

G ~~D.H.G.B.~~ <sup>PC</sup>

20, 1952

31490 No. 8 of 1952.

# In the Privy Council.

## ON APPEAL FROM THE HIGH COURT OF AUSTRALIA.

UNIVERSITY OF LONDON  
W.C.1.  
21 JUL 1952  
INSTITUTED  
LEGAL STUDIES

IN THE MATTER of The Companies  
(Queensland)

AND

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

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AND

IN THE MATTER of an Application by FRED PACE as Liquidator  
of THE QUEENSLAND NATIONAL BANK LIMITED (in Voluntary  
Liquidation) for an Order under Section 258 of the said  
Acts to determine questions arising in the winding up of the  
said THE QUEENSLAND NATIONAL BANK LIMITED.

BETWEEN

THE NATIONAL BANK OF AUSTRALASIA LIMITED *Appellant*

AND

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

AND

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

which was at the date of issue thereof registered on the said London register but had been at an intermediate period registered on a register of stock kept by the said Bank in Australia

AND

FRED PACE as Liquidator of the said THE QUEENSLAND  
NATIONAL BANK LIMITED . . . . . Respondents.

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## Case for the Appellant.

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RECORD.

1. This is an appeal by special leave from so much of the judgments and order of the High Court of Australia dated the 19th day of March 10 1951 (Dixon, Williams, Webb and Fullagar J.J., Latham C.J. dissenting) as dismissed in part the Appellant's appeal and allowed the cross-appeal of the Respondent The National Mutual Life Association of Australasia Limited from an order of Macrossan C.J. in the Supreme Court of Queensland dated the 16th day of November 1949 determining questions arising in the winding up of The Queensland National Bank Limited (in Voluntary Liquidation) (hereinafter called "The Bank").

Vol. 1, p. 79.

2. Fred Pace of Indooroopilly near Brisbane in the State of Queensland as Liquidator of the Bank moved the Supreme Court of Queensland for the determination in the events hereinafter appearing 20 of certain questions arising in the winding up of the Bank.

Vol. 1, p. 6.

3. Upon the hearing of the said motion before the Supreme Court of Queensland evidence was taken on affidavit. The following is a summary of the facts proved at such hearing as to which there was no dispute between any of the parties represented thereat.

4. In 1872 the Bank was incorporated as a limited liability company in Queensland. In 1878, pursuant to Queensland legislation authorising the Bank in that behalf, a register of shareholders in the Bank was opened in London. In that year also an office of the Bank was opened in London. A local board of directors in London was appointed with powers delegated 30 by the Bank. The functions of the London branch were mainly to provide the Bank's customers in Australia with facilities for financing their overseas purchases and sales, and to finance the overseas transactions of the Queensland Government. Little ordinary banking business was done, but the Bank appointed agents in England, Scotland and Ireland who negotiated for fixed deposits which were received and accepted at that branch. In March 1891 the Bank held more than £4,000,000 on fixed deposit in London, and in March 1893 it so held more than £2,970,000.

Vol. 1, p. 16, C8-13.

Vol. 1, p. 16, C38.

Vol. 1, p. 17, C14.

Vol. 1, p. 17, C22-26.

Vol. 1, p. 17, CC14-21.

Vol. 1, p. 18, C25.

5. On 15th May, 1893, the Bank suspended payment. Petitions to wind the Bank up were presented in Queensland, in New South Wales 40

Vol. 1, p. 18, C33.

Vol. 1, p. 19, C11.

Vol. 1, p. 21, C13.

Vol. 1, p. 22, C11.

- and in England. On 3rd July, 1893, a scheme of arrangement (hereinafter called "the old scheme") as between the Bank and its creditors was sanctioned by the Supreme Court of Queensland. On that date the Bank owed to the Queensland Government more than £2,000,000 and owed to creditors other than the said Government, in England £2,897,000, in New South Wales £110,000 and in Queensland £1,860,000. On 11th August, 1893, the same scheme was sanctioned by the Supreme Court of New South Wales and on 12th September, 1893, the same scheme was sanctioned by the High Court of Justice in England. In every case, in liquidation proceedings commenced in such Court. Before the scheme was sanctioned it had been assented to by the requisite statutory percentages of creditors at meetings held at Brisbane, Sydney and London.
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6. The old scheme provided that the debt owing to the Queensland Government was to be paid in full in terms of an agreement between the Bank and the Government, and that creditors other than the Government were to accept, in satisfaction and discharge of their claims against the Bank, certain securities described in the scheme as deposit receipts, negotiable deposit receipts and inscribed deposit stock (hereinafter called "the said securities"). The said securities and interest thereon at 4½ per cent. per annum, were payable (except as to inscribed deposit stock, which was payable only at the option of the Bank) at the office of the Bank at which the debts in exchange for which they were accepted were payable.
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7. Early in the year 1896 it appeared to the Bank that it would be unable to carry out the provisions of the old scheme, and after discussion with creditors in Great Britain and in Australia in that year and in 1897 a new scheme of arrangement (hereinafter called "the new scheme") was approved by a meeting of creditors, being holders of the said securities, held at Brisbane pursuant to an order of the Supreme Court of Queensland. On 12th May, 1897, the new scheme was sanctioned by the Supreme Court of Queensland.
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8. On 15th April, 1897, the Supreme Court of New South Wales sanctioned the new scheme as, and in the terms, sanctioned by the Supreme Court of Queensland, the same having been agreed to by a meeting in New South Wales of the creditors of the Bank, being holders of the said securities.
9. No proceedings to wind up the Bank were commenced either in Queensland or in New South Wales, as under the laws of such colonies by reason of amendments made since 1893 an order could there be made sanctioning such a scheme of arrangement without winding up proceedings being in existence.
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10. On 17th May, 1897, the Bank petitioned the High Court of Justice in England for a winding up order and attached to the petition a copy of the new scheme. On 27th May, 1897, the High Court of Justice ordered that the Bank be wound up, and ordered a meeting of creditors, being holders of the said securities, to be held in London. The meeting was held and approved the new scheme and thereupon the High Court of Justice on 4th June, 1897, sanctioned the new scheme as, and in the terms, sanctioned by the Supreme Court of Queensland.

Vol. 1, p. 21, C1.  
 Vol. 2, pp. 146-149.  
 Vol. 1, p. 23, CC82-42.  
 Vol. 1, p. 21, C41.  
 Vol. 2, p. 162, C23.  
 Vol. 1, p. 23, C21.

Vol. 2, pp. 146-149.

Vol. 1, p. 25, C45.  
 Vol. 2, pp. 215-217.

Vol. 1, p. 26, CC83-88.

Vol. 1, p. 26, C41.

Vol. 1, p. 27, C30.  
 Vol. 2, p. 244.

By reason of  
 Amendment made  
 since 1893.

Vol. 1, p. 27, C37.  
 Vol. 2, pp. 278-281.

Vol. 1, p. 28, C11.  
 Vol. 2, pp. 273-274.

Vol. 1, p. 28, C38.  
 Vol. 2, pp. 245-256.

## 11. The new scheme was as follows :—

## FIRST PART.

## COPY OF NEW SCHEME OF ARRANGEMENT.

Interpretation.

1. In this Scheme, and in the Schedule hereto, unless there is something in the subject or context inconsistent therewith, the following terms shall have the meanings set against the same respectively, that is to say :—

“ The Government.”—Her Majesty’s Government of Queensland.

“ Court.”—The Supreme Court of Queensland. 10

“ The Bank.”—The Queensland National Bank Limited.

“ The Old Agreement.”—The Agreement dated the 20th day of September, 1893, and made between the Honourable Hugh Muir Nelson, The Treasurer of Queensland, for and on behalf of the Government of the one part and the Bank of the other part.

“ Stock ” or “ the Stock.”—Interminable Inscribed Deposit Stock of the Bank created in pursuance of Clause 3 of this Scheme.

“ The said securities.”—Deposit Receipts, Negotiable 20  
Deposit Receipts, with the coupons appertaining thereto, and Inscribed Deposit Stock issued or given to creditors of the Bank under or in pursuance of the Scheme of Arrangement made between the Bank and its creditors, and sanctioned by the Supreme Court of Queensland on the 31st day of July, 1893, or which are now held by the Bank on behalf of such creditors, or as security for any advances made to them by the Bank, and all other similar documents held by creditors of the Bank at the date of the said last-mentioned 30  
Scheme, and which have not been surrendered in exchange for any of the said securities under or in pursuance of the terms of such Scheme.

Words importing the singular number only include the plural and *vice versa*.

Words importing the masculine gender include the feminine. And words importing persons include corporations *mutatis mutandis*.

Provision for debts owing by the Bank to the Government under the terms of the old agreement.

2. Subject to the provisions of this Scheme, the Government (without prejudice to any preferential rights which it may possess) 40 shall accept in full satisfaction and discharge of all principal moneys and interest owing or to become owing by the Bank to the Government under the terms of the old agreement—(A) A sum equal to 15s. in the £ upon the amount of such principal moneys

10 which said sum of 15s. in the £ (unless sooner paid at the option of the Bank as hereinafter provided) shall be payable in five equal annual instalments commencing on the 1st day of July, 1917, and shall carry interest from and after the 31st day of March, 1897, at the rate of  $3\frac{1}{2}$  per cent. per annum provided that the amount for the time being payable for interest shall never be less than the minimum amount prescribed by The Queensland National Bank Limited (Agreement) Act of 1896 with reference to an agreement made under the authority of that Act; and (B) A further sum

10 equal to 5s. in the £ upon the amount of such principal moneys as aforesaid, which said sum of 5s. in the £ shall be payable out of such part of the half-yearly profits of the Bank as hereinafter provided, and shall not carry any interest: Provided that, if the said sum of 5s. in the £ should not be sooner paid out of such profits as aforesaid or otherwise at the option of the Bank as hereinafter provided, the same or so much thereof as for the time being remains unpaid shall become and be payable on the 1st day of July, 1921.

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

Creation of stock.

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

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

Acceptance of stock in exchange for securities.

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

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

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

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

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

Time at which  
stock becomes  
payable.

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

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Conditions of  
issue of stock.

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

Applications of  
profits in  
payment of  
bonus, &c.

7. The balance of profits arising from the business of the Bank in each half-year after setting aside out of such profits such sum as the Directors may think proper to meet contingencies, shall be dealt with in manner following, that is to say :—

- (1) Twenty-five per cent. of such balance shall be paid to the Government until the sum of 5s. in the £ in clause 2 hereinbefore referred to has been duly paid.
- (2) Fifty per cent. of such balance, or after payment to the Government of the sum of 5s. in the £ as aforesaid 75 per cent. of such balance, shall be carried to a special fund, and shall from time to time and at such time or times as the Directors may think fit be paid and distributed to and amongst the registered holders of stock rateably until an aggregate amount or bonus equal to 5s. in the £ upon the principal moneys secured or represented by the said securities has been made good out of such balance of profits as aforesaid, and thereafter shall be applied in payment to the Government of any moneys payable to the Government under the terms of this Scheme :

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Provided that all moneys carried to such special fund as aforesaid may, until the application thereof in manner hereinbefore provided be invested in the public stock funds or securities of the Government.

And provided further that after the sum of 5s. in the £ hereinbefore referred to has been made good to the Government and the registered holders of stock respectively, and after the sum of 15s. in the £ payable to the Government under the terms of this Scheme, and all interest payable in respect thereof, has been duly paid, such 75 per cent. of such balance of profits as aforesaid may be dealt with in any manner authorised by the regulations of the Bank for the time being in force.

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- (3) The remaining 25 per cent. of such balance of profits, as aforesaid, shall, during a period of at least ten years from the 31st day of March, 1897, be carried to the ordinary reserve fund of the Bank, and after the expiration of such period may be dealt with in any manner authorised by the regulations of the Bank for the time being in force.

Option for  
Bank to pay  
off Government  
before time  
fixed for  
payment.

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8. The Bank may from time to time, and at any time after the expiration of five years from the date when this Scheme is finally sanctioned by the Court, and after giving to the Treasurer six calendar months' notice of its intention so to do, pay off the said sum of 15s. in the £ payable to the Government under the terms of this Scheme or any part thereof, notwithstanding that the time for such payment has not arrived, together with all interest for the time being due in respect of the moneys so paid off, and together also with the whole or a proportionate part (as the case may be) of the said sum of 5s. in the £ in clause 2 hereinbefore referred to, unless such sum of 5s. in the £ or such proportionate part thereof as aforesaid has been previously paid out of such profits as aforesaid, and therefrom interest shall cease to be payable upon the said sum of 15s. in the £ or so much thereof as shall be so paid off as aforesaid.

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Provided that the amount repaid to the Government at any one time shall not be less than £25,000.

New business.

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9. Save as in Clause 2 otherwise provided with reference to any preferential rights which the Government may possess, all debts in respect of any current account or fixed deposit which are for the time being owing by the Bank to any creditor, and for the payment whereof provision is not made by the preceding clauses of this Scheme, shall, in the event of the Bank being wound up, be payable in priority to all moneys owing or to become owing under the terms of this Scheme.

Redemption  
of stock.

10. At any time after payment by the Bank to the Government of the said sum of 15s. in the £ payable under the terms of this Scheme, together with all interest payable in respect thereof, and together also with the said sum of 5s. in the £ in Clause 2 hereinbefore referred to, the Bank may give to the registered holders of the said stock or any of them six calendar

months' notice of its intention to redeem the stock held by them, or any portion thereof, at its market value, but at not less than its par value, together with 5s. in the £ upon the amount of the principal moneys secured or represented by the said securities in exchange for which such stock was allotted, or so much of such 5s. in the £ as has not been previously paid out of such profits as aforesaid.

At the expiration of such notice every registered holder of stock to whom such notice is given shall be bound to surrender to the Bank to be cancelled the amount of his stock which is to be so redeemed, and also to deliver up his certificate of stock for cancellation; and the Bank shall thereupon pay to the registered holder of such stock the redemption money therefor calculated at the price aforesaid, together with all interest for the time being due in respect of such stock. Such surrender delivery and payment shall be made at the office of the Bank at which such stock is registered. 10

For the purposes of this clause any notice may be given to a registered holder of stock by sending the same through the post in a prepaid letter addressed to such holder at his registered place of address, and any notice so given shall be deemed to have reached the holder of such stock on the day on which in the ordinary course of post the same should have been delivered at such address. 20

On the expiration of such notice interest shall cease to be payable in respect of the stock so to be redeemed as aforesaid and the registered holder of such stock shall cease to be entitled to the benefit of Clause 7 of this Scheme in respect thereof.

All stock so redeemed shall be cancelled, and the Bank shall not be at liberty to issue any stock in substitution therefor. 30

Restriction upon payment of dividends.

11. No dividend shall be payable until the sum of 5s. in the £ hereinbefore referred to has been made good to the Government and the registered holders of stock respectively, and no larger dividend than a dividend at the rate of  $3\frac{1}{2}$  per cent. per annum shall be payable until all moneys payable to the Government under the terms of this Scheme shall have been duly paid.

Election of four Directors by holders of stock.

12. As soon as proper provisions in that behalf can be made in the Articles of Association, and so long as stock to the amount of £500,000 is unredeemed, one member of the London Board of Directors shall be appointed by the registered holders of stock and need not be a member or shareholder of the Bank, and the Board of Directors of the Bank at Brisbane shall consist of five persons, three of whom shall be elected by the registered holders of the said stock, and need not be members or shareholders of the Bank; and for the purpose of electing such last-mentioned Directors the registered holders of stock shall be entitled to have 40



notice of and to attend meetings of the Bank at which such Directors are to be elected, and to vote in person or by proxy according to the following scale, that is to say :—

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

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

20 Reduction of capital.

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

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

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Alteration of Articles of Association.

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

Incorporation of provisions of the Queensland National Bank Limited (Agreement) Act of 1896.

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

## SECOND PART.

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### COPY OF SCHEDULE TO NEW SCHEME OF ARRANGEMENT.

Register of stock.

1. Registers of Stock will be kept by the Bank at its Head Office in Brisbane, or at its Branch Offices in Queensland, Sydney, or London (as the case may be), at which the securities

in exchange for which such Stock was allotted were at the time of such allotment payable, or at the office of the Bank to which such Stock may be transferred in manner hereinafter provided.

Nature of register.

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

- (A) The names, addresses and descriptions of the registered holders for the time being of such Stock ;
- (B) The particulars and amount of the Stock held by every such registered holder ; and
- (C) The date at which every such registered holder was entered in the Register in respect of the Stock standing in his name, or any part thereof. 10

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

Transfer from one register to another.

3. The registered holder of any Stock may, upon application in writing addressed to the Manager at the office where such Stock is registered, require that the registration of such Stock shall, at his cost and expense, be transferred to the Register kept at any other office ; and upon such transfer being effected the said Stock shall be deemed to be registered at the last-mentioned office. 20

No notice of trusts.

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

Certificates.

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

Form of Certificate.

THE QUEENSLAND NATIONAL BANK LIMITED.

Interminable Inscribed Deposit Stock.

No. . . . . £ . . . . . 30  
 Bearing interest at the rate of  $3\frac{1}{2}$  per cent. per annum, payable on the 31st day of March and the 30th day of September in each year.

This is to certify that  
 of  
 is the registered holder of . . . . . of the above Stock,  
 which Stock is constituted pursuant to the provisions of the Scheme of Arrangement sanctioned by the Supreme Court of Queensland on the 12th day of May, 1897, and is issued subject to the provisions and conditions therein, and in the Schedule thereto respectively contained. 40

Mode of issuing.

6. Every Certificate of Stock registered at the Head Office of the Bank in Brisbane shall be given under the seal of the Bank, and every Certificate of Stock registered at the London Office shall be given under the duplicate seal of the Bank, and every Certificate of Stock registered at any other office shall be signed by the Manager and countersigned by the Accountant of the branch of the Bank at the office at which such Stock is so registered.

10 Registered holder deemed to be absolute owner.

7. The Bank will recognise the registered holder of any Stock as the absolute owner thereof, and shall not be bound to take notice or see to the execution of any trust, whether expressed, implied, or constructive, to which any such Stock may be subject ; and the receipt of such person for the interest from time to time accruing due in respect thereof, and for any moneys payable in respect thereof, or upon the redemption of the same, shall be a good discharge to the Bank, notwithstanding any notice it may have, whether express or otherwise, of the right, title, interest, or claim of any other person to or in such Stock or moneys.

20 Survivorship.

8. In case of the death of any one of the joint holders of any registered Stock the survivor will be the only person recognised by the Bank as having any title to or interest in such Stock.

Corporation holding as joint tenant.

9. A body corporate may be registered as one of the joint holders of Stock, and in any such case the persons so registered shall be deemed to hold in joint tenancy with right of survivorship, and the Bank shall be at liberty to act on that footing ; and for the purposes of this clause the dissolution of a body corporate shall be treated as its death.

30 Transfer of stock.

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

Form of transfer.

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THE QUEENSLAND NATIONAL BANK LIMITED.  
I, \_\_\_\_\_,  
of \_\_\_\_\_,  
in consideration of the sum of £ \_\_\_\_\_ paid to  
me by \_\_\_\_\_,  
of \_\_\_\_\_,  
do hereby transfer to the said \_\_\_\_\_  
(hereinafter called the transferee) \_\_\_\_\_ of  
the Stock of the above-named Bank, to hold the same  
unto the transferee subject to the several conditions  
on which I held the same immediately before the  
execution hereof ; and I, the transferee, do hereby  
agree to take the said Stock subject to the same  
conditions.

As witness our hands this \_\_\_\_\_ day of \_\_\_\_\_ .

Witness :

Execution of  
transfer.

11. Every such instrument must be signed both by the transferor and transferee, and the transferor shall be deemed to remain owner of such Stock until the name of the transferee is entered in the Register hereinbefore mentioned in respect thereof.

Forwarding  
transfers, &c.,  
to office where  
stock  
registered.

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

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Retention of  
transfer.

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

Fees on  
transfer.

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

Closing register  
of transfers.

15. No transfer will be registered during the fourteen days immediately preceding the 31st day of March and 30th day of September in each year.

Transmissions  
of stock.

16. The executors or administrators of a deceased registered holder of Stock (not being one of several joint holders) shall be the only persons recognised by the Bank as having any title to such Stock.

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Death or  
insolvency of  
registered  
holder.

17. Any person becoming entitled to any Stock in consequence of the death or insolvency of any registered holder of such Stock, upon producing such evidence that he sustains the character in respect of which he proposes to act under these conditions, or of his title, as the Bank shall deem sufficient, may be registered himself as the holder of such Stock or, subject to the preceding conditions as to transfer, may transfer such Stock. This clause shall include any case in which a person becomes entitled as the survivor of persons registered as joint holders.

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Withholding  
interest.

18. The Bank shall be at liberty to retain the interest payable upon any Stock in respect of which any person under the last preceding condition is entitled to transfer until such person shall be registered or duly transfer the same.

Mode of  
payment of  
interest.

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

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Receipt of one  
joint holder.

20. If several persons are entered on the Register as joint holders of any Stock, then, without prejudice to the last preceding clause, the receipt of any such person for the interest or other moneys from time to time payable in respect of such Stock shall be as effective a discharge to the Bank as if the person signing the same receipt were the sole registered holder of such Stock.

Loss, &c., of  
certificate.

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21. If any certificate of Stock, issued pursuant to these conditions, be worn out or defaced, upon production thereof at the office of the Bank at which such Stock is registered, the Bank may cancel the same and may issue a new certificate in lieu thereof; and if any such certificate be lost or destroyed, then, upon proof thereof to the satisfaction of the Bank, or in default of proof on such indemnity as the Bank deems adequate being given, a new certificate in lieu thereof may be given to the person entitled to such lost or destroyed instrument. An entry as to the issue of the new certificate and indemnity (if any) will be made in the Register hereinbefore mentioned.

There shall be paid to the Bank in respect of any new certificate issued under this clause a sum not exceeding 2s. 6d.

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12. The indebtedness of the Bank to the Queensland Government at the date upon which the new scheme was sanctioned by the Supreme Court of Queensland was to be payable in accordance with an agreement made between the Bank and the said Government, the terms of which agreement were in substance set out in the new scheme. In the year 1904, however, a new agreement was made between the Bank and the said Government in substitution for the said first-mentioned agreement. The whole of the moneys owing by the Bank to the said Government had been paid in terms of such new agreement before the date of the resolution to wind up the Bank hereinafter mentioned.

Vol. 1, p. 32, C45.  
Vol. 2, pp. 315-320.

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13. Pursuant to the new scheme the Bank created stock to an amount of £3,116,621 and of such stock £1,083,097 was inscribed on Australian registers and £2,033,524 thereof was inscribed on the London register. Transfers of stock between persons and between registers took place and the Bank from time to time itself bought various amounts of the stock.

Vol. 1, p. 29, CC23-36.

Vol. 1, p. 41, par. 122.  
Vol. 1, p. 29, CC23-36.

14. By the end of the year 1918 the Bank had paid to the stockholders the sum of five shillings in the pound mentioned in clause 7 of the new scheme.

Vol. 1, p. 33, CC.12-20.

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15. On 30th October 1947 a resolution was passed at a meeting of the Bank that the Bank be wound up voluntarily, an agreement having been made between the shareholders of the Bank and the Appellant whereby the Appellant and its nominees became possessed of all the shares in the Bank. At the date of the resolution there was £729,269 of the stock registered on Australian registers and £1,829,817 thereof registered on the London register. No transfers of stock between registers have taken place since the date of the said resolution.

Vol. 1, p. 45, CC1-20.

Vol. 1, p. 29, CC29-  
p. 30, C11.

Vol. 1, p. 45, C32.

16. At the date of the commencement of the winding up of the Bank there existed the following classes of stockholders :—

(i) Those whose stock was at that date registered on the London register and had been at all times so registered ;

(ii) Those whose stock was at that date registered on the London register but which had been transferred thereto from an Australian register ;

(iii) Those whose stock was at that date registered on an Australian register and had been at all times so registered ;

(iv) Those whose stock was at that date registered on an Australian register but which had been transferred thereto from the London register ;

(v) Those whose stock was at that date and at the date of issue thereof registered on the London register but which had at an intermediate period been registered on an Australian register ; and

(vi) Those whose stock was at that date and at the date of issue thereof registered on an Australian register but which had at an intermediate period been registered on the London register.

Vol. 1, p. 4.

Vol. 1, p. 9.

17. By order of the Supreme Court of Queensland representative 20 parties were ordered to represent such classes as follows :—

Class (i) : The Scottish Union and National Insurance Company ;

Class (ii) : The National Mutual Life Association of Australasia Limited ; and

Class (iii) and (iv) : Edward Robert Crouch.

At the hearing of the said motion argument was addressed to the Supreme Court of Queensland on behalf of Class (v) by The National Mutual Life Association of Australasia Limited and on behalf of Class (vi) by Edward Robert Crouch.

18. The questions asked by the Liquidator as aforesaid related to 30 whether the various classes of stockholders were respectively entitled to receive on the winding up of the Bank in Australia the equivalent in English or in Australian currency of the face value of their stock. The Liquidator is possessed of sufficient assets out of which to pay all the stock irrespective of the currency in which the same is to be paid, and the costs of any proceedings taken to determine the questions.

Vol. 1, p. 47, CC36-39.

19. The said motion came on for hearing before Macrossan C.J. of the State of Queensland. The questions asked by the Liquidator as aforesaid and the answers of Macrossan C.J. to such questions are as follows :—

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

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

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

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

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

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

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

QUESTION 4 : Whether the registered holders of such stock whose stock was at the date of the commencement of the voluntary winding up of the said Bank registered on a register of stock kept by the said Bank in Australia and whose stock was at the date of issue thereof on the said London register and the registration of which was subsequently transferred to a register of stock kept by the said Bank in Australia are entitled to be paid or to prove in the winding up of the said Bank for the principal and/or interest moneys secured or represented by or payable in respect of such stock the registration of which was so transferred on the basis that they 10 receive the equivalent of the face value of the principal and/or interest moneys in English or Australian currency.

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

QUESTION 5 : Whether the registered holders of such stock whose stock was at the date of commencement of the voluntary 20 winding up of the said Bank registered on a register of stock kept by the said Bank in Australia and whose stock was at the date of issue thereof on a register of stock kept by the said Bank in Australia but had been at an intermediate period registered on the said London register are entitled to be paid or to prove in the winding up of the said Bank for the principal and/or interest moneys secured or represented by or payable in respect of such stock the registration of which was so transferred on the basis that they receive the equivalent of the face value of the said principal and/or interest moneys in English or Australian currency 30

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

QUESTION 6 : Whether the registered holders of such stock whose stock was at the date of the commencement of the voluntary winding up of the said Bank registered on the said London register and was at the date of issue thereof on the said London register 40 but had been at an intermediate period registered on a register of stock kept by the said Bank in Australia are entitled to be paid or to prove in the winding up of the said Bank for the principal and/or interest moneys secured or represented by or payable in respect of such stock the registration of which was so transferred on the basis that they receive the equivalent of the face value of the said principal and/or interest moneys in English or Australian currency.



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

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

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

20. The Appellant appealed to the High Court of Australia from so much of the order of the Supreme Court of Queensland as ordered that 20 any of the said classes of stockholders were entitled to be paid the equivalent of the face value of their stock in English currency. The respondents to the said appeal were The Scottish Union and National Insurance Company as representative of class (i), The National Mutual Life Association of Australasia Limited as representative of class (v), Edward Robert Crouch as representative of class (vi) and Fred Pace as such liquidator as aforesaid. Vol. 1, p. 88.

21. The National Mutual Life Association of Australasia Limited as representative of class (ii) gave notice of cross appeal from the said order of the Supreme Court of Queensland seeking an order that the shareholders 30 in class (ii) be paid the equivalent in English currency of the face value of their stock. Vol. 1, p. 89.

22. On the hearing of the appeal and cross appeal to the High Court it was argued on behalf of the Appellant that—

(i) The question for determination was the true construction of the new scheme and, in particular, the determination of the meaning of the word and symbol pound £ as the money of account to measure the obligations of the Bank under the scheme.

40 (ii) The new scheme was not in any way consensual in nature but was imposed upon the creditors of the Bank irrespective of their consent by orders of courts, the principal such order being that of the Supreme Court of Queensland.

(iii) The orders of the Supreme Court of New South Wales and of the High Court of Justice approved the new scheme in terms identical with those in which it had been approved by the Supreme Court of Queensland and imposed it as the same scheme upon the creditors subject to the respective jurisdictions of those Courts and that the new scheme did not change its meaning when so approved.

(iv) On the true construction of the new scheme it could only refer to a single money of account throughout since under it the Bank was required to create a specific total of stock expressed in terms of a money value, and to allot such stock rateably among all creditors of the Bank being holders of the said securities, all stockholders being regarded as one class no distinction being made with respect to the nature or identity of any pre-existing obligation by the Bank to any stockholder or class of stockholder or with respect to the place of payment of the said securities or otherwise.

(v) The new scheme must in certain parts thereof be taken to refer to Queensland currency as the money of account, and therefore that currency must be the money of account referred to throughout the new scheme. 10

(vi) The word and symbol pound £ have the same meaning throughout the instrument and meant a Queensland (now Australian) pound.

(vii) This conclusion was confirmed by the consideration that the new scheme effected, by the Order of the Supreme Court of Queensland, the reconstruction of a Queensland Company modifying at the one time the rights of shareholders and of creditors, the relation of the Assets and Liabilities in the Balance Sheet of the Bank, necessarily expressed throughout in the one currency, being the fundamental reason for and justification of the order. 20

(viii) At the time at which the new scheme was approved by the Courts there was no apparent difference between English money and the money of the Australian Colonies either as to the nomenclature of the units of currency or as to their relative value. That they were distinct currencies and that their values might diverge as did subsequently happen was not in the contemplation of anybody concerned with the various transactions and orders. 30

(ix) It was not necessary, in order to construe the new scheme, to consider the history of the obligations of the Bank to creditors out of which the creation of the stock arose ; if it was so necessary, then there was no evidence that all the several obligations of the Bank which were satisfied and discharged by stock originally placed on the London Register were English obligations, and there was evidence to the contrary in one or more instances.

(x) The Bank's obligation therefore to all stockholders was to be measured in Australian money of account.

23. On the hearing of the Appeal and Cross Appeal to the High Court it was argued on behalf of the Respondent the Scottish Union and National Insurance Company that— 40

(i) The original obligations, in satisfaction and discharge of which stock was originally registered on the London Register were obligations—

(a) The proper law of which was English ;

(b) Repayable in English money of account.

(ii) The old scheme did not change the character of those obligations.

(iii) It was clear therefore that immediately before the approval of the new scheme the members of the class represented by this Respondent (class one) were entitled to have the Bank's obligation to them measured in English money of account. There was nothing in the new scheme to indicate that this position was thereby changed.

10 (iv) The history of the obligations strengthened this conclusion because there was no Australian element whatever contained in it with regard to this class, whose members lent English money in England to a Bank trading there.

(v) With regard to this class therefore the money of account referred to in the new scheme was English money.

24. On the hearing of Appeal and Cross Appeal to the High Court it was argued on behalf of the National Mutual Life Association of Australasia Limited as Cross Appellant that—

20 (i) On the true construction of the new scheme the place of payment of the stock, no matter in what event it became payable, was the place of registration.

(ii) There was a presumption that the money of account referred to in the New Scheme was the money of the place of payment. There was nothing in the new scheme to displace this presumption.

(iii) The stockholders were entitled under the provisions of the new scheme to exercise a right of transfer of the registration of their stock from one register to another.

30 (iv) They could thus at their option change the place of payment, and as the money of account was the money of that place, they could change the money of account in which the Bank's obligation to them was to be measured.

(v) The money of account for the payment of the stock was therefore the money of the place where the stock was registered at the date of the commencement of the winding up of the Bank and with regard to the members of the class represented by the Cross Appellant (class two) was English money.

25. The Respondent Fred Pace as such liquidator as aforesaid placed before the High Court no positive submissions on his own behalf.

40 26. The High Court reserved its decision and on 19th March, 1951, Vol. 1, p. 124. by majority, ordered that the appeal should be allowed in respect of the answer of Macrossan C.J. to question 4 and that the order of the Supreme Court of Queensland should be varied by substituting the word " Australian " for the word " English " in the answer to question 4, and that otherwise the appeal should be dismissed and that the cross appeal should be allowed

and that the said order of the Supreme Court of Queensland should be further varied by substituting the word "English" for the word "Australian" in the answer to Question 2.

The judgment of the Court is reported in 1951 Argus L.R. 229.

[1951] A.L.R., p. 238.

27. Latham C.J. dissented from the judgment of the other members of the Court. He was of opinion that the problem was to interpret the order of the Supreme Court of Queensland which was adopted in terms by respective Courts in New South Wales and England and under which the Bank had created the stock. He thought that the word "pounds" in some places in the scheme must mean "Australian pounds" and he thought, upon examination of the scheme, that it would be incoherent and not fully intelligible if the word "pounds" were not construed in the same sense wherever occurring in the scheme. He therefore decided that the money of account in respect of all the stock was the Australian pound. 10

28. Dixon J. came to the conclusion that the stock which at the date of the resolution to wind up the Bank referred to in paragraph 15 hereof was registered on the London register of stock kept by the Bank irrespective of whether or not it had been originally placed on such register at the date of its issue, was to be paid according to its face value in English pounds, and that otherwise the stock was to be paid according to its face value in Australian pounds. 20

[1951] A.L.R., p. 246,  
CC38-62.

His Honour said: "It appears to me that the whole series of transactions recognised the existence of the three jurisdictions involved, that is England, Queensland and New South Wales, and the existence within, at all events, the two main jurisdictions, of different bodies of creditors. It recognised that the need for the separate registers grew out of this fact. By the registers the stockholders of each jurisdiction were identified and recorded. But it was seen that it might be convenient for individual stockholders to change from one jurisdiction to another and it was thought not to matter, because no one foresaw that during the currency of the stock Great Britain and Australia would leave the gold standard and the monetary systems would widely diverge. It must be borne in mind that not only did the two monetary systems or potential monetary systems look like one indissoluble system but the stock was interminable. Apart from default or winding up the question could not arise unless the Bank itself chose to raise it by giving a notice of redemption. I think that the better view is that the register was designed to determine the jurisdiction to which the stock belonged and that the right to transfer from one to another register was added as a matter of convenience not otherwise of consequence, not that the right of transfer was an essential feature inconsistent with the intention which in its absence would be imputed. 30 40

I am of opinion that this is the unusual case of two classes of obligations, otherwise uniform in present character, belonging to two different monetary systems and therefore possessing two different moneys of account, with a means available to a payee of transferring the liability to him from one to the other class."

[1951] A.L.R. 240,  
CC7-10.

In his opinion there were two possible constructions. Either the stock associated with the United Kingdom, by virtue of registration, or of the

liabilities it represented or otherwise, could be taken to refer to the English pound as the money of account and the remainder to the Australian pound, or alternatively all the stock could be taken to refer to the Australian pound. Referring to the former alternative, His Honour said, "It will be seen that, before the winding up, the right to transfer the stock from an Australian register to the register in the United Kingdom or vice versa amounted in effect to an option to go not merely from one place of payment to another but from one measure of the quantum or substance of the obligation to another. In other words it amounts really to an *option de change* or option of payment and not merely to an *option de place*." Speaking of the presumption that the money of account was the money of the place of payment, His Honour said, "When there are means by which the country of payment may be changed by the payee the inference may be weakened but whether it is weakened to the point of being altogether invalid must depend upon circumstances." In the present case, His Honour was prepared to draw the inference.

[1951] A.L.R. 240,  
CC13-19.[1951] A.L.R. 246,  
CC4-7.

29. Williams J. came to the same conclusion as that reached by Dixon J. The obligation, His Honour said, did not depend upon contract but upon the orders of courts. But even so, the questions at issue fell to be decided in accordance with principles referred to in *Bonython v. The Commonwealth* [1941] A.C. 201 namely that the substance of the obligation was to be determined by finding what was the monetary system with which the obligation was most closely connected. The original liabilities of the Bank were entered into with respect to the separate monetary systems of Queensland, New South Wales and England. That those monetary systems were in fact separate at the relevant date was shown by the judgment of the Privy Council in *Bonython v. The Commonwealth*. It was clear to His Honour that the liabilities under the old scheme were also so entered into. Under the new scheme, His Honour held that the place of payment of the stock was the place of registration. Particular places were therefore chosen for payment, and His Honour thought that this was the decisive factor supporting the conclusion that payment was to be made at each place in the currency of that place. The new scheme, therefore, was entered into with respect to the three different currencies involved, and His Honour thought that it was not intended that the measure of the liability of the Bank to its London depositors should be changed.

[1951] A.L.R. 250,  
CC8-10.[1951] A.L.R. 250,  
CC16-25.[1951] A.L.R. 250,  
CC52-54.[1951] A.L.R. 250,  
CC35-39.[1951] A.L.R. 249,  
CC27-34.[1951] A.L.R. 250,  
CC34-35.[1951] A.L.R. 251,  
CC7-8.

30. Webb J. came to the same conclusion as Dixon and Williams JJ. holding that nothing in the new scheme altered the nature of the liability of the Bank, arising out of the original deposits and subsequently the substituted deposit receipts issued under the old scheme, so as to bring it within the framework of a single monetary system.

[1951] A.L.R. 253,  
CC1-8.

31. Fullager J. came to the same conclusion. His Honour said that there was a presumption that the money of account intended was the money of the place of payment. But this presumption was likely to have little or no weight when alternative places of payment were provided for in the contract under construction. In such case some very definite indication was necessary before the provision of alternative places of payment could be held to be more than a mere option of place. His Honour held that the place of payment of the stock was the place of

[1951] A.L.R. 254,  
CC30-31.[1951] A.L.R. 255  
CC3-5.

[1951] A.L.R. 255,  
CC44-48.

registration. He thought that the original deposits of the London depositors were measured by the English monetary system, and the original deposits of the Queensland and New South Wales depositors by the monetary system of those colonies.

[1951] A.L.R. 256,  
CC1-2.

[1951] A.L.R. 256,  
CC2-24.

[1951] A.L.R. 257,  
CC11-22.

The old scheme, in His Honour's opinion, did not alter that position. Nor did His Honour think that the new scheme altered that position. The position immediately after the new scheme had been approved was, therefore, that there were three sets of obligations on the part of the Bank, each referring to a different monetary system. As the monetary systems of Queensland and New South Wales were for all practical purposes the same, it could be said that there were two such sets of obligations, one measured by the English pound and the other by the Australian pound. If there had been no provision for transfer of registration of stock in the scheme it would have been clear, in His Honour's opinion, that the same position would have obtained at the date of liquidation. The question was, therefore, to ascertain whether the provision for transfer of registration was intended to give each stockholder the right to alter, not only the place of registration, but the monetary system governing his stock, and so to alter the substance of the obligation. His Honour thought that this was the correct solution, because there was nothing substantial in this case, assuming that there must be two sets of obligations measured by two different moneys of account, to rebut the presumption that, in the case of each stockholder, the money of account was the money of the place of payment.

[1951] A.L.R. 257,  
CC22-24.

[1951] A.L.R. 257,  
CC30-36.

32. The Appellant submits that the Judgments of the learned Judges of the High Court, except that of Latham C.J., were in error, *inter alia*, because they did not construe the order of the Supreme Court of Queensland and the scheme it approved, and, in particular, the meaning of the word and symbol "pound £" therein according to the proper law of such instruments, but rather placed a meaning upon each individual certificate of registration of stock upon the assumption that it must necessarily refer to one or other of two or possibly three monetary systems conceived as such by the Bank and the creditors at the time of the issue of the original certificates of registration, such an assumption being largely based upon the history of the liabilities which the scheme as a scheme was undoubtedly designed to displace.

The Appellant submits that such an approach is inconsistent with the judgment of the Privy Council in *Bonython v. The Commonwealth of Australia* [1951] A.C. at page 201, and particularly with the passages at page 217, where the Board by Lord Simonds said, "The question, then, is what, on the true construction of the debenture of 1895 according to its proper law, is intended by the use of the words therein 'pounds sterling'?" This is a question which must be determined as at the date of its issue," and at page 219 where His Lordship says for the Board: "The question can be posed in this way. The facts being that, though there were in a real sense two monetary systems the money of account was the same and the money of payment substantially the same in the two countries, what meaning is to be attributed to the use by the legislature and executive authority of Queensland of the words 'pound' and 'sterling' in a Queensland Act and an instrument made thereunder? Necessarily the

question is a somewhat artificial one; for it is safe to assume that a divergence in the values of the Queensland pound and the English pound was in the contemplation of nobody. But this at least seems clear, that, if no such divergence was thought of, it cannot have been intended that the debenture holder should obtain a different measure of value, or the Queensland Government be placed under a different liability, according to the place of payment; in other words, it is clear that the same substantial obligation was imposed on the Queensland Government whatever the place chosen for payment, the choice being given to the debenture holder purely as a matter of convenience. The position is wholly different from that which arises where the creditor is expressly given an option not only as to the place of payment but also as to the currency in which it shall be made, and is perhaps given the further protection of the familiar gold clause."

33. The Appellant repeats, *inter alia*, the submissions in paragraph 31 hereof and submits that this appeal should be allowed, and that the order of the High Court of Australia should be set aside and that in lieu thereof it may be ordered that the answers of Macrossan C.J. to the questions submitted by the Liquidator as aforesaid should be varied by substituting the word "Australian" for the word "English" in the answers to Questions 1, 4 and 6 for the following amongst other

## REASONS

1. BECAUSE the judgment of the majority of the learned judges of the High Court was wrong in that it failed to construe the new scheme or the orders approving the same according to their proper law and did not attach any or sufficient significance to the following elements :—

- 30 (A) That the stock was created under and in compliance with Orders of Courts of which the principal was the order of the Supreme Court of Queensland :
- (B) That the total amount of the stock to be created was expressed in a money sum in pounds, which sum necessarily remained a constant figure ;
- (C) That the stockholders were a single class each taking a rateable part of the total of stock created ;
- 40 (D) That the orders of the Courts were made to enforce on the Bank its proprietors and Creditors a composition of the former obligations of the Bank in order to avoid a liquidation which the accounts of the Bank, necessarily expressed in one currency only, suggested as otherwise inevitable ;
- (E) That the said orders required the Bank to keep registers of stock at any office of the Bank to which any of the stock might be transferred without limitation to branches in countries which express their currency in pounds.

- (F) That the new scheme at the same time readjusted the rights of the shareholders and of the creditors, such readjustment being effected in the light of the modification of its rights which the Government, as the largest creditor, was prepared to accept, which modification was subsequently embodied in an agreement between the said Government and the Bank dated the twenty-fourth day of November, 1897.
- (G) That a feature of the scheme was that the stock- 10  
holders were to participate both in the management and in the profits of a Bank incorporated in Queensland and having its assets almost wholly located and employed in Queensland and that they did so by virtue of an order of the Supreme Court of Queensland which was the principal of the orders made; and
- (H) That many of the rights of the stockholders were relative to the value of stock held and that provisions giving such rights would be unworkable unless the 20  
value was expressed in one currency only.
- (I) That the new scheme was a single scheme which necessarily involved the use of a single money of account throughout, and that the Government of Queensland was the principal creditor.
- (2) BECAUSE the said judgments attached irrelevant or at least undue significance to the history of the former liabilities of the Bank.
- (3) BECAUSE the said judgments attached undue significance to the events which had happened, namely, the deprecia- 30  
tion of the Australian pound in relation to the English pound, and insufficient significance to the fact that any distinction between the two currencies, or any possible divergence in their respective values was not in the contemplation of anybody at the time the orders of the Court were made.
- (4) BECAUSE the said judgments erroneously attach significance to the place of payment.
- (5) BECAUSE the said judgments attached undue significance to the place of payment if, as the Court 40  
thought, the place of payment could be changed at will by the stockholder by merely changing the place of registration.
- (6) BECAUSE there was no evidence in the case from which it could be inferred that any of the said Courts, or that the parties themselves, intended to give to each and every stockholder an option of change a unilateral ability to alter the extent of the obligation of the stock.



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- (7) BECAUSE upon the proper construction of the new scheme and the orders approving the same no option of change was created or intended to be created.
  - (8) BECAUSE, if the place of payment be material, the place of payment in the case of Interminable Inscribed Stock in the event of liquidation was the place of the liquidation or principal liquidation of the Bank.
  - (9) BECAUSE the place of registration had no significance in the determination of the money of account by which the obligation to any holder of stock should be measured.
  - (10) BECAUSE upon the proper construction of the new scheme and the orders approving the same the word and symbol "pound" "£" referred throughout to the currency of Queensland.
  - (11) BECAUSE the meaning of the word "pound" was the same in the various certificates of registration as it was in the new scheme and the orders approving the same and throughout referred to the currency of Queensland.

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G. E. BARWICK,

G. A. G. LUCAS,

*Counsel for the Appellant.*

**In the Privy Council.**

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**ON APPEAL**

*From the High Court of Australia.*

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IN THE MATTER of The Companies Acts 1931 to 1942  
(Queensland)

and

IN THE MATTER of The Queensland National Bank  
Limited (In Voluntary Liquidation)

and

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

BETWEEN

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

AND

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

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**Case for the Appellant.**

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*Solicitors for the Appellant.*