

G.O.I. 66 37, 1949

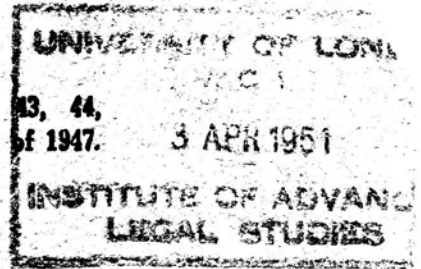
55

1948

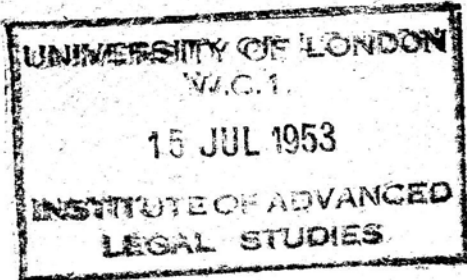
102

IN THE HIGH COURT OF AUSTRALIA)
NEW SOUTH WALES REGISTRY)

Nos. 42, 43, 44,
47 and 48 of 1947.



Between:



BANK OF NEW SOUTH WALES and others
Plaintiffs

and

THE BANK OF AUSTRALASIA and others
Plaintiffs

and

THE STATE OF VICTORIA and another
Plaintiffs

and

THE STATE OF SOUTH AUSTRALIA
and another
Plaintiffs

and

THE STATE OF WESTERN AUSTRALIA
and another
Plaintiffs

AND

THE COMMONWEALTH OF AUSTRALIA
and others
Defendants

RECORD OF PROCEEDINGS

VOL. 2

Plaintiffs' Solicitors in Actions No. 42 and No. 43 of 1947:

ALLEN ALLEN & HEMSLEY,
53 Martin Place,
SYDNEY.

BLAKE & RIGGALL,
120 William Street,
MELBOURNE.

IN THE HIGH COURT OF AUSTRALIA)
NEW SOUTH WALES REGISTRY)

Nos. 42, 43, 44,
47 and 48 of 1947.

31148

Between:

BANK OF NEW SOUTH WALES and others
Plaintiffs

and

THE BANK OF AUSTRALASIA and others
Plaintiffs

and

THE STATE OF VICTORIA and another
Plaintiffs

and

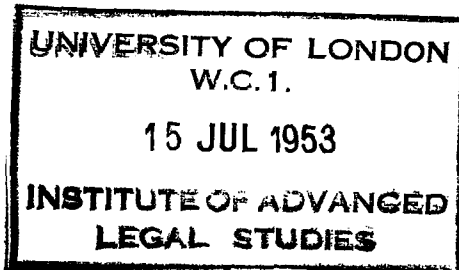
THE STATE OF SOUTH AUSTRALIA
and another
Plaintiffs

and

THE STATE OF WESTERN AUSTRALIA
and another
Plaintiffs

AND

THE COMMONWEALTH OF AUSTRALIA
and others
Defendants



RECORD OF PROCEEDINGS

VOL. 2

Plaintiffs' Solicitors in Actions No. 42 and No. 43 of 1947:

ALLEN ALLEN & HEMSLEY,
53 Martin Place,
SYDNEY.

BLAKE & RIGGALL,
120 William Street,
MELBOURNE.

IN THE HIGH COURT OF AUSTRALIA)
)
PRINCIPAL REGISTRY.)

Between:

BANK OF NEW SOUTH WALES and
others
Plaintiffs

and

THE BANK OF AUSTRALASIA and
others
Plaintiffs

and

THE STATE OF VICTORIA and
another
Plaintiffs

and

THE STATE OF SOUTH AUSTRALIA and
another
Plaintiffs

and

THE STATE OF WESTERN AUSTRALIA
and another
Plaintiffs

AND

THE COMMONWEALTH OF AUSTRALIA
and others
Defendants

TRANSCRIPT RECORD OF PROCEEDINGS.

INDEX OF REFERENCE.

Vol. 2.

No.	Description of Document.	Date.	Page.
-----	--------------------------	-------	-------

1 to 18 (inclusive) - SEE VOL. 1.

"A".

Index - Vol. 2.

No.	Description of Document.	Date.	Page.
<u>Action No. 42 of 1947.</u>			
19.	Affidavit of Leslie Galfreid <u>MELVILLE</u> - on behalf of the Defendants. Annexure "LGMI" thereto.	5. 1.1948.	189.
20.	Affidavit of Leslie Galfreid <u>MELVILLE</u> - on behalf of the Defendants.	14. 1.1948.	262.
21.	Affidavit of Gordon Murray <u>SHAIN</u> - on behalf of the Defendants.	5. 1.1948.	264.
	Exhibit "A" thereto)		Not copied;
)		to be produced.
22.	Affidavit of Stuart Gordon <u>McFARLANE</u> - on behalf of the Defendants.	2. 1.1948.	279.
23.	Affidavit of Sydney John <u>GANDON</u> - on behalf of the Plaintiffs.	12. 1.1948.	294.
24.	Affidavit of Norman Lethbridge <u>COWPER</u> - on behalf of the Plaintiffs.	21. 1.1948.	305.
25.	Joint Affidavit of Torliev <u>HYTTEN</u> , Donald Henry <u>MERRY</u> , Allan James <u>TYRER</u> and George Rowland <u>MOUNTAIN</u> on behalf of the Plaintiffs.	27. 1.1948.	307.
<u>Action No. 43 of 1947.</u>			
26.	Affidavit of Francis Favarger <u>HASSETT</u> - on behalf of the Plaintiffs.	12. 1.1948.	320.
<u>Action No. 42 of 1947.</u>			
27.	Order by Mr. Justice Dixon granting Interlocutory Injunction.	15.12.1947.	333.
<u>Action No. 43 of 1947.</u>			
28.	Order by Mr. Justice Dixon granting Interlocutory Injunction.	15.12.1947.	339.

No.	Description of Document.	Date.	Page.
<u>Action No. 44 of 1947.</u>			
29.	Order by Mr. Justice Dixon granting Interlocutory Injunction.	15.12.1947.	345.
<u>Action No. 47 of 1947.</u>			
30.	Order by Mr. Justice Dixon granting Interlocutory Injunction.	15.12.1947.	351.
<u>Action No. 48 of 1947.</u>			
31.	Order by Mr. Justice Dixon granting Interlocutory Injunction.	15.12.1947.	357.

No. 19 - Affidavit of Leslie Galfreid Melville sworn the 5th day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

IN THE HIGH COURT OF AUSTRALIA)
NEW SOUTH WALES REGISTRY.) No. 42 of 1947.

Between:

BANK OF NEW SOUTH WALES and 5
others

Plaintiffs

and

THE COMMONWEALTH OF AUSTRALIA 10
and others

Defendants

I, LESLIE GALFREID MELVILLE, of Sydney, in the State of New South Wales, Economist, make oath and say -

1.____ I am the Chief Economic Adviser to the defendant Commonwealth Bank of Australia (hereinafter called "the Commonwealth Bank") and have held that position since the 16th day of March, 1931. 15

2.____ I am a Fellow of the Institute of Actuaries (London) and a Bachelor of Economics (Sydney). During the years 1924 to 1928 inclusive, I held the position of Public Actuary of South Australia, and from the year 1929 for a period of over two years I was Professor of Economics at the University of Adelaide. 20

3.____ Since the 23rd day of August, 1945, I have been a member of the Advisory Council constituted under the 25

Place of Swearing: Sydney.

Deponent: L.G. Melville.

Date of Swearing:
5th January, 1948.

F.W. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

189. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

190. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

Commonwealth Bank Act 1945 to advise the Governor of the Commonwealth Bank.

4. _____ From time to time I have served on various committees which advised the Commonwealth and South Australian Governments on matters relating to financial and economic policy. I have also represented the Commonwealth Government at several international conferences, including conferences held in connection with the establishment and operation of the International Monetary Fund and the International Bank for Reconstruction and Development. 5 10

5. _____ I am familiar with the organisation and functions of and the business carried on by the Commonwealth Bank and generally with the banking system in Australia and the practices and procedures followed by that Bank and the private banks in Australia in the conduct of their businesses. 15

6. _____ Over the past 25 years, I have made a close study of the theory and practice of banking and of the history and current development of banking in Australia and in other countries. Before making this my affidavit, I have given consideration, in addition to general authorities on banking, including central banking, which I have studied, to the report of the Royal Commission on Monetary and Banking Systems in Australia (July, 1937). 20 25

Place of Swearing: Sydney.

Deponent: L.G. MELVILLE.

Date of Swearing:
5th January, 1948.

F.W.Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

190. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No.42 of 1947 on behalf of the Defendants.

191. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

In particular I refer to pages 56-93; 119-121; 157-159; 192-232 of the said report as being relevant to the matters mentioned in this my affidavit.

7._____In addition to the authorities referred to in the last preceding paragraph of this my affidavit, I have given consideration to the report of the Committee on Finance and Industry (1931) Cmd. 3897 (Macmillan Committee) and annexed to this my affidavit and marked with the letters "L.G.M.1" are copies of certain paragraphs of the report of the said Macmillan Committee which are, in my opinion, relevant to the matters referred to in this my affidavit and are set out because they are not readily available for perusal.

8._____I have read what purport to be copies of the several affidavits of Joseph Sydney Penell Cox and Sydney John Gandon sworn the 28th day of November, 1947, and 19th day of December, 1947, respectively and filed in this action. I have also read what purport to be copies of the several affidavits of Francis Favarger Hassett sworn the 19th day of December, 1947, and filed in action No. 43 of 1947 in the New South Wales Registry, of Arthur Tennyson Smithers and Norman Rees Williams sworn the 28th day of November, 1947, and filed in action No. 44 of 1947 in the New South Wales Registry, of Ferdinand Caire Drew sworn the 19th day of December, 1947, and

Place of Swearing: Sydney.

Deponent: L.G. MELVILLE.

Date of Swearing:
5th January, 1948.

F.W. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

191. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

192. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

filed in action No. 16 of 1947 in the South Australia Registry and of Alex James Reid sworn the 23rd day of December, 1947, and filed in action No. 1 of 1947 in the Western Australia Registry of this Honourable Court.

9.____For convenience of reference only, I have inserted 5 subject headings in this my affidavit for the purpose of showing the manner in which the paragraphs in this my affidavit are grouped.

THE AUSTRALIAN BANKING SYSTEM.

10.____At the present day the banking system of Australia 10 comprises, in the main, the following:-

(a) the Commonwealth Bank and the Commonwealth Savings Bank;

(b) the State banks and the State savings banks; and 15

(c) the private banks specified in the First Schedule to the Banking Act 1947, of which those specified in Parts I and II are carried on for private profit.

11.____The only banks in Australia carrying on general 20 banking business, other than the Commonwealth Bank and some State banks, are those specified in the First Schedule to the Banking Act 1947.

12.____With the exception of certain foreign exchange 25 business, the State Bank of South Australia provides

Place of Swearing: Sydney.

Deponent: L.G. MELVILLE.

Date of Swearing:
5th January, 1948.

F.W. Stevenson,

A Justice of the Peace in
and for the State of
New South Wales.

192. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

193. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

all usual banking services for the public generally within South Australia and carries on general banking business in that State. With the exception of certain foreign exchange business, the Rural Bank of New South Wales (a State bank) provides within New South Wales all usual banking services for the public generally and carries on general banking business in that State. The Premier of the State of Victoria has recently made a public announcement to the effect, and I believe it to be the fact, that, unless the Banking Act 1947 is held to be invalid, it is the intention of the Government of the State of Victoria to establish a State bank, which will conduct general banking business not only for that Government but also for the public generally. With the exception of certain foreign exchange business, the Rural and Industries Bank of Western Australia provides within Western Australia all usual banking facilities for the public generally and carries on general banking business in that State. The State Bank of South Australia, the Rural Bank of New South Wales and the Rural and Industries Bank of Western Australia, in addition, grant fixed or amortisation or long-term loans to certain classes of persons. The State Savings Bank of Victoria (within Victoria), the Savings Bank of South Australia - also a State savings bank - (within South Australia), and the Hobart

5

10

15

20

25

Place of Swearing: Sydney.

Deponent: L.G. MELVILLE.

Date of Swearing:
5th January, 1948.

F.W. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

193. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

194. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

Savings Bank and the Launceston Bank for Savings (within Tasmania), all conduct highly developed savings bank businesses through numerous branches and agencies throughout the respective States named. Some of the savings banks permit limited classes of customers to draw cheques. 5
The State Savings Bank of Victoria and the Savings Bank of South Australia also lend on credit foncier terms (i.e. fixed long term loans with annual payments providing for interest and amortisation of principal) for housing and to primary producers. The Agricultural Bank of Queensland 10 makes loans to primary producers. The Agricultural Bank of Tasmania makes loans to primary producers and to industries, such as the deep sea fishing industry, and is the governmental housing authority in Tasmania and, as such, lends money for housing purposes. 15

13. ___ There are only two State savings banks operating in Australia, namely, the State Savings Bank of Victoria and the Savings Bank of South Australia. These savings banks appoint agents in small towns in which the total volume of banking business is small, and where, in consequence, the establishment of a branch of a savings bank would not be profitable. Private banks have in a number of cases agreed to act as agents for such savings banks. Many other classes of individuals in the community also act as such agents. These include store- 20 keepers, grocers, drapers, newsagents, chemists, 25

Place of Swearing: Sydney.

Deponent: L.G. MELVILLE

Date of Swearing:
5th January, 1948.

F.W. Stevenson,
A Justice of the Peace in and
for the State of New South Wales.

194. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

195. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

confectioners, bakers, garage proprietors, estate agents, butter factory proprietors, municipal and shire council officers, police officers, flour mill proprietors, factory office staffs, city stores and private householders.

The nature of the work which these agents undertake may vary in detail, but the general procedure and scope of their duties are very similar no matter which savings bank is the principal or who is the agent. Agents of a savings bank outside the State where the bank is incorporated do not as a general rule accept deposits.

The State Savings banks, or, in the case of Tasmania, the Hobart Savings Bank and the Launceston Bank for Savings, have direct representation by branches and agencies only in the State in which the particular savings bank functions. Special arrangements are made for depositors to withdraw moneys in other States.

The Commonwealth Savings Bank acts as agent for the Hobart Savings Bank in New South Wales, Queensland and Western Australia.

14. In addition to the banking facilities provided by the banks in Australia, there are the following facilities for banking which are not affected by the Banking Act, 1947, namely, facilities afforded by the pastoral finance companies, building societies and other corporations. Throughout Australia twenty-eight pastoral

Place of Swearing: Sydney.

Deponent: L.G. MELVILLE.

Date of Swearing:
5th January, 1948.

F.W. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

195. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

196. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

finance companies carry on banking business, in that they accept deposits and use moneys so derived for the purpose of making loans. In some cases they also lend on overdraft and allow customers to draw by cheque or order on the company. Moreover, throughout Australia, some thirty- 5 four building societies carry on banking business by accepting deposits, allowing withdrawals in much the same way as savings banks, and making loans. In addition, there are various finance, co-operative and assurance companies which accept deposits and make loans. 10

15._____In the year 1893 the number of banks in Australia carrying on general banking business was 23, excluding State banks, savings banks and banks incorporated elsewhere than in Australia and the United Kingdom. By the date of this my affidavit, the total number of banks in 15 Australia carrying on general banking business, and with the same exclusions, has been reduced to 10, mainly by amalgamations, of which there have been 13, and most of which have occurred since 1917.

16._____The total of trade and commerce in Australia, 20 both as to quantity and value, has substantially increased since 1893.

17._____The Postmaster General's Department of the Commonwealth is the sole provider of facilities in the form of money orders and postal notes by means of which a person 25

Place of Swearing: Sydney.

Deponent: L.G. MELVILLE.

Date of Swearing:
5th January, 1948.

F.W. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

196. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

197. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in action No. 42 of 1947 on behalf of the Defendants.

in one place or one State may pay legal tender to a post office, and a post office pays legal tender to a person in another place or State. It is stated in the report of the said Department for the year ended 30th June, 1946, that the total value of money orders issued and payable within the Commonwealth for the year ended on that date was £26,905,166, and that the total value of the postal notes issued for the same year was £9,177,587. The total value of postal notes issued in one State and paid in another State during the said year is stated in the said report to be £2,880,551. 5 10

18. In the conduct of its banking business, the Commonwealth Bank provides a complete banking service for its customers. From my knowledge and experience of the Commonwealth Bank, and in particular of its organisation, the volume of its operations, the nature of facilities it is providing, and the experience of its officers, I am of opinion that, when the Banking Act 1947 is in operation, the Commonwealth Bank will be capable of providing, and will provide, for the Australian community (including State Governments and their instrumentalities) facilities in quality and volume equal to those now provided by all banks, including all facilities for the receipt, custody and payment of moneys. Having regard to the foregoing, my opinion is that the operation of the Banking Act 1947 15 20 25

Place of Swearing: Sydney.

Deponent: L.G. MELVILLE.

Date of Swearing:
5th January, 1948.

F.W. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

197 Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

198. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

will have no adverse effects on Australian business activities or on the volume of trade and commerce in Australia.

19._____The facilities which I have mentioned above as capable of being provided by the Commonwealth Bank will, 5
in my opinion, extend to all facilities for the receipt, custody and payment of moneys and transfer of credits which are available to State Governments or their instrumentalities. It is my further opinion that these facilities will enable State Governments to perform any 10
functions which depend upon the availability of banking facilities.

AUSTRALIAN ASSETS.

20._____Sections 40 and 41 of the Banking Act 1945 require each private bank (including each of the plaintiff banks) 15
to prepare and deliver to the Commonwealth Statistician and the Commonwealth Bank a statement of liabilities and assets within Australia (in accordance with Form D set out in the Second Schedule to the said Act) as at the close of business on Wednesday in each week. Each private bank 20
(including each of the plaintiff banks), in accordance with the requirements of the said sections, does in fact prepare each week and deliver a statement in the prescribed form to the said Commonwealth Statistician and the Commonwealth Bank. 25

Place of Swearing: Sydney.

Deponent: L.G. MELVILLE.

Date of Swearing:
5th January, 1948.

F.W. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

198. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

199. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

COMPENSATION.

21. _____ With regard to the compensation payable for the acquisition of property under the Banking Act 1947, from my experience of the operations of the Commonwealth Bank and from my knowledge of the methods of operation of 5 other central banks, I am of opinion that the Commonwealth Bank will be able to pay in cash the amount of compensation payable in respect of the acquisition of shares or business and assets of any or all of the private banks to any shareholder or other person, firm or company entitled 10 to compensation, who or which requires payment in cash. The Commonwealth Bank holds sufficient Government securities to make them available to those who are entitled to compensation and desire to receive Government securities. Further, in my opinion, any credit created by the Common- 15 wealth Bank in connection with the payment of compensation will not be limited by the amount of the assets set out in its balance sheet at any given time. Its power as a central bank to expand credit will not be limited by the extent of its liquid or other assets as its power would 20 be if it were not a central bank. Moreover, in my opinion, credit so created by it may be offset by appropriate action for contraction of credit which it will be in a position to take.

Place of Swearing: Sydney.

Deponent: L.G. MELVILLE.

Date of Swearing:
5th January, 1948.

F.W. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

199. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendant.

200. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendant.

EXTENT OF OPERATIONS IN MORE THAN ONE STATE.

22._____The course of business followed by the private banks in giving effect to requests from customers, in making and receiving payments for customers at a place other than that where the customer's account is situated, 5 is the same whether the transaction includes operations in more than one State or does not.

23._____From my experience of banking in Australia I am of opinion that the total number of all the transactions which include operations in more than one State con- 10 stitutes a small proportion of all the transactions conducted by the private banks in Australia.

24._____The total amounts debited to accounts of customers in The Bank of Australasia, The Union Bank of Australia Limited, and The English, Scottish and Australian Bank 15 Limited per annum are approximately £2,500,000,000, and the total of the banking transactions involving an operation in more than one State of the said three banks is stated in paragraph 15 of the said affidavit of Francis Favarger Hassett to be of the order of £300,000,000 per 20 annum, which total constitutes 12% of the total amount of the debits abovementioned.

25._____I am informed by the Secretary of the Commonwealth Bank, and believe, that an analysis was made of the trans- 25 actions conducted in the principal offices of the

Place of Swearing: Sydney.

Deponent: L.G. MELVILLE.

Date of Swearing:
5th January, 1948.

F.W. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

200. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

201. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

Commonwealth Bank (as distinct from the Commonwealth Savings Bank) in each of the capital cities of the States on three normal business days, namely, 24th, 25th and 26th November, 1947. This analysis was made both as to debit and as to credit transactions. The transactions confined to one State (expressed in terms of numbers of transactions and of the total of the amount involved) constituted the following percentages of the total of all transactions including those for Governments and other banks:-

	<u>Debit</u>	<u>Credit</u>
Number	97.7%	96.5%
Amount	90.7%	88.9%

Excluding transactions for Governments and banks from the whole of the material investigated, the transactions confined to one State constituted the following percentages:-

	<u>Debit</u>	<u>Credit</u>
Number	96.2%	96.4%
Amount	98.0%	95.3%

26. I am informed by the Secretary of the Commonwealth Bank, and believe, that, for the days referred to in the last preceding paragraph of this my affidavit, an analysis was conducted at certain branches of the Commonwealth Bank selected as typical on the following basis. In New South Wales, Victoria, Queensland and South Australia,

Place of Swearing: Sydney. Deponent: L.G. MELVILLE.
Date of Swearing: 5th January, 1948. F.W. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

201. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

202. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

branches in a typical sea-port, inland town and border town were selected. In Western Australia a typical sea-port and inland town were selected, there being no typical border town in that State, and in Tasmania one branch was selected. In addition, two Northern Territory branches were included. This analysis showed that the percentage of debit and credit transactions (excluding transactions for Governments and banks) was, in terms of numbers of transactions, 98% and 99% respectively, and, in terms of amount, 96% and 99% respectively. 5 10

27. From my knowledge and experience of banking business in Australia, I am of opinion that the total amount of the transactions which involve operations in more than one State and are performed by the Commonwealth Bank for the Commonwealth and State Governments exceeds the total amount of the transactions which involve operations in more than one State and are performed for the Commonwealth and State Governments by all the private banks. 15

NATURE OF OPERATIONS IN MORE THAN ONE STATE. 20

28. From my study of banking business generally, and from my observation of the course of such business in Australia, I am of opinion that the primary functions of each of the private banks are to borrow and to lend, and to grant and to recall credit. These functions are 25

Place of Swearing: Sydney.

Deponent: L.G. MELVILLE.

Date of Swearing:
5th January, 1948.

F.W. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

202. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

203. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

financial in nature and are utilised by, and performed for, persons engaged in manufacture, production, trade and commerce, as well as for persons engaged in non-economic activities.

29._____In the course of their business the banks exchange 5
Australian legal tender for foreign notes and coin. With-
in Australia they do not transfer appreciable amounts of
legal tender from one State to another. The banks, upon
request, credit in one State and debit in another State
the deposit or loan (or overdraft) accounts of a customer 10
or customers, thereby creating spending power in one
State and withdrawing it in another State.

30._____In my opinion, these processes of crediting and
debiting the accounts of customers represent more than 15
merely the recording of banking transactions. The pro-
cesses result in a redistribution of bank credit which
constitutes the principal medium of exchange serving as
money in Australia to-day. This redistribution is from
a banking point of view an essential element in each of
the transactions referred to. Thus the crediting by 20
a bank of the account of a drawer of a bill of exchange
with the amount of the bill upon its delivery to the
bank is not merely a record of the assumption of an
obligation by the bank, but is also the grant of spending
power by the bank to the person concerned. Examples of 25

Place of Swearing: Sydney.

Deponent: L.G. MELVILLE.

Date of Swearing:
5th January, 1948.

F.W. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

203. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

204. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

such processes are set out in paragraphs 31 to 41 (inclusive) of this my affidavit.

31._____When a cheque is drawn by A in New South Wales in favour of B in Victoria and is lodged by B with his bank, A's deposit in New South Wales is, in the ordinary course of business, reduced, or his debt to his bank increased, and at the same time the deposit of B in Victoria is increased or his debt to his bank reduced. 5

32._____When, in the ordinary course of business, a letter of credit is established by a bank on behalf of A (who is in New South Wales) in favour of B (who is in Victoria) and drawings are made thereunder, the same process of crediting and debiting takes place as is referred to in the last preceding paragraph of this my affidavit. When A asks his bank to issue a draft in favour of B, A's deposit is reduced by the amount of the draft, or his debt is increased, or A pays the bank in notes or coin in New South Wales. B, who receives the draft, is credited with a deposit which increases his credit balance with his bank, or reduces his indebtedness to his bank, or he is paid by a bank in Victoria in notes and coin. 10 15 20

33._____Where a bill of exchange, cheque or promissory note is lodged with a bank for collection or is negotiated to a bank, the action taken does not depend upon whether 25

Place of Swearing: Sydney.

Deponent: L.G. MELVILLE.

Date of Hearing:
5th January, 1948.

F.W. Stevenson.
A Justice of the Peace in
and for the State of
New South Wales.

204. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

205. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

any party to the instrument is inside or outside the State in which the instrument is lodged or negotiated and is as follows:-

- (a) Where the instrument (being a bill of exchange other than a cheque, or a promissory note) is lodged for collection, the deposit or loan account of the person by whom it is lodged is not credited until after the instrument has been paid. 5
- (b) Where the instrument is negotiated, or, being a cheque is deposited for credit of an account, the deposit account of the person concerned is credited forthwith, or his debt to the bank reduced. 10
- (c) If the instrument is paid, the deposit account of the person paying is reduced, or his debt to his bank increased, by the amount of the bill, cheque or note. If the person paying is a customer of a bank other than the collecting or negotiating bank, the Exchange Settlement Account of the collecting or negotiating bank with the Commonwealth Bank is increased. 15 20
- (d) If an instrument referred to in paragraph (a) is not paid, no credits or debits are made by the collecting or paying bank in any deposit or 25

Place of Swearing Sydney.

Deponent: L.G. MELVILLE.

Date of Swearing:
5th January, 1948.

F.W. Stevenson,
A. Justice of the Peace in
and for the State of
New South Wales.

205. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendant.

206. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendant.

loan account of the parties concerned.

- (e) If an instrument referred to in paragraph (b) is not paid, the bank normally recovers from the person who negotiated the instrument to it, or deposited the cheque with it, by withdrawing the original credit or, if this is not practicable, it normally recovers from some other person liable on the instrument, in which case the process is then the same as in paragraph (c). 5

The Exchange Settlement Account abovementioned is more fully described in paragraphs 36 to 41 (inclusive) of this my affidavit. 10

34. _____ When a bank carries out any of the transactions described by the said Sydney John Gandon in paragraph 25 of his said affidavit as - 15

- "(a) the collection and negotiation of interstate bills of exchange, cheques and promissory notes;
(b) the transfer of funds interstate;
(c) the establishment of interstate credits;
(d) the issue and negotiation of travellers' cheques", 20

it employs the processes described in the next succeeding paragraph of this my affidavit. These processes apply whether bank drafts, remitting warrants or telegraphic transfers, or bills of exchange, cheques, promissory notes or other instruments are used. 25

Place of Swearing: Sydney.

Deponent: L.G. MELVILLE.

Date of Swearing:
5th January, 1948.

F.W. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

206. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

207. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

35._____In the ordinary course of business the bank, by the process of debiting and crediting its customers' accounts, either decreases its liabilities or increases its loans or its cash reserves in one State, and either increases its liabilities or reduces its loans or its cash reserves in another State. These processes employed by the banks are those appropriate to the use of bank credit as the medium of exchange. Occasionally in these banking transactions cash is used. In some of these transactions cash is paid by a customer to a bank in one State and the account of a customer of a bank in another State is credited. In other transactions the account of a customer of a bank in one State is debited and cash is paid by a bank to a customer in another State. In others cash is paid by a customer to a bank in one State and cash is paid by a bank to a customer in another State. In my opinion, the occasional use of cash in this small proportion of banking transactions is ancillary to the essential process, the real nature of which is not affected thereby. For the service above described of making bank credit available at some particular place upon request, usually in return for the withdrawal of bank credit in some other place, the bank concerned is, in most cases, paid a fee proportionate to the amount of credit created, calculated at a rate known

5
10
15
20
25

Place of Swearing: Sydney.

Deponent: L.G. MELVILLE

Date of Swearing:
5th January, 1948.

F.W. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

207. Affidavit of Leslie Galfreid Melville dated the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

208. Affidavit of Leslie Galfreid Melville dated the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

as the rate of exchange.

EXCHANGE SETTLEMENT ACCOUNTS AND CLEARINGS.

36. _____ Many of the transactions described in paragraphs 29 to 35 (inclusive) of this my affidavit affect the cash reserves, including the Exchange Settlement Accounts, of 5 the banks. These Exchange Settlement Accounts are used to settle balances of indebtedness among the banks which have Exchange Settlement Accounts, and to increase the cash reserves of these banks in some States, and to reduce them in others, in the manner hereinafter described. 10

37. _____ Part of the ordinary business of the private banks is to negotiate and collect bills of exchange, cheques, and promissory notes payable by persons with accounts at other banks. In each State capital city in Australia, exchanges of these instruments among banks (other than a 15 few small banks) are made through a "clearing house". This is a central meeting place, controlled in each case by a committee representing the participating banks, where representatives of the banks meet and exchange these instruments. Daily settlements in respect of these 20 transactions are made by cheques drawn on and paid to the credit of accounts known as Exchange Settlement Accounts, which each of the clearing banks maintains with the Commonwealth Bank in each State capital city where it has a branch. Section 52 of the Banking Act 1945 25

Place of Swearing: Sydney.

Deponent: L.G. MELVILLE.

Date of Swearing:
5th January, 1948.

F.W. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

208. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

209. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

relates to this matter. Each bank which is a net debtor on the day's exchanges hands to the manager of the clearing house a cheque drawn on its Exchange Settlement Account for the total amount due by it and each bank which is a net creditor hands to the manager of the clearing house a credit voucher for the total amount due to it. These cheques and credit vouchers are then lodged by the clearing house with the Commonwealth Bank, which debits the Exchange Settlement Accounts of the banks which are net debtors and credits the Exchange Settlement Accounts of banks which are net creditors. In this way, settlements are made by book entries through the Exchange Settlement Accounts of the different banks in each capital city without any actual transfer of cash.

38._____It is the practice of most suburban and some country branches to make any necessary clearances of cheques through their respective State capital city offices. However, at most country centres daily exchanges of bills and other instruments among banks are arranged at times and places convenient to the banks concerned. Settlement in respect of these exchanges is made weekly and, in some cases, an additional settlement is made when the amount due by a bank is above a certain amount. Settlement takes the form of a draft or warrant

Place of Swearing: Sydney.

Deponent: L.G. MELVILLE.

Date of Swearing:
5th January, 1948.

F.W. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

209. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

210. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

drawn by the debtor bank on its State capital city office in favour of the bank to which an amount is due by it.

The debtor bank hands the draft or warrant to the creditor bank, which then sends the draft or warrant to its State capital city office, where it is cleared through 5 the clearing house and settled through the Exchange Settlement Accounts of the banks, in the manner described above.

39. Exchange Settlement Accounts are used by the banks not only for the settlement of inter-bank balances, but 10 also as ordinary deposit accounts in which part of their cash reserves is conveniently held. There is no statutory provision prescribing any particular amount to be held in these accounts comparable to Sections 16 to 22 (inclusive) of the Banking Act 1945, relating to Special Accounts. 15

The balances in the Exchange Settlement Accounts of each bank are freely available to it and may be drawn on by it in the same way as any other current account. In addition to their Exchange Settlement Accounts, some banks have other deposit accounts with the Commonwealth 20 Bank. These accounts are maintained by such banks for their own convenience, mainly for the safe custody of cash reserves in particular centres, and for the redistribution of cash reserves among centres where these banks do not have an Exchange Settlement Account. Certain small 25

Place of Swearing: Sydney.

Deponent: L.G. MELVILLE.

Date of Swearing:
5th January, 1948.

F.W. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

210. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

211. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

banks, which are not members of the clearing houses, have no Exchange Settlement Accounts styled as such, but have other deposit accounts with the Commonwealth Bank which are used for substantially the same purposes as Exchange Settlement Accounts, including the settling of inter-bank indebtedness. 5

40. Many transactions involving the cash reserves of the banks, including their Exchange Settlement Accounts, involve banking operations in more than one State. Some of these transactions have been referred to in paragraphs 29 to 35 (inclusive) of this my affidavit. By means of the Exchange Settlement Accounts maintained at the Commonwealth Bank, clearances of bills and other instruments among banks, and also the redistribution of funds among the branches of each bank, are made conveniently and without the need for any actual physical transfer of cash by the private banks. In fact, no appreciable movement of legal tender among States, in the sense of physical transfer by the private banks, takes place. The ordinary course of business followed by the private banks in redistributing their resources among States is as follows. Each of the private banks holds cash reserves in the form of coin and notes and in the form of credits in its Exchange Settlement Accounts with the Commonwealth Bank. Some of the said banks also hold credits in other deposit 10 15 20 25

Place of Swearing: Sydney.
Date of Swearing:
5th January, 1948.

Deponent: L.G. MELVILLE.
F.W. Stevenson
A Justice of the Peace in
and for the State of
New South Wales.

211. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

212. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

accounts with the Commonwealth Bank. At the request of a bank, the Commonwealth Bank will increase the Exchange Settlement Account of that bank in one State, and decrease it by the same amount in another State, by means of book entries. The account in one State is credited 5 and in the other State is debited. If a bank draws legal tender from the Commonwealth Bank, one of its Exchange Settlement Accounts is debited with the amount drawn. If a bank pays legal tender to the Commonwealth Bank, one of its Exchange Settlement Accounts is credited 10 with the amount paid. Such transactions do not involve any movement of money as between States in the sense of physical transfer by the private banks. These services are performed by the Commonwealth Bank for the private banks free of charge. 15

41._____The method employed for clearing and settling among banks is in substance the same whether the whole transaction is confined to one State or whether it involves operations in more than one State. In each case there are four main participants in the transactions - 20 the person paying, and the payee of, the negotiable instrument, and the banks of which they are customers. The transaction affects each of the participants in the following way:-

The person paying - his deposit account is reduced 25
or his loan account increased.

Place of Swearing: Sydney.

Deponent: L.G. MELVILLE.

Date of Swearing:
5th January, 1948.

F.W. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

212. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1948 on behalf of the Defendants.

213. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

The payee - his deposit account is increased or his loan account reduced.

The bank of the person paying - its Exchange Settlement Account is reduced.

The payee's bank - its Exchange Settlement Account is increased. 5

DOCUMENTS OF TITLE.

42. In the ordinary course of business, a private bank, when taking a bill of lading in connection with a banking transaction, takes it not by way of purchase but as security only, as it takes many other classes of property by way of security only when creating a credit for a customer. If the bill of lading relates to goods the subject matter of inter-state trade, it continues to be held merely as security when it is forwarded to another State. 10 15

BANKING SYSTEM AND CENTRAL BANK.

43. The primary functions of each of the principal private banks in borrowing and lending and granting and recalling credit - the details of which have formed the subject matter of statements contained in paragraphs 29 to 42 (inclusive) of this my affidavit - are carried out by each of the said banks on an Australia-wide basis. 20

These functions, however, are not performed by any one of the private banks as an independent entity. Each of the said banks in performing these functions acts as part 25

Place of Swearing: Sydney. Deponent: L.G. MELVILLE.

Date of Swearing: 5th January, 1948. F.W. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

213. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

214. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

of a banking system, the general direction of which is vested in the Commonwealth Bank. In directing this system the policy of the Commonwealth Bank as a central bank is aimed at the regulation of the spending power (or money) of the Australian people. These opinions are based on the matters set out in the succeeding paragraphs of this my affidavit. 5

44._____In the ordinary course of business, each bank grants advances to customers or asks for or receives the repayment of advances already made. The combined effect of these activities of all the banks is to expand or contract the total spending power available to the people of Australia. 10

45._____In the ordinary course of business, as a result of the granting of advances, customers draw cheques or issue negotiable instruments. In most instances, the payee of a cheque or other instrument receives payment in the form currently accepted by the people of Australia, namely in the form of an entry of a credit in his favour in an account at one of the banks in Australia. As a result, his deposit with the bank is increased or his debt to the bank is reduced. The total of the deposit accounts constitutes much the greater part of the spending power of the people of Australia. Whilst the balances of the deposit accounts may be described formally 20 25

Place of Swearing: Sydney.

Deponent: L.G. MELVILLE.

Date of Swearing:
5th January, 1948.

F.W. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

214. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

215. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

as the evidence of rights to receive legal tender up to the amounts thereof, the balances are themselves, in my opinion, used as a medium of exchange (or money) for the most part without their being exchanged into legal tender and without the users contemplating any such exchange. 5

46._____The total money available to the people of Australia (using the term "money" in the wider sense frequently employed) consists not only of legal tender in the hands of the public (that is, Australian notes and coin) but also of the total to the credit of the deposit 10 accounts in the Commonwealth Bank (General Banking Division) and in all other banks, including savings banks, but excluding deposit accounts of Governments, other banks and savings banks. In the month of September, 1947, this total money as above described in the Common- 15 wealth amounted approximately to £1,560,000,000, of which total the legal tender portion amounted approximately to £203,000,000. The total to the credit of the deposit accounts previously mentioned amounted approximately to £1,357,000,000. At the said time, the Commonwealth 20 Bank and the private banks, either by making advances or credits or by purchasing investments, had created most of the deposits of £1,357,000,000. In the ordinary course of business, an increase by the banks of either their advances or their investments adds to the spending 25

Place of Swearing: Sydney.

Deponent: L.G. MELVILLE.

Date of Swearing:
5th January, 1948.

F.W. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

215. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

216. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

power (or money) available to the public.

47._____Whilst the creation of credit, including that created by the making of advances, is carried out by each of the private banks in a partially independent manner, both as regards the general policy of the bank creating the credit and as regards the business prospects and solvency of the particular customer concerned, the independence of each of the private banks in creating credit is in fact limited and controlled under the Banking Act 1945. 5 10

48._____In the ordinary course of business the total amount of the advances which any one of the private banks is willing to make is determined by the total value of the classes of assets which constitute together what are described by bankers as "the cash reserves" of that bank. 15

49._____The cash reserves of the private banks consist of coin, notes and freely available credits of the private banks held with the Commonwealth Bank, in the form of Exchange Settlement Accounts or of other deposit accounts. In addition, some private banks treat their holdings of Treasury bills, together with Government securities other than Treasury bills, and some portion of the funds held by them in London, as part of their reserves for the purpose of determining their willingness to make advances. 20
If any circumstances cause the total value of the cash 25

Place of Swearing: Sydney.

Deponent: L.G. MELVILLE.

Date of Swearing:
5th January, 1948.

F.W. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

216. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

217. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

reserves of a private bank to be reduced, in the ordinary course of business the willingness of that bank to make advances and expand credit is in general reduced to a much greater extent. If, on the other hand, the total value of the assets included in the cash reserves of a private bank is increased, there is in general a correspondingly greater increase in the willingness of that bank to make advances and expand credit. 5

50._____The policy of each private bank in making advances and expanding credit is dependent upon its cash reserves, as indicated in the last preceding paragraph of this my affidavit and may be carried out independently of other private banks for relatively short periods, but is subject to limits well understood by practical bankers. 10
In my opinion, no one private bank can pursue a credit policy markedly more liberal than the policies of the other private banks without losing part of its cash reserves to those banks. The longer the process continues the greater is the drain upon its cash reserves. 15
The resulting reduction of cash reserves necessarily causes a reduction in the granting of advances by the bank in question and in due course causes the bank to pursue a credit policy substantially similar to that being followed by the other private banks. In my opinion, the process is accurately described in paragraph 20 25

Place of Swearing: Sydney Deponent: L.G. MELVILLE.
Date of Swearing: F.W. Stevenson,
5th January, 1948. A Justice of the Peace in
and for the State of
New South Wales.

217. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

218. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

75 of the report of the Macmillan Committee referred to in paragraph 7 of this my affidavit, as follows:-

"..... no one bank can afford to pursue a policy of creating deposits by making loans or investments which is much out of line with the policies of other banks." 5

CENTRAL BANK CONTROLS.

51._____By the provisions of Section 20 of the Banking Act 1945, the Commonwealth Bank is authorised to direct each of the private banks to pay into an account in the Commonwealth Bank, known as a Special Account, sums the maximum amount of which is defined by the said Act. If the said maximum amounts were directed to be paid to it by the Commonwealth Bank the total of the cash reserves freely available to the private banks would be considerably reduced. On the nineteenth day of November, 1947, the amount standing to the credit of the Special Accounts of the plaintiff banks was £249,000,000. On the said day the Commonwealth Bank could, in accordance with the provisions of the said section 20, have directed the plaintiff banks to pay into their Special Accounts an additional amount of approximately £57,000,000. The total of the cash reserves of all the plaintiff banks, together with Treasury bills held by them, was on the 19th day of November, 1947, approximately £58,000,000 10 15 20 25

Place of Swearing: Sydney.

Deponent: L.G. MELVILLE.

Date of Swearing:
5th January, 1948.

F.W. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

218. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

219. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

and, if other Government securities are included, was approximately £123,000,000.

52._____At the present date, each of the plaintiff banks has an amount to the credit of its Special Account with the Commonwealth Bank and that amount is, in most cases, 5 less than the maximum which the Commonwealth Bank could by law require the bank to have to the credit of its Special Account.

53._____In my opinion, the power of the Commonwealth Bank to require lodgments to, or to permit withdrawals from, 10 the Special Accounts provides the Commonwealth Bank with its principal instrument of credit control. This opinion is based upon the consideration that the cash reserves of a private bank can be increased by the Commonwealth Bank permitting withdrawals from that private bank's Special 15 Account, and that on the other hand that private bank's cash reserves can be and are reduced whenever it is required to make a lodgment to its Special Account. The movement in the cash reserves of a private bank, result- 20 ing from the exercise by the Commonwealth Bank of its authority to require such lodgments, or permit withdrawals, influences the willingness of the private bank to make advances and in consequence affects the deposits, and ultimately the spending power (or money) available to the people of Australia. 25

Place of Swearing: Sydney.

Deponent: L.G. MELVILLE.

Date of Swearing:
5th January, 1948.

F.W. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

219. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

220. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

54. _____ Further, in my opinion, it is essential that the Commonwealth Bank should have available to it means for holding in suspense a very large amount of the potential cash reserves of the plaintiff banks. The power of the Commonwealth Bank to require lodgments to, or to permit withdrawals from, Special Accounts provides it with such means. The total of Special Accounts thus withheld from the plaintiff banks amounted on the 19th day of November, 1947, to £249,000,000. The release of the amounts so withheld from the plaintiff banks, without any restrictive legal control by the Commonwealth Bank, would, in my opinion, result in the amounts being used as a basis for expanding advances, causing the central bank's control over credit to be destroyed, the spending power of the people of Australia to be greatly inflated, and the stability of the currency to be gravely imperilled.

55. _____ Under section 27 of the Banking Act 1945 it is provided that, where the Commonwealth Bank is satisfied that it is necessary or expedient to do so in the public interest, the Commonwealth Bank may determine the policy in relation to advances to be followed by private banks and each private bank is required to follow the policy so determined. The Commonwealth Bank is authorised, without limiting the generality of its power to determine advance policy, to give directions as to the classes of

Place of Swearing: Sydney.

Deponent: L.G. MELVILLE

Date of Swearing:
5th January, 1948.

F.W. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

220. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

221. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

purposes for which advances may or may not be made by private banks and each private bank is required to comply with any directions so given. The said section provides that nothing therein shall authorise the Commonwealth Bank to make any determination or give any direction with respect to an advance made, or proposed to be made, to a particular person. In the latest form in which directions have been given by the Commonwealth Bank under the said section, the subject matters dealt with include the following:-

Construction of new buildings, alterations and additions to, and repair of existing buildings.	
Investments in shares, stock, etc.	
Retailers	
Agricultural, pastoral and dairying production	15
Semi-governmental and local authorities	
Advances to take up Commonwealth Loans	
Purchase of real estate	
Financing of hire purchase transactions and cash order businesses	20
Manufacturers	
Advances to repay existing mortgages or retire debts which have not yet matured	
Amusement and sporting activities	
Advances for the purpose of meeting taxation commitments	25
Wholesalers, manufacturers' agents, and indent agents, selling and commission agents	
Exports	
Imports	30
Establishment of new businesses or purchase of an existing business	
Ex-servicemen	
Fixed deposits	
Speculative buying or holding of commodities	35
Production and exploitation of raw materials	
Probate duties and payment of legacies	
Transport (including aviation and shipping)	
Personal needs	
Companies and/or their subsidiaries and persons resident outside the sterling area.	40

Place of Swearing: Sydney.
Date of Swearing: 5th January, 1948.

Deponent: L.G. MELVILLE
F.W. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

221. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

222. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

56._____Further elements in the control in fact being exercised over the private banks by the Commonwealth Bank acting as a central bank are:-

- (a) the power conferred upon the Commonwealth Bank by section 28 of the Banking Act 1945, and 5 exercised by it, to control the purchase by any of the private banks of, and the subscription by any of them to, securities of the Commonwealth or of a State or of any authority of the Commonwealth or of a State, or securities of any 10 local governing body in Australia, or securities listed on a stock exchange in Australia; and
- (b) the power of the Commonwealth Bank to control the rates of interest payable to or by private banks. 15

CREATION OF CREDIT.

57._____In addition to the powers of controlling private banks referred to in paragraphs 43 to 56 (inclusive) of this my affidavit, the Commonwealth Bank, as the central bank (by which description it is hereinafter referred to), 20 creates money both in the narrow sense of legal tender and in the wider sense of central bank credit.

58._____The central bank creates legal tender by issuing Australian notes. There is no statutory limit on its power to issue such notes. The Bank Notes Tax Act 1910 25

Place of Swearing: Sydney.

Deponent: L.G. MELVILLE.

Date of Swearing:
5th January, 1948.

F.W. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

222. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

223. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

(since repealed by the Commonwealth Bank Act 1945) imposed a prohibitive tax on bank notes issued in Australia by private banks. Section 51 of the Commonwealth Bank Act 1945 provides that a person (including a State) shall not issue bank notes.

5

59. The central bank creates central bank credit -

- (a) by financing the operations of the Commonwealth and State Governments;
- (b) by purchasing or subscribing to securities;
- (c) by granting loans to customers; and
- (d) by acquiring overseas funds.

10

These transactions are discussed in paragraphs 60 to 63 (inclusive) of this my affidavit. In creating central bank credit in the ways referred to, the central bank affects the whole banking system and the spending power (or money) of the people of Australia.

15

60. When the Commonwealth Government, either on its own account or on account of any of the State Governments, issues Treasury bills to the central bank and the central bank discounts those bills, the central bank credits the account in its books of the Government concerned with the total amount of the Treasury bills, less the amount of the discount. When the Government spends these credits, by paying its employees or creditors, most of the money so paid is ultimately deposited in accounts

20

25

Place of Swearing: Sydney.

Deponent: L.G. MELVILLE.

Date of Swearing:
5th January, 1948.

F.W. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

223. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

224. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

with the private banks. The private banks receive from their customers either cash or cheques. The cheques are presented by the private banks to the central bank for payment, and the private banks receive in return credits to their accounts with the central bank which are the 5 equivalent of cash. Thus the discounting of Treasury bills by the central bank causes an increase in the deposits and cash reserves of the private banks. When the receipts of a Government exceed its expenditure and that Government redeems Treasury bills, the deposits and the 10 cash reserves of the private banks are reduced.

61._____When the central bank buys or subscribes to Government securities, it creates central bank credit in the same way as when it discounts Treasury bills, and the deposits and the cash reserves of the private banks 15 are increased accordingly. Conversely, when the central bank sells securities, the deposits and the cash reserves of the private banks are reduced.

62._____When the central bank makes new advances, it creates central bank credit. Most of the cheques which 20 are drawn by customers of the central bank to whom these advances have been made are paid into accounts in the private banks, thus increasing the deposits and cash reserves of the private banks. Conversely, when the central bank reduces its advances there follows a 25

Place of Swearing: Sydney.

Deponent: L.G. MELVILLE.

Date of Swearing:
5th January, 1948.

F.V. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

224. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

225. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

reduction in the deposits and cash reserves of the private banks.

63._____When the total of the overseas funds held by all the banks carrying on business in Australia and attributable to their Australian business is increased, there is 5 a corresponding increase in the amount of deposits in Australia. Under present arrangements, all increases in the overseas funds held by the private banks and attributable to their Australian business are acquired by them as agents for the central bank. When the 10 central bank acquires these overseas funds from the private banks, there is a corresponding increase in the cash reserves in Australia of the private banks. Conversely, when the total of the overseas funds held by all the banks carrying on business in Australia and 15 attributable to their Australian business decreases, there is a corresponding decrease in the amount of deposits in Australia and in the cash reserves of the private banks.

64._____The Coinage Act 1909-1947 authorises the Treasurer 20 of the Commonwealth to make and issue coins of certain specified denominations. In pursuance of this authority the Treasurer causes coins to be minted. Coins so minted are delivered to the central bank on account of the Commonwealth Government. The central bank credits 25

Place of Swearing: Sydney.

Deponent: L.G. MELVILLE.

Date of Swearing:
5th January, 1948.

F.W. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

225. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

226. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

the account of the Commonwealth Government with an amount equal to the total face value of the coins delivered.

When the account of the Commonwealth Government is so credited, spending power (or money) is created.

65._____An increase in the capital, reserves, deposits or other liabilities of the central bank reduces, in general, the deposits and cash reserves of the private banks. Conversely, a reduction in these items increases, in general, the deposits and cash reserves of the private banks. 5 10

66._____The effect of the various actions taken by the central bank to expand or contract the volume of money may not be entirely reflected in the cash reserves of the private banks because there may be changes in the total of the legal tender held by the public, or in the total of deposits of the savings banks, or of other customers, with the Commonwealth Bank. When money is created by the central bank, some portion of the money is paid into savings banks and so increases the balances of accounts of customers in those banks. The savings banks may use this money to buy securities or some other form of investment or they may place it on deposit with the private banks. To the extent that they so act, the deposits and cash reserves of the private banks will be increased. On the other hand the savings banks may 15 20 25

Place of Swearing: Sydney.

Deponent: L.G. MELVILLE.

Date of Swearing:
5th January, 1948.

F.W. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

226. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

227. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

increase their holdings of legal tender or their deposits with the central bank. To the extent that the savings banks follow either of the latter courses, the new money created by the central bank and deposited with savings banks will not increase the deposits and cash reserves of the private banks. 5

67. Except by dealings with the central bank or with customers of the central bank, the private banks, taken as a whole, cannot of themselves take any action to expand or contract the volume of their cash reserves. 10

They can, however, take action which will vary the amount of the deposits of their customers. When private banks make new advances, most of the cheques drawn by the customers to whom the advances are made are paid into accounts with the bank making the advance, or with some other bank, so that an increase in advances is, in general, reflected in an increase in deposits. Similarly, when a private bank purchases securities or some other assets (otherwise than from the central bank or from a customer of the central bank), there is, in general, an increase in the deposits of the private banks. Such action by the private banks does not affect the total amount of the cash reserves of the private banks taken as a whole. On the other hand, the actions of the central bank - referred to in paragraphs 57 to 65 25

Place of Swearing: Sydney.

Deponent: L.G. MELVILLE.

Date of Swearing:
5th January, 1948.

F.W. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

227. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

228. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

(inclusive) of this my affidavit - which increase the cash reserves of the private banks, thereby permit those private banks to increase credit in the manner referred to in paragraph 49 of this my affidavit. The following table shows, for the years from 1939 to 1947 (inclusive), the items, variations in which have caused variations of an equal amount in the deposits and the sum of the cash reserves and Special Accounts of the principal private banks, namely, the plaintiff banks other than The Ballarat Banking Company Limited and The Brisbane Permanent Building and Banking Company Limited.

5

10

Place of Swearing: Sydney.

Deponent: L.G. MELVILLE.

Date of Swearing:
5th January, 1948.

F.W. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

228. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

CREATION OF CASH RESERVES AND SPECIAL ACCOUNT BALANCES.
£million.

Av. for June	ITEMS WHICH INCREASE CASH RESERVES & SPECIAL ACCOUNTS				ITEMS WHICH DECREASE CASH RESERVES & SPECIAL ACCOUNTS				PRINCIPAL PRIVATE BANKS			
	Treasury bills outstanding + Govt. Secs. held by Cwth Bank	Advances & other assets of Cwth Bk.	London Issued Funds	Total of Deposits & other items causing increases i.e. items 1 to 4.	Total of Deposits & other liabs. held by public. of Cwth Bk. (a)	Notes & coin held by public.	Liquid Reserves of Sav. Banks & other Banks.	Total of items causing de-creases i.e. items 6 to 8	Cash Reserves and Special A/cs Col. 5 less Col. 9.	Special A/cs	Cash Res.	
	1	2	3	4	5	6	7	8	9	10	11	12
1939	117	20	10	62	209	78	40	19	137	72	-	72
1940	122	37	11	71	241	98	52	17	167	74	-	74
1941	128	25	12	94	259	96	62	30	188	71	-	71
1942	222	34	14	71	341	92	97	37	226	115	36	79
1943	399	29	19	89	536	133	138	76	347	189	103	86
1944	475	34	23	174	706	148	191	82	421	285	183	102
1945	502	30	26	207	765	148	191	95	434	331	242	89
1946	571	38	28	219	856	152	203	154	509	347	259	88
1947	547	44	28	226	845	156	204	145	505	340	275	65

(a) Deposits of banks are excluded. Capital accounts are included. Government accounts with Commonwealth Bank and with other banks overseas are included.

Place of Swearing: Sydney. Date of Swearing: 5th January, 1948.

L.G. MELVILLE
Deponent.

F.W. Stevenson,
A Justice of the Peace in and
for the State of New South
Wales.

230. Affidavit of Lesile Galfreid Melville dated the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

68. From my study and observation of banking systems in other modern communities, I am of opinion that central bank controls and central bank powers have been used and are being used in those communities similar to the controls and powers which I have described in this my affidavit. Controls and powers of the type of the controls and powers referred to are essential for the purpose of regulating the volume of money in a community and thereby facilitating and maintaining not only trade and commerce, but also production, manufacture and many other important activities of its citizens.

SIGNED AND SWORN by the Deponent)
the fifth day of January One)
thousand nine hundred and forty-) L.G. MELVILLE)
eight at Sydney in the State of) 15
New South Wales before me:-)
)

F.W. STEVENSON

A Justice of the Peace in
and for the State of
New South Wales.

This affidavit is filed on behalf of the Defendants.

230. Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

ANNEXURE L.G.M.1.

EXTRACT FROM REPORT OF MACMILLAN COMMITTEE.

CHAPTER II - GENERAL CHARACTERISTICS OF
MONETARY SYSTEMS.

18. Some common unit of value in terms of which 5
transactions can be expressed is necessary, if only as a
satisfactory measure for comparing the value of one thing
with that of another. With the growth of contractual
obligations, involving the conception of deferred pay-
ments, a time element was imported into transactions 10
which rendered it even more essential to have a common
unit of value as the basis on which to fix the amount of
payments to be made at a postponed date. When a
community, in order to meet this requirement, selects a
particular commodity such as gold to serve as its common 15
denominator of value, or, in other words, as its money,
that commodity is used not only for the actual settlement
of debts but is also naturally adopted as the unit for
the measurement of those debts. It becomes what is
termed the money of account, e.g., the pound, the dollar, 20
the franc. But the person entitled to a future payment
fixed in terms of the money of account may find, if
there is instability in the purchasing power of money
due to fluctuations of prices, that the value of his con-
tractual right has substantially changed when he comes 25
to receive payment. The importance of stability in
the value of money, that is, in its purchasing power,
thus becomes at once apparent if transactions are to be
entered into with any degree of confidence.

231. Annexure L.G.M.1 to Affidavit
of Leslie Galfreid Melville
sworn the fifth day of January,
1948 and filed in Action No.
42 of 1947 on behalf of the
Defendants.

232. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

19. It is important to realise the wide range of contractual obligations which are now affected by fluctuations in the value of money. The policy of modern States has greatly added to their number by the institution of social services which all involve future payments on a predetermined scale. Old Age Pensions, Insurance Allowances and other forms of assistance are all fixed by the Legislature in terms of money which, when it comes to be paid, may represent something quite different in value from what it represented when it was originally prescribed. The growth both of joint stock enterprise and of Government debts has also in the course of the past century enormously increased the number of fixed future money payments. Rights and interests in fact all tend to become more and more divorced from the underlying substratum of real things and are not merely expressed in terms of money but are actually constituted by the right to receive money payments. It is thus obvious that changes in the value of money may give rise to important changes in the distribution of the national income. We return to Chapter X to some of the difficulties thus occasioned.

20. The nature of the changes which the monetary system itself has been undergoing cannot be better illustrated than by the alteration in the emphasis placed by economic science upon the two functions which money is traditionally regarded as fulfilling - the function of acting as a medium of exchange and the function of acting as a standard of value, or, as it used to be put,

232. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

233. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January^m 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

as a common denominator of value. Victorian economic theory emphasised the first, modern theory emphasises the second, of these functions. This is significant of more than a mere change of academic fashion. Whereas in the nineteenth century, the symbols (pound sterling, dollar, 5 etc.), which expressed values corresponded to coins actually in circulation, this is not often the case in the modern world. To an ever-increasing extent, paper representatives of the monetary unit constitute the hand-to-hand currency in circulation. The symbolic character of the 10 monetary unit has emerged into the foreground while its relation to some actual physical material has receded.

21. Moreover, in the course of the past and the present century, the importance of hand-to-hand currency has been steadily diminishing. Although its absolute 15 amount grew with the trade and population of the world, its relative importance as the means of settling debts of all kinds at the same time declined. For international payments, even from a very early period, metallic money was little used, and credit instruments 20 in the shape of bills of exchange were largely employed in its place. Before the development of modern banking institutions, indeed, internal remittances were largely effected by means of bills, whilst in the course of the eighteenth and nineteenth centuries the bank note and 25 Government paper money became increasingly important. But, contemporaneously with the development of paper money as a circulating medium, there also developed methods of economising cash either by means of "giro"

233. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

234. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

transactions in the books of banks established for this very purpose at great commercial centres such as Amsterdam and Hamburg, or by the use of written transferable orders on bankers, i.e., cheques drawn against "running cash", the English equivalent of the Continental "giro" system. 5
In the modern world payments are effected by cheques or similar means to a far greater extent than by cash, though the extent to which substitutes for cash are employed varies in different countries. Thus the mass of purchasing power in a modern community is still further removed 10
from the physical objects with which it is linked through the monetary unit.

22. The devices mentioned above are very important in that they have given great elasticity to the volume of purchasing power. When the reserves of purchasing power 15
of each individual were held separately in the shape of current coin, what amounted in the aggregate to a large amount of money was necessarily withheld from active use. Under modern banking conditions, such reserves are entrusted to the banks, and it is the function of the banker 20
to employ in granting loans the amounts which experience teaches him are not likely to be demanded immediately by their owners. If no additional in-payments were made by customers and there were no withdrawals in cash, the volume of deposits of a single banker would fluctuate only 25
with the volume of the loans he himself made, and the limit of his loans would therefore be fixed by the size of the cash reserve he deemed it necessary to keep. When the lending powers of the banking system as a

234. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

235. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

whole are being considered, however, allowance has to be made for the circumstance that individual banks lose cash, not only to their customers in consequence of demands over the counter for wage and other payments usually made in that form, but to one another, if the cheques drawn on 5 them by their customers in favour of customers of other banks are in excess of the cheques drawn on other banks in favour of their customers. The cash reserves of the banks take the form largely of deposits at the Central Bank, and if the different banks make a point of main- 10 taining a constant ratio between their deposits and their cash reserves (whatever that ratio may be) then the additional lending capacity of a single bank, due to a greater proportion of the aggregate cash reserves passing to it in consequence of favourable clearing balances, will be 15 offset by the smaller lending capacity of all those banks which have been losing cash to it through the clearing. If, however, the aggregate of cash reserves is increased, or if all the banks together decide to reduce the pro- 20 portion of their cash reserves simultaneously, increased lending will thereby be made possible; though the additional loans thereby justified will only assume their ultimate form gradually. An increase in the deposits of a single bank, accompanied by an increase in its cash reserve due to gold imports or to an increase in the 25 volume of bankers' cash through credit operations of the Central Bank designed to have this effect, will, in the first instance, lead, through adverse clearing house balances, to part of the additional reserve passing

235. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

236. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

into the hands of other banks. As they in turn expand their loans, again part of the additional reserves which they have previously gained will pass over to other banks, until in the end, the increased reserves are spread over the system as a whole, supporting a larger volume of loans 5 and deposits. Again, a single bank which voluntarily lowers the proportion of its reserve to its deposits will impart an upward movement to the volume of credit by not restricting credit as it loses cash through the operations of the clearing. The volume of bankers' loans is 10 elastic, and so therefore is the mass of purchasing power, but there is a time lag involved before the factors which lead to an expansion exercise their full influence.

23. The banking system thus forms the vital link between the two aspects of the complex structure with 15 which we have to deal. For it relates the problems of the price level with the problems of finance, since the price level is undoubtedly influenced by the mass of purchasing power which the banking system creates and controls, and by the structure of credit which it builds 20 upon the basis of available supplies of gold. Thus, questions relating to the volume of purchasing power and questions relating to the distribution of purchasing power find a common focus in the banking system.

24. If the money income of the community were 25 constant in amount, stability of individual prices would be assured only if all goods and services were being produced in forms exactly corresponding to the way in which the owners of income were disposing of this income.

236. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

237. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

Even the stability of average prices would imply equilibrium between consumers' goods and the instrumental goods necessary for their production. But in addition to these factors affecting the stability of prices, the money-income of the community is itself a variable quantity. If Governments pursue an inflationary policy, i.e., meet expenditure not out of revenue or loans, but by the issue of paper money; or if there is an increased output of gold from the mines, adding to the incomes of gold producers and to the lending powers of the banking system; or if, finally, the banks pursue an easier credit policy and lend more freely to the business community, forces are set in motion increasing profits and wages, and therefore the possibility of additional spending arises. The effects upon the price level are complicated by the fact that the distribution of money-incomes may be altered and the rapidity with which they are spent. Thus, apart from an absolute rise in the price level, relative prices may be distorted and a new direction given to the mechanism of production. In short, an expansion of credit and of currency, however arising, has a complex effect upon the price level.

25. The characteristic modern feature of great banks of deposit, investing their funds largely in short-dated commercial loans is historically recent. Before joint stock banking arose the field was already occupied (i) by the private banker, dealing in international bills of exchange, handling bullion and foreign exchange transactions, and issuing Government and other loans to the

237. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

238. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

public, the predecessor of the modern "merchant banking" firms; (ii) by institutions created with special powers and privileges granted in return for loans to Government, the prototypes of our modern Central Banks; (iii) by the old country banks mostly possessing the right of note 5 issue; and (iv) in certain countries by special banks intended to facilitate mercantile transactions in an age of great currency disorganisation, the "giro" banks of the great commercial cities. It was not until the middle of the last century that joint stock organisations for 10 deposit banking, discounting, or the handling of securities began to come into existence.

26. But underneath the diversity of functions assigned to the various classes of financial institutions, there may be discerned certain general features which 15 may be summarised as follows:-

- (1) Every advanced financial organisation possesses a market in which funds available only for very short periods are lent out. This is designated the call-loan market. The immediate effect of 20 an increase in the supply of credit is usually an increased flow of funds to this market, whether, as in New York, it is primarily associated with the Stock Exchange, or whether, as in London, it is primarily associated with the 25 market in bills of exchange, i.e., the discount market.
- (ii) Every organised system possesses a market in which the supply of and the demand for short-period

238. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

239. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

loans is balanced. To bring short-period lending into relation with short-period demands for accommodation is the primary function of commercial banks.

- (iii) Every organised system includes a market for the adjustment of the supply of and the demand for new long-period capital. This is the capital market in the ordinary sense of the term, which prepares and offers new securities to those seeking opportunities for investment. 5 10
- (iv) In addition, and as an inevitable accompaniment of the capital market, there must be an organisation capable of transferring ownership rights in already existing securities. This organisation is the Stock Exchange. 15
- (v) There are usually special organisations dealing with the supply of savings of a special character, or linking up the flow of savings with the demand for savings for special purposes. Into this category fall the insurance companies, the savings banks, agricultural mortgage banks and other analogous institutions. 20

27. If the multifarious character of these functions, and of the agencies which perform them, is borne in mind the question of co-ordination naturally arises. How is it possible to attain equilibrium between forces of so diverse a character? In the first instance, of course, equilibrium is attained, as in every market, through the medium of rate or price; if the whole system is in 25

239. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

240. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

equilibrium, then there will be a definite relationship between the rates of interest or the price of loans in every one of these markets, and between these rates and the expected return on long-period capital. Moreover, since the financial structure of every country influences, 5 and is influenced by, the financial structure of other countries, the whole system of money markets will be in a position of mutually determined equilibrium. Since under an international gold standard international prices tend to a common level; since, further, price movements 10 are influenced by events in the money markets, and the money market is influenced by price movements, a self-determining equilibrium of all the factors, national and international, is attainable, given a sufficiently long period of time, and the absence of disturbing causes. 15 Thus variations in the rate of interest charged appear to be the appropriate instrument to bring about harmony.

28. Considerations such as these lay at the back of the long-drawn controversies between the supporters and opponents of what used to be called "Free Trade in 20 Banking" in the middle of the nineteenth century. By that time, however, it had already become clear that there resided in the financial structure a tendency not only to harmony but also to disharmony. The necessity for some agency, capable of acting as a brake upon the system, 25 was gradually recognised. The institution called upon to keep the financial structure upon an even keel is the Central Bank: in this country the Bank of England. Historically the principles of central banking were

240. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

241. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

established empirically long before they received theoretical formulation. That there is a distinction between the code of behaviour appropriate to a commercial bank and that appropriate to a Central Bank was recognised as early as 1797, was a bone of contention between practical authorities for nearly three-quarters of a century thereafter, and was finally established with unanswerable brilliance and cogency by Walter Bagehot in 1873. We mention this long struggle to show how recent, even in the case of Great Britain, is the full realisation of all that is involved in the theory of central banking.

Functions of a Central Bank.

29. Since freedom of issue of paper money may easily, under the stimulus of the desire to make profit, lead each issuer to expand until the total amount in circulation is inconsistent with the retention of a sufficient reserve of gold, it is clear that the Central Bank should possess a monopoly of note issue, and this is indeed the almost universal practice of the modern world. But this does not of itself secure to the Central Bank control over the volume of credit, the modern substitute for hand-to-hand currency. This came about in our country through the following causes. It is to the interest of every commercial banker that, in the short run, his reserves should be as small as possible consistently with safety. It is equally to the advantage of each banker that there should be one institution carrying a large reserve available for the use of all in moments of emergency, provided that this institution is

241. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

242. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

willing to utilise its reserve for the common safety when the emergency does arise. Hence the one-reserve system, the foundation of all central banking practice, arose in this country to meet a practical need and found its organ in the Bank of England. The immense im- 5 portance of this system has had to be recognised, in newer areas in which commercial banks preceded the institution of central banking, by the system of compulsory reserve-deposits at the Central Bank. Once the commercial banks of a country held their reserves in the shape 10 of deposits at the Central Bank, the possibility of control by the Central Bank arises. For an expansion of credit by the Central Bank has the effect of increasing the reserve-deposits of the commercial banks at the Central Bank, and a restriction of credit by the Central 15 Bank decreases these reserve-deposits. In the first case the commercial banks can expand, in the second they are sooner or later forced to contract, their own loans. These results follow whether or not the expansion or contraction of credit is effected by the Central Bank 20 through operations in the money market, or through operations in connection with the commercial banks themselves, i.e., whether the Central Bank acts by means of "open market operations" or by means of "re-discounting" for the commercial banks. 25

30. The Central Bank should, therefore, possess four rights: the right of note issue, the right to hold the reserves of the commercial banks, the right to buy and sell securities, and the right to discount. In

242. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

243. Annexure L.G.M.1. to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

return, it must so manage its operations as to be able at all times to meet the demands which may be made upon it, that is, it must be able to safeguard its cash reserve.

In practice the tasks which have been imposed upon the Central Bank make it imperative that it should hold 5 the account of the Government, for the financial operations of Government are conducted on a scale so great as seriously to derange the money market unless special measures are taken to counteract the inconveniences which result from the inflow of revenue or the temporary easi- 10 ness which results from interest and dividend payments. This task ought to devolve upon the Central Bank in virtue of its general function as guardian of the money market, and does in fact devolve upon it when it carries the Government account. 15

31. It follows that the functions of a Central Bank and the obligations resting upon it are of a very special character, calling for skill, experience and judgment of a kind different from those which must be possessed by commercial bankers. No banker can neglect 20 the rules of prudence and of safety, but the object of a commercial banker is to make a profit. The situation of The Central Bank is such that it must often undertake operations which are not only not profitable, but result in losses. Its aim must be the safety of the financial 25 system and the economic welfare of the country.

32. These differences of standpoint and function are reflected not only in the powers, but also in the constitution, of the Central Bank. The frame-work of

243. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

244. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

its scheme of government, the general powers conferred upon it, as well as the standards to which, in the exercise of its powers, it is expected to work, are usually embodied in legislation, which in addition to setting a time limit to the privileges conferred upon the Bank, 5 normally subjects the institution to some special limitation upon the disposition of its profits either by directing that they shall be used in specified ways, or by limiting the total amount which may be distributed, or by combining directions such as these with appropria- 10 tion of profits in part by the State.

33. In the sphere of Central Bank legislation two tendencies may be observed. The first concerns the degree of elaboration of the constitutional code by which the Bank is to be governed. There are what may be 15 called the British and the Continental traditions in these matters: the first leaving the Bank much more free to develop its constitution in accordance with changing circumstance, and limiting the degree of State interference to a minimum: the second regulating machinery in detail, 20 emphasising the subordination of the Bank to the organs of the State, and admitting some, in certain cases much, State participation in the affairs of the Bank itself. Such detailed regulation is explicable in many cases on the ground that the Bank has been set up in an environment 25 generally favourable to State paternalism or under circumstances, such as a disorganisation of the currency, which made detailed regulation appear advisable. Nevertheless, rational consideration of the problem will show

244. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

245. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

that a Central Bank which is able to adjust itself to new necessities and exigencies without requiring an amendment of its constitution or powers on every occasion when innovation is considered desirable possesses the inherent advantages which an elastic structure has over a rigid one. 5

34. The other tendency to which allusion must be made refers to the reserve requirements of modern Central Banks. In the earlier bank constitutions, in so far as a statutory cash reserve was provided for, it was against the volume of the note issue that the reserve was to be held. The magnitude of the reserve was either to be the same as the outstanding volume of notes (subject to a certain minimum of notes which need not be covered) or was to be a certain minimum percentage of the notes outstanding, whilst the reserve itself was to be composed of gold bar or gold coin actually in vault. The deposits of the Central Bank were not subject to regulation. Contrasting the present with the former situation, we note some significant differences: 10 15.

(i) whilst the tendency to insist upon a minimum ratio (generally 35 per cent or 40 per cent) still exists, there is a tendency to assimilate deposits to notes for reserve purposes, (ii) the reserve need no longer consist exclusively of gold bar or gold coin in vault, but may consist, to a greater or less extent, also of gold bars or coins earmarked and held at some other Central Bank and of foreign bills of exchange or bank deposits, payable in gold or held in some country upon a gold standard, (iii) where notes and deposits are statutorily 20 25

245. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

246. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

convertible upon demand, the Central Bank is no longer obliged to meet these demands in gold coin, but in gold bars or foreign exchange, and in minimum amounts sufficiently large to prevent a frivolous use being made of the power of conversion. The effect of these measures may be 5
shortly summed up. In so far as notes and deposits have both to be protected by a statutory reserve, the net amount of reserve to be kept increases. In so far as substitutes for gold, instead of gold itself, can be kept in reserve, the net demand for gold for reserve purposes 10
can diminish if Central Banks in practice make full use of the opportunities of the reserve regulations.
Finally, experience has shown that, where a Central Bank is required to maintain its reserves at a certain minimum percentage figure of its outstanding liabilities, the 15
maintenance of such a minimum ratio offers no adequate barrier to a rapid growth of its liabilities in periods of expansion, whilst, at the same time, if it is found necessary subsequently to contract credit, the degree of contraction required, in order to comply with the law, 20
is greater than would have been the case if no fixed relation between cash reserve and liabilities had existed. These provisions have therefore an important relation to the question of the economy of gold which we discuss elsewhere in our Report. 25

246. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

247. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

CHAPTER IV - THE MONETARY SYSTEM OF GREAT BRITAIN.

2. The Joint Stock Banks.

73. The joint stock banks, or deposit banks, are the banks with which the public in general deal. They carry out many familiar services for their customers but we are 5 concerned mainly with their functions as recipients of deposits and as lenders to trade and industry, the financial market and other borrowers, and the mechanism which governs generally their operations.

74. It is not unnatural to think of the deposits of a 10 bank as being created by the public through the deposit of cash representing either savings or amounts which are not for the time being required to meet expenditure.

But the bulk of the deposits arise out of the action of the banks themselves, for by granting loans, allowing 15 money to be drawn on an overdraft or purchasing securities a bank creates a credit in its books, which is the equivalent of a deposit. A simple illustration, in which it will be convenient to assume that all banking is concentrated in one bank, will make this clear. Let 20 us suppose that a customer has paid into the bank £1,000 in cash and that it is judged from experience that only the equivalent of 10 per cent of the bank deposit need be held actually in cash to meet the demands of customers; then the £1,000 cash received will obviously 25 support deposits amounting to £10,000. Suppose that

247. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

248. Annexure L.G.M.1. to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

the bank then grants a loan of £900; it will open a credit of £900 for its customer, and when the customer draws a cheque for £900 upon the credit so opened that cheque will, on our hypothesis, be paid into the account of another of the bank's customers. The bank now holds both the 5 original deposit of £1,000 and the £900 paid in by the second customer. Deposits have thus increased to £1,900 and the bank holds against its liability to pay out this sum (a) the original £1,000 of cash deposited and (b) the obligation of a customer to repay the loan of £900. The 10 same result follows if the bank, instead of lending £900 to a customer, purchases an investment of that amount. The cheque which it draws upon itself in payment for the investment is paid into the seller's bank account and creates a deposit of that amount in his name. The bank, 15 in this latter case, holds against its total liability for £1,900 (a) the original £1,000 of cash and (b) the investment which it has purchased. The bank can carry on the process of lending, or purchasing investments, until such time as the credits created, or investments 20 purchased, represent nine times the amount of the original deposit of £1,000 in cash.

75. The process is much the same when we remove the assumption that there is only one bank. The credit granted by one bank may reach the accounts of customers 25 in another bank. There is thus established a claim by the second bank upon the first for cash, and the ability of the second bank to grant loans is improved in so far as that of the first bank is reduced. Over the banking

248. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No.42 of 1947 on behalf of the Defendants.

249. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

system as a whole therefore, loans and investments made by the banks increase their deposits. There is, however, a limitation on this process. A bank which is actively creating deposits in this way will naturally find that a considerable part of the cheques drawn against them will be in favour of other banks. It will thus lose part of its cash reserve to those banks and must proceed to limit its loan operations if its normal cash ratio is to be maintained. In practice, therefore, no one bank can afford to pursue a policy of creating deposits by making loans or investments which is much out of line with the policies of other banks.

76. The cash which the banks hold is partly in the form of bank notes and coin maintained in tills and reserves to meet current demands by customers and for exigencies, and partly in the form of a deposit with the Bank of England - the bank of the bankers. The latter credit affords first the means of settling day to day balances between banks and secondly the means of obtaining any further supplies of notes or coin that they may need for current use. A further cash item is represented by balances with other banks and cheques on other banks in course of collection. These claims on other banks, which are settled within a day or two, usually amount to about $3\frac{1}{2}$ per cent of the deposits, varying of course with the amount of business done by the bank.

84. Despite the small variations, the figures we have

249. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

250. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

quoted show a remarkable adherence to the conventional distribution of assets over a period of years, and this feature has to be kept in mind in considering the position of the commercial banks as the distributive agents for credit throughout the commercial, industrial and financial world. Given the maintenance of a certain cash base the banks will always in time expand their deposits to a figure of some nine or ten times that base, but it does not necessarily follow that they can distribute their assets immediately in the proportions at which they normally aim. In certain circumstances it may be, indeed, that the efforts of the bankers to employ their cash remuneratively will set in motion forces which will themselves bring about a reduction of their deposits. The general process may be summed up briefly as follows.

85. A bank has each day to take a view of its general cash position. Loans and advances are constantly being granted and repaid, bills mature every day and investments are being repaid at intervals. If the result of these day to day changes is to show an increase in the cash balance relative to deposits, the bank has to find means of employing its surplus resources at a profit. Its aim ultimately is to distribute its assets in the normal proportions, but it cannot, for example, at once expand advances to its customers, since it is dependent upon the volume and quality of applications made by would-be borrowers. In the first place, therefore, the bank finds an outlet for its surplus cash, either by lending money to the market or by buying bills or investments.

250. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

251. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

The choice will be dependent largely upon the view taken by the bank as to the liquidity of its position, the nature of the demands which it anticipates in the early future, and the relative profitableness of each type of transaction. The natural outlet in the first instance 5 is, however, the grant of additional loans to the bill market. That market has then an increased volume of funds seeking remunerative employment while nothing has affected the supply of bills for discount. Competition for bills may force the rate of discount down, and though 10 some bills may be attracted to London for discount from other markets, the weakening of the rate may be such as to lead to the possibility of an outflow of gold and thus entail restrictive measures by the Bank of England. It is possible, therefore, that in certain circumstances 15 the cash base may have to be contracted before the banks have had the opportunity of employing their resources in loans to industrial or other borrowers.

86. If, however, such conditions do not arise and the cash base remains unaffected the general policy of the 20 commercial banks will be to restore the normal distribution of their assets. As and when the demand for advances increases they will be ready to withdraw accommodation from the money market. How far this readiness may affect the actual demand for advances is a matter upon which 25 the views of our witnesses appear to differ. In one case we have been told that the demands for advances for industrial purposes are continually in excess of the ability of the bank to lend; in most cases the

251. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

252. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

evidence we have received is to the effect that the banks have not been compelled, by reason of their cash position, to reject any application for an industrial loan which they regarded as a desirable loan to grant.

87. In general, however, it is clear that the ability 5
of the commercial banks to grant loans to their customers ultimately depends, under existing joint stock banking practice, upon the provision of the necessary cash base by the Bank of England. If the commercial banks have made loans up to that percentage of their deposits which 10
they have adopted as a working basis, either they must cease to grant new loans except to the extent that existing loans are reduced, or the cash base must be expanded by the Bank of England. The determination of what is an adequate supply of credit rests ultimately therefore with 15
the Central Bank. As to the factors upon which the Bank frames its judgment we quote from Sir Ernest Harvey's evidence:- "It is to the joint stock banks that we have to look for guidance as to the needs of industry for an increased volume of credit or for signs that the volume 20
of credit is in excess of requirements The barometer to which we look is the volume of money that is seeking investment in the short market, presumably for the reason that, except in so far as additional short assets may be necessary for the restoration of bankers' 25
proportions, the funds in question cannot find employment elsewhere than in the short market We have to look to the volume of the private deposits considered in conjunction with conditions in the money market, and

252. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

253. Annexure L.G.M.1. to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

we have to measure on that basis the adequacy of the volume of credit - always, of course, having regard to the external position, the state of our reserve, the position and trend of the exchanges" (Q. 8848).

3. The Accepting Houses and the Discount Market. 5

88. In the British monetary system, these organisations play an important part. In contrast with most other countries, the function of accepting and discounting bills of exchange is very largely performed in this country by highly specialised firms and companies instead of by the commercial banks, although the latter do a not unimportant share of the business. It is unnecessary to enter into a detailed account of the work of these organisations since we are concerned particularly with the manner in which one of them, namely the discount market, as an intermediary between the Bank of England and the commercial banks, acts as the principal user of the short-term funds of the latter. 10 15

89. International trade is largely financed by bills of exchange drawn on banks or banking houses. The process may be briefly described by an example. A British importer wishing to import goods from a foreign country will go, say, to his accepting house and ask them to open a confirmed credit in favour of the foreign exporter through some bank in the exporter's country. The exporter, on exporting the goods and obtaining the ship's bill of lading will attach the latter together with an invoice, insurance policy and any other relevant documents to a draft for the sum due to him drawn on the 20 25

253. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

254. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

London accepting house and ask the local bank to discount the bill so that he may receive his money at once.

Relying on the confirmed letter of credit and the first-class standing of the accepting house the bank will be ready to do this. It will then send the draft and the documents to its London agent with orders to present it to the accepting house for its acceptance. The draft being accepted, the agent can either hold it for collection till maturity, or discount it at once in the discount market and recoup his principal abroad. The exporter therefore receives his money at once: the importer secures credit for a period; the discounter of the bill abroad obtains an instrument freely negotiable, and the accepting house receives an acceptance commission for the use of its name on the bill, either retaining the documents until the bill is repaid or, as is often done, parting with them at once to the importer. The risk run by the accepting house is therefore the insolvency of the importer.

90. The details of the transaction will vary with the particular case. The accepting house may stipulate that the importer must give security, either in the form of the relative documents (such as bills of lading, &c.) or some other form, or it will often give a blank credit to a client who is well-known and financially strong. The importer must place the accepting house in funds in time to meet the payment of the bill on its due date. The accepting house does not, therefore, actually provide cash in respect of its acceptances, though it must

254. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

255. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

always be ready to "take up" its acceptances whether or not funds have been received to cover them. Its function is to guarantee due payment of the bill and in this way to make it one which will be readily discounted by banks or by the discount market. For this guarantee it makes a charge which in general varies from one to two per cent per annum according to the credit of the customer and the character of the risk. 5

96. From this brief review of the mechanism of our monetary system we may now see the machine as a whole. The Bank of England, as the Central Bank, is in complete control of the creation of the cash base of the country, subject to such limitations as result from the statutory restrictions upon the issue of legal tender money and the obligation to meet demands for the export of gold. As regards the former, however, the provisions of the Act of 1928 permit of the expansion of the note issue by an increase of the fiduciary portion. 10 15

97. By its control over the cash base the Bank of England is in a position to regulate the volume of bank deposits, so long as the joint stock banks adhere to their normal practices in regard to the distribution of their assets, or indeed to offset any change which might be made in those practices. The volume of deposits, in turn, is the approximate measure of the amounts which the commercial banks are prepared to employ in various ways and more particularly, from the point of view of our inquiry, the amount which they are ready to 20 25

255. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

256. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

lend to trade and industry if the demand for accommodation is forthcoming. Money so lent and actively employed in production is disbursed in wages and other payments and becomes the incomes of those who will purchase commodities. It is through this relationship that the creation of credit 5 affects the level of prices.

98. The link between the Bank and the commercial banks is established through the discount market which is the first outlet of any surplus funds held by the banks and from which funds are withdrawn when the banks find it 10 necessary to replenish their reserves. If the withdrawal causes a shortage of funds in the market, the market borrows in one form or another from the Bank of England and the accommodation given by the Bank provides the means of replenishing the cash resources of the 15 commercial banks.

CONCLUSIONS AND RECOMMENDATIONS.

CHAPTER II - PROPOSALS RELATING TO INTERNATIONAL MONETARY POLICY.

5. Central Bank Control over the Volume and Terms of Bank Credit. 20

301. The method by which the Central Banks must attempt to achieve their aim of maintaining stability of the international price level over long and short periods is through their control of the volume and terms of bank 25 credit. It is when we approach the questions relating to the control of credit, the causes of the Credit or

256. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

257. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

Trade Cycle, and the alternations of prosperity and depression, that we reach some of the most fundamental and difficult problems in economic theory and practice, on which there still exists among experts very considerable difference of opinion. With these we do not intend to 5 deal at length. But this should not be taken to mean that we do not regard them as of the greatest importance. When practical bankers and business men can explain clearly the causes of the Trade Cycle, why prosperity is followed by depression, and depression by prosperity, and can find 10 practical means to avoid the economic waste caused thereby, and when they can adjust more satisfactorily the powers of the modern world to consume and absorb wealth with its powers to produce wealth, they will have more justification than they now have in ignoring and treating as of 15 little or no consequence economic research into these very difficult but vitally important problems. The practical man is satisfied to make profits when the sun shines, and to bear his losses when the bad times come, regarding these alternations more or less as laws of 20 nature, when very often they are due to the working of the monetary machine and are to some extent at any rate under human control. But, if they are even partly under human control, it is of the utmost importance for the betterment of humanity and the stability of society 25 that such methods of control as may exist should be worked out and put into practice, even if, as is and will remain true, there exist no simple scientific rules by the mere application of which such control can be exercised.

257. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

258. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

The management of currency and credit is essentially an art and not a science.

302. In this connection we quote Governor Strong's evidence before the Stabilisation Committee of Congress in 1926:- "There is no magic formula that can be introduced into the Federal Reserve Act to control prices. . . . I have discussed these matters with many economists and students of prices and purposely have always carried the discussion through the same course. We have agreed on the record of the past in the Federal Reserve system pretty generally, as to what has been done and the effect of what has been done. We have generally agreed as to the conditions at the present moment But, when I ask them, 'Now, we have got to decide something to-day; you are in the position of running in the Federal Reserve system; what are you going to do to-day that will have an influence on the future?' the answer is always the same. 'Well, you are the practical fellows who are running this; you have got to decide that'. And that is the difficulty. Our examination of the past produces the most accurate knowledge of past action and reaction, but when it comes to a decision as to what we are going to do for the future, then just human judgment has got to govern. There is no mathematical formula for the administration of the Federal Reserve system or the regulation of prices."

303. The function of a Central Bank should be to regulate the volume and price of bank credit, i.e., "short" credit, so as to maintain output and employment,

258. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

259. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

at the maximum compatible with adherence to the international gold standard and with maintenance of the stability of the international price level. Credit is essentially unstable. Credit conditions which tend to generate a rise in prices, lead, if uncontrolled, to 5 still higher prices, and, when the reaction commences, falling prices produce in themselves a further fall. The Credit Cycle in fact on which so much economic research has been expended seems to be the effect of monetary conditions upon human psychology. If we take 10 the depth of a depression, we find easy money, idle balances, but no confidence, and, therefore, reduced investment and reduced output. In time, shortage of stocks, or a fall in the rate of interest, or some other cause, will bring increased demand for goods of some kind 15 or another; after a period of such increased demand prices will rise; output and investment will increase, and consequently purchasing power; the improvement will spread from one industry to another, restoring confidence; with the increase in profits the readiness to embark on 20 capital outlay will increase. Meanwhile the growth in employment and wages will have increased purchasing power still further and may in time bring actual rises in wages. As the process continues, capital issues become greater and greater until, finally, the new in- 25 vestments in buildings and fixed plant are no longer able to yield the rate of interest or profit upon which their optimistic promoters had been reckoning. At the same time, just when enterprise is beginning to yield

259. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

260. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

less, the over-extension of banking credit will cause an increase in interest rates, and the pressure on the banking system for short-term advances will bring about a certain restriction of credit. Moreover, unless an equivalent rise in prices is taking place elsewhere, the country's balance of payments may be affected, gold may be exported and pressure on the Central Bank's reserves lead to further restrictions. 5

304. We have attempted this very inadequate account in order to show that the problem of a Central Bank must be, not only to watch the short-money market, the gold movements and the pressure on the exchange and conditions abroad, but also the internal price level, the unemployment figures and the capital market. Control of credit conditions is always easier before a boom has commenced in earnest. When that has once happened, to prevent its development to a stage ultimately leading to a reaction, and to prevent the reaction running its full course, are both difficult. Yet a Central Bank, if it attempts to curb an upward movement, may and will be criticised for cutting short the country's nascent prosperity. Even when the recent American boom had grown to very great proportions, there was strenuous and widespread opposition in every quarter, even the most authoritative, to any attempt seriously to control it. To the difficulties of the control by a Central Bank of its own market must be added the additional difficulty of securing concerted action by several. Even if it were conceded that such concerted action would generally be effective if it 10 15 20 25

260. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

261. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

were taken soon enough, it may be argued that it is not in fact practicable to detect and interpret the obscure premonitory signs of the financial weather soon enough or accurately enough, or with a high enough degree of probability to procure concerted action amongst a number 5 of independent authorities, each of which is likely to have its own ideas based on its local information and to maintain them with tenacity. Here again only time can show. There is no need to minimise the difficulty of the high enterprise which we should like to see the 10 Central Banks of the world put in hand.

This and the preceding 25 pages are the annexure marked "L.G.M.1" mentioned and referred to in the annexed affidavit of Leslie Galfreid Melville sworn at Sydney the fifth day of January One thousand nine hundred and forty-eight before me -

F.W. STEVENSON,

A Justice of the Peace in
and for the State of
New South Wales.

261. Annexure L.G.M.1 to Affidavit of Leslie Galfreid Melville sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

No. 20 - Affidavit of Leslie Galfreid Melville sworn the 14th day of January, 1948, and filed in Action No. 42 of 1947 on behalf of the Defendants.

IN THE HIGH COURT OF AUSTRALIA)
NEW SOUTH WALES REGISTRY.) No. 42 of 1947.

Between:

BANK OF NEW SOUTH WALES and 5
others

Plaintiffs

and

THE COMMONWEALTH OF AUSTRALIA 10
and others

Defendants

I, LESLIE GALFREID MELVILLE of Sydney in the State of New South Wales, Economist, make oath and say -

1. _____ I crave leave to refer to the affidavit of me this deponent sworn on the 5th day of January instant and filed 15 herein, and particularly to the following sentence appearing in paragraph 26 thereof:-

"This analysis showed that the percentage of debit
"and credit transactions (excluding transactions
"for Governments and banks) was, in terms of 20
"numbers of transactions 98% and 99% respectively,
"and, in terms of amount 96% and 99% respectively".

2. _____ Owing to a typographical error which escaped my notice when reading my said affidavit at the time of the

Place of Swearing: Sydney.

Deponent: L.G. MELVILLE.

Date of Swearing:
14th January, 1948.

F.W. Stevenson.
A Justice of the Peace in
and for the State of
New South Wales.

262. Affidavit of Leslie Galfreid Melville sworn the fourteenth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

263. Affidavit of Leslie Galfreid Melville sworn the fourteenth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

swearing thereof the words "confined to one State" were omitted from the description of the debit and credit transactions the percentage of which is set out in the said sentence. Such percentage is, as I am informed by the Secretary of the Commonwealth Bank and believe, in fact 5 that of debit and credit transactions confined to one State (excluding transactions for Governments and banks).

SIGNED AND SWORN by the deponent at)
Sydney in the State of New South)
Wales this fourteenth day of) L.G. MELVILLE. 10
January one thousand nine hundred)
and fortyeight, Before me:-)

F.W. Stevenson.

A Justice of the Peace in
and for the State of
New South Wales.

263. Affidavit of Leslie Galfreid Melville sworn the fourteenth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

No. 21 - Affidavit of Gordon Murray Shain sworn the 5th day of January, 1948, and filed in Action No. 42 of 1947 on behalf of the Defendants.

IN THE HIGH COURT OF AUSTRALIA)
) No. 42 of 1947.
NEW SOUTH WALES REGISTRY.)

Between:

BANK OF NEW SOUTH WALES and 5
others

Plaintiffs

and

THE COMMONWEALTH OF AUSTRALIA
and others 10

Defendants

I, GORDON MURRAY SHAIN, of Sydney in the State of New South Wales, Deputy Governor of the Commonwealth Bank of Australia, make oath and say -

1. _____ I have held the office of Deputy Governor 15
of the defendant Commonwealth Bank of Australia (hereinafter called "the Commonwealth Bank") since the 1st day of July, 1941 by appointment of the Governor-General.

2. _____ I have had 47 years' experience in banking 20
business in Australia and London. For 25 years prior to my appointment as Deputy Governor I was an officer of the Commonwealth Bank and before becoming an officer of the Commonwealth Bank I had

Place of Swearing: Sydney.

Deponent: G.M. SHAIN.

Date of Swearing:
5th January, 1948.

F.W. Stevenson,

A Justice of the Peace in
and for the State of
New South Wales.

264.

Affidavit of Gordon Murray Shain sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants. *

265. Affidavit of Gordon Murray Shain sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

16 years' experience as an officer of The Commercial Bank of Australia Limited.

3._____In the service of The Commercial Bank of Australia Limited I occupied from time to time different positions at the Head Office and branches in Victoria, including 5 the position of Branch Manager.

4._____From time to time in the service of the Commonwealth Bank I have occupied various positions in different States of the Commonwealth and in London. Since the year 1917, I have held successively the 10 following executive positions in the Commonwealth Bank - Assistant Accountant of the Melbourne Branch; Accountant of the Brisbane Branch; Accountant of the Melbourne Branch; Accountant of the Sydney Branch; Inspecting Officer inspecting and auditing branches throughout 15 the Commonwealth; Assistant Manager of the Melbourne Branch; Assistant Manager of the London Branch; Manager of the Melbourne Branch; Chief Inspector at the Head Office; and Deputy Governor.

5._____Since the 23rd day of August, 1945, I have 20 been a member of the Advisory Council constituted under the Commonwealth Bank Act 1945 to advise the Governor of the Bank. Since November, 1941, I have been a member of the Capital Issues Advisory

Place of Swearing: Sydney

Deponent: G.M. SHAIN

Date of Swearing:
5th January, 1948.

F.W. Stevenson.
A Justice of the Peace in
and for the State of
New South Wales.

265. Affidavit of Gordon Murray Shain sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

266. Affidavit of Gordon Murray Shain sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

Committee appointed by the Treasurer to advise him on matters connected with the administration of the National Security (Capital Issues) Regulations. I have been Chairman of that Committee since May, 1943.

6._____I am fully acquainted with the organisation, 5
functions and activities of the Commonwealth Bank and of the Commonwealth Savings Bank and of the general banking system of Australia. I am also acquainted generally with the nature of the business carried on by the plaintiff banks and other private banks carrying on business in Australia and the practices of and procedures followed by such banks in the conduct of their banking business. 10

7._____I have read what purport to be copies of the several affidavits of Joseph Sydney Penell Cox and Sydney John Gandon sworn the 28th day of November, 1947 and 19th day of December, 1947 respectively and filed in this action. I have also read what purport to be copies of the several affidavits of Francis Favarger Hassett sworn the 19th day of 20
December, 1947 and filed in Action No. 43 of 1947 in the New South Wales Registry, of Arthur Tennyson Smithers and Norman Rees Williams sworn the 28th day of November, 1947 and filed in Action No. 44 of

Place of Swearing: Sydney

Deponent: G.M. SHAIN

Date of Swearing:
5th January, 1948.

F.W. Stevenson.
A Justice of the Peace in
and for the State of
New South Wales.

266. Affidavit of Gordon Murray Swain sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

267. Affidavit of Gordon Murray Shain sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

1947 in the New South Wales Registry, of Ferdinand Caire Drew sworn the 19th day of December, 1947 and filed in Action No. 16 of 1947 in the South Australia Registry and of Alex James Reid sworn the 23rd day of December, 1947 and filed in Action No. 1 of 1947 5 in the Western Australia Registry of this Honourable Court.

8. _____ The Commonwealth Bank was established in 1911 under the provisions of the Commonwealth Bank Act 1911 as a body corporate having the powers and functions set 10 out in that Act. From that time until 1945 it carried on business under the provisions of that Act, as amended from time to time. In the year 1920 a Note Issue Department of the Commonwealth Bank was established under the provisions of the Commonwealth Bank Act 1920. 15 In my opinion, this was a measure which later enabled the Commonwealth Bank to become a central bank. Since 1924, the control of the Note issue has been vested solely in the Commonwealth Bank, and from that date, as well as carrying on the general business of 20 banking in competition with the private banks, the Commonwealth Bank has exercised an increasing measure of control over the banking system of the Commonwealth. In the period following the year 1930, during the

Place of Swearing: Sydney.

Deponent: G.M. SHAIN
F.W. Stevenson.

Date of Swearing:
5th January, 1948.

A Justice of the Peace in
and for the State of
New South Wales.

267. Affidavit of Gordon Murray Shain sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

268. Affidavit of Gordon Murray Shain sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

economic depression, the Commonwealth Bank further developed central banking functions by such measures as, for example, stabilising the foreign exchange rate and acting to a greater degree as the financial agent of the Commonwealth Government generally and in matters arising out of the Financial Agreement with the States. As the central banking functions of the Commonwealth Bank were developed and extended, the private banks became units in a central banking system.

9. During the years of the recent World War the Commonwealth Bank assisted the Nation in the financial aspects of transferring the country's resources to the war effort and of maintaining the unimpeded flow of approved imports and exports. In connection with Australia's special requirements in relation to external trade, it conserved the external funds at the disposal of the Australian economy and took measures unprecedented in Australian history to mobilise Australian holdings of gold as well as of certain foreign currencies and securities. In these matters the part played by the private banks was solely that of agents (though required to exercise a measure of discretion) for the Commonwealth

Place of Swearing: Sydney.

Deponent: G.M.SHAIN

Date of Swearing:
5th January, 1948.

F.W. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

268. Affidavit of Gordon Murray Shain sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

269. Affidavit of Gordon Murray Shain sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

Bank. The Commonwealth Bank also undertook the financing of much of Australia's primary production. Its activities were directed towards assisting in keeping prices from rising unduly and mobilising resources for the production within Australia, and the purchase from abroad, of essentials for the war effort. Its central banking function was used to ensure that wartime finance and the national economy generally were directed towards the furtherance of the war effort. Legal recognition and sanction for the measures the Commonwealth Bank was required to take were given by the Wartime Banking Control and other National Security Regulations. In my opinion, the experience gained in these wartime measures has equipped the Commonwealth Bank and its officers to deal with all the complex functions of banking including those of central banking which latter, in my opinion, have become a recognised feature of government under modern conditions.

10.____Since the enactment of the Commonwealth Bank Act 1945 and the Banking Act 1945 functions and duties similar to those exercised by it during the war have been performed by the Commonwealth Bank.

11.____The management of the Commonwealth Bank is

Place of Swearing: Sydney.

Deponent: G.M. SHAIN

Date of Swearing:
5th January, 1948.

F.W. Stevenson.
A Justice of the Peace in
and for the State of
New South Wales.

269. Affidavit of Gordon Murray Shain sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

270. Affidavit of Gordon Murray Shain sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

now vested in a Governor, assisted by an Advisory Council for which provision is made in the said Commonwealth Bank Act. There is a staff consisting of more than 9,000 officers and employees. The Commonwealth Bank has over 400 branches situated in all States of Australia, in Territories of the Commonwealth and in London.

5

12. _____ The Commonwealth Bank conducts approximately 209,000 current accounts and has fixed deposit accounts totalling approximately 15,600 in number.

10

13. _____ The Commonwealth Bank carries on general banking business as well as performing the functions of a central bank. Its general banking business is organised on an Australia-wide basis. That business has been developed and expanded since the establishment of the Commonwealth Bank, and since the enactment of section 18 of the Commonwealth Bank Act 1945 (referring to the duty of the Commonwealth Bank to develop and expand its general banking business) this process has been continued.

15

20

In the conduct of its general banking business the Commonwealth Bank provides a full banking service for its customers. In my opinion, when the Banking Act 1947 is in operation, the Commonwealth

Place of Swearing: Sydney.

Deponent: G.M. SHAIN

Date of Swearing:
5th January, 1948.

F.W. Stevenson.

A Justice of the Peace in
and for the State of
New South Wales.

270. Affidavit of Gordon Murray Shain sworn the fifth day of January, 1948, and filed in Action No. 42 of 1947 on behalf of the Defendants.

271. Affidavit of Gordon Murray Shain sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

Bank will be capable of providing all the facilities that are necessary for the banking operations of the Australian community, including those of the Commonwealth and State Governments and their instrumentalities.

5

14.____The business of general banking as conducted by the Commonwealth Bank includes -

(a) the acceptance of money on ^d deposit and on current account, bearing interest or not bearing interest;

10

(b) the lending of money by way of overdrafts repayable at call or for a fixed term;

(c) the collection, discounting or negotiation of bills of exchange both local and overseas, and promissory notes;

15

(d) the establishment of credits within Australia and overseas, including the issue of drafts and travellers' cheques;

(e) the purchase and sale of gold, specie and foreign currency; and

20

(f) the provision of certain incidental and miscellaneous services and facilities.

15.____The facilities so provided and the services so rendered by the Commonwealth Bank include, to

Place of Swearing: Sydney.

Deponent: G.M. SHAIN

Date of Swearing:
5th January, 1948.

F.W. Stevenson.

A Justice of the Peace in
and for the State of
New South Wales.

271. Affidavit of Gordon Murray Shain sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

272. Affidavit of Gordon Murray Shain sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

the best of my knowledge and belief, all the banking facilities and services of the kind provided and rendered by the private banks (including the plaintiff banks) carrying on business in Australia.

In some respects the banking services provided by the Commonwealth Bank cover a wider range than those provided by the private banks in that the Commonwealth Bank - 5

(a) finances the acquisition on a hire purchase basis of industrial plant, including agricultural machinery; and 10

(b) provides financial assistance to industrial undertakings by way of subscription of share capital.

16. In the conduct of its business the Commonwealth Bank employs the assets which are set out in its published balance sheet. Now produced and shown to me, marked with the letter "A", is a copy of the last published balance sheets of the Bank as at thirtieth day of June, 1947. These assets as set out in the Aggregate Balance Sheet so published are :- 15 20

Place of Swearing: Sydney.

Deponent: G.M. SHAIN

Date of Swearing:
5th January, 1948.

F.W. Stevenson.

A Justice of the Peace in
and for the State of
New South Wales.

272. Affidavit of Gordon Murray Shain sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

273. Affidavit of Gordon Murray Shain sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

£

Gold and balances held abroad (including money at short call)	186,610,941	
Australian notes and coin	6,943,114	
Cheques and bills of other banks	6,458,223	
Commonwealth Government Securities (including Commonwealth Treasury bills)	470,597,029	5
Securities of other Governments, and of local and semi-Governmental authorities	5,803,971	10
Bills Receivable and remittances in transit	13,937,297	
Bank premises	879,677	
Loans, advances, bills discounted, and other assets (after deducting provision for debts considered bad or doubtful)	39,653,606	15
	730,883,858	
Total		

17._____The Commonwealth Bank is the banker of the Governments of Western Australia, Tasmania, South Australia and Queensland. It has, in every respect, acted in this capacity for the said Governments since the year 1914 in the case of the two first-mentioned States, the year 1916 in the case of South Australia and the year 1920 in the case of Queensland.

18._____Since the said years the Commonwealth Bank

Place of Swearing: Sydney.

Deponent: G.M. SHAIN

Date of Swearing:
5th January, 1948.

F.W. Stevenson.

A Justice of the Peace in
and for the State of
New South Wales.

273. Affidavit of Gordon Murray Shain sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

274. Affidavit of Gordon Murray Shain sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

has provided for the four State Governments above-mentioned respectively all banking facilities required by them embracing -

- (a) the conduct of all accounts required (except for certain minor accounts that, for local convenience, are conducted with private banks at places at which the Commonwealth Bank has no branch); 5
- (b) the clearance of cheques and the establishment of credits throughout Australia and abroad; 10
- (c) the acceptance of fixed deposits at agreed rates;
- (d) the investment in London at the best available market rate of funds of these Governments surplus to their immediate requirements; and 15
- (e) the conduct of accounts as required by the State Governments in London. 20

Interest at the rate of 1 per cent. per annum is allowed on the daily credit balance of each Government within certain limits as to the maximum and minimum amount. Interest is also allowed on credits held in any current accounts for such

Place of Swearing: Sydney.

Deponent: G.M. SHAIN

Date of Swearing:
5th January, 1948.

F.W. Stevenson.
A Justice of the Peace in
and for the State of
New South Wales.

274. Affidavit of Gordon Murray Shain sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

275. Affidavit of Gordon Murray Shain sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

Governments in London. Accounts are conducted and cheques negotiated and funds transferred free of charges for keeping accounts and inland exchange. In the case of Queensland, special services are provided in the form of acceptance by the Commonwealth Bank of State taxation payments and loan instalments due by borrowers to the Housing Commission and the Agricultural Bank and the acceptance of fees due to the Senate of the University of Queensland. 5

19._____It is customary for the Governments of the States of South Australia and Western Australia to use orders (that is to say, instruments drawn on the State Treasury or other State Department and used in lieu of cheques) to make payments as hereinafter described. 10 15

20._____Departments and instrumentalities of the Government of South Australia draw orders on the South Australian Treasurer. The State orders have printed on the face of them the words "Payable through Commonwealth Bank of Australia". The Commonwealth Bank delivers to the said State Treasury daily all orders received from customers and from other banks and in exchange obtains a cheque from the said Treasury. The orders are payable to "Order" 20

Place of Swearing: Sydney.

Deponent: G.M. SHAIN

Date of Swearing:
5th January, 1948.

F.W. Stevenson.

A Justice of the Peace in
and for the State of
New South Wales.

275 Affidavit of Gordon Murray Shain sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

276. Affidavit of Gordon Murray Shain sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the defendants.

and the Treasury is responsible for regularity (that is to say, for endorsements and the like). Approximately 15,700 orders of an average approximate total amount of £2,250,000 are issued monthly.

21._____In Western Australia orders drawn on the 5
Western Australian Treasury are issued by State
Government Departments, by State instrumentalities
(including State trading concerns) and by field
officers of the said departments and instrumental-
ities. The orders have printed on the face of them 10
the words "Payable through the Commonwealth Bank of
Australia". The Commonwealth Bank of Australia
sends to the appropriate Government Departments
daily all orders received from customers and from
other banks and in exchange obtains a cheque from 15
the Western Australian Treasury. For the most part
the orders are payable to "Order" and the Department
issuing the particular order is responsible for
regularity (that is to say, for endorsements and
the like). Approximately 16,000 orders of an 20
average approximate total amount of £650,000 are
issued monthly.

22._____The Commonwealth Savings Bank was originally
established under the Commonwealth Bank Act 1911 as

Place of Swearing; Sydney.

Deponent: G.M. SHAIN

Date of Swearing:
5th January, 1948.

F.W. Stevenson.
A Justice of the Peace in
and for the State of
New South Wales.

276. Affidavit of Gordon Murray Shain sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

277. Affidavit of Gordon Murray Shain sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

a department of the Commonwealth Bank but, under the Commonwealth Bank (Savings Bank) Act 1927, it was established and has continued as a body corporate with a separate entity. It now operates under Part XII of the Commonwealth Bank Act 1945. It conducts normal savings bank business (by accepting money on deposit subject to certain limits and allowing interest thereon and investing such moneys in Government securities and loans to local governing and other public bodies) at some 400 branches and some 4,000 agencies throughout the Commonwealth and its territories. It conducts over 3,700,000 accounts. Its branches with two or three exceptions are established at offices of the Commonwealth Bank, and the great majority of its agencies are at Post Offices throughout the Commonwealth but some 800 of such agencies are conducted by store-keepers, estate agents and other members of the business community and Government officers.

23._____The State savings banks, like the Commonwealth Savings Bank, have agencies in the States in which they operate conducted by persons in the business community. The Commonwealth Bank has the facilities to act, and would be prepared to act, as

Place of Swearing: Sydney.

Deponent: G.M. SHAIN

Date of Swearing:
5th January, 1948.

F.W. Stevenson,
A Justice of the Peace in
and for the State of
New South Wales.

277. Affidavit of Gordon Murray Shain sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

278. Affidavit of Gordon Murray Shain sworn the fifth day of January, 1948 and filed in Action No. 42 of 1948 on behalf of the Defendants.

agent for any State savings Bank in any State other than that in which such State savings bank carries on business.

24. _____ The Hobart Savings Bank and the Launceston Bank for Savings conduct normal savings bank business in Tasmania. Branches and agencies of the Commonwealth Savings Bank of Australia in New South Wales, Queensland and Western Australia are authorised by the Hobart Savings Bank to pay depositors without notice amounts up to £10 every four days upon presentation of passbook and satisfactory identification. Branches in these States may pay any amount standing to the credit of a depositor of the Hobart Savings Bank on receipt of authority to do so from that bank.

SIGNED AND SWORN by the deponent)
the fifth day of January One)
thousand nine hundred and forty-) G.M. SHAIN
eight at Sydney in the State of)
New South Wales before me:-)

F.W. Stevenson.

A Justice of the Peace in
and for the State of
New South Wales.

This Affidavit is filed on behalf of the Defendants.

278. Affidavit of Gordon Murray Shain sworn the fifth day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

No. 22 - Affidavit of Stuart Gordon McFarlane
sworn the 2nd day of January 1948 and filed in
Action No. 42 of 1947 on behalf of the Defendants.

IN THE HIGH COURT OF AUSTRALIA)
) No. 42 of 1947.
NEW SOUTH WALES REGISTRY.)

Between:

BANK OF NEW SOUTH WALES and 5
others

Plaintiffs

and

THE COMMONWEALTH OF AUSTRALIA 10
and others

Defendants

I, STUART GORDON McFARLANE, of Canberra, in the
Australian Capital Territory, Secretary to the
Commonwealth Department of the Treasury, make oath
and say: 15

1.____I have held the office of Secretary to the
Commonwealth Department of the Treasury (hereinafter
called the Treasury) since 1st March, 1938.

2.____I have had 44 years' continuous experience in
The Commonwealth Public Service, including 27 years' 20
experience in the Treasury.

3.____During my service in the Treasury I have occupied
the following positions :- Assistant Secretary (Finance)

Place of Swearing: Canberra

Deponent: S.G. McFARLANE.

Date of Swearing:
2nd January, 1948.

A Justice of the Peace in
and for the Australian
Capital Territory.

279. Affidavit of Stuart Gordon
McFarlane sworn the second day
of January, 1948 and filed in
Action No. 42 of 1947 on be-
half of the Defendants.

280. Affidavit of Stuart Gordon McFarlane sworn the second day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

1926/32; Assistant Secretary (Administrative) 1932/36; Secretary, National Debt Commission and Secretary to the Australian Loan Council 1932/36; Official Secretary, Australia House, London 1936/37; Secretary to the Treasury since 1938; Member of the Commonwealth Bank Board 1938/45; Member of the Commonwealth Bank Advisory Council since 1945; Member of the Overseas Telecommunications Commission (Australia) since 1946. 5

4. _____ In the course of my official duties I have from time to time had to acquaint myself generally with the financial position of the States, including their methods of borrowing. Up to the end of the year 1930, one of the methods by which the States had obtained temporary financial accommodation was by overdraft from banks in Australia. After the commencement of the economic depression in 1929, there was a marked increase in the total amount of this temporary accommodation to the States by overdraft. The Governments of South Australia, Western Australia, Queensland and Tasmania, which banked with the Commonwealth Bank, had long-standing agreements entitling them to overdraft accommodation, subject to limits varying respectively from £500,000 to £100,000. Some of those States obtained overdrafts 10 15 20

Place of Swearing: Canberra.

Deponent: S.G. McFARLANE.

Date of Swearing:
2nd January, 1948.

A Justice of the Peace in
and for the Australian
Capital Territory.

280. Affidavit of Stuart Gordon McFarlane sworn the second day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

281. Affidavit of Stuart Gordon McFarlane sworn the second day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

in excess of those limits about the years 1929 and 1930. The Governments of New South Wales and Victoria, which banked with private banks, had no similar provision for overdrafts in their respective agreements with those banks, but did in fact obtain overdraft accommodation from those banks during the years 1929 and 1930. 5

5. In December 1930 the private banks, together with the Commonwealth Bank, requested the Australian Loan Council (established under the Financial Agreement of 1927 between the Commonwealth and the States and consisting of representatives of the Commonwealth and of all the State Governments) that this practice of borrowing by overdraft from banks should be discontinued and that there should be substituted a form of borrowing by way of Commonwealth Treasury bills, in which the credit of the Commonwealth and the States would be combined and the extent of the borrowing co-ordinated by agreement ~~through~~ ^{through} the Australian Loan Council. 15

This request by the banks was approved by the Australian Loan Council and the system of providing temporary financial accommodation for the States by the issue of Treasury bills was adopted. By the year 1933 all the State Governments were using this system. 20

Place of Swearing: Canberra.

Deponent: S.G. McFARLANE.

Date of Swearing:
2nd January, 1948.

A Justice of the Peace in
and for the Australian
Capital Territory.

281. Affidavit of Stuart Gordon McFarlane sworn the second day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

282. Affidavit of Stuart Gordon McFarlane sworn the second day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

6._____The issue of Commonwealth Treasury bills to finance deficits of the Governments of the States commenced in 1929. From 1st July, 1929, to 30th June, 1935, the accounts of the Governments of each of the States disclosed, with one exception, a deficit in each year, which was almost wholly financed by the method of Treasury bills aforementioned. The accumulated deficits of the Governments of the States financed in this way amounted to approximately £52,000,000. After 30th June, 1935, this method of financing deficits ceased. Thereafter some annual deficits were financed by funds obtained by long-term public loans, raised with the approval of the Australian Loan Council. Limited finance was, however, provided on some occasions by the Commonwealth Bank discounting Treasury bills and providing funds to some of the Governments of the States, to meet unforeseen requirements.

7._____The Treasury bills discounted during the period 1st July, 1929, to 30th June, 1935, had in each case a currency of three months. The Commonwealth Bank continued to renew these Treasury bills as and when they matured up to 30th June, 1944. The Governments of the States retired part of these bills by using available moneys, and an arrangement was made with the

Place of Swearing: Canberra.

Deponent: S.G. McFARLANE.

Date of Swearing:
2nd January, 1948.

A Justice of the Peace in
and for the Australian
Capital Territory.

282. Affidavit of Stuart Gordon McFarlane sworn the second day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

283. Affidavit of Stuart Gordon McFarlane sworn the second day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

Commonwealth Bank, under which bills so retired would be re-issued as required. The rate of interest charged by the Commonwealth Bank on the said bills was progressively reduced from 4% in 1931 to 2% in 1934, and was further reduced progressively to 1½% in 1943. The rates charged as abovementioned were much lower than the corresponding current rates charged on overdrafts by banks. Some of the Treasury bills were negotiated by the Commonwealth Bank from time to time to private banks, subject to the right of any private bank holding such bills to have them re-discounted by the Commonwealth Bank. 5 10

8. In the year 1944 the Commonwealth Government, the Commonwealth Bank and the Governments of each of the States agreed to the redemption of the balance of the Treasury bills which had been issued during the period 1st July, 1929, to 30th June, 1935, as abovementioned, together with certain additional bills issued after the latter date, amounting in all to £53,018,000. The Governments of the States agreed to provide, and did provide, £7,000,000 to redeem part of the bills. The National Debt Commission agreed to apply, and did apply, £3,000,000, for the same purpose, out of Sinking Fund moneys held by it on behalf of the 15 20

Place of Swearing: Canberra.

Deponent: S.G. McFARLANE.

Date of Swearing:
2nd January, 1948.

A Justice of the Peace in
and for the Australian
Capital Territory.

283. Affidavit of Stuart Gordon McFarlane sworn the second day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

284. Affidavit of Stuart Gordon McFarlane sworn the second day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

States. The unredeemed balance of the Treasury bills
aforementioned, after these redemptions had been made,
amounted to £43,018,000. This balance was thereafter
known as the "special deficit loans". In the year 1944
the Commonwealth Bank took debentures from the Common- 5
wealth Government in substitution for the Treasury bills
constituting the special deficit loans. These
debentures carried interest at 1% per annum, payable.
by the States. The prevailing rate of interest for
long-term public loans was at this time approximately 10
3¼% per annum. Payments into a sinking fund were
agreed to be made by the Commonwealth and the States,
to redeem the special deficit loans over a period of
39 years. The Governments of the States agreed to pay,
and are paying, into the sinking fund, 15/- per cent per 15
annum on the respective portions of the special deficit
loans attributable to them, and the Commonwealth Govern-
ment agreed to pay, and is paying, into the sinking fund,
5/- per cent per annum on the whole of the special
deficit loans. The Financial Agreement of 1927 was 20
amended so as to incorporate these provisions (see
Financial Agreement Act 1944). The liability of the
Governments of the States in respect of the special
deficit loans thus funded was as follows:-

Place of Swearing: Canberra.

Deponent: S.G. McFARLANE.

Date of Swearing:
2nd January, 1948.

A Justice of the Peace in
and for the Australian
Capital Territory.

284. Affidavit of Stuart Gordon McFarlane sworn the second day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

285. Affidavit of Stuart Gordon McFarlane sworn the second day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

New South Wales	£26,120,000	
Victoria	3,995,000	
Queensland	2,148,000	
South Australia	4,920,000	
Western Australia	5,390,000	5
Tasmania	<u>445,000</u>	
	<u>£43,018,000</u>	

9. During the period 1st July, 1931, to 30th June, 1934, Commonwealth Treasury bills were issued to, and discounted by, the Commonwealth Bank in order to provide funds to enable the Governments of the States to carry on public works which normally have been carried on by means of funds raised by long-term public loans. This temporary method of financing was approved by the Australian Loan Council. The total provided for this purpose during the period mentioned was approximately £14,000,000. Practically the whole of this total was repaid out of funds raised by long-term public loans during the period 1st July, 1932, to 30th June, 1935.

10. The following table shows -

- (a) the amounts of Commonwealth Treasury Bills which were issued and discounted each year on behalf of the Governments of the States during the period from 1st July,

Place of Swearing: Canberra.

Deponent: S.G. McFARLANE.

Date of Swearing:
2nd January, 1948.

A Justice of the Peace in
and for the Australian
Capital Territory.

285 Affidavit of Stuart Gordon McFarlane sworn the second day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

286. Affidavit of Stuart Gordon McFarlane sworn the second day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

1929, to 30th June, 1935, inclusive for the purpose of -

- (i) financing the annual revenue deficits of such Governments;
and 5
- (ii) providing finance for the carrying on of public works by such Governments;
- (b) the progressive totals of the Commonwealth Treasury bills so issued and discounted 10
in that period; and
- (c) the amounts by which the Treasury bills issued and discounted for the purpose of providing finance for the carrying on of public works by such Governments were 15
reduced by redemptions during certain of the periods included in the table.

Place of Swearing: Canberra.

Deponent: S.G. McFARLANE.

Date of Swearing:
2nd January, 1948.

A Justice of the Peace in
and for the Australian
Capital Territory.

286. Affidavit of Stuart Gordon McFarlane sworn the second day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

287. Affidavit of Stuart Gordon McFarlane sworn the second day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

COMMONWEALTH TREASURY BILL BORROWINGS AND FUNDINGS
THEREOF (EXCLUDING TEMPORARY REDEMPTIONS) FOR STATES

	N.S.W.	VIC.	QLD.	S.A.	W.A.	TAS.	ANNUAL PROGRESS- TOTAL.	IVE TOTAL	
	£000	£000	£000	£000	£000	£000	£000	£000	
1st July 1929- 30th June 1930									5
Deficits.	-	800	-	1,500	-	-	2,300	2,300	10
1st July 1930- 30th June 1931									
Deficits.	9,754	1,600	-	300	1,600	-	13,254	15,554	15
1st July 1931- 30th June 1932									
Deficits.	11,376	1,550	-	1,700	1,900	272	16,798	32,352	20
Works	3,880	1,250	-	-	1,150	28	6,308	6,308	
	15,256	2,800	-	1,700	3,050	300	23,106	38,660	
1st July 1932- 30th June 1933									25
Deficits	4,220	535	1,580	1,100	865	55	8,355	40,707	
Works	3,705	1,390	310	400	1,680	200	7,685	13,993	
	7,925	1,925	1,890	1,500	2,545	255	16,040	54,700	
Fundings	1,730	515	-	-	460	75	2,780	2,780	30

Place of Swearing: Canberra.

Deponent: S.G. McFARLANE.

Date of Swearing:
2nd January, 1948.

A Justice of the Peace in
and for the Australian
Capital Territory.

287. Affidavit of Stuart Gordon McFarlane sworn the second day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

288. Affidavit of Stuart Gordon McFarlane sworn the second day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

	N.S.W.	VIC.	QLD.	S.A.	W.A.	TAS.	ANNUAL PROGRESS- TOTAL. IVE TOTAL		
	£000	£000	£000	£000	£000	£000	£000	£000	
1st July 1933- 30th June 1934									5
Deficits	3,300	1,065	1,104	840	790	50	7,149	47,856	
Works	5	-	-	5	-	39	49	14,042	
Fundings	3,305	1,065	1,104	845	790	89	7,198	61,898	10
	3,670	1,330	195	250	935	110	6,490	9,270	
1st July 1934- 30th June 1935									15
Deficits	2,845	150	565	-	165	121	3,846	51,702	
Works	-	-	-	-	-	-	-	14,042	
Fundings	2,845	150	565	-	165	121	3,846	65,744	
	1,755	640	91	125	450	55	3,116	12,386	
<u>Total as at 30/6/35</u>								<u>TOTAL</u>	20
Deficits	31,495	5,700	3,249	5,440	5,320	498	51,702		
Works	7,590	2,640	310	405	2,830	267	14,042		
Total	39,085	8,340	3,559	5,845	8,150	765	65,744		
Less funding of Works Bills	7,155	2,485	286	375	1,845	240	12,386		25
Net Totals	31,930	5,855	3,273	5,470	6,305	525	53,358		30

Place of Swearing: Canberra.

Deponent: S.G. McFARLANE.

Date of Swearing:
2nd January, 1948.

A Justice of the Peace in
and for the Australian
Capital Territory.

288. Affidavit of Stuart Gordon McFarlane sworn the second day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

289. Affidavit of Stuart Gordon McFarlane sworn the second day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

Notes:

(1) The term "deficits" wherever appearing means the amount borrowed by the issue of Commonwealth Treasury bills to meet revenue deficits. 5

(2) The term "works" wherever appearing means the amount borrowed by the issue of Commonwealth Treasury bills to provide finance for public works usually financed by means of public loans. 10

(3) The term "funding" means the amount of public loans raised and applied in redemption of Commonwealth Treasury bills issued for "works".

(4) In later years some further bills were issued for deficits and some "works" bills were funded. The total of "deficit" bills outstanding in 1944 was £53,018,000. 15

11. _____ Since 1st July, 1934, the Governments of the States which have required temporary financial accommodation to meet expenditure incurred in anticipation of the receipt of revenue during the course of any one financial year have been provided with such accommodation by means of Commonwealth Treasury bills discounted by the Commonwealth Bank. Such bills are 20

Place of Swearing: Canberra.

Deponent: S.G. McFARLANE.

Date of Swearing:
2nd January, 1948.

A Justice of the Peace in
and for the Australian
Capital Territory.

289. Affidavit of Stuart Gordon McFarlane sworn the second day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

290. Affidavit of Stuart Gordon McFarlane sworn the second day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

known as "lag-in-revenue" bills and their issue has been approved by the Australian Loan Council.

12.____In my opinion the provision of financial accommodation for the Governments of the States by means of Treasury bills in the manner described in paragraphs 6 5 to 11 inclusive of this my affidavit during the period of the economic depression was of great advantage to the States in the carrying on of their functions. In my opinion this method as a whole was made possible by the existence and functioning of the Australian Loan 10 Council, by the support given to the credit of the Governments of the States by the credit of the Government of the Commonwealth, and by the existence of the Commonwealth Bank which enabled the necessary credits to be provided. The attempts of the Governments of the States 15 to secure their temporary borrowings through the banks and independently of the Australian Loan Council broke down when the private banks with which the Governments of New South Wales and Victoria banked became unwilling to provide overdraft accommodation except with the 20 approval of the Australian Loan Council and upon securities guaranteed by the Commonwealth Government or the Commonwealth Bank. The Commonwealth Bank continued to provide overdraft accommodation for the other four

Place of Swearing: Canberra.

Deponent: S.G. McFARLANE.

Date of Swearing:
2nd January, 1948.

A Justice of the Peace in
and for the Australian
Capital Territory.

290. Affidavit of Stuart Gordon McFarlane sworn the second day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

291. Affidavit of Stuart Gordon McFarlane sworn the second day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

State Governments in accordance with the agreements referred to in paragraph 4 of this my affidavit. In 1933, however, at the request of the Commonwealth Bank, these States agreed to suspend their overdraft rights and to obtain the whole of their temporary financial accommodation by means of Commonwealth Treasury bills. 5

13.____Since June, 1933, therefore, all the State Governments have obtained through the Australian Loan Council the temporary financial accommodation previously obtained by overdrafts from banks in Australia. From 10 that time such temporary financial accommodation for the Governments of the Commonwealth and the States has been provided, with the approval of the Australian Loan Council, by the issue of Treasury bills by the Commonwealth Treasurer, or, in one case, by a Commonwealth 15 debenture to the Commonwealth Bank. The Commonwealth Bank has discounted the said Treasury bills and made the moneys available to each of the Governments concerned as required by it. This method of obtaining temporary financial accommodation, used by all the Governments 20 since June, 1933, has been continued with the approval of the Australian Loan Council, and the practice of obtaining temporary financial accommodation by overdraft from the banks has not been resumed.

Place of Swearing: Canberra.

Deponent: S.G. McFARLANE.

Date of Swearing:
2nd January, 1948.

A Justice of the Peace in
and for the Australian
Capital Territory.

291. Affidavit of Stuart Gordon McFarlane sworn the second day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

292. Affidavit of Stuart Gordon McFarlane sworn the second day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

14.____I am familiar with the proceedings of the Australian Loan Council and am aware of the financial dealings of the States, including their dealings with the Banks. To the best of my knowledge, the method of obtaining temporary financial accommodation by means of Treasury bills through the Australian Loan Council is satisfactory and, so far as I am aware, no objection has been raised to it by any State. 5

15.____Whatever action is taken under the Banking Act 1947, the Governments of the States will, in my opinion, having regard to the facts abovementioned, be in a position in regard to temporary borrowing in no way inferior to that which has in fact prevailed since June, 1933. 10

16.____I refer to paragraph 10 of the affidavit of Ferdinand Caire Drew sworn on the 19th day of December, 1947, and filed in Action No. 16 of 1947 in the South Australia Registry, and to paragraph 7 of the affidavit of Alex James Reid sworn on the 23rd day of December, 1947, and filed in Action No. 1 of 1947 in the Western Australia Registry. In my opinion, insofar as the performance of what are referred to in those paragraphs as governmental functions of the States may be dependent upon the borrowing of money for temporary purposes, 15 20

Place of Swearing: Canberra.

Deponent: S.G. McFARLANE.

Date of Swearing:
2nd January, 1948.

A Justice of the Peace in
and for the Australian
Capital Territory.

292. Affidavit of Stuart Gordon McFarlane sworn the second day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

293. Affidavit of Stuart Gordon McFarlane sworn the second day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

the performance of any of what are so referred to as governmental functions will not, by the taking of any action under the Banking Act 1947. be in any way impaired.

SIGNED AND SWORN by the deponent) 5
the second day of January one)
thousand nine hundred and forty-)
eight at Canberra in the) S.G. McFARLANE.
Australian Capital Territory)
before me:-) 10

A Justice of the Peace in
and for the Australian
Capital Territory.

This affidavit is filed on behalf of the defendants.

293. Affidavit of Stuart Gordon McFarlane sworn the second day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Defendants.

295. Affidavit of Sydney John Gandon sworn the twelfth day of January 1948, and filed in Action No.42 of 1947 on behalf of the Plaintiffs.

Section 10 of the Banking Act 1945 and published in the Commonwealth Gazette;

- (2) the pastoral finance companies referred to, even considered as a group, have not the branches or places of business, nor the staff and organisation in Australia or overseas, nor have they the liquid resources with which to do more than a small fraction of the banking business carried on by the trading banks. The same is true of the State Banks, including Agricultural Banks; 5 10
- (3) building societies, and finance, co-operative and assurance companies, whether or not they technically carry on banking business, do not carry on business on similar lines to the trading banks, and in my opinion do not and could not satisfy public requirements with respect to general banking facilities; 15
- (4) the volume of interstate banking transactions carried on by all the institutions referred to in the said paragraph 14 amounts in my opinion to only a small fraction of the total interstate banking transactions at present carried on; 20
- (5) of all the institutions referred to in this paragraph the only ones which carry on general banking business are the Rural and Industries Bank of Western Australia, the State Bank of South 25

SIGNED AND SWORN this twelfth day of January, 1948,
at Sydney before me:

D. Farquharson, J.P.

S.J. Gandon.

295. Affidavit of Sydney John Gandon sworn the twelfth day of January 1948, and filed in Action No.42 of 1947 on behalf of the Plaintiffs.

296. Affidavit of Sydney John Gandon sworn the twelfth day of January 1948, and filed in Action No.42 of 1947 on behalf of the Plaintiffs.

Australia and the Rural Bank of New South Wales.

If the private trading banks are taken over by the Commonwealth there will be no institution carrying on general banking business other than the Commonwealth Bank in the States of Victoria 5
Queensland and Tasmania.

3. Referring to paragraph 17 of the said affidavit I say that by Section 75 of the Post and Telegraph Act it is provided that a money order shall not be granted for a larger sum than £20 nor a postal note for a larger 10
sum than 20/-. Owing to these limitations and to the necessity for purchasing money orders and postal notes for cash at a post office and for exchanging the same on receipt for cash at a post office neither money orders nor postal notes afford a satisfactory substitute for 15
the banking facilities now in use. The total values of money orders and postal notes stated in the said paragraph 17 are trifling in comparison with the total debits to customers' accounts in the private trading banks in each year. 20

4. With reference to paragraph 18 of the said affidavit I say that I disagree with the opinions expressed therein -

(a) that when the Banking Act 1947 is in operation the Commonwealth Bank will provide facilities 25
equal in quality to those now provided by all

SIGNED AND SWORN this twelfth day of January, 1948,
at Sydney before me:

D. Farquharson, J.P.

S.J. Gandon.

296. Affidavit of Sydney John Gandon sworn the twelfth day of January 1948, and filed in Action No.42 of 1947 on behalf of the Plaintiffs.

297. Affidavit of Sydney John Gandon sworn the twelfth day of January 1948 and filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

banks; and

- (b) that the operation of the Banking Act 1947 will have no adverse effects on Australian business activities or on the volume of trade and commerce in Australia.

5

5. I refer to paragraphs 25, 26 and 27 of the said affidavit and say that -

- (a) the proportion which banking transactions involving operations in more than one State bear to all banking transactions carried on by any bank varies as between different periods of the year and also varies as between different banks by reason of differences that exist in the proportions in which their customers fall into various classes, e.g. governments, interstate traders, other traders, and non-traders;
- (b) in view of the statements made in paragraphs 25, 26 and 27 of the said affidavit and paragraph 12 of the affidavit of Gordon Murray Shain sworn the fifth day of January 1948 and filed herein I am of opinion that the proportions of customers of different classes banking with the Commonwealth Bank must differ widely from the proportions in the case of the private trading banks;
- (c) by reason of the matters aforesaid the limited survey made by the Commonwealth Bank as described

15

20

25

SIGNED AND SWORN this twelfth day of January, 1948,
at Sydney before me:

D. Farquharson, J.P.

S.J. Gandon.

297. Affidavit of Sydney John Gandon sworn the twelfth day of January, 1948, and filed in Action No.42 of 1947 on behalf of the Plaintiffs.

298. Affidavit of Sydney John Gandon sworn the twelfth day of January 1948, and filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

in the said paragraphs even if it be fairly representative of the total transactions of that Bank for a full year, does not in my opinion afford a satisfactory basis for an inference as to the proportion of transactions of the trading banks which are interstate transactions; 5

(d) I am informed by Norman Lethbridge Cowper and believe that from enquiries made of the plaintiff banks for the purposes of this Action he has obtained the following information: 10

(1) BANK OF NEW SOUTH WALES

(a) total debits to customers' accounts in Australia for year ended 30th September 1947 £2,152,237,256 15

(b) total turnover of interstate transactions for year ended 30th September 1947 £161,645,056

(2) THE COMMERCIAL BANKING COMPANY OF SYDNEY LTD. 20

(a) total debits to customers' accounts in Australia for year ended 30th June 1947 £694,975,061

(b) total turnover of interstate transactions for year ended 30th June 1947 £64,891,163 25

SIGNED AND SWORN this twelfth day of January, 1948,
at Sydney before me:

D. Farquharson, J.P.

S.J. Gandon.

298. Affidavit of Sydney John Gandon sworn the twelfth day of January, 1948, and filed in Action No.42 of 1947 on behalf of the Plaintiffs.

299. Affidavit of Sydney John Gandon sworn the twelfth day of January, 1948, and filed in Action No.42 of 1947 on behalf of the Plaintiffs.

- (3) THE NATIONAL BANK OF AUSTRALASIA LTD.
- (a) total turnover on customers' accounts in Australia for year ended 30th September 1947 £972,354,000 5
- (b) total turnover of inter-state transactions for year ended 30th September 1947 £161,221,666
- (4) THE BANK OF ADELAIDE 10
- (a) total debits to customers' accounts in Australia for year ended 30th September 1947 £184,514,722
- (b) total amount of remittances from Adelaide to interstate branches and vice versa (also includes remittances to interstate agents) £46,731,352 15
- (5) THE COMMERCIAL BANK OF AUSTRALIA LTD. 20
- (a) total debits to customers' accounts for year ended 30th June 1947 £758,148,280
- (b) total turnover of inter-state transactions for year ended 30th June 1947 £86,149,002 25

SIGNED AND SWORN this twelfth day of January, 1948,
at Sydney before me:

D. Farquharson, J.P.

S.J. Gandon.

299. Affidavit of Sydney John Gandon sworn the twelfth day of January, 1948, and filed in Action No.42 of 1947 on behalf of the Plaintiffs.

300. Affidavit of Sydney John Gandon sworn the twelfth day of January, 1948, and filed in Action No.42 of 1947 on behalf of the Plaintiffs.

6. _____ With reference to the statements contained in paragraphs 28 to 35 inclusive of the said affidavit of Leslie Galfreid Melville as to what are the actual transactions which take place in the course of the banking operations of the private trading banks I say that 5 those transactions as they occur in interstate banking operations are accurately described in my previous affidavit sworn the nineteenth day of December 1947 and in the affidavit of Francis Favarger Hassett sworn the said day and in the affidavit of Joseph Sydney Penell 10 Cox sworn the twenty-eighth day of November 1947.

7. _____ With reference to paragraphs 29 and 40 of the said affidavit of the said Leslie Galfreid Melville and particularly with respect to the statements therein as to the transfer of legal tender from one State to another 15 by the private banks I am informed by the Chief Accountant of the plaintiff the Bank of New South Wales and believe that from inquiries he has made for the purposes of this action he has ascertained that during the year ended the 30th November 1947 the actual physical transfers 20 of legal tender interstate between branches and between chief offices and branches of the following banks, namely, the Bank of New South Wales, The Commercial Banking Company of Sydney Limited, The National Bank of Australasia Limited, The Commercial Bank of Australia 25 Limited, The Bank of Australasia, The Union Bank of

SIGNED AND SWORN this twelfth day of January, 1948,
at Sydney before me:

D. Farquharson, J.P.

S.J. Gandon.

300. Affidavit of Sydney John Gandon, sworn the twelfth day of January, 1948, and filed in Action No.42 of 1947 on behalf of the Plaintiffs.

301. Affidavit of Sydney John Gandon sworn the twelfth day of January, 1948, and filed in Action No.42 of 1947 on behalf of the Plaintiffs.

Australia Limited, the English Scottish and Australian Bank Limited, and The Queensland National Bank Limited, exceeded one million pounds. Referring further to the statements made in the said paragraph 40 I say that when one of the private trading banks desires to increase its funds in a particular State it normally does so through the Commonwealth Bank. As a customer of the Commonwealth Bank it requests that Bank to transfer funds of the trading bank in one State to the credit of its account in another State. The Commonwealth Bank in such a case acts for the trading bank in the same way as a trading bank acts for one of its customers who requests a transfer of his funds interstate. Before the Commonwealth Bank was established as a Central Bank any trading bank which required additional funds in a particular State ordinarily approached one or more of the other trading banks and asked it or them to sell to it funds in the State in question. Generally there was no transmission of currency unless it was impracticable to purchase money in the State where it was required. Now that the Commonwealth Bank operates as a Central Bank it is practicable in normal circumstances for a trading bank to obtain from the Commonwealth Bank additional funds required in any particular State and accordingly the volume of interstate physical transfers of currency by the trading banks has been much reduced.

SIGNED AND SWORN this twelfth day of January, 1948,
at Sydney before me:

D. Farquharson, J.P.

S.J. Gandon.

301. Affidavit of Sydney John Gandon sworn the twelfth day of January, 1948, and filed in Action No.42 of 1947 on behalf of the Plaintiffs.

302. Affidavit of Sydney John Gandon sworn the twelfth day of January, 1948, and filed in Action No.42 of 1947 on behalf of the Plaintiffs.

8._____Now produced and shown to me at the time of swearing this my affidavit and marked respectively "SJG1" "SJG2" "SJG3" and "SJG4" are copies of the following forms at present in use by the Commonwealth Bank, namely:-

- (a) form of local draft requisition; 5
- (b) form of overseas draft requisition;
- (c) form of local telegraphic transfer requisition;
- and
- (d) form of overseas telegraphic transfer requisition.

9._____With reference to paragraph 41 of the said affidavit¹⁰ I say that the statements therein set out describe the effect of what is done by reference merely to the end results as shown in customers' accounts and Exchange Settlement Accounts and disregard the banking transactions (as described in my said previous affidavit) which are 15 necessarily interposed between those end results. Moreover, a large proportion of the interstate banking transactions involve only branches or the head office and a branch of the one bank and in such cases the Exchange Settlement Accounts are not used. 20

10._____As to the statements contained in paragraph 42 of the said affidavit I say that when an interstate documentary draft to which a bill of lading is attached is negotiated to a bank for value, although the bank normally takes the bill of lading as a pledgee thereof 25 and not as absolute owner, the draft itself is purchased

SIGNED AND SWORN this twelfth day of January, 1948,
at Sydney before me:

D. Farquharson, J.P.

S.J. Gandon.

302. Affidavit of Sydney John Gandon sworn the twelfth day of January, 1948, and filed in Action No.42 of 1947 on behalf of the Plaintiffs.

303. Affidavit of Sydney John Gandon sworn the twelfth day of January, 1948, and filed in Action No.42 of 1947 on behalf of the Plaintiffs.

by the bank outright. What is done by the bank in such cases does not end with the taking of the pledge or security, or with the taking of the transfer of the interstate draft. The Bank as the owner of the draft and the pledgee of the bill of lading forwards these documents to their destination in the other State and there presents them or causes them to be presented to the drawee for the purpose of obtaining payment of the draft and effecting delivery of the goods. 5

11. I have perused the statements published in the Commonwealth Gazette of the 18th December 1947 of the average of the liabilities and assets within Australia of each Bank as at the close of business on Wednesday the 5th, 12th, 19th and 26th of November, 1947, purporting to be prepared from returns delivered to the Commonwealth Statistician under Section 41 of the Banking Act 1945. From those statements it appears that during the month of November 1947 each of the private banks mentioned in the First Schedule to the Banking Act 1947 had assets (other than goodwill) in Australia exceeding in value the total amount of its deposit liabilities in Australia and I believe that that is still the position. 10 15 20

12. In each of the countries in which it carries on business the plaintiff the Bank of New South Wales has numerous and valuable rights against and is subject to numerous and substantial obligations in favour of persons 25

SIGNED AND SWORN this twelfth day of January, 1948,
at Sydney before me:

D. Farquharson, J.P.

S.J. Gandon.

303. Affidavit of Sydney John Gandon sworn the twelfth day of January, 1948, and filed in Action No.42 of 1947 on behalf of the Plaintiffs.

304. Affidavit of Sydney John Gandon sworn the twelfth day of January, 1948, and filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

who are not customers of that Bank and which rights and obligations do not arise out of any relation of banker and customer. From my knowledge of the nature of the businesses carried on by the other private trading banks I am of opinion that the same is true of each of such other banks. 5

SIGNED AND SWORN by the Deponent)
on the twelfth day of January, one)
thousand nine hundred and forty-) S.J. GANDON.
eight at Sydney in the State of) 10
New South Wales Before me:)

D. FARQUHARSON, J.P.

304. Affidavit of Sydney John Gandon sworn the twelfth day of January, 1948, and filed in Action No.42 of 1947 on behalf of the Plaintiffs.

No. 24 - Affidavit of Norman Lethbridge Cowper sworn the twenty-first day of January 1948 and filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

IN THE HIGH COURT OF AUSTRALIA)
) No. 42 of 1947.
NEW SOUTH WALES REGISTRY.)

Between:

BANK OF NEW SOUTH WALES and 5
others
Plaintiffs

and

THE COMMONWEALTH OF AUSTRALIA 10
and others
Defendants

I, NORMAN LETHBRIDGE COWPER of Sydney in the State of New South Wales, Solicitor, make oath and say:-

1. I refer to the affidavit of Sydney John Gandon sworn on the twelfth day of January one thousand nine hundred and forty-eight and filed herein. 15

2. With reference to sub-paragraph (5) of paragraph 2, of the said affidavit, since the filing of the said affidavit I have been informed by the Chief Manager of The National Bank of Australasia Limited and believe 20 that the information previously given to me by the said Bank as to the total turnover of interstate transactions of that Bank for the year ended thirtieth day of September one thousand nine hundred and forty-seven has been found to be incorrect and that the correct 25 information is as follows:-

SIGNED AND SWORN this twenty-first day of January, 1948
at Sydney Before me:

A.E. Patterson, J.P. Norman Cowper.

305. Affidavit of Norman Cowper sworn the 21st day of January, 1948 and filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

306. Affidavit of Norman Cowper sworn
the 21st day of January, 1948
and filed in Action No. 42 of
1947 on behalf of the Plaintiffs.

total turnover of interstate transactions for year
ended thirtieth day of September one thousand nine
hundred and forty-seven - One hundred and four
million four hundred and thirty-nine thousand
two hundred and eighty-six pounds (£104,439,286). 5

SIGNED AND SWORN by the Deponent)
on the twenty-first day of January)
one thousand nine hundred and) NORMAN COWPER.
forty-eight at Sydney in the State)
of New South Wales Before me:) 10

A.E. Patterson, J.P.

306. Affidavit of Norman Cowper sworn
the 21st day of January, 1948
and filed in Action No. 42 of
1947 on behalf of the Plaintiffs.

No. 25 Joint Affidavit of Torliev Hytten, Donald Henry Merry, Allan James Tyrer and George Rowland Mountain sworn the 27th day of January, 1948 on behalf of the Plaintiffs.

IN THE HIGH COURT OF AUSTRALIA)
) No. 42 of 1947.
NEW SOUTH WALES REGISTRY.)

Between:

BANK OF NEW SOUTH WALES and 5
others
Plaintiffs

and

THE COMMONWEALTH OF AUSTRALIA
and others 10
Defendants

WE, TORLEIV HYTEN of 21 Berrillee Road Turramurra Sydney
in the State of New South Wales Economist DONALD HENRY
MERRY of 14 Grange Road Kew Melbourne in the State of
Victoria Economist ALLAN JAMES TYRER of 98 Albert 15
Street Mordialloc in the State of Victoria Economist and
GEORGE ROWLAND MOUNTAIN of 172 Hawthorn Road Caulfield
Melbourne in the State of Victoria Economist jointly
and severally make oath and say as follows:

AND I the said TORLEIV HYTEN for myself say that - 20
1. _____ I am the Economic Adviser to the abovenamed
Plaintiff the Bank of New South Wales having held that

SIGNED AND SWORN this twenty-seventh day of January, 1948,
by the said Torleiv Hytten at Sydney before me:

T. Hytten.

and by the other Deponents at Melbourne before me:

A.R. Partridge, J.P. D.H. Merry, A.J. Tyrer
G.R. Mountain.

307. Joint Affidavit of T. Hytten,
D.H. Merry, A.J. Tyrer and
G.R. Mountain sworn 27/1/48
and filed in Action No. 42 of
1947 on behalf of the Plaintiffs.

308. Joint Affidavit of T. Hytten,
D.H. Merry, A.J. Tyrer and
G.R. Mountain sworn 27/1/48 and
filed in Action No. 42 of 1947
on behalf of the Plaintiffs.

position first during the year 1933 and from 1935 until
the present time. I am a Master of Arts with first-
class honours in Economics (Tasmania). I was lecturer
in Economics in the University of Tasmania from 1926 to
1929 and Professor of Economics from 1929 to 1935. For 5
the latter period I was also Economic Adviser to the
Government of Tasmania. In 1932 I was appointed Chair-
man of the Tasmanian State Employment Council. In 1935
I attended the League of Nations Assembly as Australian
delegate and in 1935 and 1937 attended Congresses of the 10
International Chamber of Commerce in Paris and Berlin
respectively. I am a member of the Monetary Relations
Committee of the International Chamber of Commerce and
Vice-President of the Australian National Committee of
that Chamber. I attended international conferences of 15
bank economists at Eastbourne in England in 1937 and 1947
and in 1947 I also attended the International Industrial
Management Congress in Stockholm as representative of the
Institute of Industrial Management, Sydney.

2. _____ I am familiar with the organisation and functions 20
of and the business carried on by the Bank of New South
Wales and generally with the banking system in Australia
and the central banking practices and procedures followed

SIGNED AND SWORN this twenty-seventh day of January, 1948,
by the said Torleiv Hytten at Sydney before me:

T. Hytten.

and by the other Deponents at Melbourne before me:

A.R. Partridge, J.P. D.H. Merry, A.J. Tyrer
 G.R. Mountain.

308. Joint Affidavit of T. Hytten,
D.H. Merry, A.J. Tyrer and
G.R. Mountain sworn 27/1/48
and filed in Action No. 42 of
1947 on behalf of the Plaintiffs.

309. Joint Affidavit of T. Hytten,
D.H. Merry, A.J. Tyrer and
G.R. Mountain sworn 27/1/48
and filed in Action No. 42 of
1947 on behalf of the Plaintiffs.

by the Commonwealth Bank of Australia insofar as they
affect the trading banks.

3. _____ Over the past 25 years I have made a close study
of the theory and practice of banking and of the history
and current development of banking in Australia and in 5
other countries particularly the United Kingdom.

AND I the said DONALD HENRY MERRY for myself say that -

4. _____ I am the Economist of The Union Bank of Australia
Limited and have held that position since the 1st day
of March 1947. I am a Bachelor of Commerce of the 10
University of Melbourne and for two years did post-
graduate study in economics at the London School of
Economics. During the years 1933 to 1945 inclusive I
was in the employ of the Plaintiff the Bank of New South
Wales and served on the economic staff of that Bank in 15
Sydney and in London holding the position of Assistant
Economist in the years 1938 and 1939. In the years 1936
and 1937 I was an Australian Representative on the Bankers'
Committee of the International Chamber of Commerce and I
also went to Berlin in 1937 as an Australian Delegate to 20
the Nineteenth Congress of the International Chamber of
Commerce. During the year 1940 I was transferred to

SIGNED AND SWORN this twenty-seventh day of January, 1948,
by the said Torleiv Hytten at Sydney before me:

T. Hytten.

and by the other Deponents at Melbourne before me:

A.R. Partridge, J.P.

D.H. Merry, A.J. Tyrer
G.R. Mountain.

309. Joint Affidavit of T. Hytten,
D.H. Merry, A.J. Tyrer and
G.R. Mountain sworn 27/1/48
and filed in Action No. 42 of
1947 on behalf of the Plaintiffs.

310. Joint Affidavit of T. Hytten,
D.H. Merry, A.J. Tyrer and
G.R. Mountain sworn 27/1/48
and filed in Action No. 42 of
1947 on behalf of the Plaintiffs.

special duties on foreign exchange. Towards the end of
the year 1940 my services were made available on loan to
the Commonwealth Prices Branch and for a period of time I
was Assistant Secretary. In March 1943 I was transferred
to the staff of the Commonwealth Treasury being Deputy 5
to the Treasurer Representative at the Department of
Defence. In 1945 I was released and I became the Fin-
ancial Editor of the Argus Newspaper Melbourne which
position I occupied until I joined The Union Bank of
Australia Limited on the 1st day of March 1947. 10

5. _____ I am familiar with the organisation and functions
of and the business carried on by The Union Bank of
Australia Limited and generally with the banking system
in Australia and the central banking practices and pro-
cedures followed by the Commonwealth Bank of Australia 15
insofar as they affect the trading banks.

6. _____ Over the past 16 years I have made a close study
of the theory and practice of banking and of the history
and current development of banking in Australia and in
other countries particularly the United Kingdom. 20

AND I the said ALLAN JAMES TYRER for myself say that -

7. _____ I am the Research Economist of the Plaintiff the
Commercial Bank of Australia Limited and have occupied

SIGNED AND SWORN this twenty-seventh day of January, 1948,
by the said Torleiv Hytten at Sydney before me:

T. Hytten.

and by the other Deponents at Melbourne before me:

A.R. Partridge, J.P.

D.H. Merry, A.J. Tyrer,
G.R. Mountain.

310. Joint Affidavit of T. Hytten,
D.H. Merry, A.J. Tyrer and
G.R. Mountain sworn 27/1/48 and
filed in Action No. 42 of 1947
on behalf of the Plaintiffs.

311. Joint Affidavit of T. Hytten,
D.H. Merry, A.J. Tyrer and
G.R. Mountain sworn 27/1/48 and
filed in Action No. 42 of 1947
on behalf of the Plaintiffs.

that position since August 1945. I am a Bachelor of
Commerce of the University of Melbourne. For a time I
was a member of the Economists' Research Staff, Commerce
Department of the University of Melbourne and later held
the position of Senior Research Officer, Economics and 5
Statistics, of the Commonwealth Grants Commission. From
time to time I have acted as Economic Adviser to various
Australian Employer Organisations in connection with
hearings before the Commonwealth Court of Conciliation
and Arbitration in the course of their investigation into 10
and determination of the Federal basic wage and standard
working hours.

8. I am familiar with the organisation and functions
of and the business carried on by The Commercial Bank of
Australia Limited and generally with the banking system 15
in Australia and the central banking practices and pro-
cedures followed by the Commonwealth Bank of Australia
insofar as they affect the trading banks.

9. Over the past 8 years I have made a close study
of the theory and practice of banking and of the history 20
and current development of banking in Australia and in
other countries particularly the United Kingdom.

SIGNED AND SWORN this twenty-seventh day of January, 1948,
by the said Torleiv Hytten at Sydney before me:

T. Hytten.

and by the other Deponents at Melbourne before me:

A.R. Partridge, J.P.

D.H. Merry, A.J. Tyrer,
G.R. Mountain.

311. Joint Affidavit of T. Hytten,
D.H. Merry, A.J. Tyrer and
G.R. Mountain sworn 27/1/48 and
filed in Action No. 42 of 1947
on behalf of the Plaintiffs.

312. Joint Affidavit of T. Hytten,
D.H. Merry, A.J. Tyrer and
G.R. Mountain sworn 27/1/48 and
filed in Action No. 42 of 1947
on behalf of the Plaintiffs.

AND I the said GEORGE ROWLAND MOUNTAIN for myself say

that -

10. _____ I am the Senior Economist of the Plaintiff The
National Bank of Australasia Limited and have occupied
that position since the year 1944. I am a Master of 5
Arts in the School of Economics of the University of
Melbourne and after graduating from that University in
the year 1934 I was appointed to the National Bank of
Australasia Limited as an Economist. For the past 11
years I have been intimately associated with economic 10
and other policy and administrative matters in the head
office management of the National Bank of Australasia
Limited and my position as the Bank's Senior Economist
has required me to make and I have in fact made a special
study of Australian banking and Australian monetary 15
policy together with problems associated with the
relationship between central banking and trading bank
policy and operations. I have frequently represented
The National Bank of Australasia Limited at conferences
and discussions on monetary and economic affairs and I 20
represented the Bank at the 1944 Convention of The United
States Bankers' Association for Foreign Trade held in New
York.

SIGNED AND SWORN this twenty-seventh day of January, 1948,
by the said Torleiv Hytten at Sydney before me:

T. Hytten.

and by the other Deponents at Melbourne before me:

A.R. Partridge, J.P.

D.H. Merry, A.J. Tyrer,
G.R. Mountain.

312. Joint Affidavit of T. Hytten,
D.H. Merry, A.J. Tyrer and
G.R. Mountain sworn 27/1/48 and
filed in Action No. 42 of 1947
on behalf of the Plaintiffs.

313. Joint Affidavit of T. Hytten, D.H. Merry, A.J. Tyrer and G.R. Mountain sworn 27/1/48 and filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

11._____ I am familiar with the organisation and functions of and the business carried on by The National Bank of Australasia Limited and generally with the banking system in Australia and the central banking practices and procedures followed by the Commonwealth Bank of Australia 5 insofar as they affect the trading banks.

12._____ Over the past 15 years I have made a close study of the theory and practice of banking and of the history and current development of banking in Australia and in other countries particularly in the United Kingdom, 10 Canada and the United States of America.

AND WE the said TORLEIV HYTTEN, DONALD HENRY MERRY, ALLAN JAMES TYRER and GEORGE ROWLAND MOUNTAIN jointly say as follows:-

13._____ We have read what purports to be a copy of an 15 Affidavit sworn by LESLIE GALFREID MELVILLE on the 5th day of January 1948 and filed herein.

14._____ In the year 1900 the business of banking in Australia as in Great Britain was conducted by a number of private trading banks in competition and without any 20 direct legislative control of their general banking operations. There was then no central bank in Australia

SIGNED AND SWORN this twenty-seventh day of January, 1948, by the said Torleiv Hytten at Sydney before me:

T. Hytten.

and by the other Deponents at Melbourne before me:

A.R. Partridge, J.P.

D.H. Merry, A.J. Tyrer,
G.R. Mountain.

313. Joint Affidavit of T. Hytten, D.H. Merry, A.J. Tyrer and G.R. Mountain sworn 27/1/48 and filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

314. Joint Affidavit of T. Hytten,
D.R. Merry, A.J. Tyrer and
G.R. Mountain sworn 27/1/48 and
filed in Action No. 42 of 1947
on behalf of the Plaintiffs.

and many of the private trading banks then in existence
had the right to and did in fact issue bank notes. In
England, the Bank of England then acted as a central bank
as hereinafter described. At that time, almost every
country in Europe, along with Japan, Java and Persia in 5
the East and Egypt and Algeria in Africa, had established
a bank of issue with special privileges and powers. All
these banks became the bankers and financial agents of
the Governments of their respective countries; and in
different ways or in varying degrees they also assumed 10
functions which had then been developed by the Bank of
England and which are now regarded as essential functions
of "central banks".

15. _____ In 1900 the Bank of England was the principal
bank of issue and acted as the Government's banker and 15
as a banker's bank. Since 1854 the Bank of England had
been a settlement bank for the clearance differences
between trading banks and even before that time it had
become the traditional policy of the trading banks to
entrust their surplus cash to the Bank of England (see 20
de Kock, Central Banking, 2nd Edition, p.68). The Bank
of England had developed the practice of regulating the
volume of credit and thereby controlling fluctuations in

SIGNED AND SWORN this twenty-seventh day of January, 1948,
by the said Torleiv Hytten at Sydney before me:

T. Hytten.

and by the other Deponents at Melbourne before me:

A.R. Partridge, J.P.

D.H. Merry, A.J. Tyrer,
G.R. Mountain.

314. Joint Affidavit of T. Hytten,
D.H. Merry, A.J. Tyrer and
G.R. Mountain sworn 27/1/48 and
filed in Action No. 42 of 1947
on behalf of the Plaintiffs.

315. Joint Affidavit of T. Hytten,
D.H. Merry, A.J. Tyrer and
G.R. Mountain sworn 27/1/48 and
filed in Action No. 42 of 1947
on behalf of the Plaintiffs.

trade mainly by open market operations and variations
in the Bank rate. It did not have any legislative
powers of control over other banks. In 1900 the Bank
of England was the most highly developed central bank
in the world. So far as we are aware, no central bank 5
then existing had legislative power to interfere with the
operations of trading banks.

16._____The historical development outlined above resulted
in the emergence of central banking with specialised
functions essentially different from those of commercial 10
banking. This essential difference is apt to be obscur-
ed by applying the terminology of commercial banking to
describe central banking operations.

17._____The essential function of trading banks in the
community is to transact general banking business with 15
the public. The essential function, on the other hand,
of a central bank is to exercise control over the volume
of credit. A central bank commonly acts as a bankers'
bank and as banker for the Central Government. It is
not an essential function of a central bank as such to 20
transact general banking business with the public.

The province of a central bank, however, includes
the taking of measures to support the trading banks

SIGNED AND SWORN this twenty-seventh day of January, 1948,
by the said Torleiv Hytten at Sydney before me:

T. Hytten.

and by the other Deponents at Melbourne before me:

A.R. Partridge, J.P.

D.H. Merry, A.J. Tyrer,
G.R. Mountain.

315.

Joint Affidavit of T. Hytten,
D.H. Merry, A.J. Tyrer and
G.R. Mountain sworn 27/1/48
and filed in Action No. 42 of
1947 on behalf of the
Plaintiffs.

316. Joint Affidavit of T.Hytten,
D.H. Merry, A.J. Tyrer and
G.R. Mountain sworn 27/1/48 and
filed in Action No. 42 of 1947
on behalf of the Plaintiffs.

forming part of a system in which it is operating as a
bankers' bank, whenever the central banking authorities
deem the same to be necessary in the interests of credit
stability. The autonomous existence of trading banks
is an integral part of a system in which the controls, 5
powers and processes referred to in paragraphs 43-68 of
the affidavit of the said LESLIE GALFREID MELVILLE sworn
and filed herein on the 5th day of January, 1948 are
imposed and exercised.

The positive and independent acts of each of the 10
individual trading banks operating under present condi-
tions continue notwithstanding the restrictions imposed
by these controls, powers and processes.

18. _____The controls, powers and processes referred to
by the said LESLIE GALFREID MELVILLE as aforesaid affect 15
neither the character of the ordinary banking operations
carried on by each of the trading banks as an independent
organisation, nor the relationship of banker and customer,
nor the ordinary practices of each of such trading banks
in deciding individual cases and in determining each 20
bank's individual policy. They merely provide a frame-
work of common limitations within which ordinary banking
operations are carried on by each trading bank independently.

SIGNED AND SWORN this twenty-seventh day of January, 1948,
by the said Torleiv Hytten at Sydney before me:

T. Hytten.

and by the other Deponents at Melbourne before me:

A.R. Partridge, J.P.

D.H. Merry, A.J. Tyrer,
G.R. Mountain.

316. Joint Affidavit of T. Hytten,
D.H. Merry, A.J. Tyrer and
G.R. Mountain sworn 27/1/48
and filed in Action No. 42 of
1947 on behalf of the Plaintiffs.

317. Joint Affidavit of T. Hytten,
D.H. Merry, A.J. Tyrer and
G.R. Mountain sworn 27/1/48
and filed in Action No. 42 of
1947 on behalf of the Plaintiffs.

19._____The essence of the theory and practice of
central banking, as reviewed above, is in our opinion
to provide this framework within which the carrying on
of essential trading bank functions by independent com-
petitive trading banks may have effects which assist the 5
achievement of wider economic objectives. The control
of the level of credit exercised by the central bank is
not an end in itself, but is merely a means by which to
influence (inter alia) the volume of production, the
flow of trade and the level of employment. 10

20._____Central bank controls are not the only controls
employed to achieve the above economic objectives. Other
controls are initiated and exercised entirely apart from
banking, and impinge only indirectly upon it. Such con-
trols include:- 15

(a) Fiscal policy (including taxation and loan
operations).

(b) Price control.

(c) Customs regulations.

(d) Land sales control. 20

(e) Capital issues control.

21._____Accordingly the inauguration of a system without
independent trading banks would not in our opinion

SIGNED AND SWORN this twenty-seventh day of January, 1948,
by the said Torleiv Hytten at Sydney before me:

T.Hytten.

and by the other Deponents at Melbourne before me:

A.R. Partridge, J.P.

D.H. Merry, A.J.Tyrer,
G.R. Mountain.

317. Joint Affidavit of T. Hytten,
D.H. Merry, A.J. Tyrer and
G.R. Mountain sworn 27/1/48
and filed in Action No. 42 of
1947 on behalf of the Plaintiffs..

318. Joint Affidavit of T. Hytten, D.H. Merry, A.J. Tyrer and G.R. Mountain sworn 27/1/48 and filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

represent a further development of central banking.

The controls described and referred to in Paragraphs 43-68 of the said Affidavit of the said Leslie Galfreid Melville do not involve the elimination of the trading banks nor does the said Melville state that the elimination of trading banks is necessary to give effect to such controls. 5

In our opinion the elimination of the trading banks would be a step entirely outside of, different from, and independent of all central bank controls. Furthermore, 10 in our opinion the taking over of the business of one or more of the trading banks by the Commonwealth Bank for the purpose of enlarging its general banking business would not be a development of central banking.

SIGNED AND SWORN by the Deponent) 15
TORLEIV HYTTEN on the twenty-seventh)
day of January one thousand nine) T. HYTTEN.
hundred and forty-eight at Sydney)
in the State of New South Wales)
Before me:) 20

SIGNED AND SWORN by the Deponent)
DONALD HENRY MERRY on the twenty-)
seventh day of January, one thousand) D.H. MERRY.
nine hundred and forty-eight at)
Melbourne in the State of Victoria) 25
Before me:)
A.R. Partridge, J.P.

SIGNED AND SWORN by the Deponent)
ALLAN JAMES TYRER on the twenty-)
seventh day of January, one thousand) A.J. TYRER. 30
nine hundred and forty-eight at)
Melbourne in the State of Victoria)
Before me:)
A.R. Partridge, J.P.

318. Joint Affidavit of T. Hytten, D.H. Merry, A.J. Tyrer and G.R. Mountain sworn 27/1/48 and filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

319. Joint Affidavit of T. Hytten,
D.H. Merry, A.J. Tyrer and
G.R. Mountain sworn 27/1/48 and
filed in Action No. 42 of 1947
on behalf of the Plaintiffs.

SIGNED AND SWORN by the Deponent)
GEORGE ROWLAND MOUNTAIN on the)
twenty-seventh day of January, one)
thousand nine hundred and forty-)
eight, at Melbourne in the State of)
Victoria Before me:)

G.R. MOUNTAIN.

5

A.R. Partridge, J.P.

319. Joint Affidavit of T.Hytten,
D.H. Merry, A.J. Tyrer and
G.R. Mountain sworn 27/1/48
and filed in Action No. 42
of 1947 on behalf of the
Plaintiffs.

No. 26 - Affidavit of Francis Favarger Hassett sworn the 12th day of January, 1948 and filed in Action No. 43 of 1947 on behalf of the Plaintiffs.

IN THE HIGH COURT OF AUSTRALIA)
) No. 43 of 1947
NEW SOUTH WALES REGISTRY.)

Between:

THE BANK OF AUSTRALASIA and 5
others

Plaintiffs

and

THE COMMONWEALTH OF AUSTRALIA
and others 10

Defendants

I, FRANCIS FAVARGER HASSETT of Martin Place, Sydney in the State of New South Wales Bank Manager make oath and say as follows:-

1. _____ I have ready a copy of the affidavit of Leslie 15
Galfreid Melville sworn on the fifth day of January 1948 and filed in Action No. 42 of 1947.

2. _____ With reference to paragraphs 11, 12 and 14 of the said affidavit I say that -

(i) the pastoral finance companies and building 20
societies and finance, co-operative and assurance companies referred to in the said paragraph 14 do not carry on general banking business and insofar as they conduct any banking transactions do so pursuant to temporary exemptions granted under 25 .

SIGNED AND SWORN this twelfth day of January, 1948,
at Sydney before me:-

R.V. Alexander, J.P.

Frank Hassett.

320. Affidavit of Francis Favarger Hassett sworn the twelfth day of January, 1948 and filed in Action No. 43 of 1947 on behalf of the Plaintiffs.

321. Affidavit of Francis Favarger Hassett sworn the twelfth day of January, 1948 and filed in Action No. 43 of 1947 on behalf of the Plaintiffs.

Section 10 of the Banking Act 1945 and published in the Commonwealth Gazette:

- (ii) the pastoral finance companies referred to even considered as a group have not the branches or places of business nor the staff and organisation in Australia or overseas, nor have they the liquid resources with which to do more than a small fraction of the banking business carried on by the trading banks. The same is true of the State Banks including Agricultural Banks;
- (iii) building societies and finance, co-operative and assurance companies whether or not they technically carry on banking business do not carry on business on similar lines to the trading banks and in my opinion do not and could not satisfy public requirements with respect to general banking facilities;
- (iv) the volume of interstate banking transactions carried on by all the institutions referred to in this paragraph amounts in my opinion to only a small fraction of the total interstate banking transactions at present carried on;
- (v) of all the institutions referred to in this paragraph the only ones which carry on general banking business are the Rural and Industries Bank of

SIGNED AND SWORN this twelfth day of January, 1948,
at Sydney before me:-

R.V. Alexander, J.P.

Frank Hassett.

321. Affidavit of Francis Favarger Hassett sworn the twelfth day of January, 1948 and filed in Action No. 43 of 1947 on behalf of the Plaintiffs.

322. Affidavit of Francis Favarger Hassett sworn the twelfth day of January, 1948 and filed in Action No. 43 of 1947 on behalf of the Plaintiffs.

Western Australia, the State Bank of South Australia and the Rural Bank of New South Wales. If the private trading banks are taken over by the Commonwealth there will be no institution carrying on general banking business other than the Commonwealth Bank in the States of Victoria Queensland and Tasmania. 5

3. Referring to paragraph 17 of the said affidavit I say that by Section 75 of the Post and Telegraph Act it is provided that a money order shall not be granted for a larger sum than £20 nor a postal note for a larger sum than 20/-. Owing to these limitations and to the necessity for purchasing money orders and postal notes for cash at a post office and for exchanging the same on receipt for cash at a post office neither money orders nor postal notes afford a satisfactory substitute for the banking facilities now in use. The total values of money orders and postal notes stated in the said paragraph 17 are trifling in comparison with the total debits to customers' accounts in the private trading banks in each year. 10 15 20

4. With reference to paragraph 18 of the said affidavit I say that I disagree with the opinions expressed therein -

(a) that when the Banking Act 1947 is in operation the Commonwealth Bank will provide facilities equal in 25

SIGNED AND SWORN this twelfth day of January, 1948,
at Sydney before me:-

R.V. Alexander, J.P.

Frank Hassett.

322. Affidavit of Francis Favarger Hassett sworn the twelfth day of January, 1948 and filed in Action No. 43 of 1947 on behalf of the Plaintiffs.

323. Affidavit of Francis Favarger Hassett sworn the twelfth day of January, 1948 and filed in Action No. 43 of 1947 on behalf of the Plaintiffs.

quality to those now provided by all banks; and

- (b) that the operation of the Banking Act 1947 will have no adverse effects on Australian business activities or on the volume of trade and commerce in Australia.

5

5. I refer to paragraphs 25, 26 and 27 of the said affidavit and say that -

- (a) the proportion which banking transactions involving operations in more than one State bear to all banking transactions carried on by any bank varies as between different periods of the year and also varies as between different banks by reason of differences that exist in the proportions in which their customers fall into various classes, e.g., governments, interstate traders, other traders and non-traders;

- (b) in view of the statements made in paragraphs 25, 26 and 27 of the said affidavit and paragraph 12 of the affidavit of Gordon Murray Shain sworn the fifth day of January 1948 and filed in Action No. 42 of 1947 I am of opinion that the proportions of customers of different classes banking with the Commonwealth Bank must differ widely from the proportions in the case of the private trading banks;

25

SIGNED AND SWORN this twelfth day of January, 1948,
at Sydney before me:-

R.V. Alexander, J.P.

Frank Hassett.

323. Affidavit of Francis Favarger Hassett sworn the twelfth day of January, 1948 and filed in Action No. 43 of 1947 on behalf of the Plaintiffs.

324. Affidavit of Francis Favarger Hassett sworn the twelfth day of January 1948 and filed in Action No. 43 of 1947 on behalf of the Plaintiffs.

(c) by reason of the matters aforesaid the limited survey made by the Commonwealth Bank as described in the said paragraphs even if it be fairly representative of the total transactions of that Bank for a full year, does not in my opinion afford a satisfactory basis for an inference as to the proportion of transactions of the trading banks which are interstate transactions. 5

6. With reference to the statements contained in paragraphs 28 to 35 inclusive of the said affidavit of Leslie Galfreid Melville as to what are the actual transactions which take place in the course of the banking operations of the private trading banks I say that those transactions as they occur in interstate banking operations are accurately described in my previous affidavit sworn the 19th day of December 1947 and in the affidavit of Sydney John Gandon sworn the said day and in the affidavit of Joseph Sydney Penell Cox sworn the 28th day of November, 1947. 10 15

7. Referring to paragraphs 34 and 35 of the said affidavit of the said Leslie Galfreid Melville I say that if the statements therein contained are intended to describe the interstate banking operations of the trading banks they are partial and incomplete. In the interstate banking business carried on by them the trading 20 25

SIGNED AND SWORN this twelfth day of January, 1948,
at Sydney before me:-

R.V. Alexander, J.P.

Frank Hassett.

324. Affidavit of Francis Favarger Hassett sworn the twelfth day of January, 1948 and filed in Action No. 43 of 1947 on behalf of the Plaintiffs.

325. Affidavit of Francis Favarger
Hassett sworn the twelfth day
of January, 1948 and filed in
Action No. 43 of 1947 on
behalf of the Plaintiffs.

banks are not, except in some particular classes of
transactions, acting as agents for customers. They are
carrying on a business of dealing in money or rights to
money. In each of the classes of transactions consti- 5
tuting such business (as described in my said previous
affidavit) what is done consists of or involves an ex-
change of legal tender or a right to legal tender in one
State for legal tender or a right to legal tender in
another State; and in each transaction there is a transmission
interstate of a negotiable instrument with or without docu- 10
ments of title or a warrant or other banking instruments.
The debiting or crediting of customers' accounts referred
to in the said paragraph 35 does not itself constitute the
interstate banking transaction. For example, what in
fact takes place as between the bank and the other party 15
to the transaction when there is what I have described in
my said previous affidavit as a transfer of funds from one
State to another is as set out hereunder:-

- (i) taking first the case in which a person who has
no account with the bank hands (say) £1,000 across 20
the counter at a bank in (say) Melbourne with a
request that it be transferred to Sydney and paid
there to a named person, if that named person
has no account with the bank in question there
is no debiting or crediting of customers' accounts 25

SIGNED AND SWORN this twelfth day of January, 1948,
at Sydney before me:-

R.V. Alexander, J.P.

Frank Hassett.

325. Affidavit of Francis Favarger
Hassett sworn the twelfth day
of January, 1948 and filed in
Action No. 43 of 1947 on
behalf of the Plaintiffs.

326. Affidavit of Francis Favarger Hasset sworn the twelfth day of January, 1948 and filed in Action No. 43 of 1947 on behalf of the Plaintiffs.

at all nor does the transaction involve any borrowing or lending of money;

(ii) if the person requesting the transfer has an account with the bank at Melbourne there may be a borrowing transaction associated with the interstate transfer of funds but this borrowing transaction precedes the interstate transfer. If the customer for example obtains an overdraft limit on his account in Melbourne for £1,000 and requests the transfer of that amount to Sydney, what is done is normally that the customer borrows the £1,000 by drawing a cheque for that sum and this drawing is debited to his account. Instead of cashing the cheque and handing £1,000 in currency to the bank he hands the cheque to the bank. As the consideration for the handing over of the cheque the bank gives him its undertaking to pay £1,000 (less exchange) in Sydney;

(iii) where the transfer is made for a customer with an account at the bank in Melbourne to an account of the same customer with the bank in Sydney what is involved is not merely the making of debit and credit entries in the customer's accounts. The debiting of the customer's account in Melbourne records the fact that the bank has received

SIGNED AND SWORN this twelfth day of January, 1948,
at Sydney before me:-

R.V. Alexander, J.P.

Frank Hasset.

326. Affidavit of Francis Favarger Hasset sworn the twelfth day of January, 1948 and filed in Action No. 43 of 1947 on behalf of the Plaintiffs.

327. Affidavit of Francis Favarger Hassett sworn the twelfth day of January, 1948 and filed in Action No. 43 of 1947 on behalf of the Plaintiffs.

payment from him there of the £1,000. In consideration for this payment in Melbourne it gives him its undertaking to credit his account in Sydney and to pay him £1,000 in Sydney out of his account there in the ordinary course of banking. 5

8. _____ Now produced and shown to me at the time of swearing this my affidavit and marked respectively "FFH1" "FFH2" "FFH3" and "FFH4" are copies of the following forms at present in use by the Commonwealth Bank namely:-

- (a) form of local draft requisition; 10
- (b) form of overseas draft requisition;
- (c) form of local telegraphic transfer requisition;
- and
- (d) form of overseas telegraphic transfer requisition.

9. _____ Referring to paragraphs 36 to 40 inclusive of the 15 said affidavit of Leslie Galfreid Melville I say that for many years prior to the establishment of the Commonwealth Bank the private trading banks made use of a clearing house system. The principal purposes of the clearing houses were and are to facilitate the clearing of cheques between 20 one bank and another and to minimise the transfer of legal tender in final settlement between the banks. For some years it has been the practice to settle the final balances by drawing cheques on the Commonwealth Bank and this became legally compulsory upon the passing of the 25

SIGNED AND SWORN this twelfth day of January, 1948,
at Sydney before me:-

R.V. Alexander, J.P.

Frank Hassett.

327. Affidavit of Francis Favarger Hassett sworn the twelfth day of January, 1948 and filed in Action No. 43 of 1947 on behalf of the Plaintiffs.

328. Affidavit of Francis Favarger Hassett sworn the twelfth day of January, 1948 and filed in Action No. 43 of 1947 on behalf of the Plaintiffs.

Banking Act 1945. The use of the clearing house system by the private trading banks and of the Exchange Settlement Accounts with the Commonwealth Bank does not alter or affect the nature of the interstate banking transactions between the private trading banks and their customers described in my said previous affidavit. 5

10. _____ With reference to the statements in paragraphs 29 and 40 of the said affidavit of Leslie Galfreid Melville that no appreciable amounts of legal tender are transferred from one State to another by the private banks I am informed by the Chief Accountant of the Bank of New South Wales and believe that from enquiries he has made for the purposes of Action No. 42 of 1947 he has ascertained that during the year ended the 30th day of November 1947 the actual physical transfers of legal tender interstate between branches and between chief offices and branches of the following banks, namely, the Bank of New South Wales, The Commercial Banking Company of Sydney Limited, The National Bank of Australasia Limited, The Commercial Bank of Australia Limited, The Bank of Australasia, The Union Bank of Australia Limited, The English Scottish & Australian Bank Limited, and The Queensland National Bank Limited, exceeded one million pounds. Referring further to the statements made in the said paragraph 40 I say that when one of the private

10 15 20 25

SIGNED AND SWORN this twelfth day of January, 1948,
at Sydney before me:-

R.V. Alexander, J.P.

Frank Hassett.

328. Affidavit of Francis Favarger Hassett sworn the twelfth day of January, 1948 and filed in Action No. 43 of 1947 on behalf of the Plaintiffs.

Affidavit of Francis Favarger Hassett sworn the twelfth day of January, 1948 and filed in Action No. 43 of 1947 on behalf of the Plaintiffs.

trading banks desires to increase its funds in a particular State it normally does so through the Commonwealth Bank. As a customer of the Commonwealth Bank it requests that Bank to transfer funds of the trading bank in one State to the credit of its account in another State. 5

The Commonwealth Bank in such a case acts for the trading bank in the same way as a trading bank acts for one of its customers who requests a transfer of his funds interstate. In the case of the Bank of Australasia and to my knowledge at least some of the other private trading banks, the trading bank's request is accompanied by a cheque for the amount of the funds to be transferred, drawn on its account at the Commonwealth Bank at the place where the request is made. The Commonwealth Bank in exchange for the money at that place so received by it 15 gives to the trading bank a right to an equal sum of money at the place to which the transfer is to be made. Before the Commonwealth Bank was established as a Central Bank any trading bank which required additional funds in a particular State ordinarily approached one or more of 20 the other trading banks and asked it or them to sell to it funds in the State in question. Generally there was no transmission of currency unless it was impracticable to purchase money in the State where it was required. Now that the Commonwealth Bank operates as a Central Bank it is 25

SIGNED AND SWORN this twelfth day of January, 1948,
at Sydney before me:-

R.V. Alexander, J.P.

Frank Hassett.

329. Affidavit of Francis Favarger Hassett sworn the twelfth day of January, 1948 and filed in Action No. 43 of 1947 on behalf of the Plaintiffs.

330. Affidavit of Francis Favarger Hassett sworn the twelfth day of January, 1948 and filed in Action No. 43 of 1947 on behalf of the Plaintiffs.

practicable in normal circumstances for a private trading bank to obtain from the Commonwealth Bank additional funds required in any particular State and accordingly the volume of interstate physical transfers of currency by the private trading banks has been much reduced. 5

11. _____ With reference to paragraph 41 of the said affidavit I say that the statements therein set out describe the effect of what is done by reference merely to the end results as shown in customers' accounts and Exchange Settlement Accounts and disregard the banking transactions (as described in my said previous affidavit) which are necessarily interposed between those end results. 10
Moreover, in a large proportion of the interstate banking transactions there is only one bank involved and the Exchange Settlement Accounts therefore are not used. 15

12. _____ As to the statements contained in paragraph 42 of the said affidavit I say that when an interstate documentary draft to which a bill of lading is attached is negotiated to a bank for value, although the bank normally takes the bill of lading as a pledgee thereof and not as absolute owner, the draft itself is purchased by the bank outright. 20
What is done by the bank in such cases does not end with the taking of the pledge or security or with the taking of the transfer of the interstate draft. The bank as the owner of the draft and the pledgee of the bill

SIGNED AND SWORN this twelfth day of January, 1948,
at Sydney before me:-

R.V. Alexander, J.P.

Frank Hassett.

330. Affidavit of Francis Favarger Hassett sworn the twelfth day of January, 1948 and filed in Action No. 43 of 1947 on behalf of the Plaintiffs.

331. Affidavit of Francis Favarger Hassett sworn the twelfth day of January, 1948 and filed in Action No. 43 of 1947 on behalf of the Plaintiffs.

of lading forwards these documents to their destination in the other State and there presents them or causes them to be presented to the drawee for the purpose of obtaining payment of the draft and effecting delivery of the goods.

13._____Referring to the description of the Central Bank 5
and its controls over the trading banks set out in paragraph 43 and following paragraphs of the said affidavit it is true that the business conducted by the trading banks with their customers in any community incidentally affects the amount of credit and purchasing power available in 10
that community as a whole. Because this in turn has important effects upon the economy of the community it has become the practice in recent times for a Central Bank in consultation with the Government constitutionally responsible for maintaining economic stability to exercise 15
controls over the expansion and contraction of credit by trading banks. In my opinion the exercise of these controls does not alter or affect the nature of the transactions between the trading banks and their customers. In Australia the private trading banks remain 20
independent corporations each carrying on its own business although subject to general directions as to policy. In my opinion it is only in this sense that there can be said to be a unified Australian banking system.

14._____I have perused the statements published in the 25

SIGNED AND SWORN this twelfth day of January, 1948,
at Sydney before me:-

R.V. Alexander, J.P.

Frank Hassett.

331. Affidavit of Francis Favarger Hassett sworn the twelfth day of January, 1948 and filed in Action No. 43 of 1947 on behalf of the Plaintiffs.

332. Affidavit of Francis Favarger
Hassett sworn the twelfth day
of January, 1948 and filed in
Action No. 43 of 1947 on
behalf of the Plaintiffs.

Commonwealth Gazette of the 16th December 1947 of the
average of the liabilities and assets within Australia
of each Bank as at the close of business on Wednesday,
the 5th, 12th, 19th and 26th of November, 1947, purporting
to be prepared from returns delivered to the Commonwealth 5
Statistician under Section 41 of the Banking Act 1945.
From those statements it appears that during the month
of November, 1947 each of the private banks mentioned in
the First Schedule to the Banking Act 1947 had assets
(other than goodwill) in Australia exceeding in value the 10
total amount of its deposit liabilities in Australia and
I believe that that is still the position.

15. _____ In each of the countries in which it carries on
business the plaintiff The Bank of Australasia has
numerous and valuable rights against and is subject to 15
numerous and substantial obligations in favour of
persons who are not customers of that Bank and which
rights and obligations do not arise out of any relation
of banker and customer. From my knowledge of the
nature of the businesses carried on by the other 20
private trading banks I am of opinion that the same is
true of each of such other banks.

SIGNED AND SWORN by the abovenamed)
Deponent on the twelfth day of)
January one thousand nine hundred) FRANK HASSETT 25
and forty-eight at Sydney in the)
State of New South Wales,)
Before me -)

R.V. ALEXANDER, J.P.
A Justice of the Peace. 30

Filed on behalf of the
Plaintiffs.

332. Affidavit of Francis Favarger
Hassett sworn the twelfth day
of January, 1948 and filed in
Action No. 43 of 1947 on
behalf of the Plaintiffs.

No. 27 Order by Mr. Justice Dixon granting
Interlocutory Injunction.

IN THE HIGH COURT OF AUSTRALIA)
) No. 42 of 1947.
NEW SOUTH WALES REGISTRY.)

Between:

BANK OF NEW SOUTH WALES and 5
others

Plaintiffs

and

THE COMMONWEALTH OF AUSTRALIA 10
and others

Defendants

BEFORE HIS HONOUR MR. JUSTICE DIXON
Monday the 15th day of December, 1947.

UPON MOTION made this day by Counsel on behalf of the
abovenamed plaintiffs AND UPON READING the Writ of 15
Summons issued herein and the Notice of Motion dated the
28th day of November 1947 AND UPON READING the two sever-
al affidavits of Thomas Baker Heffer and Joseph Sydney
Penell Cox sworn on the 28th day of November 1947 and
the affidavit of Sydney John Gandon sworn on the 8th day 20
of December 1947 and all filed herein on behalf of the
plaintiffs AND the two several affidavits of Francis
Favarger Hassetts sworn respectively on the said 28th
day of November and the 12th day of December 1947 filed
on behalf of the plaintiffs in Action No. 43 of 1947 25
in the New South Wales Registry between The Bank of
Australasia The Union Bank of Australia Limited and

333. Order of His Honour Mr. Justice
Dixon, made the 15th day of
December, 1947 in Action No.42
of 1947.

334. Order of His Honour Mr. Justice
Dixon, made the 15th day of
December, 1947 in Action No.42
of 1947.

The English Scottish and Australian Bank Limited
plaintiffs and the defendants herein defendants and the
three several affidavits of Leslie Galfreid Melville
Gordon Murray Shain and Stuart Gordon McFarlane sworn
on the 8th day of December 1947 and filed herein on 5
behalf of the defendants and the two several affidavits
of Leslie Galfreid Melville sworn respectively on the
8th and 15th days of December 1947 filed on behalf of
the defendants in Action No. 43 of 1947 in the New South
Wales Registry aforesaid and the exhibits referred to in 10
the said affidavits AND UPON HEARING what was alleged
by Mr. G.E. Barwick of King's Counsel for the plaintiffs
with whom appeared Mr. E.G. Coppel of King's Counsel
Mr. A.D.G. Adam of Counsel Mr. R.M. Eggleston of
Counsel Mr. R. Ashburner of Counsel and Mr. B.B. Riley 15
of Counsel AND by Mr. C.A. Weston of King's Counsel
for the defendants with whom appeared Mr. H.H. Mason of
King's Counsel, Mr. J.D. Holmes of Counsel and Mr. B.P.
Macfarlan of Counsel AND IT APPEARING THAT the parties
have agreed to treat the motion for an interlocutory 20
injunction as the trial of the action, the plaintiffs
however seeking protection in the meantime by way of
undertaking or interim injunction until the determina-
tion of the action AND IT FURTHER APPEARING THAT the
parties desire that the cause should be tried before 25
the Full Court and that an order should be made accord-
ingly pursuant to Section 18 of the Judiciary Act 1903-
1947 by the Justice constituting this Court, but the
said Justice being of opinion that the questions arising

334. Order of His Honour Mr. Justice
Dixon, made the 15th day of
December, 1947 in Action No.42
of 1947.

335. Order of His Honour Mr. Justice
Dixon, made the 15th day of
December, 1947 in Action No. 42
of 1947.

in this action could not be satisfactorily heard and
determined upon the abovementioned affidavits and
declining to make such an order unless for the pur-
poses of the trial of the action proof of matters of
fact and of evidence relied upon by the respective 5
parties be made not by the said affidavits but by
other affidavits or testimony and unless the said Justice
consider that upon such last mentioned affidavits or
testimony the questions arising in this action may be
satisfactorily dealt with by the Full Court AND IT 10
FURTHER APPEARING THAT the parties are willing to file
other affidavits NOW THIS COURT DOTH ORDER that the
plaintiffs be given until Friday the 19th day of December
1947 including the said day to file in this Court such
affidavits as they may be advised in support of the 15
plaintiffs' case and that the defendants be given until
Monday the 5th day of January 1948 including the said day
to file such affidavits as they may be advised in answer
or in support of the defendants' case and that the
plaintiffs be given until Monday the 12th day of January 20
1948 including the said day to file such affidavits in
reply as they may be advised and that Thursday the 15th
day of January 1948 at 10.30 o'clock in the forenoon at
the High Court Melbourne be appointed for the attendance
of the parties by counsel before the said Justice in 25
Chambers to obtain further directions in this matter
AND IT APPEARING THAT the parties in Action No. 43 of
1947 in the New South Wales Registry between The Bank
of Australasia The Union Bank of Australia Limited and

335. Order of His Honour Mr. Justice
Dixon, made the 15th day of
December, 1947 in Action No.42
of 1947.

336. Order of His Honour Mr. Justice Dixon, made the 15th day of December, 1947 in Action No. 42 of 1947.

The English Scottish and Australian Bank Limited
plaintiffs and the defendants herein defendants and in
Action No. 44 of 1947 in the New South Wales Registry
between the State of Victoria and the Attorney-General
of the State of Victoria plaintiffs and the defendants 5
herein defendants and in Action No. 16 of 1947 in the
South Australia Registry between the State of South
Australia and the Attorney-General of the State of
South Australia plaintiffs and the defendants herein
defendants and in Action No. 1 of 1947 in the Western 10
Australia Registry between the State of Western Australia
and the Attorney-General of the State of Western Aus-
tralia plaintiffs and the defendants herein defendants
have agreed to treat such motions as the trials of such
actions respectively and that they and the parties in 15
this action desire that the said actions shall be tried
together NOW THIS COURT DOTH ORDER that the said motions
being treated as the trials of the actions they be heard
concurrently with this motion AND THIS COURT DOTH FURTHER
ORDER that until judgment is finally pronounced in this 20
action or until the further order of this Court the
defendant the Treasurer the Right Honourable Joseph
Benedict Chifley and any Minister of the Defendant the
Commonwealth of Australia or any member of the Executive
Council for the time being acting or purporting to act 25
for or on behalf of the Treasurer of the Commonwealth
of Australia be restrained from publishing or causing
or permitting to be published any notice pursuant to
sub-section (1) of Section 13 of the Banking Act 1947

336. Order of His Honour Mr. Justice Dixon, made the 15th day of December, 1947 in Action No. 42 of 1947.

337. Order of His Honour Mr. Justice Dixon, made the 15th day of December, 1947 in Action No.42 of 1947.

AND the Defendant Hugh Trail Armitage and every other person for the time being entitled by law or purporting to exercise the powers of the Governor of the Commonwealth Bank of Australia be restrained from appointing or purporting to appoint any person a director 5 of any of the plaintiff companies AND the defendant the Treasurer the Right Honourable Joseph Benedict Chifley and any Minister of the defendant the Commonwealth of Australia or any member of the Executive Council for the time being acting or purporting to act for or on behalf 10 of the Treasurer of the Commonwealth of Australia be restrained from giving or causing or permitting to be given any notice pursuant to sub-section (1) of Section 22 of the Banking Act 1947 AND the defendant the Commonwealth Bank of Australia its officers and servants be 15 restrained from requiring any of the plaintiff companies to take any action pursuant to sub-section (8) of Section 24 of the Banking Act 1947 AND the defendant the Treasurer the Right Honourable Joseph Benedict Chifley and any Minister of the Defendant the Commonwealth of Australia 20 or any member of the Executive Council for the time being acting or purporting to act for or on behalf of the Treasurer of the Commonwealth of Australia be restrained from publishing or causing or permitting to be published in the Commonwealth Gazette any notice pursuant to sub- 25 section (4) of Section 46 of the Banking Act 1947 AND the defendant Hugh Trail Armitage and every other person for the time being entitled by law or purporting to exercise the powers of the Governor of the Commonwealth

337. Order of His Honour Mr. Justice Dixon, made the 15th day of December, 1947 in Action No.42 of 1947.

338. Order of His Honour Mr. Justice
Dixon, made the 15th day of
December, 1947 in Action No. 42
of 1947.

Bank of Australia be restrained from authorising any
person to act under Section 59 of the Banking Act 1947
AND THIS COURT DOTH ALSO ORDER that costs of this Motion
incurred to date shall be costs in the cause.

BY THE COURT,

5

(L. S.)

M. DOHERTY,

DEPUTY REGISTRAR.

338. Order of His Honour Mr. Justice
Dixon, made the 15th day of
December, 1947 in Action No. 42
of 1947.

No. 28 - Order by Mr. Justice Dixon granting
Interlocutory Injunction.

IN THE HIGH COURT OF AUSTRALIA)
) No. 43 of 1947.
NEW SOUTH WALES REGISTRY.)

Between:

THE BANK OF AUSTRALASIA and 5
others

Plaintiffs

and

THE COMMONWEALTH OF AUSTRALIA 10
and others

Defendants

BEFORE HIS HONOUR MR. JUSTICE DIXON.

Monday, the 15th day of December, 1947.

UPON MOTION made this day by Counsel on behalf of the
abovenamed plaintiffs AND UPON READING the Writ of Summons 15
issued herein and the Notice of Motion dated the 28th
day of November 1947 AND UPON READING the two several
affidavits of Francis Favarger Hassetts sworn respectively
on the 28th day of November and the 12th day of December
1947 both filed herein on behalf of the plaintiffs and 20
the two several affidavits of Leslie Galfreid Melville
sworn respectively on the 8th and 15th days of December
1947 both filed herein on behalf of the defendants and
the two several affidavits of Thomas Baker Heffer and
Joseph Sydney Penell Cox sworn on the 28th day of November 25

339. Order of His Honor Mr. Justice
Dixon, made the 15th day of
December, 1947 in Action
No. 43 of 1947.

340. Order of His Honour Mr. Justice Dixon, made the 15th day of December, 1947 in Action No. 43 of 1947.

1947 and the affidavit of Sydney John Gandon sworn on the 8th day of December 1947 the three last mentioned affidavits having been filed on behalf of the plaintiffs in Action No. 42 of 1947 in the New South Wales Registry between Bank of New South Wales George Roland Love 5
Norman Burgoyne Perkins The Commercial Banking Company of Sydney Limited Edward Ritchie Knox Basil Colin Shubra Hordern The National Bank of Australasia Limited Harry Douglas Giddy Vera de Lauret Rankin The Queensland National Bank Limited (in Voluntary Liquidation) 10
Fred Pace The Commercial Bank of Australia Limited John Langley Webb Leslie Horace Ayliff White The Bank of Adelaide Sir Howard Watson Lloyd The Ballarat Banking Company Limited The Honourable James Frederick Kittson The Brisbane Permanent Building and Banking Company 15
Limited and Walter Edwin Savage plaintiffs and the defendants herein defendants AND the three several affidavits of Leslie Galfreid Melville Gordon Murray Shain and Stuart Gordon McFarlane sworn on the 8th day of December 1947 the three last mentioned affidavits 20
having been filed on behalf of the defendants in Action No. 42 of 1947 in the New South Wales Registry aforesaid and the exhibits referred to in the said affidavits AND UPON HEARING what was alleged by Mr. F.W. Kitto of King's Counsel for the plaintiffs with whom appeared 25
Mr. Alan R. Taylor of King's Counsel Mr. A. Dean of King's Counsel Mr. S. Lewis of Counsel Mr. T.W. Smith of Counsel and Mr. J.A. Spicer of Counsel AND by Mr. C.A. Weston of King's Counsel for the defendants

340. Order of His Honour Mr. Justice Dixon, made the 15th day of December, 1947 in Action No. 43 of 1947.

341. Order of His Honour Mr. Justice
Dixon, made the 15th day of
December, 1947 in Action
No. 43 of 1947.

with whom appeared Mr. H.H. Mason of King's Counsel
Mr. J.D. Holmes of Counsel and Mr. B.P. Macfarlan of
Counsel AND IT APPEARING THAT the parties have agreed
to treat the motion for an interlocutory injunction as
the trial of the action, the plaintiffs however seeking 5
protection in the meantime by way of undertaking or
interim injunction until the determination of the action
AND IT FURTHER APPEARING THAT the parties desire that
the cause should be tried before the Full Court and
that an order should be made accordingly pursuant to 10
Section 18 of the Judiciary Act 1903-1947 by the Justice
constituting this Court, but the said Justice being
of opinion that the questions arising in this action
could not be satisfactorily heard and determined upon
the abovementioned affidavits and declining to make such 15
an order unless for the purposes of the trial of the
action proof of matters of fact and of evidence relied
upon by the respective parties be made not by the said
affidavits but by other affidavits or testimony and
unless the said Justice consider that upon such last 20
mentioned affidavits or testimony the questions arising
in this action may be satisfactorily dealt with by the
Full Court AND IT FURTHER APPEARING THAT the parties are
willing to file other affidavits NOW THIS COURT DOTH
ORDER that the plaintiffs be given until Friday the 25
19th day of December 1947 including the said day to
file in this Court such affidavits as they may be advis-
ed in support of the plaintiffs' case and that the defend-
ants be given until Monday the 5th day of January 1948

341. Order of His Honour Mr. Justice
Dixon, made the 15th day of
December, 1947 in Action
No. 43 of 1947.

342. Order of His Honour Mr. Justice
Dixon, made the 15th day of
December, 1947 in Action
No. 43 of 1947.

including the said day to file such affidavits as
they may be advised in answer or in support of the
defendants' case and that the plaintiffs be given until
Monday the 12th day of January 1948 including the said
day to file such affidavits in reply as they may be 5
advised and that Thursday the 15th day of January 1948
at 10.30 o'clock in the forenoon at the High Court
Melbourne be appointed for the attendance of the par-
ties by Counsel before the said Justice in Chambers to
obtain further directions in this matter AND IT APPEARING 10
THAT the parties in Action No. 42 of 1947 in the New
South Wales Registry between Bank of New South Wales
George Roland Love Norman Burgoyne Perkins The
Commercial Banking Company of Sydney Limited Edward
Ritchie Knox Basil Colin Shubra Hordern The National 15
Bank of Australasia Limited Harry Douglas Giddy Vera de
Lauret Rankin The Queensland National Bank Limited (in
Voluntary Liquidation) Fred Pace The Commercial Bank
of Australia Limited John Langley Webb Leslie Horace
Ayliff White The Bank of Adelaide Sir Howard Watson 20
Lloyd The Ballarat Banking Company Limited The Honour-
able James Frederick Kittson The Brisbane Permanent
Building and Banking Company Limited and Walter Edwin
Savage plaintiffs and the defendants herein defendants
and in Action No. 44 of 1947 in the New South Wales 25
Registry between the State of Victoria and the Attorney-
General of the State of Victoria plaintiffs and the
defendants herein defendants and in Action No. 16 of
1947 in the South Australia Registry between the State

342. Order of His Honour Mr. Justice
Dixon, made the 15th day of
December, 1947 in Action
No. 43 of 1947.

343. Order of His Honour Mr. Justice
Dixon, made the 15th day of
December, 1947 in Action
No. 43 of 1947.

of South Australia and the Attorney-General of the
State of South Australia plaintiffs and the defendants
herein defendants and in Action No. 1 of 1947 in the
Western Australia Registry between the State of Western
Australia and the Attorney-General of the State of 5
Western Australia plaintiffs and the defendants herein
defendants have agreed to treat such motions as the
trials of such actions respectively and that they and
the parties in this action desire that the said actions
shall be tried together NOW THIS COURT DOTH ORDER that 10
the said motions being treated as the trials of the
actions they be heard concurrently with this motion
AND THIS COURT DOTH ORDER that until judgment is finally
pronounced in this action or until the further order of
this Court the Defendant the Treasurer the Right Honour- 15
able Joseph Benedict Chifley and any Minister of the
defendant the Commonwealth of Australia or any Member of
the Executive Council for the time being acting or pur-
porting to act for or on behalf of the Treasurer of the
Commonwealth of Australia be restrained from publishing 20
or causing or permitting to be published any notice
pursuant to sub-section (1) of Section 13 of the Banking
Act 1947 AND the defendant the Treasurer the Right
Honourable Joseph Benedict Chifley and any Minister
of the defendant the Commonwealth of Australia or any 25
member of the Executive Council for the time being act-
ing or purporting to act for or on behalf of the Treasur-
er of the Commonwealth of Australia be restrained from
giving or causing or permitting to be given any notice

343. Order of His Honour Mr. Justice
Dixon, made the 15th day of
December, 1947 in Action
No. 43 of 1947.

344. Order of His Honour Mr. Justice
Dixon, made the 15th day of
December, 1947 in Action
No. 43 of 1947.

pursuant to sub-section (1) of Section 22 of the Banking
Act 1947 AND the defendant the Commonwealth Bank of
Australia its officers and servants be restrained from
requiring any of the plaintiff companies to take any
action pursuant to sub-section (8) of Section 24 of 5
the Banking Act 1947 AND the defendant the Treasurer the
Right Honourable Joseph Benedict Chifley and any Minister
of the defendant the Commonwealth of Australia or any
member of the Executive Council for the time being acting
or purporting to act for or on behalf of the Treasurer 10
of the Commonwealth of Australia be restrained from
publishing or causing or permitting to be published in
the Commonwealth Gazette any notice pursuant to sub-
section (4) of Section 46 of the Banking Act 1947 AND
the defendant Hugh Trail Armitage and every other person 15
for the time being entitled by law or purporting to exer-
cise the powers of the Governor of the Commonwealth Bank
of Australia be restrained from authorising any person
to act under Section 59 of the Banking Act 1947 AND THIS
COURT DOTH ALSO ORDER that costs of this Motion incurred 20
to date shall be costs in the cause.

BY THE COURT

(L. S.)

M. DOHERTY,

DEPUTY REGISTRAR.

344. Order of His Honour Mr. Justice
Dixon, made the 15th day of
December, 1947 in Action
No. 43 of 1947.

346. Order of His Honour Mr. Justice
Dixon made the 15th day of
December, 1947 in Action No. 44
of 1947.

Action No. 42 of 1947 in the New South Wales Registry
between Bank of New South Wales George Roland Love
Norman Burgoyne Perkins The Commercial Banking Company
of Sydney Limited Edward Ritchie Knox Basil Colin
Shubra Hordern The National Bank of Australasia 5
Limited Harry Douglas Giddy Vera de Lauret Rankin
The Queensland National Bank Limited (In Voluntary
Liquidation) Fred Pace The Commercial Bank of Australia
Limited John Langley Webb Leslie Horace Ayliff White
The Bank of Adelaide Sir Howard Watson Lloyd The 10
Ballarat Banking Company Limited The Honourable James
Frederick Kittson The Brisbane Permanent Building
and Banking Company Limited and Walter Edwin Savage
plaintiffs and the defendants herein defendants AND
the two several affidavits of Francis Favarger Hassett 15
sworn respectively on the 28th day of November and the
12th day of December 1947 both filed on behalf of the
plaintiffs in Action No. 43 of 1947 in the New South
Wales Registry between The Bank of Australasia The
Union Bank of Australia Limited and The English Scottish 20
and Australian Bank Limited plaintiffs and the defend-
ants herein defendants AND the affidavit of Ferdinand
Caire Drew sworn the 28th day of November 1947 and the
exhibits referred to in the said affidavit filed on
behalf of the plaintiffs in Action No. 16 of 1947 in 25
the South Australia Registry between the State of
South Australia and the Attorney-General of the State
of South Australia plaintiffs and the defendants herein
defendants AND the affidavit of Alex James Reid sworn

346. Order of His Honour Mr. Justice
Dixon made the 15th day of
December, 1947 in Action No. 44
of 1947.

347. Order of His Honour Mr. Justice Dixon made the 15th day of December, 1947 in Action No. 44 of 1947.

on the 1st day of December 1947 and filed on behalf of the plaintiffs in Action No. 1 of 1947 in the Western Australia Registry between the State of Western Australia and the Attorney-General of the State of Western Australia plaintiffs and the defendants herein defendants 5

•AND the three several affidavits of Leslie Galfreid Melville Gordon Murray Shain and Stuart Gordon McFarlane sworn on the 8th day of December 1947 and the exhibits referred to in the said affidavits the three lastmentioned affidavits having been filed on behalf of 10 the defendants in Action No. 42 of 1947 in the New South Wales Registry aforesaid AND the two several affidavits of Leslie Galfreid Melville sworn respectively on the 8th and 15th days of December 1947 the two lastmentioned affidavits having been filed on behalf of the defendants 15 in Action No. 43 of 1947 in the New South Wales Registry aforesaid AND UPON HEARING what was alleged by Mr. E.H. Hudson of Kings Counsel for the Plaintiffs with whom appeared Mr. D.I. Menzies of Counsel and by Mr. C.A. Weston of Kings Counsel for the defendants with whom 20 appeared Mr. H.H. Mason of King's Counsel Mr. J.D. Holmes of Counsel and Mr. B.P. Macfarlan of Counsel AND IT APPEARING that the parties have agreed to treat the motion for an interlocutory injunction as the trial of the action the plaintiffs however seeking protection in 25 the meantime by way of undertaking or interim injunction until the determination of the action AND IT FURTHER APPEARING that the parties desire that the cause should be tried before the Full Court and that an order should

347. Order of His Honour Mr. Justice Dixon made the 15th day of December, 1947 in Action No.44 of 1947.

348. Order of His Honour Mr. Justice
Dixon made the 15th day of
December, 1947 in Action No.44
of 1947.

be made accordingly pursuant to Section 18 of the Judiciary
Act 1903-1947 by the Justice constituting this Court, but
the said Justice being of opinion that the questions aris-
ing in this action could not be satisfactorily heard and
determined upon the abovementioned affidavits and declin- 5
ing to make such an order unless for the purposes of the
trial of the action proof of matters of fact and of evid-
ence relied upon by the respective parties be made not
by the said affidavits but by other affidavits or testimony
and unless the said Justice consider that upon such last- 10
mentioned affidavits or testimony the questions arising
in this action may be satisfactorily dealt with by the
Full Court AND IT FURTHER APPEARING that the parties are
willing to file other affidavits NOW THIS COURT DOTH
ORDER that the plaintiffs be given until Friday the 19th 15
day of December 1947 including the said day to file in
this Court such affidavits as they may be advised in
support of the plaintiffs' case and that the defendants
be given until Monday the 5th day of January 1948
including the said day to file such affidavits as they 20
may be advised in answer or in support of the defendants'
case and that the plaintiffs be given until Monday the
12th day of January 1948 including the said day to file
such affidavits in reply as they may be advised and that
Thursday the 15th day of January 1948 at 10.30 o'clock 25
in the forenoon at the High Court Melbourne be appointed
for the attendance of the parties by Counsel before the
said Justice in Chambers to obtain further directions in
this matter AND IT APPEARING that the parties in Actions

348. Order of His Honour Mr. Justice
Dixon made the 15th day of
December, 1947 in Action No. 44
of 1947.

349. Order of His Honour Mr. Justice
Dixon made the 15th day of
December, 1947 in Action No. 44
of 1947.

Nos. 42 and 43 of 1947 aforesaid in the New South Wales
Registry and in Action No. 16 of 1947 aforesaid in the
South Australia Registry and in Action No. 1 of 1947
aforesaid in the Western Australia Registry have agreed
to treat such motions as the trials of such actions res- 5
pectively and that they and the parties in this action
desire that the said actions shall be tried together
NOW THIS COURT DOTH ORDER that the said motions being
treated as the trials of the actions they be heard con-
currently with this motion AND THIS COURT DOTH FURTHER 10
ORDER that until judgment is finally pronounced in
this action or until the further Order of this Court the
defendant the Treasurer The Right Honourable Joseph
Benedict Chifley and any Minister of the defendant the
Commonwealth of Australia or any member of the Executive 15
Council for the time being acting or purporting to act
for or on behalf of the Treasurer of the Commonwealth of
Australia be restrained from publishing or causing or
permitting to be published any notice pursuant to sub-
section (1) of Section 13 of the Banking Act 1947 AND 20
the defendant Hugh Trail Armitage and every other person
for the time being entitled by law or purporting to exer-
cise the powers of the Governor of the Commonwealth Bank
of Australia be restrained from appointing or purporting
to appoint any person a director of any of the Companies 25
who are plaintiffs in Action No. 42 of 1947 aforesaid AND
the Defendant the Treasurer the Right Honourable Joseph
Benedict Chifley and any Minister of the defendant the
Commonwealth of Australia or any member of the Executive

349. Order of His Honour Mr. Justice
Dixon made the 15th day of
December, 1947 in Action No. 44
of 1947.

350. Order of His Honour Mr. Justice
Dixon made the 15th day of
December, 1947 in Action No. 44
of 1947.

Council for the time being acting or purporting to act
for or on behalf of the Treasurer of the Commonwealth of
Australia be restrained from giving or causing or per-
mitting to be given any notice pursuant to sub-section (1)
of Section 22 of the Banking Act 1947 AND the defendant 5
the Commonwealth Bank of Australia its officers and ser-
vants be restrained from requiring any of the companies
who are plaintiffs in Actions Nos. 42 and 43 of 1947
aforesaid to take any action pursuant to sub-section (8)
of Section 24 of the Banking Act 1947 AND the defendant 10
the Treasurer the Right Honourable Joseph Benedict
Chifley and any Minister of the defendant the Common-
wealth of Australia or any member of the Executive
Council for the time being acting or purporting to act
for or on behalf of the Treasurer of the Commonwealth of 15
Australia be restrained from publishing or causing or
permitting to be published in the Commonwealth Gazette
any notice pursuant to sub-section (4) of Section 46 of
the Banking Act 1947 AND THIS COURT DOTH ALSO ORDER that
the costs of this Motion incurred to date shall be costs 20
in the cause.

BY THE COURT,

(L. S.)

M. DOHERTY,

DEPUTY REGISTRAR.

350. Order of His Honour Mr. Justice
Dixon made the 15th day of
December, 1947 in Action No. 44
of 1947.

352. Order of His Honour Mr. Justice
Dixon made the 15th day of
December, 1947 in Action No.
16 of 1947.

Limited Edward Ritchie Knox Basil Colin Shubra Hordern
The National Bank of Australasia Limited Harry Douglas
Giddy Vera de Lauret Rankin The Queensland National
Bank Limited (in Voluntary Liquidation) Fred Pace The
Commercial Bank of Australia Limited John Langley Webb 5
Leslie Horace Ayliff White The Bank of Adelaide Sir
Howard Watson Lloyd The Ballarat Banking Company Limited
The Honourable James Frederick Kittson The Brisbane
Permanent Building and Banking Company Limited and Walter
Edwin Savage Plaintiffs and the Defendants herein 10
Defendants AND the two several affidavits of Francis
Favarger Hassett sworn respectively on the 28th day of
November and the 12th day of December 1947 both filed
on behalf of the Plaintiffs in Action No. 43 of 1947 in
the New South Wales Registry between The Bank of 15
Australasia The Union Bank of Australia Limited and
The English Scottish and Australian Bank Limited
Plaintiffs and the Defendants herein Defendants AND
the two several affidavits of Arthur Tennyson Smithers
and Norman Rees Williams both sworn on the 28th day of 20
November 1947 and the exhibit to the affidavit of the
said Arthur Tennyson Smithers filed on behalf of the
Plaintiffs in Action No. 44 of 1947 in the New South Wales
Registry between the State of Victoria and the Attorney-
General of the State of Victoria Plaintiffs and the 25
Defendants herein Defendants AND the affidavit of
Alex James Reid sworn on the 1st day of December 1947
and filed on behalf of the Plaintiffs in Action No. 1
of 1947 in the Western Australia Registry between the
State of Western Australia and the Attorney-General of

352. Order of His Honour, Mr. Justice
Dixon made the 15th day of
December, 1947 in Action No.
16 of 1947.

353. Order of His Honour, Mr. Justice
Dixon made the 15th day of
December, 1947 in Action No.
16 of 1947.

the State of Western Australia Plaintiffs and the Defen-
dants herein Defendants AND the three several affidavits
of Leslie Galfreid Melville Gordon Murray Shain and
Stuart Gordon McFarlane sworn on the 8th day of December
1947 and the exhibits referred to in the said affidavits 5
the three lastmentioned affidavits having been filed on
behalf of the Defendants in Action No. 42 of 1947 in
the New South Wales Registry aforesaid and the two
several affidavits of the said Leslie Galfreid Melville
sworn respectively on the 8th and 15th days of December 10
1947 the two last-mentioned affidavits having been filed
on behalf of the Defendants in Action No. 43 of 1947 in
the New South Wales Registry aforesaid AND UPON HEARING
what was alleged by Mr. H.J.H. Henchman of counsel for
the Plaintiffs and by Mr. C.A. Weston of King's Counsel 15
for the Defendants with whom appeared Mr. H.H. Mason of
King's Counsel, Mr. J.D. Holmes of Counsel and Mr. B.P.
Macfarlan of Counsel AND IT APPEARING that the parties
have agreed to treat the motion for an interlocutory
injunction as the trial of the action, the Plaintiffs 20
however seeking protection in the meantime by way of
undertaking or interim injunction until the determination
of the action AND IT FURTHER APPEARING that the parties
desire that the cause should be tried before the Full
Court and that an order should be made accordingly 25
pursuant to Section 18 of the Judiciary Act 1903-1947
by the Justice constituting this Court, but the said
Justice being of opinion that the questions arising
in this action could not be satisfactorily heard and

353. Order of His Honour, Mr. Justice
Dixon made the 15th day of
December, 1947 in Action No.
16 of 1947.

354. Order of His Honour, Mr. Justice
Dixon made the 15th day of
December, 1947 in Action No.
16 of 1947.

determined upon the abovementioned affidavits and declining to make such an order unless for the purposes of the trial of the action proof of matters of fact and of evidence relied upon by the respective parties be made not by the said affidavits but by other affidavits or testimony and unless the said Justice consider that upon such lastmentioned affidavits or testimony the questions arising in this action may be satisfactorily dealt with by the Full Court AND IT FURTHER APPEARING that the parties are willing to file other affidavits NOW THIS COURT DOTH ORDER that the Plaintiffs be given until Friday the 19th day of December 1947 including the said day to file in this Court such affidavits as they may be advised in support of the Plaintiffs' case and that the Defendants be given until Monday the 5th day of January 1948 including the said day to file such affidavits as they may be advised in answer or in support of the Defendants' case and that the Plaintiffs be given until Monday the 12th day of January 1948 including the said day to file such affidavits in reply as they may be advised and that Thursday the 15th day of January 1948 at 10.30 o'clock in the forenoon at the High Court Melbourne be appointed for the attendance of the parties by counsel before the said Justice in Chambers to obtain further directions in this matter AND IT APPEARING that the parties in Actions Nos. 42, 43 and 44 of 1947 aforesaid in the New South Wales Registry and in Action No. 1 of 1947 aforesaid in the Western Australia Registry have agreed to treat such motions as the trials of such actions respectively and that they and the parties in

354. Order of His Honour, Mr. Justice
Dixon made the 15th day of
December, 1947 in Action No.
16 of 1947.

355. Order of His Honour, Mr. Justice
Dixon made the 15th day of
December, 1947 in Action No.
16 of 1947.

this action desire that the said actions shall be tried
together NOW THIS COURT DOTH ORDER that the said motions
being treated as the trials of the actions they be heard
concurrently with this motion AND THIS COURT DOTH FURTHER
ORDER that until judgment is finally pronounced in this 5
action or until the further Order of this Court the
Defendant the Treasurer the Right Honourable Joseph
Benedict Chifley and any Minister of the Defendant the
Commonwealth of Australia or any member of the Executive
Council for the time being acting or purporting to act 10
for or on behalf of the Treasurer of the Commonwealth of
Australia be restrained from publishing or causing or
permitting to be published any notice pursuant to sub-
section (1) of Section 13 of the Banking Act 1947 AND
the Defendant Hugh Trail Armitage and every other person 15
for the time being entitled by law or purporting to exer-
cise the powers of the Governor of the Commonwealth Bank
of Australia be restrained from appointing or purporting
to appoint any person a director of any of the companies
who are Plaintiffs in Action No. 42 of 1947 aforesaid 20
AND the Defendant the Treasurer the Right Honourable
Joseph Benedict Chifley and any Minister of the Defendant
the Commonwealth of Australia or any member of the
Executive Council for the time being acting or purporting
to act for or on behalf of the Treasurer of the Common- 25
wealth of Australia be restrained from giving or causing
or permitting to be given any notice pursuant to sub-
section (1) of Section 22 of the Banking Act 1947 AND
the Defendant the Commonwealth Bank of Australia its
officers and servants be restrained from requiring any 30

355. Order of His Honour, Mr. Justice
Dixon made the 15th day of
December, 1947 in Action No.
16 of 1947.

356. Order of His Honour, Mr. Justice
Dixon made the 15th day of
December, 1947 in Action No.
16 of 1947.

of the companies who are plaintiffs in Actions Nos. 42 and
43 of 1947 aforesaid to take any action pursuant to sub-
section (8) of Section 24 of the Banking Act 1947 AND
the Defendant the Treasurer the Right Honourable Joseph
Benedict Chifley and any Minister of the Defendant the 5
Commonwealth of Australia or any Member of the Executive
Council for the time being acting or purporting to act
for or on behalf of the Treasurer of the Commonwealth of
Australia be restrained from publishing or causing or
permitting to be published in the Commonwealth Gazette 10
any notice pursuant to sub-section (4) of Section 46 of
the Banking Act 1947 AND THIS COURT DOTH ALSO ORDER that
the costs of this Motion incurred to date shall be costs
in the cause.

By the Court 15

(L. S.)

M. DOHERTY

Deputy Registrar.

356. Order of His Honour, Mr. Justice
Dixon made the 15th day of
December, 1947 in Action No.
16 of 1947.

358. Order of His Honour Mr. Justice Dixon made the 15th day of December, 1947 in Action No. 1 of 1947.

Rankin The Queensland National Bank Limited (in Voluntary Liquidation) Fred Pace The Commercial Bank of Australia Limited John Langley Webb Leslie Horace Ayliff White The Bank of Adelaide Sir Howard Watson Lloyd The Ballarat Banking Company Limited The Honourable James Frederick Kittson The Brisbane Permanent Building and Banking Company Limited and Walter Edwin Savage plaintiffs and the defendants herein defendants AND the two several affidavits of Francis Favarger Hassetts sworn respectively on the 28th day of November and the 12th day of December 1947 both filed on behalf of the plaintiffs in Action No. 43 of 1947 in the New South Wales Registry between The Bank of Australasia The Union Bank of Australia Limited and The English Scottish and Australian Bank Limited plaintiffs and the defendants herein defendants AND the two several affidavits of Arthur Tennyson Smithers and Norman Rees Williams both sworn on the 28th day of November 1947 and the exhibit to the affidavit of the said Arthur Tennyson Smithers filed on behalf of the plaintiffs in Action No. 44 of 1947 in the New South Wales Registry between the State of Victoria and the Attorney-General of the State of Victoria plaintiffs and the defendants herein defendants AND the affidavit of Ferdinand Caire Drew sworn the 28th day of November 1947 and the exhibits referred to in the said affidavit filed on behalf of the plaintiffs in Action No. 16 of 1947 in the South Australia Registry between the State of South Australia and the Attorney-General of the State of South Australia plaintiffs and the defendants herein defendants AND the three several affidavits of Leslie Galfreid Melville Gordon Murray Shain and Stuart

358. Order of His Honour Mr. Justice Dixon made the 15th day of December, 1947 in Action No. 1 of 1947.

359. Order of His Honour Mr. Justice
Dixon made the 15th day of
December, 1947 in Action No. 1
of 1947.

Gordon McFarlane sworn on the 8th day of December, 1947
and the exhibits referred to in the said affidavits the
three lastmentioned affidavits having been filed on be-
half of the defendants in Action No. 42 of 1947 in the
New South Wales Registry aforesaid and the two several 5
affidavits of the said Leslie Galfreid Melville sworn
respectively on the 8th and 15th days of December 1947 the
two lastmentioned affidavits having been filed on behalf
of the defendants in Action No. 43 of 1947 in the New
South Wales Registry aforesaid AND UPON HEARING what 10
was alleged by Mr. H.J. Henchman of Counsel for the
plaintiffs and by Mr. C.A. Weston of King's Counsel for
the defendants with whom appeared Mr. H.H. Mason of King's
Counsel Mr. J.D. Holmes of Counsel and Mr. B.P. Macfarlan
of Counsel AND IT APPEARING that the parties have agreed 15
to treat the motion for an interlocutory injunction as the
trial of the action, the plaintiffs however seeking pro-
tection in the meantime by way of undertaking or interim
injunction until the determination of the action AND IT
FURTHER APPEARING that the parties desire that the cause 20
should be tried before the Full Court and that an order
should be made accordingly pursuant to Section 18 of the
Judiciary Act 1903-1947 by the Justice constituting this
Court, but the said Justice being of opinion that the
questions arising in this action could not be satisfact- 25
orily heard and determined upon the abovementioned affi-
davits and declining to make such an order unless for the
purposes of the trial of the action proof of matters of
fact and of evidence relied upon by the respective parties
be made not by the said affidavits but by other affidavits 30

359. Order of His Honour Mr. Justice
Dixon made the 15th day of
December, 1947 in Action No. 1
of 1947.

360. Order of His Honour Mr. Justice Dixon made the 15th day of December, 1947 in Action No. 1 of 1947.

or testimony and unless the said Justice consider that upon such lastmentioned affidavits or testimony the questions arising in this action may be satisfactorily dealt with by the Full Court AND IT FURTHER APPEARING that the parties are willing to file other affidavits 5
NOW THIS COURT DOETH ORDER that the plaintiffs be given until Friday the 19th day of December, 1947 including the said day to file in this Court such affidavits as they may be advised in support of the plaintiffs' case and that the defendants be given until Monday the 5th 10
day of January 1948 including the said day to file such affidavits as they may be advised in answer or in support of the defendants' case and that the plaintiffs be given until Monday the 12th day of January 1948 including the said day to file such affidavits in reply as they may be 15
advised and that Thursday the 15th day of January 1948 at 10.30 o'clock in the forenoon at the High Court Melbourne be appointed for the attendance of the parties by Counsel before the said Justice in Chambers to obtain further directions in this matter AND IT APPEARING that the parties 20
in Actions Nos. 42, 43 and 44 of 1947 aforesaid in the New South Wales Registry and in Action No. 16 of 1947 aforesaid in the South Australia Registry have agreed to treat such motions as the trials of such actions respectively and that they and the parties in this action desire 25
that the said actions shall be tried together NOW THIS COURT DOETH ORDER that the said motions being treated as the trials of the actions they be heard concurrently with this motion AND THIS COURT DOETH FURTHER ORDER that until judgment is finally pronounced in this action or until the further 30

360. Order of His Honour Mr. Justice Dixon made the 15th day of December, 1947 in Action No. 1 of 1947.

361. Order of His Honour Mr. Justice Dixon made the 15th day of December, 1947 in Action No. 1 of 1947.

Order of this Court the defendant the Treasurer the Right Honourable Joseph Benedict Chifley and any Minister of the defendant the Commonwealth of Australia or any member of the Executive Council for the time being acting or purporting to act for or on behalf of the Treasurer of the Commonwealth of Australia be restrained from publishing or causing or permitting to be published any notice pursuant to sub-section (1) of Section 13 of the Banking Act 1947 AND the defendant Hugh Trail Armitage and every other person for the time being entitled by law or purporting to exercise the powers of the Governor of the Commonwealth Bank of Australia be restrained from appointing or purporting to appoint any person a director of any of the Companies who are plaintiffs in Action No. 42 of 1947 aforesaid AND the defendant the Treasurer the Right Honourable Joseph Benedict Chifley and any Minister of the defendant the Commonwealth of Australia or any member of the Executive Council for the time being acting or purporting to act for or on behalf of the Treasurer of the Commonwealth of Australia be restrained from giving or causing or permitting to be given any notice pursuant to sub-section (1) of Section 22 of the Banking Act 1947 AND the defendant the Commonwealth Bank of Australia its officers and servants be restrained from requiring any of the companies who are plaintiffs in actions Nos. 42 and 43 of 1947 aforesaid to take any action pursuant to sub-section (8) of Section 24 of the Banking Act 1947 AND the defendant the Treasurer the Right Honourable Joseph Benedict Chifley and any Minister of the defendant the Commonwealth of Australia or any member of the Executive Council for the

361. Order of His Honour Mr. Justice Dixon made the 15th day of December, 1947 in Action No. 1 of 1947.

362. Order of His Honour Mr. Justice
Dixon made the 15th day of
December, 1947 in Action No. 1
of 1947.

time being acting or purporting to act for or on behalf
of the Treasurer of the Commonwealth of Australia be
restrained from publishing or causing or permitting to
be published in the Commonwealth Gazette any notice pur-
suant to sub-section (4) of Section 46 of the Banking 5
Act 1947 AND THIS COURT DOTH ALSO ORDER that the costs
of this Motion incurred to date shall be costs in the
cause.

BY THE COURT

M. DOHERTY (L. S.) 10
Deputy Registrar.

362. Order of His Honour Mr. Justice
Dixon made the 15th day of
December, 1947 in Action No. 1
of 1947.