the High Court of Justice in England on 4th June 1897. It was also sanctioned by the Supreme Court of New South Wales. It was the second Scheme of Arrangement which the Bank had found it necessary to effect. The first had been a Scheme of Arrangement made between the Bank and its creditors, four years earlier. It was sanctioned by the Supreme Court of Queensland on 31st July 1893. The Bank had been incorporated in
50 Queensland in 1872 as a limited company and it proceeded to carry on the business of banking in the colony. Early in 1878 the Bank opened a

branch in London. From September in the following year it transacted the general Government banking business of the colony of Queensland under agreements between the Treasurer and the Bank. A London board of directors was appointed and a systematic effort was made to obtain deposits in Great Britain and Ireland. Agents were appointed in various places and apparently they canvassed for deposits. The moneys were accepted on fixed deposit at 4 per cent. to 5 per cent. per annum for terms varying between one and five years. The amount of the deposits in London increased until in the early part of 1891 it reached more than £4,000,000 but, doubtless under the influence of the growing depression in the Australian colonies, the amount declined until as at 31st March 1893 it stood at £2,971,817. On 15th May 1893 the Bank was compelled to suspend payment. A petition for winding up was presented to the Supreme Court of Queensland and a provisional liquidator was appointed. At the same time petitions were presented in England and in New South Wales and provisional liquidators were appointed. The Bank's liability to the Government of Queensland was about £2,360,000. Among its other liabilities were £2,897,619 in respect of deposits in London, £1,860,628 in respect of deposits in Queensland and £110,322 in respect of deposits in New South Wales. A Scheme of Arrangement was duly adopted and it was sanctioned in all three jurisdictions. It contained provisions for calling up unpaid capital and cancelling in part paid up capital and regulating the rights of shareholders in respect of dividends. But all that is material for present purposes is the manner in which it dealt with the liabilities I have mentioned. Of the debt to the Government, £2,000,000 was to be covered by twelve deposit receipts of equal amount, payable at intervals of six months commencing six years later, viz., 1st July 1899 and bearing interest at 4½ per cent. per annum. The balance of £360,000 was to bear interest at the same rate and to be repayable only on six months' notice and then in amounts not greater than £100,000 for any one period of six months. To these terms the Government of Queensland agreed under statutory authority. The creditors in respect of deposits were to accept twelve deposit receipts each for a twelfth of the debt. The first was to be payable at the end of six years and the remaining eleven at successive intervals of six months. They were to bear interest at 4½ per cent. per annum (except for any unexpired period in respect of which the Bank had contracted to pay some other rate of interest). As alternatives to accepting these deposit receipts the creditors might take either negotiable deposit receipts of the same currency, payable to bearer with interest coupons attached, or inscribed stock repayable at the option of the Bank on six months' notice, to be given only after the substituted deposit receipts had been paid off.

Neither form of the alternative seems to have proved attractive to the depositors. No inscribed stock was issued in Australia, and in London the issue amounted to £50,448 only. Negotiable deposit receipts were issued to the amount of £198,119. But creditors took up the non-negotiable fixed deposit receipts in pursuance of the Scheme to the extent of £2,534,484 in London and £1,516,136 in Australia. Some creditors made no application under the Scheme.

The Scheme of Arrangement having been put into effect the Bank resumed business. But before four years were out it became apparent

that a second Scheme of Arrangement would be necessary. At the end of 1896 an Act was passed by the Parliament of Queensland authorising the Treasurer to enter into an agreement with the Bank extending the terms of payment and reducing interest.

A committee had reported that according to their estimate of the Bank's position, the liabilities exceeded the assets by such an amount that the whole of the paid up capital had been lost together with the amounts at the credit of the profit and loss and other accounts and that still a deficit existed of £1,252,810. It is needless to state the steps resulting in a new Scheme of Arrangement but at length one was adopted and sanctioned in all three jurisdictions. The Scheme took effect in substance as from 31st March 1897. The amount remaining due to the Queensland Government was £1,833,326. The Government agreed that repayment of 75 per cent. of this debt should be deferred and made in five equal annual instalments on 1st July of the years 1917 to 1921 bearing interest at 3½ per cent. per annum, and that the remaining 25 per cent. should be repayable without interest out of the Bank's half-yearly profits (after providing for contingencies) not less than 25 per cent. of such profits being applied to the purposes and any unpaid residue of that part of the debt becoming repayable in any case on 1st July 1921. The terms of which this is a summary were later expressed in an agreement outside the Scheme of Arrangement, by which the Government was not necessarily bound and to which it was not a formal party. Indeed the order made by the High Court of Justice in England sanctioning the Scheme declared it to be binding, not on creditors generally, but on all creditors of the Bank in respect of deposit receipts, negotiable deposit receipts and inscribed deposit stock issued by the Bank in pursuance of the earlier Scheme. The debts of these creditors amounted to £4,155,495 of which £2,711,366 was owing in respect of deposits in England and £1,444,129 in respect of deposits in Queensland and New South Wales.

The basal principle of the scheme of compromise was that the debts so representing deposits should be dealt with by converting 15s. in the £ into interminable inscribed stock and leaving the remaining 5s. in the £ to be provided out of a proportion of the profits (if at all). The stock carried interest at 3½ per cent. per annum from 31st March 1897. The Bank, in pursuance of the Scheme, created what the Scheme called interminable inscribed deposit stock £3,116,621 (75 per cent, of £4,155,495) and allocated £2,033,524 among holders in London of deposit receipts, negotiable deposit receipts and inscribed deposit stock issued under the earlier Scheme and £1,083,097 among holders in Australia of such deposit receipts and negotiable deposit receipts.

The Scheme of Arrangement provided for the establishment of registers of stock in Brisbane, Sydney and London as well as at branch offices in Queensland. The stock issued in respect of the London deposit receipts, etc., was placed upon the London register and that in respect of the Australian deposit receipts on the Brisbane or other Australian register. The stock certificates issued from the respective registries differed, apart from format, only in the address ascribed to the Bank, in the name of the place at which they were expressed to be given, and in the way they described the authority for affixing the Company's common seal. They

all called the security interminable inscribed deposit stock bearing interest at the rate of 3½ per cent. per annum payable on specified half-yearly dates and certified that the named person was registered holder of so many pounds of the stock and proceeded, " which stock is constituted pursuant to the provisions of the Scheme of Arrangement sanctioned by the Supreme Court of Queensland on the Twelfth day of May 1897 and is issued subject to the provisions therein and in the Schedule thereto respectively contained." The schedule referred to is a schedule to the Scheme of Arrangement and contains the provisions regulating the keeping of the registers, dealings with stock and their registration transfers from one registry to another and kindred matters.

The Scheme of Arrangement provides for the application of a portion of profits in payment of the 5s. in the £ of deposit receipts, etc., under the earlier scheme, the 5s. in the £ not represented by the interminable inscribed deposit stock ; but in so providing the Scheme must necessarily take account of the prior claim upon profits conceded to the debt to the Queensland Government. It provides that the balance of profits (after setting aside an amount thought proper for contingencies) should be dealt with first by paying 25 per cent. to the Queensland Government until the 5s. in the £ of the debt to the Government is repaid, next in carrying until that event 50 per cent. of such profits, and after that event 75 per cent. of such profits, to a special fund and distributing it as the directors might think fit among the holders of stock until an amount or bonus equal to 5s. in the £ upon the principal moneys had been made good, and thirdly for ten years after 31st March 1897 by carrying the remaining 25 per cent. to a reserve fund.

When in the events that should happen there should be profits not absorbed by these requirements, they might be dealt with in any manner allowed by the Articles of Association.

The Scheme of Arrangement provided that the principal moneys payable to the Government and the principal moneys secured by the stock should become payable in either of two events. The first is a compound event consisting of the Bank's making default for a period of six months in the payment of any interest payable upon such principal moneys and the Government or the holders of stock of an amount equal to two-thirds of the stock then unredeemed giving a notice in writing calling up the principal moneys. The second event is an order or resolution for winding up. But the Bank was given a right after the expiration of five years to pay off the Government debt, or portions of it not less than £25,000 at one time, before the time of payment ; and it was given an analogous right to redeem the stock. The right to redeem the stock could not arise until the Government debt had been repaid, 20s. in the £ and interest. When that had been done, the Bank might give to the stockholders or any of them six months' notice of its intention to redeem the stock held by them or any portion thereof. The redemption had to be at market value but at not less than its par value together with 5s. in the £ upon the amount of the principal moneys secured or represented by the securities in exchange for which the stock redeemed was allotted, or so much of such 5s. as had not been previously paid out of profits. The stockholder was required to surrender the amount of the stock to be

cancelled, and to deliver up his stock certificates and, thereupon, the Bank, having given notice, was obliged to pay him the redemption money. The surrender of the stock, the delivery of the certificate, and the payment were all to take place at the office of the Bank where the stock was registered. The Scheme of Arrangement contained elaborate provisions entitling holders of the stock to representation upon the Bank's directorate. These provisions applied so long as stock remained unredeemed to the amount of £500,000 at least. On the board of directors in London the stockholders were to have one director and on the board in Brisbane three 10 directors out of five. The stockholders were to receive notice of meetings at which directors were to be elected and they were to be entitled to attend in person or by proxy. Proxies were to be deposited at the Bank's office at the place of registry and particulars of the proxies were to be telegraphed to Brisbane for the meeting. The number of votes to which holders of stock were to be entitled varied with the amount of stock held—one vote for an amount of stock not less than £500, two votes for an amount not less than £2,000, three votes for an amount not less than £5,000, four votes for an amount exceeding £5,000 (*sic*).

It may not be immaterial to add that the Scheme expressly 20 incorporated the provisions of the Queensland statute authorising the Government to agree on a deferment of its debt.

Of the provisions contained in the schedule to the Scheme of Arrangement that most important for the purposes of the question to be decided is no doubt the clause authorising the registered holder of stock to transfer his stock from one register to another. Upon an application in writing addressed to the manager at the office of the Bank where the stock was registered the holder might require that the registration of such stock should at his cost and expense be transferred to the register kept at any other office and upon the transfer being effected it must be deemed to be 30 registered at such last-mentioned office.

The schedule prescribes the form of certificate, the contents of which have been already stated. The mode of transfer is also prescribed, and, of course, it must be registered at the place where the stock is registered. The addresses of stockholders were to be entered on the register as well as the particulars of the stock and the date of registry. Interest might be paid by cheque or warrant sent through the post to the registered address. The cheque or warrant was to be made payable to the order of the stockholder and payment of the cheque or warrant, if duly endorsed by the stockholder, was to be a good discharge to the Bank.

40 After the second Scheme of Arrangement took effect the Bank continued to carry on the business of banking until 31st October 1947, when a voluntary liquidation commenced in consequence of an agreement under which the Bank was taken over by the National Bank of Australasia, the Appellant. The whole of the moneys owing under the Scheme of Arrangement to the Government of Queensland were repaid before the year 1919, a course to which the Government consented under a further agreement. Between the years 1900 and 1918 the Bank repaid to stockholders an amount of 5s. upon the face value of the stock issued being the amount payable out of 50 per cent. of the profits and representing the 50 5s. in the £ of the amount of the deposit receipts etc. under the earlier

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scheme not covered by the interminable inscribed deposit stock issued up to 15s. in the £ of that amount. The Bank also purchased and cancelled amounts of stock of a par value of £376,770 on Australian registries and £180,765 on the London registry. The result was that £2,559,086 of stock remained outstanding at the commencement of the winding up. During the period since the issue of the stock, transfers from London to Australia of £754,662 of stock had taken place, and from Australia to London of £731,720. This made the amount of stock on the London register £1,829,817 and that upon the Australian registers £729,269, making the aggregate outstanding which has already been given. 10

Upon the foregoing facts a variety of answers has been put forward to the question which pound, the £A or the £ stg. alias the £E, provides the money of account, or money of contract, which measures the substance of the obligations evidenced or established by the stock.

I have formed the conclusion that the basis of the Scheme of Arrangement was a tacit assumption that stock upon the English register would be governed by English law and the English financial and monetary system, while stock on the Australian registers would be governed by the laws of the two Australian colonies concerned, predominantly that of Queensland, and their financial and monetary systems. 20

There was of course in 1897 no material difference in the content of the law and no difference in the money of account. But there were distinct countries with governments whose powers might have been exercised independently in such a way as to create a difference that might be important. I think that the proper inference is that the obligations of stock upon the English register was identified with England and that upon the Australian registers with Australia or, as it would be regarded at that date, with the two colonies. This is, I think, the conclusion to be drawn from the history of the liabilities dealt with by the Scheme of Arrangement and from the nature and terms of that transaction. The liabilities incurred 30 by the Bank when before 1893 it sought fixed deposits in Great Britain and Ireland were liabilities to depositors who clearly must have lent their money on the footing that it was an English banking transaction governed by English law and expressed in English money because it was the money of the country. Deposits obtained in Australia would correspondingly be regarded as governed by Queensland law, or New South Wales law, as the case may be, and as expressed in pounds because they were the money of the country. The Scheme of Arrangement of 1893 did not destroy or impair the identity or continuity of any of these liabilities. It did no more than defer them and provide a fresh form of security or securities 40 to evidence them. It is no doubt true that the orders made in the three jurisdictions by which the Scheme was sanctioned bound respectively the creditors whose debts were governed by the law of England, of Queensland or of New South Wales, as the case might be, as the proper law of the obligation.

No doubt it is also true that the primary order was that made in Queensland and that the deferment of the debts was interdependent with provisions relating to the rights of shareholders and to the Government debt and other matters intimately connected with Queensland. But these are not considerations which detract from the correctness of the view that 50

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the liabilities incurred by the Branch in England were English debts belonging to the English monetary and legal system. Indeed it was for this very reason that the English order of confirmation was an indispensable necessity.

The Scheme of Arrangement of 1897 took the liabilities secured by the deposit receipts, negotiable deposit receipts and inscribed stock under the earlier Scheme and replaced them with interminable inscribed deposit stock of an amount equal to 75 per cent. of the amount of the liabilities and added a right to recoupment of 25 per cent. of that amount out of 10 profits. In replacing them the Scheme provided for the keeping of registers at the offices of the Bank in London, Brisbane and Sydney, as the case might be, where the former securities were payable in respect of which the stock was allotted; and it is implicit in the Scheme that the new interminable inscribed stock should at its inception be allotted from and registered in London where it replaced English deposit receipts, negotiable deposit receipts and inscribed stock and in Australia where it replaced Australian deposit receipts and negotiable deposit receipts. There was thus continued a concursus of debts in England and a concursus of debts in Australia. As perhaps might be expected with interminable stock the 20 question of the place where principal is to be repaid is not dealt with very explicitly. But there is a definite provision that interest shall be payable half-yearly at the respective offices of the Bank in Queensland, Sydney and London. It is followed by a reference to the bonus out of half-yearly profits (scil. up to the 25 per cent. in the £) which appears to me to import that the same rule should apply to that payment. Another provision deals with two of the events upon which the interminable stock might become repayable, viz.: Default in interest and winding up. In the former case the stockholders may " call in " the principal moneys. The third event, notice by the Bank of redemption, is dealt with by a clause which requires the 30 stockholder to surrender his stock and deliver up the certificate at the office of the Bank where the stock is registered. " Thereupon " the Bank must pay him the redemption money. All this points to the same conclusion, namely, that principal is payable in the same place as interest. It is proper to add that the schedule contains a provision for paying interest by sending a cheque or warrant through the post to the stockholder's registered address. But such a provision imposes no duty to pay elsewhere than the office of the Bank otherwise specified; it gives an alternative mode of performance, and in any case it contemplates pretty plainly the sending out of the cheques and warrants from the same office or branch. In a case like this 40 where there is what has become an ambiguous nomination of currency as the money of account or of contract and there is an optional means of changing the place of payment, great care must be exercised in using the place of payment as a consideration supporting an inference that the substance of the obligation is to be measured in the money of the same place. The matter is discussed to some extent in *Goldsborough Mort & Co., Ltd.* v. *Hall* (1948) Argus L.R. 201, at pp. 208–9; (1948) V.L.R. 145, at pp. 155–156, by Fullagar, J., and Dr. Mann goes as far as to say that it can be of no avail where there exist two or more places of payment whose units of account bear the same name: F. A. Mann, " The Legal Aspect 50 of Money," p. 167. But I think that it still remains a consideration to be taken into account as favouring the conclusion, to be weighed with

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other considerations, and against it weighing the general a priori improbability of its being intended that the quantum of the obligation should be measured in alternative moneys of account according to the place of performance. Where there is no alternative place of payment wisdom can be seen in the view that a reference to money which was or has become ambiguous, as may well be the case where pounds, dollars or francs are named, should be understood prima facie as meaning the money of the place of payment. " As a matter of fact, if not of law, it is reasonable to interpret an ambiguous currency stipulation in terms of the currency of the place of payment, because if one promises to pay dollars in New York 10 one naturally thinks of United States currency, even though the contract was perhaps made in, and had other important contacts with Canada." Professor Nussbaum, " Money in the Law," p. 377. This view does not, I think, involve the now familiar confusion between the money in which payment is actually made and the money in which the obligation is measured. It does no more than give effect to the probability that the parties to a transaction would regard the money of the place of payment as fulfilling both purposes. When there are means by which the country of payment may be changed by the payee the inference may be weakened, but whether it is weakened to the point of being altogether invalid must 20 depend upon circumstances.

In the present case I think the place of payment combines with the history of the liabilities and the character of the transaction as a scheme of arrangement to strengthen the inference that it was not intended that the rights of the London depositors should cease to be measured by the English pound as part of the monetary system of Great Britain. But the existence of the right of the holders of the interminable inscribed deposit stock to transfer their stock from one register to another is a very definite reason for caution, if not hesitation, in drawing the inference. Nevertheless it is a reason which to my mind is insufficient to overcome first the strong 30 improbability of depositors with a Bank in London, even though a branch Bank, relying upon any other monetary system than that of Great Britain as the system determining the content of the obligation, whether in making the original deposits or in a consideration of any scheme of arrangement concerning repayment of the deposits, and secondly, the unfairness of treating the scheme of arrangement as meaning to produce a contrary result, obtaining, as it does, its binding force from the sanction of the court and not from contract. It must be remembered that upon holders of English deposit receipts, negotiable deposit receipts and inscribed stock the scheme obtained its binding force from the order of an English court 40 under English law. Further, it may be asked, was not interest to be calculated in sterling on their stock ? Why should they suppose that principal was not to be paid in sterling ? Two views have been put forward as to the manner in which some or all of the foregoing considerations should apply. One, and it is that adopted by Macrossan, C.J., distinguishes between the interminable inscribed deposit stock sounding in English money and that sounding in Australian money according to the place of origin of the obligation now represented by the stock. That involves tracing the history of the dealings in the stock or anterior deposit receipts, etc., back beyond the first scheme. The other course is to make the 50 distinction according to the place of registry at the date when the winding

up commenced. I prefer the latter view. It appears to me that the whole series of transactions recognised the existence of the three jurisdictions involved, that is England, Queensland and New South Wales, and the existence within, at all events, the two main jurisdictions of different bodies of creditors. It recognised that the need for the separate registers grew out of this fact. By the registers the stockholders of each jurisdiction were identified and recorded. But it was seen that it might be convenient for individual stockholders to change from one jurisdiction to another and it was thought not to matter, because no one foresaw that during the currency of the stock Great Britain and Australia would leave the gold standard and the monetary systems would widely diverge. It must be borne in mind that not only did the two monetary systems or potential monetary systems look like one indissoluble system but the stock was interminable. Apart from default or winding up the question could not arise unless the Bank itself chose to raise it by giving a notice of redemption. I think that the better view is that the register was designed to determine the jurisdiction to which the stock belonged and that the right to transfer from one to another register was added as a matter of convenience not otherwise of consequence, not that the right of transfer was an essential feature inconsistent with the intention which in its absence would be imputed. I am of opinion that this is the unusual case of two classes of obligations, otherwise uniform in present character belonging to two different monetary systems, and therefore possessing two different moneys of account, with a means available to a payee of transferring the liability to him from one to the other class. It may be remarked that in the event the net result of the use actually made of the right of transfer has not been to the disadvantage of the Bank as the figures already given show.

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Of the views contrary to that I have adopted that which chiefly requires consideration is that the whole Scheme of Arrangement is based upon the sanction of the Queensland Court and upon Queensland as the actual or potential source of the monetary system with which the transaction was associated and upon which it depended. In support of this view emphasis is placed on the primary or original character of the Queensland Court's sanction, on the description of the scheme in the English order as one so sanctioned, on the similar description of the stock in the stock certificates, on the fact that the Banking Company was incorporated and domiciled in Queensland, on the place occupied by the debt to the Queensland Government in the transaction and the resort in connection therewith to Queensland statute, and in the operation of the scheme on share capital, necessarily a thing governed by Queensland law. My answer to these considerations, considerations which were fully developed by Counsel in the argument of the appeal, is briefly that, while they show a close connection between the Scheme of Arrangement and Queensland, they are consistent with a recognition by the scheme of arrangement itself of the fact that a most important part of the liabilities with which it dealt consisted of English obligations to be discharged in England and to be dealt with by English law and by reference to the English monetary system and with a further recognition of the propriety, if not necessity, of carrying them over on that footing and that that is what the scheme did. But in further support of the view that Queensland was the source of the transaction and provided the monetary system which

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should now make the Australian pound the money of account, it was said that the nature of the transaction was such that there could only be one money of account for all the stock. Reliance for this contention was placed upon the provision relating to percentages of profit as a source of payment of the 25 per cent. both in the case of the Government debt and in the case of that satisfied by the allocation of stock representing 75 per cent. of the deposit receipts, etc., and upon the provisions for the election of directors by stockholders possessing a voting strength varying with the amount of stock held. It was urged that these provisions were unworkable unless there was one uniform money of account. This contention appears to me to be fallacious. I am unable to see why any conversion would be necessary to arrive at the voting strength. It appears to me that it is not. To arrive at profits from all sources for an Australian profit and loss account conversion of £ sterling would be necessary whatever view is taken of the question under decision. But that having been done I am unable to see why in order to find how 50 per cent. or 75 per cent. of the profits are to be applied any difficulty should be caused because some of the creditors are to be paid with a premium on exchange. It only means that they cannot be paid off in full until the prescribed proportion of profit provides more money.

For the reasons I have given I am of opinion that the stock on the English register at the date of winding up is to be paid according to its face value in sterling. Otherwise the stock is to be paid in £A according to its face value.

The questions submitted to the Supreme Court by the liquidator should be answered as follows : Questions 1, 2 and 6, In English currency ; Questions 3, 4 and 5, In Australian currency. Question 7 asks as to the date when the rate of exchange should be taken for the purpose of ascertaining the equivalent in Australian money for the liability to stockholders payable in sterling. I agree in the answer given in the Supreme Court, which was not attached, viz., the date of the commencement of the winding up.

I think that the appeal should be allowed as to question 4 and otherwise dismissed and the cross-appeal should be allowed. The order of the Supreme Court should be varied in respect of the answers to the second and fourth questions by the substitution in the answer to the second question of the word " English " for the word " Australian " and the substitution in the answer to the fourth question of the word " Australian " for the word " English." As the Appellant is the only shareholder it seems immaterial whether the order providing for the costs of the appeal is that the Appellant pays the costs of the appeal or that the costs of all parties be paid by the liquidator out of the assets. Apart from the position of the Appellant as the only shareholder, the latter is the order which I would make.

No. 17.

REASONS for Judgment of Williams, J.

The material facts and portions of documents and the nature of the appeal and cross appeal appear in previous judgments, so that I shall only refer to those details which are essential to these reasons. On 15th May 1893, the date upon which the Queensland National Bank Limited suspended payment, the amount due to the Government of Queensland was £2,360,000 and to depositors in respect of fixed deposits at interest in Queensland £1,860,628, in New South Wales £110,322, and in London
10 £2,897,619. The New South Wales deposits consisted of moneys lent to the Bank at its branch in Sydney, and the London deposits of moneys lent to the Bank at its branch in London. The moneys were primarily repayable only at these branches respectively, and were locally situate in New South Wales and England : *R.* v. *Lovitt* [1912] A.C. 212 ; *Clare & Co.* v. *Dresdner Bank* [1915] 2 K.B. 576, at p. 578 ; *Joachimson* v. *Swiss Bank Corp.* [1921] 3 K.B. 110, at p. 127 ; *Richardson* v. *Richardson* [1927] P. 228 ; *Isaacs* v. *Barclays Bank, Ltd. & Anor*, 169 L.T. 370 ; *Melville Island, Ltd.* v. *Richards*, 50 W.N. (N.S.W.) 41. It is clear, therefore, that the original obligation to repay the moneys deposited in New South
20 Wales and England was an obligation to repay them with any interest payable thereon in the currencies of New South Wales and England respectively.

Under the old Scheme of Arrangement sanctioned by the Courts of Queensland, New South Wales and England in 1893, the depositors, except a few who preferred to accept negotiable deposit receipts payable to bearer or inscribed deposit stock, received twelve deposit receipts, each for one-twelfth of the balance of principal moneys then due to them by the Bank, the first of such deposit receipts to become payable at the expiration of six years from the time when the Scheme was sanctioned
30 by the Supreme Court of Queensland and the remaining eleven at intervals of six calendar months. The old Scheme provided for the payment of interest on the postponed debts and also provided that " all payments of principal and interest shall be made at the place where the same are now payable." Under the old Scheme, therefore, it is also clear that the obligation to repay the amounts of the deposit receipts payable at the Sydney and London branches of the Bank and to pay interest thereon was an obligation to make these payments in the currencies of New South Wales and England respectively.

In 1897 the old Scheme of Arrangement was replaced by the new
40 Scheme of Arrangement, also sanctioned by the Courts of Queensland, New South Wales and England. Under this Scheme 5s. in the £ of the indebtedness to depositors was to be paid out of the profits arising from the business of the Bank as therein provided, and the balance, 15s., was to be satisfied and discharged by the allotment of a new form of stock to be created by the Bank called " Interminable Inscribed Deposit Stock." The new Scheme provided for the keeping by the Bank of registers of stock at its head office in Brisbane and at its branch offices in Queensland, Sydney or London (as the case might be) at which the securities (that is the securities under the old Scheme) in exchange for which such stock was

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allotted were at the time of such allotment payable or at the office of the bank to which such stock might be transferred in manner thereinafter provided. It provided that the registered holder of any stock might require the registration of his stock at his own cost and expense to be transferred to the register kept at any other office of the Bank and that, upon such transfer being effected, the stock should be deemed to be registered at the last-mentioned office. It also provided that every certificate of stock registered at head office should be given under the seal of the Bank, and every certificate of stock registered at the London office should be given under the duplicate seal of the Bank, and every certificate 10 of stock registered at any other office should be signed by the manager and countersigned by the accountant of the branch of the Bank, at the office of which such stock was so registered. It also provided that interest on the stock should be payable half-yearly on 30th September and 31st March in each year at the respective offices of the Bank in Queensland, Sydney and London at which such stock was registered.

The new stock was, as the title indicates, interminable in the sense that the capital moneys did not become repayable on any fixed date, and only became repayable in three events: (1) if an order was made or an effective resolution passed for the winding up of the Bank; (2) if the Bank 20 made default for a period of six months in the payment of any interest on the principal moneys payable to the Government of Queensland or to the stock holders, and if after such default the Government or registered holders of stock to an amount equal to two-thirds of the stock for the time being unredeemed, calculated at its par value, by notice in writing to the Bank, called in such principal moneys; (3) the Bank in accordance with the provisions of the Scheme exercised its right on six months' notice to redeem the stock held by any registered holders or any part thereof.

The new Scheme did not expressly provide any place for repayment of principal except upon a redemption. It did, however, provide that 30 interest on the stock and all other moneys payable in respect thereof (which I interpret to mean in respect of the stock) might be paid by cheque or warrant sent through the post to the registered address of the holder, that every cheque or warrant should be made payable to the order of the person to whom it was sent, and that the payment of the cheque or warrant, if duly endorsed, should be a satisfaction of the interest and other moneys as aforesaid and a good discharge to the Bank therefor. Since interest was payable at the respective offices of the Bank in Queensland, Sydney and London at which the stock was registered, it seems to me necessarily to follow that a cheque or warrant in payment of interest would also be 40 payable at the head office or branch of the Bank at which the stock was registered, and also necessarily to follow that a cheque or warrant in respect of any other moneys payable in respect of the stock, whether on account of principal or in respect of the 5s. payable out of profits would be similarly payable. Further, the right to redeem the stock or any part of it on six months' notice was a right to redeem the stock at its market value but not less than its par value, and in this event the new Scheme provided that at the expiration of the notice the stock holder to whom notice had been given should be bound to surrender the amount of his stock to the Bank to be cancelled, and deliver up his certificate of stock 50 for cancellation, and the Bank should thereupon pay the redemption

moneys to the registered holder of this stock together with all interest for the time being due in respect of such stock and that " such surrender delivery and payment shall be made at the office of the bank at which such stock is registered."

The sum at which the stock might be redeemed was the market or par value whichever was the higher, and the market value intended must surely have been the market value at the place where the stock was registered, measured in the currency of that place, and the comparison between the market value and the par value intended must also surely have been a comparison between the two values in the same currency. It would be capricious in the extreme to attribute to the new scheme an intention that the amount of interest which the Bank was obliged to pay during the life of the stock and the amount of capital which it was obliged to pay to redeem the stock should be measured by the currency of the place where the interest was payable and redemption took place whereas some different measure of obligation should be applied to the repayment of capital upon a winding up or upon default in payment of interest. The new Scheme was, of course, sanctioned by the Courts when in the words of Lord Simonds in *Bonython's* case, " a divergence in the value of the Queensland pound and the value of the English pound was in the contemplation of nobody." Now there is an effective resolution for the voluntary winding up of the Bank, passed on 30th October 1947. That resolution caused the principal moneys to become immediately repayable, and there was on that date a considerable divergence in the value of the Australian pound and the English pound, and it becomes important to determine which money of account is the proper money in which to measure the obligation of the Bank to repay the principal to the stockholders registered in London and Australia.

The obligations of the Bank to its creditors do not depend upon contract. They arise out of orders of the Courts in Queensland, New South Wales and England made in the exercise of statutory powers which authorised them in the exercise of their discretion to impose upon the creditors and contributories of the Bank, with the sanction of the prescribed majority of creditors, new rights and obligations in lieu of those previously existing: *Re Garner Motors, Ltd.* [1937] 1 All E.R. 671; *Re Oceanic Steam Navigation Co., Ltd.* [1939] 1 Ch. 41. But these new rights and obligations once imposed were not in any material respect different in their operation and effect from contractual rights, and in my opinion the questions at issue fall to be determined in accordance with the principles referred to in the many cases culminating in *Bonython's* case dealing with similar problems. These cases decide that the substance of the obligation must be determined in somewhat the same way as the proper law of the contract is ascertained, namely, by finding what is the monetary system or monetary area with which the obligation is most closely connected, what is that which the parties must be taken to have relied upon and contemplated as affording the means of measuring the obligation, or, as Lord Simonds said, " to relate the general question to the particular problem, within the framework of what monetary or financial system should the instrument be construed. Upon the assumption that express reference is made to none (as in the present case), the question becomes a matter of implication to be derived from all the circumstances of the

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transaction." "In the consideration of . . . what is the proper law of the contract, and therefore of what is the substance of the obligation created by it, it is a factor and sometimes a decisive one that a particular place is chosen for performance."

The present case is, in my opinion, one in which the factor that particular places are chosen for performance is the decisive factor. It is clear that at the crucial date (that is, when the new Scheme came into operation in 1897) the obligations of the Bank were measured by different monetary systems according to whether the debts to the depositors were repayable in London, New South Wales or Queensland. Those monetary 10 systems then were, as Lord Simonds said, similar in the sense that the same nomenclature, pounds, shillings and pence was used to describe their units of value. But they depended upon different law-making powers, so that, although those values were then substantially the same, they were capable of variation, and, as pointed out in *Bonython's* case, those values did change, so that at the date of liquidation £E100 had the same value as £A125.

Apart from the provisions by which stockholders were entitled to transfer stock from one register to another, I would feel little doubt that it was intended in the new Scheme that the obligation to pay the interest 20 and principal of stock on the Queensland and Sydney registers should be measured in Queensland and New South Wales currencies respectively, and the obligation to pay the interest and principal of stock on the London register should be measured in English currency. This was the substance of the obligation created by the original deposit of the moneys and continued by the provisions of the old Scheme. It is important to remember that the debtor is a Bank and that the indebtedness of the Bank at its head office and its separate branches is primarily the indebtedness of separate entities although the debt can finally be recovered from the Bank at whatever office it is incurred. At the time the new Scheme 30 came into operation therefore the Bank had commitments with its depositors within the framework of three monetary systems, the contracts with the depositors fell into three classes, and there were three systems of law depending upon localities with reference to which the contracts were made and with all of which a portion of the transactions had their closest and most real connection. It was in these circumstances that the new Scheme of Arrangement was confirmed by the Courts, each Court having jurisdiction under the laws of one of these localities. Accordingly the contracts for the repayment of the original debts to the depositors, the substituted mode of repayment under the old Scheme of Arrangement, 40 and the fresh arrangement under the new Scheme were all entered into with respect to these separate monetary systems and contemplated payments to be made the value of which was to be measured by the value of the money of payment in the place where the obligation was to be performed. The provisions of the new Scheme construed in the light of these circumstances appear to me to point, and point decisively, to the conclusion that the implication to be derived from all the circumstances of the transaction is that the place of payment was intended to govern the substance of the obligation, and that stockholders were to be entitled to have the obligations of the Bank to pay interest and principal measured 50 in the currency of the place of payment.

Macrossan C.J. was of opinion that " the money of account applicable to the discharge of the obligation of the Bank to pay the principal moneys secured or represented by the stock issued under the new Scheme of Arrangement should be in the case of stock originally issued and registered in London, English money, and in the case of stock originally issued and registered on an Australian register, Australian money, and that any subsequent changes of the place of registration of the stock should have no effect on the determination of the money of account applicable to the payment of the principal moneys secured or represented by the stock."

10 With this opinion I am in substantial agreement, for I agree that all creditors whose deposits were repayable in London under the old Scheme and who received stock on the London register under the new Scheme and remained on the London register are entitled to have the obligations of the Bank measured in English money. But I think that the Scheme went further and intended that stockholders should have the option of changing from one monetary system to another. The stock was originally allotted to customers of the Bank, and it was apparently contemplated that these customers might wish to transfer their stock from one office of the Bank to another in furtherance of their financial 20 arrangements with the Bank or as a means of selling it in the best market. At the date of the new Scheme the value of the currencies of each monetary system was substantially the same so that this transfer of indebtedness was of no pecuniary moment to the Bank. The new Scheme provided that the change of registration should be effected at the cost and expense of the registered holder of the stock, and the practice of the Bank, rightly in my opinion, was to issue a new certificate each time the registration was changed. There may be inconsistencies in the provisions relating to the offices at which stock might be registered. In the first part of the Scheme it is provided that interest on the stock shall be payable at the 30 respective offices of the Bank in Queensland, Sydney and London at which such stock is registered and this provision connotes that registers shall only be kept in these three localities. The provisions of the second part of the Scheme are open to the construction that registers might be kept at branches of the Bank subsequently opened in other countries (one was in fact kept in a branch opened in Melbourne). But the provisions of the first part are clear and precise, whereas those of the second part are somewhat ambiguous, and it appears to me that, reading them together, it was intended to confine the registers to the offices of the Bank in Queensland, Sydney and London. The express provisions that upon a 40 change of registration interest and principal upon redemption shall become payable from a different office appear to me to indicate that this change was intended to change the obligation to pay the interest and principal from the currency of the existing to that of the new place of registration.

It was contended for the Appellant that the substance of the obligation was to pay interest and principal in the currency of Queensland or its equivalent value from time to time in the currency of any place of payment outside Queensland. But I cannot accept this contention. Under the old Scheme each creditor acquired rights against the Bank quite separate and distinct from the rights of any other creditor. Under the new Scheme 50 the rights of the creditors were made in several respects dependent upon the actions of the other creditors. The principal moneys secured or

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No. 17. Reasons for Judgment of Williams, J., *continued.*

represented by the stock did not become payable if the Bank made default for a period of six months in payment of interest but only if after default the Government of Queensland or registered holders of stock to an amount equal to two-thirds of the stock for the time being unredeemed calculated at its par value by notice in writing to the Bank called in such principal moneys. So long as stock to the value of £500,000 was unredeemed, holders of stock were entitled to appoint three out of five directors of the board of the Bank in Brisbane and one member of the London board for which purpose they were entitled to one vote provided they held an amount of not less than £500 and up to four votes if they held greater 10 amounts. There was also the provision for the distribution of portion of the profits of the business of the Bank rateably amongst the registered holders of stock until 5s. in the £ had been paid. There was also the circumstance that the arrangements for the payment of the debt to the Government of Queensland made pursuant to the Queensland National Bank Limited (Agreement) Act of 1896 were included in the Scheme. It was submitted for the Appellant that all these circumstances showed that there should only be one money of account, namely, Queensland money, otherwise the new Scheme would be unworkable. They are all circumstances to which due weight must be given. But they are not, 20 in my opinion, comparable in weight to the matters to which I have adverted, and it is not difficult to imply in the circumstances existing in 1897 that it was intended that for all purposes of voting, rateable distribution of profits, change of registration from one office to another and such like, the stock should be taken at its nominal value. The interest and principal and other moneys payable in respect of the debt to the Government of Queensland were plainly intended to be repayable in Queensland currency, and the fact that the Government was included in the new Scheme does not appear to me to throw any real light on the substance of the obligation to the stockholders. 30

For these reasons I am of opinion that the appeal should be allowed as to question 4 and otherwise dismissed, the cross-appeal allowed, and the questions for the Court answered as suggested by Dixon J.

No. 18.

REASONS for Judgment of Webb, J.

I think *Bonython's* case is distinguishable. There the Queensland Government borrowed money under the authority of a Queensland statute, and because the borrower was the Queensland Government acting under the authority of a Queensland statute, it was held that the loan contracts which resulted were within the framework of the Queensland monetary system. There had never been any monetary system in operation under those loan contracts other than the Queensland system. There were loan
10 registers in Queensland and elsewhere in Australia, and in London, and transfers could be made from one register to another; but as there was only one monetary system, i.e., the Queensland system, the money of account was always Queensland money; although the money of payment in London was English.

This case is different. The obligations which finally resulted in 1897 in interminable inscribed deposit stock originated in ordinary bank deposits in Queensland, New South Wales and England. Those deposits were not monies lent to a government under the authority of a statute; they were ordinary loan contracts, Queensland, New South Wales and English,
20 within the framework of the Queensland, New South Wales and English monetary systems, respectively. This position was not altered by the 1893 deed of arrangement. Under that arrangement the new deposit and negotiable deposit receipts and inscribed deposit stock were still within the framework of the three monetary systems, according to place of registry. And, in my opinion, no change of monetary systems was brought about by the 1897 deed of arrangement. As far as I can see, the only provisions of the 1897 deed which might be taken to suggest the contrary are Clauses 7 and 12 of Part 1; but I do not think that those clauses had the effect of eliminating the English and New South Wales
30 monetary systems. In Clause 7 provision was made that a percentage of a profits fund should be paid and distributed "ratably" among the stockholders; and by Clause 12 voting for directors was based on the amount of stock held.

As to Clause 7: when the 1897 deed of arrangement was sanctioned by the Queensland, New South Wales and English Courts, and for many years before and after 1897, the currencies of Queensland, New South Wales and England were substantially the same; but still there were three monetary systems, as *Bonython's* case decided. I see nothing to warrant the conclusion that any of the Courts, in sanctioning the 1897 deed,
40 intended by Clauses 7 and 12 that the deed of arrangement should come within the framework of a single monetary system. The deed of arrangement did not provide for that, or for one or more money systems operating from time to time according to exchange fluctuations. It was to be expected that the Courts, in giving their sanction to the deed of arrangement, would insist on a ratable distribution of the profits under Clause 7; they could never approve of the directors being put in a position to discriminate in making the distribution. A ratable distribution ensured equal treatment of the stockholder. But equality of treatment might be defeated if all stockholders were brought under a single monetary system.

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No. 18. Reasons for Judgment of Webb, J., *continued.*

In that event some stockholders might have received more or less than equality of treatment if the exchange position altered, perhaps at the whim of a government bank fixing exchange rates as a matter of policy. I do not think that any of the three Courts subjected stockholders to that risk. Clause 7 is not inconsistent with a ratable distribution according to the nominal value of the stock after allowing for exchange.

As to Clause 12 : I think that it was intended that voting should be according to the nominal value of the stock, without regard to the exchange position at the time of voting. Voting power fluctuating with exchange rates would be unusual, if not impracticable. Moreover, the voting for directors for substantial periods should not, I think, be assumed to have been regulated according to the exchange position at the time of the voting.

The fact that the Queensland Government was a party to the scheme did not, I think, have the effect of substituting the Queensland monetary system for the English and New South Wales systems. The special provision for the payment of that Government's debt did not call for any change in that regard ; and I think that none can properly be implied in the absence of any need for it.

Then, as the registries of this interminable inscribed deposit stock in Queensland, New South Wales and England were in countries with different monetary systems, a transfer of stock from one registry to another brought the stock within the monetary system of the country to which the transfer was made. The position would have been different if, as in *Bonython's* case, there had been only the one monetary system throughout.

I think then that all holders of stock on the English register at the date of commencement of the liquidation are entitled to be paid in English currency the nominal value of their stock ; and that all holders of stock on the Australian registers at such date are entitled to be paid in Australian currency the nominal value of their stock.

The questions submitted by the Liquidator should be answered accordingly.

I agree with the order proposed by Dixon, J.

No. 19.

REASONS for Judgment of Fullagar, J.

The facts of this case are stated in full detail in other judgments, and it is not necessary for me to repeat them.

The Privy Council in *Bonython* v. *Commonwealth* (1951), A.L.R. 37, has now approved of the principles adopted and applied by this court in *Bonython's* case (1948), 75 C.L.R. 589, itself and in *Goldsbrough Mort & Co., Ltd.* v. *Hall* (1949), 78 C.L.R. 1. It may be taken, therefore, as settled that in cases of this class the question which arises is correctly propounded
10 by asking whether the obligation of the debtor company is to be measured by reference to English pounds or Australian pounds, considered as two different moneys of account. The question is one of the substance of the obligation, and is to be answered as a matter of construction of the contract. The relevant law is, therefore, to be found in the proper law of the contract. In a case in which the possibly relevant monetary systems were different at the date of the making of the contract, the question would generally be a question of construction in the sense that it would depend on the interpretation of the actual language of the contract. Where, as here, the parties at the time of the making of the contract assumed that there was only one
20 relevant monetary system, and the question arises only because that system appears, so to speak, to have divided itself into two before the date of performance arrived, the question is likely to be a question of construction in the somewhat different (but very familiar) sense that what we are seeking is a presumptive intention to be gathered from the nature of the terms of the contract and the circumstances under which the parties contracted. In each class of case, however, the ultimate question will be as to the meaning of a word—the word " pounds " or " dollars " or " francs " or whatever it may be. " The actual intention of the parties, if expressed, is prima facie decisive of the question. In all cases it is a
30 question of the intention, actual or presumed, of the parties " (*Bonython* v. *Commonwealth* (1948), 75 C.L.R., at p. 602, per Latham, C.J.).

There is a presumption that the money of account intended is the money of the place of payment. But the presumption may be of greater or less weight according to the circumstances of the particular case, and in some cases it may have no weight at all. In particular, the presumption is likely to have little or no weight where alternative places of payment are stated or provided for in the contract. This is because it is prima facie likely that the parties had in mind only one money of account, by reference to which they contracted. An option of place of payment may be given
40 either to creditor or to debtor, and it is unlikely that either party would intend the other to have power to determine *ex mero motu* the extent or substance of the obligation. The presumption that the money of account intended is the money of the place of payment is, so to speak, counterbalanced by another presumption. This is not, of course, to say that there can never be two moneys of account, either of which may, at the option of one party, exercised by direct or indirect nomination of the place of payment or by some other means, provide the measure of the obligation. But, when nothing more appears than that one party has an option as to place of payment, I would certainly think that there was no justification
50 for saying that alternative moneys of account were intended. In other words, it is, in my opinion, true to say that an *option de place* is *prima facie*

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No. 19.
Reasons for Judgment of Fullagar, J., *continued.*

an *option de place* only and not an *option de change.* I respectfully agree with what Dixon, J., said in *Bonython* v. *Commonwealth* (1948), 75 C.L.R. at p. 623. His Honour said: "Options of place are given for the convenience of the payee, who may thus obtain the money where he desires and in the form appropriate to the place. They are not directed to a different quantification of the substance of the obligation. Something much more definite is needed to warrant an interpretation ascribing an intention to the parties that there shall be alternative moneys of account for the measurement of the obligation." Parallel considerations will, of course, apply where the option is given to the debtor. In this connection 10 it is, of course, very important to observe what is said by their Lordships in *Bonython* v. *Commonwealth* (1951), A.L.R. 37, with reference to *Auckland Corporation* v. *Alliance Assurance Co., Ltd.* [1937] A.C. 587.

In the present case no option of place of payment as such is given by the contract either to debtor or to creditor. But stockholders are given a right of transfer from one register to another, and I do not think there can be any doubt that under the contract the place of payment to each stockholder is the place at which he is registered. I have felt some difficulty in the course of my consideration of the case, but in the end I have felt satisfied that this is a case in which the place of registration determines 20 not only the money of payment but the money of account by reference to which the obligation of the debtor to each of its creditors is to be measured. I think that "something much more definite" appears here than the mere fact that the creditor has been able by his own act to determine the place of payment.

In considering this case the first thing to observe is, I think, that there is not here one obligation between a single debtor and a single creditor, but a large number of obligations between one debtor and each of many creditors. Although each contract embodies a common set of conditions there is a separate contract in each case. The ultimate question in the 30 present case is not, therefore, answered by saying that the word "pounds" must have one and the same meaning for all the purposes of one instrument. Here there are many instruments, each evidencing a separate contract.

The next correct step is, I think, taken when one observes that the institution of the second "Scheme" did not create something out of nothing but substituted a new obligation for an old obligation which had subsisted between the same parties. It is necessary, therefore, to proceed step by step. In this connection it will be helpful to bear in mind that in *Bonython's* case (1951), A.L.R. 37, at p. 43, their Lordships said: "Too much emphasis should not be laid upon the fact that the moneys of account 40 of Queensland and of England were the same in 1895." (The relevant year here is approximately the same.) At the relevant date the moneys of account *were* the same, as the statement of their Lordships recognises, but it is useful to bear in mind that there were two legislatures, each of which had control over the currency of a territory for which it could make laws, and at any moment that control might be exercised by either in such a way as to produce two moneys of account, which were not the less separate and distinct for that they denominated their fundamental unit of money of account by the same name, the name which had formerly denoted their common unit. If we bear this in mind, we can consider, 50 without danger of confusion, the question of what was the money of account by reference to which the parties were contracting at each of the three

stages of their contractual relations. We can suppose the question arising by reason of a "divergence" between the currencies immediately after the formation of the relevant contracts at each stage.

The vital features of this case are, to my mind, the facts that the original obligations of the company to its English depositors were English obligations governed by English law, and that the nature of those obligations was not changed either by the institution of the first "Scheme" or by the institution of the second "Scheme."

When the English deposits were originally made, the money of account relevant to the relation of debtor and creditor thereby created was obviously, I should think, English money of account. The money was English money lent in England by people in England, repayable in England, and the proper law of the contract between debtor and creditor was English. If, before the institution of the first Scheme, a "divergence" had taken place between the money of England and the money of Queensland, there could have been no question but that the obligations of the Company to its English depositors were to be measured in terms of an English money of account. This position could not be in the least degree affected by the fact that the company had many other separate and distinct monetary obligations which would have to be measured by the money of account of Queensland—or, for that matter, of Canada or New Zealand.

No change in this position was effected by the institution of the first Scheme, which proved abortive.

Nor can I see any reason for supposing that any change in this position was effected initially by the institution of the second Scheme. If, the instant after the institution of the second Scheme by the initial registration of the stock, a divergence between the currencies had occurred, the position must have been held to be the same as it had been before. The content of the obligations was, of course, radically changed, but the company had had, and still had, three relevant sets of obligations, one to its Queensland depositors, one to its New South Wales depositors, and one to its English depositors. The proper law of the first set was the law of Queensland, of the second set the law of New South Wales, and of the third set the law of England. The money of account, as well as the money of payment, was in the first case the money of Queensland, in the second case the money of New South Wales, and in the third case the money of England. It was because, and only because, some of the obligations of the company were governed by the laws of New South Wales and of England that it was necessary that the Scheme should have the support of orders of competent Courts in New South Wales and England as well as in Queensland. The order of each Court gave sanction to the change in content of those obligations the proper law of which was the law administered by it. But each of the three sets of obligations remained subject to its original proper law, and the money of account in each case remained unchanged.

The position is thus seen to be radically different from that which subsisted after the adoption of the final "Scheme" in *Goldsbrough Mort and Co. Ltd.* v. *Hall* (1949), 78 C.L.R. 1. There the scheme substituted a single obligation for a series of obligations. Whereas before the scheme there was a separate obligation between the company of each of a large

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No. 19. Reasons for Judgment of Fullagar, J., *continued.*

number of creditors, the position after the scheme was that there was a single obligation binding the company to certain trustees in England. This was not perhaps necessarily decisive, because the trustees were trustees for stockholders who would expect to receive payment in various parts of the world, and, though the rights of those stockholders were rights against the trustees only, the fact that they existed might conceivably have thrown light on the question of the money or moneys of account by reference to which the company and the trustees were contracting. But, when it was found not only that a single obligation dischargeable in England was substituted for a number of obligations dischargeable in different places, but that the new single obligation was governed by an instrument which seemed to have been deliberately designed to rely for its binding force on the law of England and to depend for all purposes on the law of England, the conclusion seemed inevitable that for the future there was to be only one money of account and that that money of account was to be the money of England.

Up to this point I would regard the present case as reasonably clear. The considerations which I have mentioned seem to me to exclude the possibility that, as at the moment of the institution of the second Scheme, a revolutionary change took place, by virtue of which there was a money of account common to all the relevant obligations of the company, that money of account being the money of Queensland. The stock of the English creditors was originally entered in the London register, and the stock of the Australian creditors in the Australian registers. If there had been no transfer to or from the London register from or to an Australian register, the simple result would have been that the money of account as between the company and stockholders on the London register was English, while the money of account as between the company and stockholders on the Australian registers was Australian. In fact, however, although the aggregate amount of stock on the London register at the date of liquidation was not greatly different from what it was originally, there had been many transfers to and fro. It is at this point that the question which has caused me difficulty arises. There are, in my opinion, two, and only two, possible answers. One answer is to say that the obligations of the company in respect of stock originally placed on the London register are to be measured in English money, and its obligations in respect of all other stock in Australian money. The other answer is to say that the place of registration at the date of liquidation determines the money of account by reference to which the obligation of the company to each stockholder is to be measured. The first answer was given by Macrossan, C.J., and it is, of course, a possible and logical answer. I am of opinion, however, that the second answer represents the presumptive intention which we are seeking, and it is the correct answer.

For all present purposes it may be taken that there were originally two sets of obligations, for events have created a position in which we do not need to distinguish between Queensland creditors and New South Wales creditors. When the stock was originally registered, that which was issued to English creditors was placed on the London register, and that which was issued to Australian creditors was placed on the Australian registers. At this stage there was merely a preservation of the pre-existing position. The obligations to stockholders on the London register were English obligations, the place of payment to them was England, and the money of

account was English. The obligations to stockholders on the Australian registers were Australian obligations, the places of payment were in Australia, and the money of account was Australian. If transfers of stock between the London and Australian registers had not been permissible, that position would have continued up to the date of liquidation. But in fact it was a condition of the issue of the stock that it would be freely transferable between the London register and the Australian registers. Each transfer involved a change in the place of payment, and I would think it ought also to be regarded as involving a change in the currency by
10 reference to which the obligation was to be measured, a change in the relevant money of account.

It is perhaps a sufficient justification for this view to say that, in all the circumstances, there is nothing really substantial to rebut the presumption that, in the case of each stockholder, the money of account is the money of the place of payment. If there must (as, in my opinion, there must) be on any view two sets of obligations measured by two different moneys of account, the reasons which will in many cases serve to rebut or cancel out the presumption are at least greatly weakened. There is no great difficulty in this case in imagining the parties as intending that
20 for the future the distinction between the two sets of obligations was to depend on place of payment, and, as I have said, I am clearly of opinion that, for the purposes of this case, place of payment is place of registration. But I think that the strictly correct view of this case is that an intention is to be inferred that place of registration, as such, is to determine the money of account. In other words, place of registration is significant, not because it is the place of payment but simply because it is the place of registration. The fact that the place of registration is also the place of payment may serve to reinforce the conclusion as to what is the money of account, but the actually decisive factor is place of registration itself.
30 Before the institution of the Scheme there were those two sets of obligations. The distinction between them rested on the making of the original contract between company and depositor, the money of account being in the one case English and in the other Australian. It was, one would suppose, possible for a creditor in one set to change over, so to speak, into the other set. If, for example, an English creditor had emigrated to Queensland, he could (though not, I suppose, as a matter of right) have had his credit transferred into the Queensland books of the company. The transfer would be effected at the rate of exchange current at the time, and thenceforth there would be an Australian debt instead of an English debt. Nor
40 need he, for that matter, have emigrated. When the Scheme was inaugurated, the distinction between the two sets of obligations was preserved, but it depended now on the place of registration and not on the place of the making of a contract. When there was superadded a free right to transfer from one register to another, the only proper inference seems to me to be that what was really intended, or what must be presumed to have been intended, was that a stockholder in either " set " should be at liberty to leave his own " set " and enter the other " set," and that, if he did so, the money of account thenceforth relevant to his contract should be the money of account relevant to the " set " which he was
50 entering.

I agree with the form of order proposed by Dixon, J., including the provision for costs.

In the High Court of Australia in its Appellate Jurisdiction

No. 20. Judgment of Full High Court, 19th March 1951.

No. 20.

JUDGMENT of full High Court.

IN THE HIGH COURT OF AUSTRALIA

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND

IN THE MATTER of The Companies Acts 1931 to 1942

and

IN THE MATTER of THE QUEENSLAND NATIONAL BANK LIMITED (in Voluntary Liquidation)

and

IN THE MATTER of an application by FRED PACE as Liquidator of The Queensland National Bank Limited (in Voluntary Liquidation) for an Order under Section 258 of the said Acts to determine questions arising in the winding up of the said The Queensland National Bank Limited.

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BETWEEN

THE NATIONAL BANK OF AUSTRALASIA LIMITED *Appellant*

and

THE SCOTTISH UNION AND NATIONAL INSURANCE COMPANY LIMITED on behalf of and for the benefit of all holders of Interminable Inscribed Deposit Stock of the Queensland National Bank Limited whose stock was at the date of the commencement of the winding up of the said Bank and was at all times prior thereto registered on the register of stock kept by the said Bank in London

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and

THE NATIONAL MUTUAL LIFE ASSOCIATION OF AUSTRALASIA LIMITED on behalf of and for the benefit of all holders of such stock whose stock was at the date of the commencement of the winding up of the said Bank registered on the London Register and was at the date of issue thereof registered on the said London register but had been at an intermediate period registered on a register of stock kept by the said Bank in Australia

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and

EDWARD ROBERT CROUCH on behalf of and for the benefit of all holders of such stock whose stock was at the date of issue thereof registered on the register of stock kept by the said Bank in London but the registration whereof was subsequently transferred to a register of stock kept by the said Bank in Australia

40

and

FRED PACE as Liquidator of the said The Queensland National Bank Limited . . . . . . *Respondents.*

Before: Their Honours THE CHIEF JUSTICE (Sir JOHN LATHAM), Mr. JUSTICE DIXON, Mr. JUSTICE WILLIAMS, Mr. JUSTICE WEBB, and Mr. JUSTICE FULLAGAR.

MONDAY THE NINETEENTH DAY OF MARCH, 1951.

THIS MATTER having on the Ninth, Tenth, Eleventh, Twelfth and Thirteenth days of October, 1950, come on for hearing at Melbourne by way of appeal and cross-appeal from the Order of the Supreme Court of Queensland pronounced by The Honourable The Chief Justice of Queensland at Brisbane on the thirty-first day of October, 1949, whereby IT WAS 10 ORDERED that the questions submitted by the Liquidator for the determination of the Court should be answered as follows :—

QUESTION 1 : Whether the registered holders of Interminable Inscribed Deposit Stock issued by The Queensland National Bank Limited pursuant to a Scheme of Arrangement made between the said Bank and certain of its creditors and sanctioned by the Supreme Court of Queensland on the twelfth day of May 1897, whose stock was at the date of the commencement of the voluntary winding up of the said Bank and was at all times prior thereto registered on the London register of the said Bank, are entitled to be paid or to prove in the winding up of the said Bank for the principal 20 and/or interest moneys secured or represented by or payable in respect of such stock on the basis that they receive the equivalent of the face value of the said principal and/or interest moneys in English or Australian currency.

ANSWER : The registered holders of the stock referred to in this question are entitled to be paid in the winding up of the Bank the principal and interest moneys secured or represented by or payable in respect of such stock on the basis that they receive the equivalent of the face value of the said principal and interest moneys in English currency.

QUESTION 2 : Whether the registered holders of such stock whose 30 stock was at the date of the commencement of the voluntary winding up of the said Bank registered on the London register of stock kept by the said Bank and whose stock was at the date of issue thereof on a register of stock kept by the said Bank in Australia and the registration of which was subsequently transferred to the London Register are entitled to be paid or to prove in the winding up of the said Bank for the principal and/or interest moneys secured or represented by or payable in respect of such stock the registration of which was so transferred on the basis that they receive the equivalent of the face value of the said principal and/or interest moneys in English or Australian currency.

40 ANSWER : The registered holders of the stock referred to in this question are entitled to be paid in the winding up of the Bank the principal and interest moneys secured or represented by or payable in respect of such stock on the basis that they receive the equivalent of the face value of the said principal and interest moneys in Australian currency

QUESTION 3 : Whether the registered holders of such stock whose stock was at the date of the commencement of the voluntary winding up of the said Bank and was at all times prior thereto registered on a register

In the High Court of Australia in its Appellate Jurisdiction

No. 20. Judgment of Full High Court, 19th March 1951, *continued.*

of stock kept by the said Bank in Australia are entitled to be paid or to prove in the winding up of the said Bank for the principal and/or interest moneys secured or represented by or payable in respect of such stock on the basis that they receive the equivalent of the face value of the said principal and/or interest moneys in English or Australian currency.

ANSWER: The registered holders of the stock referred to in this question are entitled to be paid in the winding up of the Bank the principal and interest moneys secured or represented by or payable in respect of such stock on the basis that they receive the equivalent of the face value of the said principal and interest moneys in Australian currency. 10

QUESTION 4: Whether the registered holders of such stock whose stock was at the date of the commencement of the voluntary winding up of the said Bank registered on a register of stock kept by the said Bank in Australia and whose stock was at the date of issue thereof on the said London register and the registration of which was subsequently transferred to a register of stock kept by the said Bank in Australia are entitled to be paid or to prove in the winding up of the said Bank for the principal and/or interest moneys secured or represented by or payable in respect of such stock the registration of which was so transferred on the basis that they receive the equivalent of the face value of the principal and/or interest 20 moneys in English or Australian currency.

ANSWER: The registered holders of the stock referred to in this question are entitled to be paid in the winding up of the Bank the principal and interest moneys secured or represented by or payable in respect of such stock on the basis that they receive the equivalent of the face value of the said principal and interest moneys in English currency.

QUESTION 5: Whether the registered holders of such stock whose stock was at the date of commencement of the voluntary winding up of the said Bank registered on a register of stock kept by the said Bank in Australia and whose stock was at the date of issue thereof on a register 30 of stock kept by the said Bank in Australia but had been at an intermediate period registered on the said London register are entitled to be paid or to prove in the winding up of the said Bank for the principal and/or interest moneys secured or represented by or payable in respect of such stock the registration of which was so transferred on the basis that they receive the equivalent of the face value of the said principal and/or interest moneys in English or Australian currency.

ANSWER: The registered holders of the stock referred to in this question are entitled to be paid in the winding up of the Bank the principal and interest moneys secured or represented by or payable in respect of 40 such stock on the basis that they receive the equivalent of the face value of the said principal and interest moneys in Australian currency.

QUESTION 6: Whether the registered holders of such stock whose stock was at the date of the commencement of the voluntary winding up of the said Bank registered on the said London register and was at the date of issue thereof on the said London register but had been at an intermediate period registered on a register of stock kept by the said Bank

in Australia are entitled to be paid or to prove in the winding up of the said Bank for the principal and/or interest moneys secured or represented by or payable in respect of such stock the registration of which was so transferred on the basis that they receive the equivalent of the face value of the said principal and/or interest moneys in English or Australian currency.

In the High Court of Australia in its Appellate Jurisdiction

No. 20. Judgment of Full High Court, 19th March 1951, *continued.*

ANSWER: The registered holders of the stock referred to in this question are entitled to be paid in the winding up of the Bank the principal and interest moneys secured or represented by or payable in respect of 10 such stock on the basis that they receive the equivalent of the face value of the said principal and interest moneys in English currency.

QUESTION 7: Whether, if any registered holder of such stock is entitled to be paid the principal and/or interest moneys secured or represented by or payable in respect of such stock on the basis that such holder receive the equivalent of the face value of the said principal and/or interest moneys in English currency, such equivalent is to be ascertained as of the date of the commencement of the winding up or as of the date of payment or as of any other and if so what date?

ANSWER: The equivalent of the face value of any principal or interest 20 moneys payable in English currency is to be ascertained as of the date of the commencement of the winding up of the Bank.

AND UPON HEARING Mr. Barwick, K.C., with him Mr. Eggleston, K.C., and Mr. Lucas of Counsel for the Appellant the above-named The National Bank of Australasia Limited, Mr. Adam, K.C., with him Mr. Stable of Counsel for the Respondent the above-named The Scottish Union and National Insurance Company Limited, Mr. D. I. Menzies, K.C., with him Mr. Lynam of Counsel for the Respondent the above-named The National Mutual Life Association of Australasia Limited, Mr. Hart of Counsel for the Respondent the above-named Edward Robert Crouch, 30 and Mr. McGill, K.C., with him Mr. Fahey of Counsel for the Respondent the above-named Fred Pace THIS COURT DID ORDER that the matter stand for judgment and the same standing for judgment this day in the paper at Melbourne in the presence of Counsel for the parties THIS COURT DOTH ORDER that the appeal be allowed in respect of the said answer to Question 4 in the said order and that the said order of the Supreme Court of Queensland be varied by substituting the word "Australian" for the word "English" in the answer to Question 4, and that otherwise the appeal be dismissed AND THIS COURT DOTH FURTHER ORDER that the cross-appeal be allowed and that the said Order of the Supreme 40 Court of Queensland be further varied by substituting the word "English" for the word "Australian" in the answer to Question 2 AND THIS COURT DOTH FURTHER ORDER that the costs of all parties of the appeal and the cross-appeal to be taxed be paid by the Respondent Liquidator out of the assets of the Queensland National Bank Limited.

(L.S.)

By the Court.

J. S. GIBSON,
District Registrar.

In the Privy Council

No. 21. Order of His Majesty in Council granting leave to appeal, 1st November 1951.

No. 21.

ORDER of His Majesty in Council granting Special Leave to Appeal.

AT THE COURT AT BUCKINGHAM PALACE

(L.S.) *The* 1*st day of November*, 1951

Present

THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT	SIR DAVID MAXWELL FYFE
VISCOUNT SWINTON	MR. THOMAS
LORD DE L'ISLE AND DUDLEY	MR. ECCLES
LORD CHERWELL	

10

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 15th day of October 1951 in the words following viz. :—

" Whereas by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of the National Bank of Australasia Limited in the matter of an Appeal from the High Court of Australia in the matter of the Companies Acts 1931 to 1942 (Queensland) and in the matter of The Queensland National Bank Limited (in voluntary liquidation) and in the matter of an 20 application by Fred Pace as Liquidator of the Queensland National Bank Limited (in voluntary liquidation) for an Order under section 258 of the Acts to determine questions arising in the winding up of the said Bank between the Petitioner Appellant and (1) the Scottish Union and National Insurance Company Limited on behalf of and for the benefit of all holders of Interminable Inscribed Deposit Stock of The Queensland National Bank Limited whose stock was at the date of the commencement of the winding up of the Bank and was at all times prior thereto registered on the register of stock kept by the Bank in London (2) The National Mutual Life 30 Association of Australasia Limited on behalf of and for the benefit of all holders of such stock whose stock was at the date of the commencement of the voluntary winding up of the Bank registered on the London Register of stock kept by the Bank and whose stock was at the date of issue thereof on a register of stock kept by the Bank in Australia and the registration of which was subsequently transferred by the London Register and on behalf of and for the benefit of all holders of such stock whose stock was at the date of the commencement of the winding up of the Bank registered on the London Register and was at the date of issue 40 thereof registered on the London Register but had been at an intermediate period registered on a register of stock kept by the Bank in Australia and (3) Fred Pace as Liquidator of the said Bank Respondents setting forth that : this is a Petition for special leave to appeal from part of an Order of the High Court of Australia on Appeal from the Supreme Court of Queensland determining

questions arising in the winding up of The Queensland National Bank Limited (in voluntary liquidation) (thereinafter called 'the Bank'): that in 1872 the Bank was incorporated in Queensland: that in 1893 a scheme of arrangement between the Bank and its creditors was sanctioned by the Supreme Court of Queensland: that early in 1896 it appeared to the Bank that it would be unable to carry out the provisions of the scheme and on 12th May 1897 a new scheme was sanctioned by the Supreme Court of Queensland: that on 15th April 1897 the Supreme Court of New South Wales sanctioned the new scheme: that the High Court of Justice in England on the 4th June 1897 sanctioned the scheme as and in the terms sanctioned by the Supreme Court of Queensland: that pursuant to the new scheme the Bank created stock to an amount of £3,116,621 and of such stock £1,083,097 was issued on Australian registers and £2,033,524 was issued on the London Register: that transfers of stock between persons and between registers took place and the Bank from time to time bought various amounts of the stock: that on 30th October 1947 a resolution was passed that the Bank be wound up voluntarily: that at the date of the resolution there was £729,269 of the stock registered on Australian registers and £1,829,817 thereof registered on the London Register: that no transfers of stock between registers have taken place since the date of the resolution: that at the date of the commencement of the winding up there existed six different classes of stockholders: that the question in issue is whether the various classes of stockholders are respectively entitled to receive on the winding up of the Bank the equivalent of the face value of their stock in English or Australian currency: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal from so much of the Judgment of the High Court of Australia dated the 19th March 1951 as decides that any of the classes of stockholders are entitled to be paid in the winding up of the Bank on the basis that they receive the equivalent of the face value of their stock certificates in English Currency or for such further or other Order as to Your Majesty in Council may seem meet:

In the Privy Council

No. 21. Order of His Majesty in Council granting leave to appeal, 1st November 1951, *continued*.

"The Lords of the Committee in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute its Appeal against the Judgment of the High Court of Australia dated the 19th day of March 1951 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs:

"And Their Lordships do further report to Your Majesty that the proper officer of the said High Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same."

In the Privy Council

No. 21. Order of His Majesty in Council granting leave to appeal, 1st November 1951, *continued.*

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of the Commonwealth of Australia for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

F. J. FERNAU.

No. 22. Certificate of District Registrar of the High Court of Australia verifying Transcript Record, 15th February 1952.

No. 22.

CERTIFICATE of District Registrar of the High Court of Australia verifying Transcript Record. 10

CERTIFICATE OF DISTRICT REGISTRAR OF THE HIGH COURT OF AUSTRALIA.

I, JOHN STANLEY GIBSON, District Registrar of the High Court of Australia, Brisbane DO HEREBY CERTIFY that this transcript record comprising pages numbered 1 to 725 and set out in volumes 1, 2 and 3 contain a true and exact copy of all proceedings and judgments in the matter in which The National Bank of Australasia Limited is the Appellant and The Scottish Union and National Insurance Company, The National Mutual Life Association of Australasia Limited and Fred Pace as Liquidator 20 of the said The Queensland National Bank Limited are the Respondents so far as the same have relation to the matters of this Appeal and a copy of the reasons for the respective judgments pronounced in the course of the proceedings out of which the Appeal arises AND I FURTHER CERTIFY that the Respondents herein have received notice of the Order of His Majesty in Council giving the Appellant leave to appeal to His Majesty in Council AND have also received Notice of the dispatch of this transcript record to the Registrar of the Privy Council.

Given under my hand and the Seal of the High Court of Australia at 30 Brisbane in the State of Queensland this Fifteenth day of February 1952.

(L.S.)

(Signed) J. S. GIBSON.

District Registrar of the High Court of Australia.

No. 8 of 1952.

In the Privy Council.

ON APPEAL

FROM THE HIGH COURT OF AUSTRALIA IN ITS APPELLATE JURISDICTION

IN THE MATTER of "The Companies Acts 1931 to 1942"

and

IN THE MATTER of The Queensland National Bank Limited (In Voluntary Liquidation)

and

IN THE MATTER of an application by Fred Pace as Liquidator of The Queensland National Bank Limited (In Voluntary Liquidation) for an order under Section 258 of the said Acts to determine questions arising in the winding up of the said The Queensland National Bank Limited.

BETWEEN

THE NATIONAL BANK OF AUSTRALASIA LIMITED . . . . . *Appellant*

AND

THE SCOTTISH UNION AND NATIONAL INSURANCE COMPANY LIMITED and
THE NATIONAL MUTUAL LIFE ASSOCIATION OF AUSTRALASIA LIMITED and
EDWARD ROBERT CROUCH and
FRED PACE as Liquidator of the said The Queensland National Bank Limited . *Respondents.*

RECORD OF PROCEEDINGS

VOLUME 1.

(PAGES 1—130)

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